IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 2123 Disciplinary Docket No. 3
	:	No. 122 DB 2013
v.	:	
	:	Attorney Registration No. 81503
BLAIR HARRY HINDMAN, Respondent	:	(Jefferson County)

ORDER

PER CURIAM:

AND NOW, this 10th day of February, 2015, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 8, 2014, it is

ORDERED that Blair Harry Hindman be subjected to public censure by the Supreme Court.

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 2/10/2015

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. 122 DB 2013
v.	:	Attorney Registration No. 81503
BLAIR HARRY HINDMAN Respondent	:	(Jefferson 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 September 3, 2013, Office of Disciplinary Counsel charged Blair Harry Hindman with violations of the Rules of Professional Conduct arising out of allegations that he offered evidence to a court that he knew to be false and made statements to the court that were misrepresentations. Respondent filed an Answer to Petition on October 7, 2013.

A disciplinary hearing was held on January 13, 2014, before a District IV

Hearing Committee comprised of Chair Philip Zarone, Esquire and Members Betsy A. Zimmerman, Esquire, and M. Cristina Sharp, Esquire. Respondent was represented at the hearing by Samuel Stretton, Esquire, and post-hearing by Craig E. Simpson, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on June 23, 2014, concluding that Respondent violated the Rules as contained in the Petition and recommending that he be publicly censured before the Supreme Court.

Petitioner filed a Brief on Exceptions on July 11, 2014.

Respondent filed a Brief Opposing Exceptions on August 6, 2014.

This matter was adjudicated by the Disciplinary Board at the meeting on October 23, 2014.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at 601 Commonwealth Avenue, Suite 2700, Harrisburg PA. 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 an attorney admitted to practice law in the Commonwealth and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules. (AE I, AE II)

2. Respondent is Blair Harry Hindman. He was born in 1964 and was admitted to practice law in Pennsylvania in 1998. Respondent's current attorney

registration address is P.O. Box 279, Brookville PA, 15825. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. (AE I, AE II)

3. Respondent has no discipline of record in Pennsylvania. (N.T. 16)

4. On April 26, 2013, Respondent represented Marla Lee Rupp at her sentencing hearing in the Warren County Court of Common Pleas for her conviction of Driving Under the Influence, Second Offense, Highest Tier C, Accident with Damage to Attended Vehicle/Property, and Driving Under Suspension. (AE I, AE II)

5. Ms. Rupp was a second time DUI offender. (N.T. 99)

6. Respondent hoped to obtain credit for Ms. Rupp for the 30 days she had spent in inpatient treatment at ARC Manor. (N.T. 101)

7. As an experienced criminal law practitioner, Respondent was aware that judges have discretion when considering whether to grant DUI defendants credit for time completed in inpatient therapy. (N.T. 104-105)

8. Prior to the sentencing hearing scheduled for April 26, 2013, Respondent prepared a Sentencing Memorandum. (N.T. 67, 100-101; PE 4)

9. The Sentencing Memorandum states "[i]n December of 2011, approximately one (1) month after this incident, Ms. Rupp participated in a 30-day inpatient treatment program at Arc Manor. A copy of Ms. Rupp's Arc Manor Residential schedule is attached as EXHIBIT 'B'. A copy of a letter showing her admitted and discharged dates from Arc Manor is attached as EXHIBIT 'C'." (Emphasis in original) (PE 4)

10. Several paragraphs later the conclusion to the Sentencing Memorandum states Ms. Rupp "has completed inpatient therapy." (PE 4)

11. Respondent waited to submit the Sentencing Memorandum to the court until he obtained documentation from ARC Manor. (N.T. 100-101)

12. On April 24, 2013, two days before the sentencing hearing, a letter from ARC Manor was faxed to Respondent's office. (N.T. 68, 102)

13. The letter from ARC Manor contained the following language regarding Ms. Rupp's admission to, and discharge from, ARC Manor:

> Dear Marla Rupp,
>
> This letter is your official notification of discharge from treatment at ARC Manor. You were admitted on 12-12-11 and discharged on 1-11-12.
>
> The reason for your discharge is Non Compliance with facility rules.
>
> If you wish to appeal this discharge, you may do so by contacting the Program Supervisor. If you wish to re enter treatment, you would need to contact our Admission Department. (AE I, AE II, PE 2, PE 3, N.T. 69-71)

14. Respondent was not in his office when the letter from ARC Manor was received. (N.T. 68)

15. Kirsten Garvey is Respondent's paralegal. Ms. Garvey called Respondent about the ARC Manor letter while Respondent was in-between court appearances in separate courtrooms. (N.T. 69, 102)

16. Respondent asked his paralegal to read the letter to him. (N.T. 102)

17. Ms. Garvey told Respondent that the letter contained Ms. Rupp's admission and discharge dates showing she had been in the facility for 30 days along with

the handwritten notation that Ms. Rupp had been discharged for "Non compliance with facility rules." (N.T. 69, 102)

18. Prior to that time, Respondent had not been aware that Ms. Rupp had been discharged from ARC Manor for non-compliance with facility rules. (N.T. 119-119)

