

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2365 Disciplinary Docket No. 3
: :
Petitioner : No. 121 DB 2017
: :
v. : Attorney Registration No. 206972
: :
MICHAEL CHRISTOPHER GALLO, : (Fayette County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 2nd day of November, 2018, upon consideration of the Report and Recommendations of the Disciplinary Board, Michael Christopher Gallo is disbarred from the bar of this Commonwealth, and he shall comply with the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 11/02/2018

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 121 DB 2017
Petitioner	:	
	:	
v.	:	Attorney Registration No. 206972
	:	
MICHAEL CHRISTOPHER GALLO	:	
Respondent	:	(Fayette 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 Petition for Discipline filed on August 9, 2017, Petitioner, Office of Disciplinary Counsel, charged Respondent, Michael Christopher Gallo, with violations of the Rules of Professional Conduct (“RPC”) and Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”) arising out of allegations that he practiced law while on administrative suspension, made misrepresentations to a court, was convicted on a bad check charge, and failed to respond to Petitioner’s requests for information. Respondent was personally served with the Petition for Discipline and failed to file an Answer.

A prehearing conference was held on October 17, 2017. Despite notice, Respondent failed to appear. A disciplinary hearing was held on November 28, 2017, before District IV Hearing Committee. Despite notice, Respondent failed to appear. Petitioner offered Administrative Exhibits 1, 2 and 3, and Petitioner's Exhibits 1 through 12, which were admitted. Petitioner called no witnesses. On the same day as the hearing, but following completion of the hearing, Respondent emailed Petitioner. The record was opened to add the email as Administrative Exhibit 4.

Petitioner filed a Brief with the Hearing Committee on February 15, 2017. Respondent did not file a brief.

The Hearing Committee filed its Report on March 19, 2018, concluding that Respondent violated the rules as charged in the Petition for Discipline and recommending that Respondent be disbarred from the practice of law.

The parties did not file Briefs on Exceptions.

The Board adjudicated this matter at the meeting on July 20, 2018.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Ave., P.O. Box 62485, Harrisburg, Pennsylvania, 17106-2485, is invested, pursuant to Rule 207, Pa.R.D.E., with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Michael Christopher Gallo, born in 1981 and admitted to practice law in the Commonwealth on October 15, 2007. Respondent's attorney registration address is 510 N. Second Street, Connellsville PA 15425. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. By Order of the Supreme Court dated July 15, 2015, Respondent was placed on administrative suspension, effective August 14, 2015, for failure to comply with Pennsylvania Rules of Continuing Legal Education. Admin 1; PE 1.

4. By Order of the Supreme Court dated December 10, 2015, in an unrelated disciplinary matter, Respondent was placed on temporary suspension pursuant to Rule 208(f)(5), Pa.R.D.E. Respondent remains on temporary suspension. Administrative Exhibit ("Admin.") 1; Petitioner's Exhibit ("PE") 2, 4, 5.

5. On August 18, 2017, Pennsylvania Constable Philip Michael personally served Respondent with the Petition for Discipline and Notice to Plead. Admin. 3.

6. Respondent failed to file an Answer to Petition for Discipline.

7. On October 5, 2017, Constable Michael personally served Respondent with Notices of Prehearing Conference and Hearing. Admin. 2.

8. On October 17, 2017, Respondent failed to appear for the prehearing conference. N.T. 5, 6.

9. On November 28, 2017, Respondent failed to appear for the disciplinary hearing. N.T. 5.

10. Following the disciplinary hearing, on November 28, 2017, Respondent sent an email to Disciplinary Counsel, who submitted the email to the Hearing Committee and the Disciplinary Board Prothonotary. Admin. 4.

11. In his email, Respondent stated that he accepted responsibility for his actions and asked for compassion from the Board. He requested that the Board consider a suspension instead of disbarment as discipline for his misconduct. Admin 4.

12. By Order dated February 12, 2018, the Hearing Committee directed the record be reopened for the limited purpose of accepting Respondent's email. Admin. 4.

Ritenour Matter

13. Commencing on June 19, 2014, Respondent represented Brandon James Ritenour in a criminal matter in the Court of Common Pleas of Fayette County. Admin. 1; PE 3.

