IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 913 Disciplinary Docket No. 3
	:	No. 101 DB 2004
v.	:	
	:	Attorney Registration No. 64599
DANIEL JOSEPH SEAL, II, Respondent	:	(Delaware County)

ORDER

PER CURIAM:

AND NOW, this 8th day of July, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 9, 2010, it is hereby

ORDERED that Daniel Joseph Seal, II, is suspended from the Bar of this Commonwealth for a period of five years retroactive to April 14, 2009, 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.

A True Copy Patricia Nicola
As of: July 8, 2010
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. 913 Disciplinary Docket No. 3
	:	No. 101 DB 2004
v.	:	
	:	Attorney Registration No. 64599
DANIEL JOSEPH SEAL, II Respondent	:	(Delaware County)

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 of July 8, 2004, the Supreme Court of Pennsylvania referred the matter of the criminal conviction of Daniel Joseph Seal, II, to the Disciplinary Board, pursuant to Rule 214(f)(1), Pa.R.D.E. Office of Disciplinary Counsel filed a Petition for Discipline against Respondent on May 23, 2006, based on his conviction of one count of conspiracy to tamper with a witness, in violation of 18 U.S.C. Section 371; and two counts

of witness tampering and aiding and abetting, in violation of 18 U.S.C. Section 1512(b)(1) and (2). Respondent filed an Answer to Petition for Discipline on June 29, 2006.

Respondent requested a continuance of the proceedings until he was released from prison, which was granted by the Board Chair on July 19, 2006. A pre-hearing conference was held on August 7, 2007. A joint request for continuance was made by the parties and granted by the Board Chair on September 4, 2007.

A pre-hearing conference was held on March 12, 2009. The disciplinary hearing was held ON April 14, 2009 before a District II Hearing Committee comprised of Chair Joseph J. Riper, Esquire, and Members Francis J. Sullivan, Esquire, and Dennis D. Brogan, Esquire. Respondent appeared pro se.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on October 2, 2009, in which it concluded that Respondent violated the Rules of Professional Conduct as contained in the Petition for Discipline. The majority of the Committee recommended a five year suspension, retroactive to April 14, 2009, the date of the disciplinary hearing. The dissenting member recommended a five year suspension retroactive to August 7, 2007, the date of the first pre-hearing conference.

This matter was adjudicated by the Disciplinary Board at the meeting on January 20, 2010.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, 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 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 the aforesaid Rules.

2. Respondent is Daniel Joseph Seal, II. He was born in 1966 and was admitted to practice law in this Commonwealth in 1992. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of discipline.

4. Following his admission to the bar in Pennsylvania, Respondent practiced law in Delaware County. At the time of the underlying incident, Respondent was working with the law firm of Schuster and Associates.

5. On May 28, 2002, four men robbed a federal credit union within the Eastern District of Pennsylvania: Nicholas Paz, Harvey Clanton (known as "Baz"), William Gaines and Dennis McCoy.

6. On May 31, 2002, the FBI arrested Paz and charged him with bank robbery.

7. At the time of his arrest, Paz had committed other burglaries and faced a possible sentence of 32 years under the Federal Sentencing Guidelines.

8. Shortly after his arrest, Paz confessed and assisted the authorities in locating and arresting his co-defendant, Clanton. Paz expressed a desire to cooperate with the government. Paz hoped to have the government seek a reduced sentence for him in exchange for cooperation.

9. Both Paz and Clanton planned to enter guilty pleas to the criminal charges stemming from the armed robbery.

10. From May 2002 to March 2003, a federal grand jury was investigating the May 28, 2002 bank robbery and other federal crimes committed by Paz, Clanton and others.

11. On June 27, 2002, the U.S. Attorney's Office requested that Paz and Clanton be separated in detention so that they would not be able to directly communicate with each other. Officials at the Federal Detention Center (FDC) separated the two men on different floors.

