

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 747 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 69 DB 2000
v.	:	
	:	Attorney Registration No. []
[ANONYMOUS]	:	
Respondent	:	([])

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 May 22, 2000, a Petition for Discipline was filed against [], Respondent in these proceedings. The Petition charged that Respondent made misrepresentations in his application for admission to the Pennsylvania Bar filed with the Pennsylvania Board of Law Examiners in April of 1994. Respondent is also charged with lying under oath in a criminal proceeding in which he was called as a witness. Respondent filed an Answer to Petition for Discipline on June 26, 2000 and an Amended Answer on July 26, 2000.

A disciplinary hearing was held on December 19, 2000, before Hearing Committee [] comprised of Chair [], Esquire, Member [], Esquire, and Alternate Member [], Esquire. Respondent was represented by [], Esquire. Following briefing by the parties, the Committee filed its Report on June 27, 2001, and determined that Respondent violated the Rules of Professional Conduct. The Committee recommended that Respondent be suspended for a period of three years.

Respondent filed a Brief on Exceptions and Request for Oral Argument on August 7, 2001. Petitioner filed a Brief on Exceptions on August 7, 2001.

Oral Argument was held before a three member panel of the Disciplinary Board consisting of Charles J. Cunningham, III, Angelo L. Scaricamazza, Jr., and Lisa A. Watkins on November 28, 2001.

This matter was adjudicated by the Disciplinary Board at the meeting of December 6, 2001.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is situated at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania, is invested, pursuant to Rules 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter Pa.R.D.E.), with the power and duty to investigate all matters involving alleged misconduct of any 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 was born in 1961 and was admitted to practice law in Pennsylvania in 1995. His office is located at [].

THE BAR APPLICATION

3. On April 15, 1994, Respondent filed with the Pennsylvania Board of Law Examiners (“the Law Examiners”) an application for admission to the Bar of the Supreme Court of Pennsylvania, dated April 2, 1994 and signed by Respondent after the following verification (Ex. P-27):

I verify that the statements of facts made by me in this application are true and correct and that they are made subject to the penalties of 14 Pa.C.S. §4904 relating to unsworn falsification to authorities. I further verify that I have not omitted any facts or matters pertinent to this application.

a. Question 7 of the bar application asks:

State principal residences outside of Pennsylvania you have had within the past 10 years, including college, law school and military addresses.

NO. & STREET	CITY & STATE	FROM	TO
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Respondent listed:

<input type="checkbox"/>	Washington DC	8/91	5/94
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- b. Question 8 (a) of the bar application asks:

"Have you ever used another name?"

Respondent placed an "X" in the box marked "No."

- c. Question 14 (b) of the bar application asks:

Have you ever been arrested or prosecuted for any crime (other than a summary motor vehicle violation?)

Note: This question requires an affirmative response notwithstanding the fact that an arrest, conviction, or sentence has been legally expunged from your record (if such applies to you.)

Respondent placed an "X" in the box marked "Yes."

- d. Following question 16 of the bar application is the directive:

Note: If your answer(s) to questions 13, 14, 15 or 16 is in the affirmative, you must send all related documentation along with this application. See instructions.

- e. Page 6 of the bar application directs:

Use this space, if needed, to complete questions. If you have answered "yes" to any section of questions 10 (c) – 19, 24, 25, use this space to give a detailed explanation of the circumstances.

Respondent responded, *inter alia*:

question 14(b) See attached. I have a conviction for cashing a bad check, which I received probation 3 yrs., fine of \$1,000.00. I have successfully completed my probation and I am currently seeking a pardon from the U.S. Pardon Attorney.

4. Respondent appended to his application a pleading titled "Petition to Expunge Criminal Record" (Ex. P-28A), an Affidavit dated June 4, 1993 (Ex. P-28B), and an unsigned and undated Order (Ex. P-28C), with respect to criminal charges at [] Municipal Court docket no. [] and [] Municipal Court docket no. []; the Petition and Order are captioned in the [] Court of Common Pleas but lack a court term and number and a time stamp.

a. In the Petition to Expunge, Respondent stated, *inter alia*:

The Petitioner has no prior record. The aforementioned arrests were his first contact with authorities.

b. On or about April 20, 1994, [A], Executive Director of the Board of Law Examiners requested that Respondent provide a copy of the executed Order granting expungement, if any. (Ex. P-29).

c. On May 2, 1994, Respondent submitted to the Law Examiners an unverified and undated "Motion for Expungement" (Ex. P-30A) and a verified but undated "Petition to Expunge" (Ex. P-30B), both lacking a court term and number and date stamp; and a signed Order at No. [], dated June 4, 1993, reflecting filing of a motion on March 29, 1993 (Ex. P-30C).

d. In the Motion for Expungement, Respondent stated, *inter alia*:
"Your applicant has no prior arrest record."