14. On February 5, 2015, Mr. Ritenour entered a counseled guilty plea to the charge of Theft by Unlawful Taking – Movable Property. Admin. 1; PE 3.

15. On May 11, 2015, the Honorable Gerald R. Solomon sentenced Mr. Ritenour; however, after consideration of the Commonwealth's Motion, the Court vacated the sentence with a future date for sentencing to be set by the Court. Admin. 1; PE 3.

16. By letter dated July 15, 2015, sent to Respondent by certified mail return receipt requested, Suzanne E. Price, Attorney Registrar, informed Respondent, among other things, that by Order of the Supreme Court dated July 15, 2015, Respondent was administratively suspended effective August 14, 2015, for failure to comply with Pennsylvania Rules of Continuing Legal Education. Admin. 1; PE 1.

17. As of August 14, 2015, Respondent did not at that time or thereafter:

a. Notify the Court of Common Pleas of Fayette County that he had been administratively suspended;

b. Withdraw his appearance on behalf of Mr. Ritenour;

c. Inform Mr. Ritenour that he had been placed on administrative suspension and could no longer represent him; and

d. File, within ten days, a statement of compliance with the Secretary of the Disciplinary Board. Admin. 1.

18. On or about September 28, 2015, an Order was issued scheduling Mr. Ritenour's sentencing for October 21, 2015, before Senior Judge William J. Ober. Admin. 1; PE 3.

19. On October 21, 2015, Respondent and Mr. Ritenour appeared before Judge Ober, who resentenced Mr. Ritenour. Admin. 1; PE 3.

20. At that time, Respondent, who was administratively suspended, did not:

a. Inform Judge Ober that he was administratively suspended and was not permitted to engage in the practice of law; and

b. Advise Mr. Ritenour that he could not represent him at his sentencing. Admin. 1; PE 3.

21. After the sentencing was concluded, Respondent never notified the Court that at the time of the October 21, 2015 hearing, he was administratively suspended and prohibited from practicing law. Admin. 1; PE 3.

Varner Matter

22. On March 4, 2016, while temporarily suspended pursuant to Order of the Supreme Court dated December 10, 2015, Respondent entered his appearance as counsel for Brandon Varner in a Westmoreland County criminal case captioned as ***Commonwealth of Pennsylvania v. Brandon Varner*** at case number CP-65-CR-0003062-2015. Admin. 1; PE 6.

23. On April 1, 2016, Respondent appeared before Westmoreland County Court of Common Pleas Judge Christopher Feliciani to represent Mr. Varner at a status conference. Admin. 1; PE 8.

24. Prior to the status conference, Westmoreland County Assistant District Attorney Peter Flannigan had reviewed the Disciplinary Board's website, which reflected that Respondent had been suspended from the practice of law effective December 10, 2015. Admin. 1; PE 8.

25. Prior to the start of the status conference, Mr. Flannigan asked Respondent in open court and on the record whether he was on active status. Admins. 1; PE 8.

26. Respondent responded to Mr. Flannigan's questions by stating that:

- a. He was "reinstated in October of last year"; and
- b. While he did not have the *per curiam* order with him, a copy could be submitted to the Court and the District Attorney's office. Admin. 1; PE 8.

27. An off-the-record conversation was then held between Judge Feliciani, Mr. Flannigan, and Respondent. Admin. 1; PE 8.

28. Judge Feliciani came back on the record and asked, "Mr. Gallo you're indicating that you're in good standing with the Supreme Court, and you're prepared to represent Mr. Varner?" Admin. 1; PE 8.

29. Respondent replied to Judge Feliciani, "That's correct Your Honor." Admin 1; PE 8.

30. Respondent's statement in response to Mr. Flannigan and his subsequent responses to Judge Feliciani were knowing and material misrepresentations. Admin .1; PE 8, 10, 11.

31. At that time, Respondent knew that he was temporarily suspended and prohibited from practicing law by the Supreme Court's Order of December 10, 2015. Admin. 1; PE 1, 4, 6.

32. The December 10, 2015 temporary suspension followed Respondent's administrative suspension on July 15, 2015, for failure to comply with Continuing Legal Education requirements. Admin. 1; PE 1, 4.