12. Paz asked his girlfriend, Carla McFadden, to contact Respondent for representation because Respondent previously represented Ms. McFadden in an automobile accident case.

13. In June 2002, Paz retained Respondent to represent him in charges stemming from the bank robbery.

14. Respondent agreed to represent Paz with the understanding that Paz was going to plead guilty, and that Respondent would only try to help Paz negotiate a plea agreement and get a reduced sentence through continued efforts in cooperating with the federal authorities.

15. Respondent learned from the FBI that the way to reduce Paz's sentence was through information leading to new arrests.

16. Respondent first met with Paz on June 10, 2002, at the FDC.

17. With respect to cooperation efforts, Paz told Respondent about alleged prior drug dealings Paz and Clanton had with a reputed mob figure named Joseph Ligambi.

18. Respondent than approached the government to report that Paz had information about a mob figure. Respondent also informed the government that Paz wanted to cooperate in the investigation of other persons who committed criminal offenses.

19. The supposed prior drug dealings that Paz and Clanton had with Ligambi became known in Respondent's case as "the Ligambi story."

20. On June 27, 2002, Respondent entered his appearance for Paz.

21. Respondent also arranged to meet with Clanton to see if Clanton would help Paz "set up" Ligambi in a drug deal.

22. On July 1, 2002, Respondent went to the FDC to meet with Paz and Clanton.

23. Respondent signed in as an attorney to meet with both his client Paz and Clanton.

24. As of July 1, 2002, Clanton was represented by Robert O'Shea, Esquire.

25. Respondent did not have permission from Clanton's lawyer to meet with Clanton.

26. When Respondent arrived at the FDC, he learned that Paz and Clanton were under a separation order and could not be visited at the same time so he met with them one at a time.

27. The guards told Respondent that Paz and Clanton were jailed on two different floors and that Respondent had to sign in separately to see each of them.

28. On July 1, 2002, Respondent first met with his client, Paz.

29. Respondent testified at his criminal trial that Paz requested him to meet with Clanton to find out if Clanton along with Paz would wear a wire in order to "set up" Ligambi.

30. Respondent testified at his criminal trial that Paz gave him a note to give to Clanton. The note contained details of the prior drug deals with Ligambi as told by Paz.

31. Respondent had Paz sign his name on Respondent's legal pad so that Respondent could show Clanton that Respondent represented Paz, and that Paz sent Respondent to talk to Clanton.

32. Respondent wrote a paragraph on the legal pad, above Paz's signature, that read: "Nick is trying to work something out that will help him (Baz) come up off a lot of this stuff...But he'll have to do his part, he'll find out what that part is..."

33. After meeting with Paz, Respondent met with Clanton.

34. Clanton testified at Respondent's criminal trial that Respondent explained to him that he represented Paz, and showed Clanton Paz's signature on his legal pad.

35. Clanton testified that he told Respondent that he was represented by Robert O'Shea and asked if Mr. O'Shea knew that Respondent was visiting him.

36. Respondent told Clanton that he had not talked to Mr. O'Shea and that Mr. O'Shea did not know about the visit.

37. Respondent did not stop the visit after establishing that Clanton was represented by counsel and after telling Clanton that Respondent had not talked to Mr. O'Shea about the visit.

38. Clanton testified at Respondent's criminal trial that Respondent told Clanton that Paz was going to cooperate with the government, and wanted to tell the authorities about their prior drug dealing with Ligambi. Clanton testified that Paz asked Respondent to ask Clanton to tell the federal authorities about the alleged prior drug deals too.

39. Respondent testified that he gave Clanton a note from Paz, describing the details of the Ligambi story, and that both Respondent and Clanton read the note.

40. Clanton testified that he told Respondent that the Ligambi story was "bullshit" and "I ain't never do any business with Mr. Ligambi." (Exh. P-9, P-29)

41. Clanton told Respondent that he would consider going along with the false story. Clanton asked for more details about the Ligambi story and Respondent agreed to get more details of the story from Paz.