19. Respondent instructed Ms. Garvey to redact the statement on the ARC Manor letter about Ms. Rupp being discharged for "Non Compliance with facility rules", attach the redacted document to the Sentencing Memorandum, and submit the Sentencing Memorandum to the court. (N.T. 69, 103)

20. Ms. Garvey redacted the statement in question by covering it with white labeling tape and faxed the altered Sentencing Memorandum to the court. (N.T. 69-70; PE 4)

21. As redacted, the ARC Manor letter that was included as Exhibit C to the Sentencing Memorandum states in relevant part as follows:

> Dear Marla Rupp,
>
> This letter is your official notification of discharge from treatment at ARC Manor. You were admitted on 12-12-11 and discharged on 1-11-12.
>
> (PE 2, PE 4)

22. Prior to the April 26, 2013 sentencing hearing, the court received a non-redacted copy of the ARC Manor letter from Warren County Probation Department, which had received the letter from Ms. Rupp. (AE 1, AEII, PE I)

23. At Ms. Rupp's sentencing hearing on April 26, 2013, Judge Hammond asked Respondent if he had reviewed the pre-sentence report with his client and whether he had any corrections or additions to bring to the court's attention. (AE I, AE II, PE 5)

24. Respondent stated that he had reviewed the pre-sentence report with Ms. Rupp and there were no changes that should be made. (AE I, AE II, PE 5)

25. Respondent then asked Judge Hammond if he had reviewed the Sentencing Memorandum filed on behalf of Ms. Rupp. (AE I, AE II, PE 5)

26. Judge Hammond stated that he had received the Sentencing Memorandum, and that he had a preliminary question for Respondent. (AE I, AE II, PE 5)

27. The following exchange then occurred on the record at Ms. Rupp's sentencing hearing:

THE COURT: - I received two different letters from the Addiction Recovery Center. Obviously, they are identical. One was provided to me by Probation. One came to me from defense counsel. Clearly, one has been altered. The information regarding –

MR. HINDMAN: The compliance with the facility.

THE COURT: -has been removed from one of those.

MR. HINDMAN: Yes.

THE COURT: Why?

MR. HINDMAN: That was, my paralegal did that, your Honor. On a medical information, that I told her all medical, specific information shouldn't be passed on all –

THE COURT: You submitted a psychiatric report to me.

MR. HINDMAN: That's correct. It shouldn't have been done Judge. And, I was going to tell the Court that. But, in her estimation, it was private medical. We were only showing the Court that she completed 30 days inpatient.

THE COURT: Yes. And, you are taking out the negative part about she was discharged for non-compliance.

MR. HINDMAN: Well, that –

THE COURT: And, your presentence memorandum doesn't say anything about her discharge for non-compliance. So, it says she completed it. The psychiatric report you submitted to me has more specific information about –

MR. HINDMAN: Right.

THE COURT: - her treatment.

MR. HINDMAN: There was no statement that she completed anything other than she was inpatient 30 days. That's the only thing –

THE COURT: The implication was that she completed it. It's about a month-long period.

MR. HINDMAN: I didn't mean to imply that, because that's not –

THE COURT: For the Court to receive altered records without telling me with a note, we removed personal medical information, to simply alter one –

MR. HINDMAN: Well –

THE COURT: - is a problem for me. I don't want that happening again. And, I am going to have to consider what I do with the fact that I have been submitted an altered document.

MR. HINDMAN: Well, I apologize, Judge. And, I didn't consider that to be an altered document. We are not telling the Court that she completed a program. What I needed to have for the Court is something that she completed 30 days there. She was there 30 days, not that she had completed the program. And, I apologize.

THE COURT: All right. But, your memorandum says she has completed inpatient therapy.

MR. HINDMAN: Well, she. Okay. Well, that's. She has completed inpatient therapy. She didn't complete a program there [at ARC], specifically. She did 30 days.

THE COURT: That's not completing inpatient therapy.

MR. HINDMAN: No.

THE COURT: That's leaving against advice. That's information that is critical to me when I am addressing [this] type of sentencing. There is no confidential medial reports when I am considering a sentence when there is a mental health or a drug and alcohol issue. So, whatever needs to happen at your end so this doesn't happen again, take care of it.

MR. HINDMAN: I apologize for that.

(AE I, AE II, PE 5)

28. Upon learning that Ms. Rupp had been discharged from the ARC Manor for non-compliance with facility rules, Judge Hammond refused to apply any of her time in inpatient therapy to her sentence for DUI. (PE 5 at 16)

29. When he directed the redaction of the ARC Manor letter, Respondent had recently started his own practice and was responsible for winding down the affairs of the firm where he had previously worked. (N.T. 63, 92-93)

30. When he directed the redaction of the ARC Manor letter, Respondent was experiencing significant family and marital problems. (N.T. 82, 97,98)

31. When he directed the redaction of the ARC Manor letter, Respondent was suffering from health issues and was later hospitalized in July 2013. (N.T. 98-99)