5. The custodian of Records of the Pennsylvania Board of Law Examiners, if called to testify in this matter, would testify that:

- a. in the ordinary course of business, the Law Examiners maintain complete records of each application to the Pennsylvania bar, including but not limited to submissions by the applicant and records of action by the Executive Director of the Board;
- b. he has knowledge of the types of documents maintained by the Law Examiners;
- c. he conducted a thorough search of the Law Examiner's files concerning the application to the Pennsylvania Bar filed by Respondent;
- d. after said search, the documents located in the Law Examiner's file with respect to Respondent are those marked as Exhibits P-27 through P-30C; and
- e. these documents were kept in the ordinary course of the Board of Law Examiner's business.

THE PARDON APPLICATION

6. On February 25, 1994, Respondent submitted to the United States Pardon Authority a sworn Petition for Pardon after Completion of Sentence (Ex. P-22), signed by him below the following certification:

I hereby certify that all answers to the above questions and all statements contained herein are true, and I understand that any misstatements of material facts contained in this petition may cause adverse action on my petition for pardon, in addition to subjecting me to any other penalties provided by law.

- a. Question 1 of the Petition for Pardon directs:

If you have ever been known by any other name, state in full every other name by which you have been known, including name under which you were convicted, the reason for the use of another name, and the dates during which you were so known.

Respondent responded:

[B] Voluntary name change.

- b. Question 2 of the Petition for Pardon states, and Respondent responded [response in **bold**]:

Petitioner was convicted in the United States District Court for the [] District of **Pennsylvania** at [] on a plea of **guilty** of the crime of **Bank Larceny (cashed a bad check)** _____ and was sentenced (describe specific offense)

On **9/27/88** to ["imprisonment" crossed out] / probation **for 3 yrs.** and/or to pay fine of **\$1,000**. Restitution in the amount of **\$1,400 was** ordered and **has** been made. Petitioner was **21** years of age when the crime was committed.

- c. Question 4 of the Petition for Pardon states, and Respondent responded [response in **bold**]:

Petitioner began service of the sentence of ["imprisonment" crossed out] /probation on **9/27/88**; was released on _____, 19__ from _____ (Federal institution); and was finally discharged by expiration of sentence on _____, 19__.

- d. Question 5 of the Petition for Pardon states:

Give a complete and detailed account of the offense, including dates (or time span) of the offense, names of codefendants and, when applicable, the amount of money involved. You are expected to describe the factual basis of your offense completely and accurately and not rely on criminal code citations or name references only. If

your conviction resulted from a plea agreement, you should describe fully the extent of your total involvement in the criminal transaction(s), in addition to the charge(s) to which you pled guilty. ...

Respondent stated:

On or about April of 1983, I deposited a check into my bank account with knowledg [sic] that there was [sic] insufficient funds to honor the check. The check was paid to me and I was subsequently charged with the following offense.

e. Question 8 of the Petition for Pardon asks:

Have you ever been arrested, taken into custody, held for investigation or questioning, or charged by any law enforcement authority, whether federal, state, local or foreign, either as a juvenile or adult? ___ (yes/no). For each incident, list date, nature of offense charged, law enforcement authority involved, location and disposition. You must list every violation, including traffic violations that resulted in an arrest or criminal charge; for example, driving under the influence. (Any omission will be construed as falsification.)

Respondent did not provide any information in response.

f. Question 11 of the Petition for Pardon asks:

Have you received restoration of your civil rights (for example, a state pardon, a certificate of restoration of civil rights, or a certificate of discharge? ... If yes, attach copy of the documents) evidencing the state's action.

Respondent responded "yes"; "copy not available."

g. Question 13 of the Petition for Pardon states:

State your reasons for seeking a pardon. [instructions]

Respondent responded:

I am about to complete law school. This conviction may impede my admission to the bar.

7. By letter dated March 29, 1994 (Ex. P-23), United States Pardon Attorney [C] asked that Respondent provide extensive additional detailed information within thirty days.