42. Respondent wrote a note on his legal pad that read "gotta get story to him (Baz) [reference to Clanton]."

43. After meeting with Clanton and learning from Clanton that he was represented by Mr. O'Shea, Respondent did not communicate with Mr. O'Shea about his visit with Clanton.

44. On or about July 8, 2002, through his sister, Paz caused a letter to be sent to Clanton at the FDC. Paz stated that he knew that Clanton did not like the idea of providing false information to the government.

45. Clanton testified at Respondent's criminal trial that "I was being asked to lie and bring [Ligambi] into a situation that he had nothing to do with it." (Exh. P-29)

46. On July 30, 2002, Paz, in the presence of Respondent, gave a proffer interview to Special FBI Agent Roselli and Roberta Benjamin, one of the Assistant United States Attorneys who was prosecuting the robberies.

47. In the July 30, 2002 proffer, Paz told the government the false information about the Ligambi story that Paz had written in his note to Clanton.

48. At Respondent's criminal trial, Agent Roselli testified that it was necessary for him to verify the information that Paz gave in his proffer interview.

49. Agent Roselli testified that he did not consider having Paz and Clanton wear a wire on Ligambi because many times criminals who have committed serious crimes and who are facing severe sentences will offer to wear wires.

50. The government did not take steps after the July 30 proffer interview to have Paz and Clanton wear wires on Ligambi.

51. Respondent and Paz expected Paz and Clanton to tell the false story to the grand jury.

52. Six days later on August 6, 2002, Respondent again went to the FDC to meet with Clanton and Paz.

53. Respondent met first with Clanton.

54. Respondent did not advise Attorney O'Shea that he was going to meet with Clanton and Respondent did not obtain permission from Mr. O'Shea to meet with Clanton.

55. Respondent told Clanton specific details that they had previously discussed about the supposed drug dealing that Clanton and Paz had with Ligambi, and also told Clanton that Paz had given this information to the federal authorities.

56. After the meeting with Clanton, Respondent met with his client.

57. Shortly after the August 6, 2002 meetings, Clanton and Paz came into visual contact with each other in the holding cells in the courthouse. At this point in time, Clanton had learned from his lawyer that it was Paz who had set him up to be arrested. Through the glass of the cell room, Clanton asked Paz "[W]hy did you do this to me?" (Exh. P-29)

58. Respondent did not initiate contact with Clanton after their August 6, 2002 meetings.

59. In late September or October 2002, Clanton told the government about his meetings with Respondent and explained that he had never engaged in a drug deal with Ligambi.

60. The FBI opened an investigation into whether Respondent and Paz had obstructed justice by providing false information (the Ligambi story) to the government and by persuading Clanton to provide the same false information to the government.

61. Clanton agreed to cooperate in the FBI investigation, and in December 2002 made three recorded telephone conversations with Respondent. The tapes were played at Respondent's criminal trial and transcripts of the tapes were introduced into evidence.

62. In the first recorded conversation on December 16, 2002, Clanton called Respondent and asked to meet with him at the FDC. Clanton explained that he would be attending a proffer session with the government later that week, and wanted to "make sure I know exactly what's bein [sic] said." Respondent agreed, and went to the FDC to see Clanton on December 19 as requested, but was unable to meet with Clanton for more than a few minutes. (Exh. P-29)

63. In the second recorded call, which took place later in the day on December 19, Respondent admitted that after meeting with Clanton in July 2002, Respondent "could sense that it [the Ligambi story] wasn't a hundred percent true." Respondent also suggested that Clanton should take responsibility for his crimes to get credit for accepting responsibility. (Exh. P-29)

64. The final taped conversation took place on December 23, 2002. Clanton again asked Respondent to visit him at the FDC to know "if me and Nick are on the same page." Respondent said that he would review what Paz had told the government and then visit Clanton, but no further conversation or visit ever took place. (Exh. P-29)

65. In February 2003, Agent Thompson spoke with Respondent about his visits to Clanton.

66. In the beginning of their conversation, Respondent admitted meeting with Clanton only twice, once in early July 2002 and once in December 2002. Respondent did not mention the meeting on August 6, 2002. Respondent said that the first time he met with Clanton they discussed the robbery with which Paz and Clanton were charged, and the second meeting was at Clanton's request, but was cut short by a fire alarm.