33. At the time of Respondent's December 2015 temporary suspension, he had not cured his administrative suspension. Respondent has been continuously prohibited from engaging in the practice of law since August 14, 2015, the effective date of the administrative suspension Order. Admin. 1; PE 2, 5.

34. Respondent took no steps to correct his April 1, 2016 misrepresentations to Judge Feliciani. Admin. 1; PE 9, 10.

35. By Order dated July 1, 2016, Judge Feliciani issued a Rule to Show Cause upon Respondent to explain why he should not be held in contempt of court for the misrepresentations he made to the Court on April 1, 2016 that he was authorized to practice law in the Commonwealth. Admin 1; PE 9.

36. A Rule to Show Cause hearing was scheduled for August 8, 2016 before Judge Feliciani, but was postponed at the request of the Commonwealth and relisted for November 7, 2016. Admin. 1; PE 10.

37. Respondent did not respond to the Court's Rule to Show Cause. Admin. 1; PE 9, 10.

38. On November 7, 2016, Respondent appeared at the hearing, waived his right to counsel in open court, and testified. Judge Feliciani adjudicated Respondent to be in direct Criminal Contempt of Court as a result of the misrepresentations he made to the Judge on April 1, 2016. Admin. 1; PE 10, 11.

39. On November 7, 2016, Judge Feliciani sentenced Respondent to pay a \$500 fine within 30 days or upon his failure to pay the fine, Respondent was to be incarcerated in the Westmoreland County Prison for a period of 30 days commencing on December 12, 2016. Admin. 1; PE 10, 11.

40. On December 9, 2016, Respondent paid the fine of \$500.00 imposed by Judge Feliciani. Admin. 1; PE 11.

Bad Check Conviction

41. On September 23, 2015, a Non-Traffic Citation was filed against Respondent in the District Court of Magisterial District Judge Michael M. Metros in Fayette County, Pennsylvania, docketed at MJ-14101-NT-0000983-2015. Admin. 1; PE 12.

42. Respondent was charged with one count of 18 Pa.C.S.A. §4105(A)(1), Bad Check, a summary offense. Admin. 1; PE 12.

43. Respondent had issued a check, made payable to the Fayette County Recorder of Deeds in the amount of \$165, and the check was not honored due to insufficient funds in the account and/or the account having been closed. Admin. 1; PE 12.

44. On December 8, 2015, Respondent entered a plea of guilty to the bad check charge. Admin. 1; PE 12.

45. Respondent's guilty plea was accepted and he was sentenced to pay a fine, costs, and the face amount of the dishonored check for a total amount of \$376.50. Admin. 1; PE 12.

46. Respondent paid the fine on February 5, 2016. Admin. 1; PE 12.

Additional Findings

47. On February 8, 2016, Petitioner sent to Respondent's attorney registration address by first-class United States mail and certified United States mail, a DB-7 Request for Statement of Respondent's Position, which contained allegations regarding the Ritenour matter and the bad check conviction. Admin. 1.

48. The certified mailing was delivered to Respondent on February 24, 2016. Admin. 1.

49. Respondent never responded to the allegations in the DB-7 Request for Statement of Respondent's Position. Admin. 1.

50. On two separate occasions during Respondent's administrative suspension, he communicated with Magisterial District Judge Ronald Haggerty, District Court 12-1-02, seeking postponements for criminal cases in which he was counsel of record. Admin. 1; PE 2, 7.

III. CONCLUSIONS OF LAW

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

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

2. 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.

3. 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.

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)(1) – Conviction of a crime shall be grounds for discipline.

8. Pa.R.D.E. 203(b)(3) – Willful violation of any other provision of the Enforcement Rules shall be grounds for discipline, via Rules 217(b), 217(e)(1),

217(j)(4)(iv), and 217(j)(4)(vii) (failing to comply by the rules applicable to formerly admitted attorneys).

9. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel’s request or supplemental request under Disciplinary Board Rules §87.7(b) for a statement of the respondent-attorney’s position shall be grounds for discipline.