8. On or about May 2, 1994, Respondent submitted a copy of the original Petition, to which had been added, *inter alia*, the following information (Ex. P-24):

- a. After the previously provided answer to his response to the inquiry in question 1 as to his name, he added: **"used from 1983 – 1988."**
- b. After the previously provided response to question 5:

(This is exactly what happened)

I do not know why there was a five year delay in pursuing legal action.

Amount of the check \$1,400 [D] Bank
___ [], Pa

All fines were paid.

- c. In response to question 8 [relating to prior and subsequent criminal record], Respondent answered "yes" and added:

See Attached:
From 9/86 – 9/88 Incarcerated for possession of an instrument of crime (gun); conviction was reversed, remanded and dismissed.
Incarcerated in Michigan.

- d. Respondent attached no documents.

9. On October 13, 1994, the Petition for Pardon was denied, and by letter of that date, Respondent was so notified. (Exs. P-25 and P-26).

10. The Custodian of Records of the United States Pardon Attorney ("the Pardon Attorney"), if called to testify in this matter, would testify that:

- a. in the ordinary course of business, the Pardon Attorney maintains complete records of each application for a pardon of a federal criminal conviction, including but not limited to submissions by the applicant and records of action by the Pardon Attorney and the Executive Branch;
- b. he has knowledge of the types of documents maintained by the Department;
- c. he conducted a thorough search of the Department's files concerning the application for a pardon filed by Respondent;
- d. after said search, the documents located in the Pardon Attorney's file with respect to Respondent, exclusive of privileged documents relating to the deliberative process, are those marked as Exhibits P-22 through P-26; and
- e. these documents were kept in the ordinary course of the Pardon Attorney's business.

BACKGROUND INFORMATION

11. Respondent has been arrested and/or charged with crimes on the following occasions:

- a. detained by police for retail theft, 3/29/78, using Social Security No. [], [], PA; charge dismissed 4/10/78 (Ex. P-1);
- b. arrested for possession of controlled substance, 4/5/82, [], PA, at MC #[]; disposition unconfirmed (Ex. P-2);

- c. arrested for delivery of a controlled substance, manufacturing a controlled substance and possession of narcotics, 5/27/82, [], PA, at MC # []; disposition unconfirmed (Ex. P-2);
 - d. arrested for carrying a concealed weapon in a motor vehicle on 4/6/86, under the alias "[B]," using Social Security number []; DOB [], Case No. [], [], MI; pled guilty 6/16/86; sentenced 9/9/86 to two years probation, with conditions (Exs. P-3, P-3A, P-3B);
 - e. charged with possession of stolen property, 7/8/86, under the alias "[B]," [], MI; charge dismissed 7/16/86 (Exs. P-3, P-4A, P-4B);
 - f. charged 1/27/87 with possession of stolen property on 6/17/86, under the alias "[B]," [], MI; acquitted 5/21/87 (Exs. P-5, P-5A, P-5B);
 - g. convicted of violation of probation, 8/13/86, [], MI; sentenced to confinement for 40 to 60 months, 9/9/86; incarcerated from 9/9/86 until probation revocation reversed 5/17/88 (Exs. P-6, P-6A, P-6B, P-6C) and
 - h. charged 4/88 with bank larceny and entering a bank with the intent to commit a felony/larceny on 4/11 – 4/14/83, United States District Court for the [] District of Pennsylvania (Exs. P-7, P-7A); pled guilty to bank larceny and entering a bank with the intent to commit a felony/larceny, 7/5/88; sentenced to imprisonment for a period of ninety days (with credit for time served), restitution, and 150 hours of community service, in addition to three years probation, 9/27/88 (Ex. P-7B).
12. Between 1981 and 1994, Respondent resided at various locations, including:
- a. [], PA, prior to 1981;
 - b. [], PA, 1983;
 - c. various addresses in [], North Carolina and [], Michigan, under the alias "[B]", including [], MI, 1982-1985;

- d. [], PA;
- e. [], MD []; and
- f. [], Washington, DC [].

13. Respondent attended the following educational institutions:

- a. [] University: Fall, 1979 to Spring, 1982; Spring and Summer, 1983, Summer, 1990 to Spring 1991;
- b. []: 2/89 – 6/89;
- c. Community College of []: Summer, 1989 to Spring, 1990; and
- d. [] University Law School: 9/91 – 5/94.