67. Agent Thompson left the room and retuned with Michael Schwartz, Esquire, an Assistant United States Attorney assigned to the case. They announced that Respondent was the subject of a witness tampering and obstruction of justice investigation.

68. At that point, Respondent admitted that he met with Clanton three times and that during his visits he discussed with Clanton prior drug deals and a new drug deal including Clanton, Paz and Ligambi.

69. After Agent Thompson told Respondent the government knew about the August meeting, Respondent admitted that the purpose of the August 6, 2002 meeting was to influence what Clanton was going to say to the government. In an effort to help his client, Paz, Respondent wanted Clanton to stick to the Ligambi story. Respondent believed Clanton and Paz were a team. Respondent believed that Clanton would repeat the Ligambi story to the government at his proffer. Respondent admitted that he doubted whether parts of the story were true. (Exh. P-9)

70. On June 25, 2003, following a three-day jury trial, the jury found Respondent guilty of conspiring with his client to tamper with a witness, in violation of 18

U.S.C. Section 371, and two counts of witness tampering and aiding and abetting, in violation of 18 U.S.C. Section 1512(b)(1) and (2).

71. On direct examination at his criminal trial, Respondent denied that he told Clanton details of the Ligambi story on July 1 and August 6, 2002, and Respondent denied that he wanted Clanton to stick to the details of the Ligambi story when Clanton talked to the government. (Exh. P-9)

72. On cross-examination at his criminal trial, Respondent admitted the following:

a. Respondent did not have permission from Clanton's lawyer to meet with Clanton on July 1 or August 6, 2002;

b. Respondent passed along a note from Paz to Clanton that contained details of the supposed deal with Ligambi;

c. Respondent and Clanton both read the note that Respondent brought from Paz;

d. The truth of the drug deal did not matter to Respondent;

e. Respondent knew that parts of the story were not true;

f. Respondent agreed with Clanton to go back to Paz to get the details of the story; and

g. Respondent told Paz about the July 1 and August 6, 2002 meetings with Clanton. (Exh. P-5, P-10)

73. Respondent testified that he did what he did because he wanted to "help" his client. (Exh. P-9)

74. On January 5, 2004, the Honorable Clarence C. Newcomer sentenced Respondent.

75. At the sentencing hearing, Respondent acknowledged that he realized mistakes had been made, and he apologized to family and friends.

76. Judge Newcomer applied two upward adjustments - for perjury and for use of a special skill - and sentenced Respondent to 21 months imprisonment, followed by two years of supervised release.

77. On January 12, 2004, Respondent filed a Notice of Appeal with the District Court advising of his appeal to the United States Court of Appeals for the Third Circuit.

78. On February 9, 2006, the Third Circuit affirmed judgment of conviction of the District Court; vacated the sentence imposed by the District Court; and remanded the case for re-sentencing.

79. On April 21, 2006, the Honorable Anita B. Brody presided over a re-sentencing hearing in the District Court and re-sentenced Respondent to one year and one day of imprisonment commencing July 5, 2006; two years of supervised release; a $300.00 special assessment and a $500.00 fine.

80. Judge Brody increased the offense level of Respondent's crimes by two points because she found that Respondent abused his position of trust and used his special skill as an attorney in facilitating the crimes for which he was convicted.

81. At the re-sentencing hearing, Respondent stated that he realized he should have never gone to see a co-defendant without his attorney.