IV. DISCUSSION

This matter is before the Board for review of allegations that Respondent engaged in professional misconduct in two separate matters, including the unauthorized practice of law, misrepresentations to a court, a bad check conviction, and failure to respond to Petitioner’s requests for information. Respondent failed to respond to the charges filed against him. Consequently, all of the factual allegations in the Petition for Discipline are deemed admitted, pursuant to Rule 208(b)(3), Pa.R.D.E., and support the conclusion that Respondent violated the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement charged in the Petition for Discipline. Petitioner proved by clear and satisfactory evidence that Respondent engaged in ethical misconduct by virtue of the facts plead in the Petition for Discipline and related exhibits. ***Office of Disciplinary Counsel v. John Grigsby***, 425 A.2d 730, 732 (Pa. 1981).

Having concluded that Respondent violated the rules, this matter is ripe for the determination of discipline. For the following reasons, the Board recommends that Respondent be disbarred.

It is well-established that in evaluating professional discipline, each case must be decided individually on its own unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***, 427 A.2d 186, 190 (Pa. 1983). In order to

“strive for consistency so that similar misconduct is not punished in radically different ways,” *Office of Disciplinary Counsel v Anthony Cappuccio*, 48 A.3d 1231, 1238 (Pa. 2012) (quoting *Lucarini*, 473 A.2d at 190), the Board is guided by precedent for the purpose of measuring “the respondent’s conduct against other similar transgressions.” *In re Anonymous No. 56 DB 94 (Linda Gertrude Roback)*, 28 Pa. D. & C. 4th 398 (1995). The Board is mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts and deter unethical conduct. *Office of Disciplinary Counsel v. Akim Czmus*, 889 A.2d 1197, 1204 (Pa. 2005).

Respondent engaged in serious professional misconduct involving two clients’ matters. Upon his administrative suspension in July 2015, Respondent received notice that he was prohibited from practicing law after the effective date of the court order. Further, the administrative suspension order directed that he must comply with Rule 217, Pa.R.D.E., including notifying his clients, courts and opposing counsel of his administrative suspension and inability to practice law, and filing a statement of compliance with the Disciplinary Board. Respondent fulfilled none of these obligations. In contravention of the Supreme Court’s Order of administrative suspension, Respondent engaged in the unauthorized practice of law on October 21, 2015, by appearing before Senior Judge Ober in Fayette County for a resentencing of his client, Mr. Ritenour, and identifying himself for the record as an eligible attorney.

In contravention of the Supreme Court’s Order of temporary suspension imposed on December 10, 2015, on April 1, 2016, Respondent appeared before Judge Feliciani in Westmoreland County for a status conference on behalf of his client, Mr. Varner. In the Varner matter, Respondent not only appeared in an unauthorized capacity,

he made knowing misrepresentations on the record to Judge Feliciani and Assistant District Attorney Flannigan concerning his status as a licensed attorney in the Commonwealth. After being questioned why he was listed as “suspended” on the Disciplinary Board website, Respondent blatantly informed the court that he was not suspended and had been reinstated. He failed to correct this misrepresentation. Respondent’s deceptive actions resulted in the court issuing a rule to show cause, and ultimately in the court holding Respondent in direct criminal contempt of court, for which Respondent paid a fine.

Further, while on administrative suspension and prior to being found in direct criminal contempt, Respondent on two separate occasions knowingly communicated with a Fayette County Magisterial District Court Judge and requested postponement of underlying criminal cases for which he was the attorney of record. In those communications, Respondent did not inform the district judge that he was an administratively suspended attorney.

In September of 2015, Respondent was charged with a summary offense involving a bad check. In that matter, Respondent entered a guilty plea, which was accepted by the Fayette County Court of Common Pleas, and Respondent was sentenced to pay a fine, costs, and the face amount of the dishonored check.

In 2016, Petitioner sent to Respondent a DB-7 request for statement of Respondent’s position concerning the Ritenour and bad check conviction matters. Respondent received the DB-7 Request but failed to respond.