14. Commencing in 1984, Respondent held, *inter alia*, the following employment:

- a. [] Temporary Services, [], NC, under the alias [B], using Social Security number [], 6/28/84 – 8/3/84;
- b. [] Company, Inc., [], NC, under the alias [B], using Social Security number [], 8/13/84 – 9/10/84;
- c. [] Company, [], MI, under the alias [B], using Social Security number [], 12/13/84 – 2/8/85;
- d. [] Corporation, [], MI, under the alias [B], using a false Social Security number, 6/8/85 – 3/13/86;
- e. [], [], PA, 8/88 – 7/90;
- f. School District of [], PA, 1/15 – 2/6/89;
- g. [] Hospital, [], PA, 2/17/88 – 9/21/89;
- h. PA Department of [], [], 8/27/90 - 8/2/91;

- i. [], Esquire, [], PA., 1992; and
- j. [] Association, Washington, DC, 5/93 – 6/94.

15. Respondent has no prior record of discipline.

II. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct as set forth in Charge I of the Petition for Discipline:

- 1. RPC 8.1(a) - A lawyer is subject to discipline if the lawyer has made a materially false statement in, or deliberately failed to disclose a material fact requested in connection with an application for admission to the bar or any disciplinary matter.
- 2. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

The Board concludes that Respondent did not violate the Rules of Professional Conduct as set forth in Charge II of the Petition for Discipline.

IV. DISCUSSION

On April 15, 1994, Respondent submitted to the Pennsylvania Board of Law Examiners an Application for Admission to the Bar of the Commonwealth of Pennsylvania. Petitioner has charged Respondent with making materially false and misleading statements in his application and failing to disclose material facts. Petitioner has the burden of proof by clear and satisfactory evidence that Respondent committed this misconduct. Office of Disciplinary Counsel

v. Surrick, 749 A.2d 441 (Pa. 2000). Based on the evidence presented of record, the Board concludes that Petitioner met its burden of proof.

Respondent's bar application is replete with false statements and omissions. Question 8(a) asked "Have you ever used another name?". Respondent checked the box responding "No". The facts offered into evidence clearly support the conclusion that Respondent used the alias "[B]" for an extended period of time. From 1984 through 1985 Respondent held three different jobs, each of which he was employed under the alias [B]. In April of 1986, Respondent was arrested for carrying a concealed weapon in a motor vehicle under the alias of [B]. Between 1986 and 1987 Respondent was charged on three separate occasions with possession of stolen property under the alias [B]. Due to the duration and frequency of Respondent's use of this alias, it is inconceivable that he had a memory lapse while completing his bar application in 1994. Respondent's negative response to Question 8(a) was a deliberate misrepresentation of a material fact. Respondent did not want to reveal that he used an alias because it would have alerted the Board of Law Examiners to Respondent's criminal history.

Question 7 of the Application for Admission to the Pennsylvania Bar states: "State principal residences outside of Pennsylvania you have had within the past ten years, including college, law school, and military addresses." Respondent failed to state that he had resided at [], Michigan, between 1982 and 1985 and was a resident of a Michigan jail from September 9, 1986 until May 17, 1988. Again, Respondent's failure to reveal this information is viewed by the Board

as intentional and not merely negligent, as revelation of this information would have alerted the Board of Law Examiners to Respondent's criminal history.

Question 14(b) of the Application for Admission to the Pennsylvania Bar asks: "Have you ever been arrested or prosecuted for any crime (other than a summary motor vehicle violation)?" Respondent replied "Yes" to this question. The application further states "If you answer "Yes" to any of the following questions (13-17) give a complete explanation of the circumstances on page 6." Respondent's explanation states "See attached. I have a conviction for cashing a bad check, which I received probation 3 yr., fine of \$1000.00. I have successfully completed my probation and am currently seeking a pardon from the U.S. Pardon Attorney." Review of the record indicates there was more to the conviction than was stated by Respondent. He pleaded guilty to two counts of Bank Larceny in 1988 and was sentenced to 90 days imprisonment, with credit for time served and community service, as well as probation and the fine. At the disciplinary hearing, when examined on this issue by Petitioner, Respondent testified that the crime involved getting someone to give or sell to him a number of checks on an account that he did not have signature authority and which did not have money to cover the checks written against it. Respondent explained that what he did was get checks and sell them to people. (N.T. 97-99) This activity involved more than merely cashing a bad check. Respondent was involved in a criminal scheme with other participants.