82. On May 23, 2006, Respondent filed a motion to vacate, set aside, or correct sentence.

83. In July 2006, Respondent began serving his criminal sentence.

84. In April 2007, Respondent completed his criminal sentence and was released from incarceration to a Luzerne County halfway house where he remained until May 28, 2007.

85. On July 9, 2007, Judge Brody referred Respondent's motion to vacate to United States District Magistrate Elizabeth T. Hey.

86. On April 24, 2008, Judge Hey entered a Report and Recommendation recommending denial of the motion to vacate.

87. On May 12, 2008, Judge Brody denied Respondent's motion.

88. Respondent completed his probation in May 2009.

89. On April 8, 2004, the Supreme Court of Pennsylvania entered a Rule to Show Cause why Respondent should not be placed on temporary suspension following his criminal conviction.

90. In May 2004, Respondent filed a response to the Rule opposing a temporary suspension on the grounds that he had filed an appeal of the conviction; he had a good faith basis to believe the appeal would be successful; he had a small general practice and the practice would be damaged by an interim suspension.

91. In May 2004, Office of Disciplinary Counsel filed a reply to Respondent's response to the Rule.

92. In May 2004, Respondent filed a response to Disciplinary Counsel's reply, therein arguing that the charges against him did not involved theft or misappropriation of any funds.

93. By Order of July 8, 2004, the Supreme Court discharged the Rule and directed that the matter be referred to the Disciplinary Board, pursuant to Rule 214(f)(1), Pa.R.D.E.

94. On April 14, 2009, Respondent testified at his disciplinary hearing and presented three character witnesses.

95. Respondent's goal in representing Paz was to work with the government to see if he could get a reduced sentence. Paz had already made statements and the FBI needed more statements.

96. Respondent took a letter from Paz to give to Clanton, and the letter contained details about the prior drug transactions between Paz and Clanton.

97. Respondent did not know that Paz and Clanton were incarcerated under a separation order.

98. Respondent did not know what a separation order was and did not know that attorneys were not allowed to take written materials from one defendant to another defendant.

99. This was Respondent's first federal criminal trial and he stated that he had no federal experience. His only jury trial experience was for a DUI in the Court of Common Pleas of Delaware County.

100. Respondent did not know that Clanton was represented by counsel before meeting with Clanton, but learned of the fact at the beginning of the first meeting with Clanton on July 1, 2002.

101. Respondent did not stop the meeting upon learning that Clanton had an attorney.

102. Respondent did not consider his obligations under the Rules of Professional Conduct regarding already represented persons and continued the meeting with Clanton. Respondent knew that Clanton wanted to continue the meeting.

103. Respondent testified that when Clanton asked Respondent to represent him, he told Clanton he could not because it would be a conflict of interest and the Rules did not allow him to represent co-defendants.

104. Respondent admitted that he talked to Clanton about a way for Paz and Clanton to cooperate with the government to obtain reduced sentences, specifically by wearing a wire to set Ligambi up in a new drug deal.

105. Respondent admitted that the reason the government would allow Paz and Clanton to wear a wire to set up Ligambi in a new drug deal was due to the facts set forth by his client in the Ligambi story - a history of prior drug deals between Paz and Clanton.

106. In response to the question on cross-examination, "Didn't you think it important to tell the FBI you suspected parts of the story they were relying on to have Paz and Clanton wear a wire wasn't true," Respondent testified that details were not important. (N.T. 77, 78)

107. Respondent gave Clanton the letter from Paz containing the Ligambi story and he and Clanton read the letter.

108. Respondent admitted that Clanton stated that the information in the letter was "bullshit." (N.T. 51)

109. Respondent met with Clanton on August 6, 2002 and December 12, 2002, and talked to Clanton by telephone on December 12, 19, and 23, 2002, without obtaining permission from Clanton's attorney.