When considering the level of discipline to be imposed, it is important to bear in mind the “total picture” of the professional conduct. ***Office of Disciplinary Counsel v. John W. Campbell***, 345 A.2d 616, 622 (Pa. 1975). Respondent is a relatively

inexperienced practitioner, having been admitted to practice in the Commonwealth in 2007. Respondent's disciplinary problems form a pattern of non-compliance with Supreme Court orders and attorney conduct rules. Respondent compounded his disciplinary problems by failing to answer the Petition for Discipline and failing to participate in the disciplinary process. On numerous occasions, the Board has concluded that failing to appear at a disciplinary hearing and participate in the proceeding is an aggravating factor. ***Office of Disciplinary Counsel v. Franchot A.S. Golub***, No. 162 DB 2016 (D. Bd. Rpt. 2/14/2018) (S. Ct. Order 4/24/2018); ***Office of Disciplinary Counsel v. Keith Hall Barkley***, 144 DB 2016 (D. Bd. Rpt. 9/13/2017) (S. Ct. Order 11/14/2017). We note that Respondent knew of the ongoing process against him, as evidenced by his email request for leniency to the Hearing Committee on the day of the hearing. At that point, Respondent had already missed multiple opportunities to respond to the allegations and explain his motives for violating the Supreme Court's orders prohibiting him from practicing law and lying to the court, and to demonstrate that he valued his privilege to practice law. Upon our review of the record, we find no mitigating factors.

Disbarment is a severe sanction appropriate for only the most egregious matters, as it constitutes a termination of an attorney's privilege to practice law without promise of its restoration. ***Office of Disciplinary Counsel v. Harry Jackson***, 637 A.2d 615, 619 (Pa. 1994); ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872, 874-875 (Pa. 1986).

Respondent's deception upon the judicial system is the most serious of his multiple disciplinary violations. On two occasions, he appeared in court and misrepresented himself as eligible to practice law, specifically stating to the judge in one matter that he was not a suspended attorney, but on active status. Lying to a court has

been viewed by the Supreme Court as “an egregious species of dishonesty.” ***Office of Disciplinary Counsel v. Gregory Holston***, 619 A.2d 1054, 1056 (Pa. 1993). The Supreme Court has not hesitated to disbar an attorney where the attorney’s conduct demonstrates a disregard for the integrity of the judicial process, and has found that dishonesty on the part of an attorney establishes unfitness to continue practicing law. ***Grigsby***, 425 A.2d at 733.

Viewed collectively, Respondent’s very serious misconduct establishes that he is unfit to practice law. This matter is similar to the case of ***Office of Disciplinary Counsel v. John Francis Licari***, No. 111 DB 2011 (D. Bd. Rpt. 6/21/2012) S. Ct. Order 9/20//2012). Therein, the Court disbarred Mr. Licari because he engaged in the unauthorized practice of law, lied about his status to a court by impersonating another attorney, failed to comply with rules regulating attorney conduct, and failed to participate in the disciplinary process.

The Court imposed a suspension for a period of five years in the matter of ***Office of Disciplinary Counsel v. Ronald I. Kaplan***, No. 217 DB 2010 (D. Bd. Rpt. 1/24/2012) (S. Ct. Order 6/5/2012). Therein, Kaplan, while on suspended status, represented a former client before a master in a custody proceeding. The facts demonstrated that Kaplan was working as a paralegal when he was approached by the former client for representation. Kaplan initially told the former client that he was unable to represent him, but the client asked for help because he feared the consequence of appearing without representation. Kaplan agreed to do so without a fee. Kaplan forged the name of his employer, an active attorney, on the entry of appearance and identified himself to the master under the pseudonym “Ron Cohen.” The Board noted that Kaplan’s matter was limited to a single appearance on behalf of a person who was not only fully

aware of Respondent's suspended status but also paid no money for Respondent's services. The Board recognized mitigating circumstances in that Kaplan participated in the disciplinary process by filing an Answer to the Petition, cooperating with Petitioner by stipulating to the violations and facts as alleged by Petitioner, and appearing at the disciplinary hearing. Upon consideration of these specific facts, the Board recommended a five-year period of suspension to the Court.

After analysis of the decisional law, we conclude that Respondent's violation of the Supreme Court's orders prohibiting him from practicing law , unauthorized practice of law, deceitful conduct to the court, conviction on a bad check charge, and failure to respond to Petitioner's requests for information, aggravated by his failure to participate in the disciplinary process, weigh in favor of disbarment as the most appropriate sanction to protect the public and maintain the integrity of the court and the legal profession.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Michael Christopher Gallo, 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: 
P. Brennan Hart, Member

Date: 8/10/18