To his bar application, Respondent attached a Petition to Expunge Criminal Record. He also claims he attached a Pardon Application, although this document was not found in the file retained by the Board of Law Examiners. The Petition to Expunge revealed that in April of 1982 Respondent had been arrested and charged with possession of narcotics and in May of 1982 he was arrested and charged with delivery of a controlled substance, manufacturing of a controlled substance, and possession of narcotics. The Pardon Application was filed in February of 1994 with the U.S. Department of Justice. It revealed that Respondent had been convicted in the [] District of Pennsylvania for bank larceny, which Respondent further described as cashing a bad check. Question 8 of the Petition asked for details of any other arrests or charges at the federal or state level. Respondent provided no information in response to this question. In March of 1994, Respondent was asked by the Pardon Attorney to provide extensive additional information. In May of 1994, Respondent provided amended information, in which he revealed that he had been incarcerated in Michigan for possession of an instrument of crime. He further stated that the conviction had been reversed, remanded and dismissed.

Assuming that the Board of Law Examiners had the Pardon Application in its files when it reviewed Respondent's bar application, Respondent's full criminal history was still not entirely revealed due to Respondent's failure to list his Michigan conviction. Respondent revealed the Michigan conviction in the amended pardon application, but there is no dispute by the parties that this document was never submitted to the Board of Law Examiners.

Respondent's position on these falsities and misrepresentations is that he was simultaneously completing his pardon application and his bar application in early 1994 and was also busy completing law school, working and supporting his family. Respondent describes his omissions as memory lapses or unintentional mistakes. He claims he was not trying to deceive the Board of Law Examiners. The Board perceives otherwise. It is apparent that Respondent was attempting to obfuscate the trail leading to his Michigan conviction by neglecting to reveal that he used an alias and that he lived in Michigan. He also conveniently forgot to directly mention his Michigan conviction on the bar application in response to Question 14(b). Respondent was required to provide an explanation in response to his affirmative answer to that question. The only conviction he noted on the actual application was for bank larceny, which he did not even fully describe. He was obligated to reveal his other criminal history as well. Instead, he attached some documents, one of which perhaps was never seen by the Board of Law Examiners and which once again misrepresented the actual depth of Respondent's criminal background. The Board perceives Respondent's attitude to be that the Board of Law Examiners had the duty to investigate the sparse answers and documents he provided to fully determine Respondent's criminal history, thus placing the onus on the Law Examiners to piece together his convoluted criminal background. In fact, Respondent had the primary obligation to fully apprise the Law Examiners of his history. He well knew that his history might stand in his way of taking the bar examination, so he decided to hide what had transpired. Respondent did not provide a plausible explanation as to why he failed to

reveal such crucial information to the proper authorities. He merely claims that it was not his intention to mislead. He admits that he did not fill out his bar application hurriedly, but took “a couple of days to fill out this application”. (N.T. 61). He offers no justification for lying about his alias or minimizing his convictions, other than his claim that he was confused as to the actual status of his Michigan criminal record. Respondent concedes that he did not investigate the facts in responding to either the bar application or the pardon application. (N.T. 107). Respondent’s denials of intent to mislead do not outweigh the evidence supporting a finding of his knowing and intentional prevarication.

In addition to the charge of making misrepresentations on the bar application, Respondent is charged in the Petition for Discipline with lying under oath in a criminal proceeding in which he was called as a witness. In December of 1998, Respondent appeared under subpoena by the defendant in a Post Conviction Relief Act hearing in the case of *Com. v. [E]* in the Court of Common Pleas of [] County. During the course of his testimony, Respondent was questioned about his use of the alias [B]. Petitioner contends Respondent did not truthfully answer the question pertaining to this issue. The Hearing Committee found that Respondent may have been inaccurate in his answers but did not outright lie under oath and concluded that Respondent did not violate RPC 3.3(a)(1), 8.4(b), 8.4(c) or 8.4(d) as pertaining to Charge II in the Petition for Discipline. Review of the record persuades the Board that the Hearing Committee is correct in its conclusion. The evidence presented by Petitioner is not clear and satisfactory that Respondent

knowingly made a false statement of fact under oath. Respondent testified at the disciplinary hearing that he answered under oath to the best of his recollection without benefit of reviewing any documents referred to by the prosecutor during the hearing. Petitioner's evidence does not compel the Board to conclude otherwise.