110. Respondent gave Clanton legal advice during one of the telephone conversations.

111. Respondent did not receive permission from Clanton's lawyer to give Clanton legal advice.

112. Respondent admitted that his criminal conviction is grounds for discipline pursuant to Pa.R.D.E. 203(b)(1).

113. Respondent denied he committed a crime and that his conduct was criminal.

114. Respondent denied that he violated RPC 4.2 because he did not talk to Clanton about the robbery.

115. Respondent denied that he violated RPC 8.4(b) as it applies to criminal conduct.

116. Respondent admitted that he made mistakes in the Paz case including going to meet with the co-defendant, Clanton. (N.T. 16)

117. Respondent argued that he is now stuck with the label of witness tampering. (N.T. 19)

118. Respondent testified that he was sorry not only for grief that he caused but for the black eye it caused the bar. (N.T. 48, 49).

119. Respondent presented three character witnesses.

120. Nicholas Guarente, Esquire, was Respondent's attorney in appealing his conviction. He has known Respondent for at least 25 years.

121. Mr. Guarente described Respondent as being naïve and inexperienced regarding criminal matters

122. Mr. Guarente offered his credible opinion that Respondent's reputation in the community as a truthful and honest person is excellent.

123. Dr. Robert Evans is an ordained clergyman and has known Respondent for at least 24 years. He testified credibly that Respondent is held in high regard by the members of their church congregation, and he is an honest and trustworthy individual.

124. Dr. Richard Taylor is a clergyman who has known Respondent for about 26 years as a member of the same church congregation. He testified credibly that Respondent has a very good reputation in the church community and is appreciated by many parishioners, and this held true even after the criminal conviction became known.

125. At the time Respondent represented Paz, he was 36 years old, a ten year member of the bar in Pennsylvania, and an eight year member of the Federal Court.

126. By Order dated November 21, 2006, effective December 21, 2006, the Supreme Court of Pennsylvania placed Respondent on inactive status for his failure to comply with Continuing Legal Education requirements.

127. Respondent did not submit to the Disciplinary Board a verified statement as required by Rule 217(e), Pa.R.D.E., showing that he complied with the provisions of the Order and the Rule regarding communications to clients and third persons.

128. Upon completing his prison sentence in May 2007, Respondent did not take steps to become compliant with CLE requirements and to pay fees to become reinstated.

129. At the pre-hearing conference held in August 2007, Petitioner agreed to continuance of the disciplinary proceedings because Respondent was seeking to vacate his criminal sentence, and Respondent stated that he would not take steps to become reinstated until the conclusion of the disciplinary proceedings.

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. Witness tampering and conspiring with a client to tamper with a witness are felonies and "serious crimes", as defined by Pa.R.D.E. 214(i).

2. Respondent's criminal convictions for serious crimes constitute a basis for discipline under Pa.R.D.E. 203(b)(1).

3. RPC 8.4(b) - It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on his fitness as a lawyer.

4. RPC 4.2 - In representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or by court order.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the appropriate sanction to address Respondent's criminal conviction for witness tampering and aiding and abetting, and conspiring with his client to tamper with a witness. In light of Respondent's convictions, there is no question presented as to whether misconduct occurred. Pa.R.D.E. 214(e) states that a certificate of conviction serves as conclusive evidence of the commission of a crime in any disciplinary proceeding commenced against an attorney based upon the conviction. Further, there is no question that some form of discipline is warranted, as Pa.R.D.E. 203(b) establishes that conviction of a serious crime is in itself a basis for discipline.

It is Respondent's position that while the fact of his criminal conviction requires the imposition of discipline, the nature of his conduct for which he was convicted

does not constitute a violation of Rules of Professional Conduct 4.2 and 8.4(b) as charged in the Petition for Discipline. Respondent has stated that he is unable to admit that he intentionally participated in criminal conduct and violated the Rules. The most that Respondent willingly admits is that he made mistakes in the underlying case.

The Board is not persuaded by Respondent's arguments. The record supports the conclusion that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline. RPC 4.2 prohibits a lawyer while representing a client to communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order. The facts demonstrate that Respondent was immediately aware that Clanton was represented by another attorney shortly into the initial meeting on July 1, 2002, and further, that throughout his subsequent communications with Clanton, he was aware that Clanton was still represented by counsel. Respondent himself never obtained permission from Clanton's lawyer to speak to Clanton. Respondent engaged in a violation of RPC 4.2.

RPC 8.4(b) provides that it is professional misconduct for lawyer to commit a criminal act that reflects adversely on his fitness as a lawyer. Respondent was convicted of tampering with a witness and conspiring with a client to tamper with a witness. These are criminal acts and fall within the language and intent of RPC 8.4(b). Respondent violated RPC 8.4(b).

In determining the degree of discipline in a criminal conviction matter, the Board considers and evaluates relevant facts and circumstances, including the presence of

mitigating and aggravating factors. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983). The mitigating factors of significance brought to light in the instant matter are Respondent's lack of a prior record of discipline and evidence of good character as testified to by his witnesses. Other factors raised by Respondent, such as his inexperience in practicing federal law, are not particularly significant in light of the nature of the misconduct and do not lessen the discipline that is warranted by the convictions.

Aggravating factors are raised as well, primarily that of Respondent's lack of recognition of his misconduct and lack of remorse. This fact is important to consider as one of the functions of the disciplinary process is to determine the fitness of an attorney to practice law. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). If an attorney demonstrates a lack of contrition or is unwilling to acknowledge or comprehend his misconduct at the hearing, the Board may consider the attorney's attitude in its recommendation for discipline. In re Costigan, 664 A.2d 518 (Pa. 1995). Here, Respondent continues to refuse to believe or accept that he is guilty of criminal conduct which rises to the level of a violation of the Rules of Professional Conduct. He evidenced no sincere recognition of wrongdoing or remorse at his disciplinary hearing.

Respondent did not cooperate with the disciplinary process. He opposed a temporary suspension, and denied that his conduct violated the Rules of Professional Conduct, even in the face of his criminal conviction.

Respondent engaged in very serious misconduct which impacted the justice system and the legal profession. Respondent exhibited a complete lack of judgment and ignorance of the Rules governing his actions as a lawyer. In Pennsylvania, disbarment or a

lengthy suspension has been the appropriate discipline for an attorney who attempted to induce a witness to testify falsely or was convicted of an analogous crime. The Supreme Court did not hesitate to disbar an attorney who was convicted of witness tampering. In the case of In re Anonymous No. 67 DB 82, 4 Pa. D. & C. 4th 586 (1989), the attorney was convicted of witness tampering because he attempted to change a witness's testimony by bribery. The Board found that the attorney's conduct "seriously eroded the fundamental view that the court system is a system of justice unscathed by outside influence." Id. at 586. The Board further determined that the attorney neglected his duty as a court officer and breached the public's trust in the court system and legal profession,

In In re Anonymous No. 25 DB 88, 18 Pa. D. & C. 4th 204 (1992), the Supreme Court disbarred an attorney who conspired to influence the outcome of judicial proceedings pending in the court system through bribery and extortion. This respondent bribed a judge. Disbarment was the correct sanction because the attorney's "egregious behavior...goes to the core of our criminal justice system and basic notions of fairness and truthfulness." Id. at 215.

An attorney was suspended for five years for mail fraud and subornation of perjury. Office of Disciplinary Counsel v. Valentino, 730 A.2d 479 (Pa. 1999). This case does not involve bribery of a witness. Rather, Valentino acted as his mother's attorney and advised her to provide false testimony before a grand jury, which she did. Almost immediately thereafter Valentino admitted his involvement in the scheme. Valentino had no prior record of discipline and presented evidence of good character.