The evidence of Respondent's subterfuge is stronger than in other bar admissions cases previously addressed by the Board and the Supreme Court. In In re Anonymous No. 58 DB 82, 27 Pa. D. & C. 3d 471 (1983), an attorney who took the bar examination for his wife was disbarred despite facts that a unique situation imposed tremendous pressure on the attorney and caused him to engage in the misconduct. Three year suspensions were imposed in In re Anonymous No. 7 DB 94, 30 Pa. D. & C. 4th 104 (1995), (attorney failed to disclose a shoplifting conviction in seven applications to three jurisdictions and engaged in the unauthorized practice of law); In re Anonymous No. 68 DB 93, 34 Pa. D. & C. 4th 292 (1996), (false denial of previous application to sit for the bar, discipline aggravated by unrelated misconduct and failure to cooperate in the disciplinary proceeding); and In re Anonymous No. 92 DB 91, 2 Pa. D. & C. 4th 19 (1994) (attorney under scrutiny for falsifying transcript in character and fitness proceeding in another jurisdiction provided twelve fraudulent character reference letters to investigators).

An attorney was suspended for a period of two years after failing to reveal on her bar application a federal criminal conviction for deception as to credit history and use of a false social security card, for which she had been sentenced to three years of probation. In re

Anonymous No. 76 DB 91, 20 Pa. D. & C. 4th 385 (1994). The attorney therein expressed remorse for her misconduct and demonstrated rehabilitation. She provided mitigation in that she surmounted a background of poverty, spousal abuse, and welfare dependency to earn her law degree. She supported a mentally disabled son and her post-admission career was exemplary. While the Disciplinary Board recommended a public censure in light of the mitigating factors, the Court saw fit to suspend this attorney for two years, thus emphasizing the grave nature of bar admissions misconduct.¹

Respondent contends that his situation is similar to the respondent in the above cited case and his matter should be dealt with accordingly. The record shows that Respondent's deceit was more extensive and done with the intent to deceive the Board of Law Examiners. Respondent's concealed criminal record, including seven arrests and two convictions of serious crimes, is of substantially longer duration and gravity than other attorneys who have been disciplined. Moreover, Respondent lied about numerous other matters, including his use of an alias and his prior addresses, all done in an attempt to mislead the Bar Examiners about his criminal past. Respondent offered little if any mitigation and showed little remorse. He showed no appreciation for his responsibilities as an attorney and officer of the court. The character witnesses he presented understood little of the extent of his alleged misconduct. Respondent felt

¹ Justice Papadakos filed a dissent and called for a rule to show cause why the respondent should not be disbarred due to her course of lying and deceit. He viewed fraud in the admissions procedure as equal to fraud on the court.

no duty to divulge crucial facts that bore directly on his character. Prudence and candor lost out to self-serving motives.

The Hearing Committee's recommendation of a three year suspension is too lenient in this particular matter. The Board is persuaded that this case warrants disbarment. Respondent intentionally deprived the Board of Law Examiners of the opportunity to assess his fitness and character to be an attorney and to make its judgment based on a whole and truthful picture of Respondent's background.² Respondent was permitted to take the bar examination and become a lawyer under false pretenses.

² The Board notes that in the past the Board of Law Examiners had the ability to petition the Supreme Court to revoke the admission of an attorney in a situation wherein the attorney was found to have lied on the bar application. The basis for such a petition was that but for the false statements, the attorney would not have been permitted to sit for the bar examination nor would the attorney have met the character standards; therefore the attorney had committed a deception on the Law Examiners and the Court. Specifically, in the case of The Pennsylvania Board of Law Examiners v. Richard Norman Potack 11 E.D. Miscellaneous Docket 1986, the Board of Law Examiners petitioned to revoke Mr. Potack's admission based on his false answers to questions dealing with his arrest and prosecution in California for mishandling client funds, his knowledge of an investigation by the State Bar of California, and his treatment for use of narcotics or liquor. By Order of April 16, 1986, the Supreme Court of Pennsylvania granted the Petition and revoked Mr. Potack's admission.

The Board can find no information on why this procedure is no longer in use.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, [], be Disbarred from the practice of law in the Commonwealth of Pennsylvania.

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: _____
Charles J. Cunningham, III, Member

Date: April 19, 2002

Board Members Scaricamazza and Watkins dissented and would recommend a five (5) year Suspension.

Board Members Schultz and Morris did not participate in the December 6, 2001 Adjudication.

PER CURIAM:

AND NOW, this 19th day of June, 2002, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 19, 2002, the Petition for Review and response thereto, it is hereby

ORDERED that [Respondent] 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.