Reviewing the facts of the cited cases, the Board is persuaded that disbarment is not warranted in this matter. The disbarment cases involve more egregious acts of misconduct against the system of justice than that in which Respondent engaged. The Hearing Committee has recommended that Respondent be suspended for five years. We find that this sanction is compatible with the facts of the particular matter. We note that Petitioner seeks at the very least, a lengthy suspension. Respondent seeks a minimal suspension, which is not realistic.

The question of retroactivity of the sanction has been raised. Several different dates have been posited for consideration. The majority of the Committee has recommended retroactivity to April 14, 2009, the date of the disciplinary hearing. The dissenting member recommended retroactivity of the sanction to August 7, 2007, the date of the first pre-hearing conference. Respondent seeks retroactivity to July 1, 2006, the date Respondent contends he voluntarily closed his law practice, or to August 7, 2007. Petitioner contends no retroactivity is warranted in this matter.

Retroactivity is not automatic in a discipline matter. The Supreme Court may grant it in situations where a respondent has already been placed on temporary suspension. This occurs most often in criminal conviction cases, where the respondent who was convicted of a serious crime was placed on temporary suspension pursuant to Pa.R.D.E. 214 at the outset of the disciplinary process. Office of Disciplinary Counsel v. Valentino, 730 A.2d 479 (Pa. 1999). The Supreme Court may grant retroactivity where a respondent has affirmatively removed him or herself from practice, by voluntary transfer to inactive status under the Enforcement Rules. In re Anonymous No. 95 DB 1998 , 541

Disciplinary Docket No. 3, (Pa. Oct. 15, 1999). The Court has rejected arguments that a suspension should be made retroactive to the date when a respondent claims he voluntarily ceased practicing law. Office of Disciplinary Counsel v. Obod, No. 37 DB 2001, 646 Disciplinary Docket No. 3 (Pa Jan. 31, 2003)

In the instant matter, Respondent opposed formal temporary suspension as a result of his criminal conviction. He pressed to avoid the imposition of any discipline pending the outcome of motions to set aside his criminal sentence. Respondent affirmatively chose this course of action, cognizant that his motions might not be granted, which they were not. Respondent now seeks the benefit of retroactivity.

Respondent desires retroactivity to July 1, 2006, or August 7, 2007. The July 1 date is when Respondent says he stopped practicing law. As noted above, the Court has rejected this argument. The August 7, 2007 date is the pre-hearing conference. At this point in time, Respondent was on involuntary inactive status, having been placed there by Order of the Supreme Court of November 21, 2006, for failure to comply with Continuing Legal Education requirements. At the conference, a joint Motion to continue the scheduled disciplinary hearing was signed by the parties. The Motion included Respondent's representation that he was on inactive status, and would not seek to regain his license until the conclusion of the disciplinary process. Respondent contends that this Motion evidences his intent to voluntarily cease practicing law. The dissenting member agrees with this position.

The Committee majority has recommended a retroactive date of April 14, 2009, the date of the disciplinary hearing. The majority reasoned that if its

recommendation of a suspension for five years is accepted by the Court, Respondent's suspension in actuality will be longer than five years, as time will have passed between the date of the disciplinary hearing and the ultimate imposition of discipline by the Court. Based upon the recognition that the period of suspension should be five years, the majority concluded that a retroactive date of April 14, 2009 would be appropriate.

The Board has weighed the arguments and concurs with the considered analysis of the Committee majority for retroactivity to April 14, 2009. The August 7, 2007 date is simply not viable as Respondent should not be given credit for his involuntary transfer to inactivity. While it is clear to the Board that there is no entitlement to retroactivity, we are persuaded that it is appropriate in this particular matter by the fact that a five year suspension should not result in a lengthier suspension due to elapsed time between the recommendation and the final imposition of discipline.

The Board recommends that Respondent be suspended for a five year period, retroactive to April 14, 2009.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Daniel John Seal, be Suspended from the practice of law for a period of five years retroactive to April 14, 2009.

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: _____
Stephan R. Todd, Board Member

Date: April 9, 2010