32. Five members of the bar - Scott Allen, Esquire; Ralph Montana, Esquire; Bryan Huwar, Esquire; Frank Nardo, Esquire; and Robert Tinsley, Esquire, appeared and testified credibly to Respondent's good character in general, and with full knowledge of the conduct engaged in by Respondent, testified in particular that

Respondent has a very good reputation for being truthful and honest. (N.T. 22-23, 30-32, 38-41, 46-48, 54-55)

33. All of Respondent's witnesses credibly testified to the great remorse Respondent has for his conduct in this matter. (N.T. 24, 33-34, 42, 50, 57)

34. Respondent is sorry for his misconduct. (N.T. 115; AE II)

35. Respondent accepts full responsibility for his misconduct. (N.T. 109)

36. Respondent acknowledges that he exhibited "poor judgment" in this matter. (N.T. 114)

37. Respondent has taken steps to improve the process by which he makes decisions, such as turning down cases to avoid being overwhelmed and personally reviewing documents that will be filed with a court. (N.T. 108)

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent has violated the following Rules of Professional Conduct:

1. RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

2. RPC 3.3(a)(3) – A lawyer shall not knowingly offer evidence that the lawyer knows to be false.

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

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

IV. DISCUSSION

This matter is before the Board for consideration of the charges of misconduct involving Respondent's submission of a redacted document to a court and his subsequent statements to the court regarding that document. Respondent is charged with violations of Rules of Professional Conduct 3.3(a)(1), 3.3(a)(3), 8.4(c) and 8.4(d). Petitioner bears the burden of proof by a preponderance of the evidence that is clear and satisfactory. *Office of Disciplinary Counsel v. Duffield*, 644 A.2d 1186 (Pa. 1994). In his pleadings and testimony, Respondent admitted each of the charged violations. For the reasons set forth below, the Board concludes that Petitioner met its burden of proof and recommends that Respondent be subjected to a public censure before the Supreme Court of Pennsylvania.

In the course of his representation of Marla Rupp for a DUI, Respondent admits that he directed his paralegal to redact information from the ARC Manor letter that was not favorable to his client and then submit that reacted document to the court as part of the Sentencing Memorandum for his client. Respondent further admits that his statements to Judge Hammond at the sentencing hearing were misrepresentations.

As a practicing criminal lawyer in Jefferson County and the surrounding counties, Respondent knew that judges have discretion when considering whether to grant DUI defendants credit for time completed in inpatient therapy. Respondent's Sentencing

Memorandum to Judge Hammond concerning Ms. Rupp's case concluded by asking the court to give Ms. Rupp credit for such inpatient treatment. Upon receiving the ARC letter and being informed by his paralegal that it contained a statement that Ms. Rupp's discharge was for non-compliance with facility rules, Respondent determined that redacting that information was necessary in order to preserve Ms. Rupp's opportunity to receive credit for time served. Respondent did not direct his paralegal to include a notation about the redacted information and did not notify the court of the redaction at the time he submitted the ARC letter to the Court, nor did he revise his Sentencing Memorandum to reflect the actual state of events. Respondent has admitted that his actions were wrong and an error in judgment.

Judge Hammond had received his own, unredacted copy of the ARC letter from the Warren County Probation Department, and at the sentencing hearing proceeded to question Respondent on the record concerning the two different letters and Respondent's statement in his Sentencing Memorandum that Ms. Rupp completed the ARC program. Respondent twice told the court that the redaction had occurred because the information in question was "confidential medical" information, and in one instance attempted to place blame on his paralegal. There is no evidence of record to demonstrate that Respondent ever believed that the information in question was "confidential medical" information, and should therefore be removed. His statements to the court were therefore misrepresentations.

Respondent then attempted to equate the word "completed" as he used it in the Memorandum to "participated". The Memorandum, which Respondent wrote prior to his knowledge of Ms. Rupp's non-compliance with the program, was never revised to

reflect the new information, and therefore Respondent submitted a misleading document to the court. The Judge roundly rejected Respondent's arguments and Respondent ultimately changed course to apologize for his actions.

A range of disciplinary action from public censure to varying lengths of suspension has been imposed on attorneys who alter documents and misrepresent facts to a court.

In the matter of *Office of Disciplinary Counsel v. Donald B. Hoyt*, 68 DB 1997 (Pa. 1998), Mr. Hoyt filed documents with the court that omitted information designed to mislead the court, and made misstatements to the court at a hearing. The Board recommended a public censure after concluding that Mr. Hoyt "compromised the truth-seeking function of the judicial process." The Supreme Court adopted the recommendation.

A public censure was imposed on an attorney who "repeatedly crossed the line of permissible advocacy by advancing baseless claims, seeking unwarranted legal remedies, and misrepresenting both the facts and the law before two tribunals." *Office of Disciplinary Counsel v. Donald Saunders Litman*, 168 DB 2009 (Pa. 2012).

Cases warranting suspension have involved more egregious acts before the court. In *Office of Disciplinary Counsel v. Cary Bartlow Hall*, No. 80 DB 2006 (Pa. 2006), Mr. Hall consented to a suspension of 18 months after admitting that his sworn testimony before a referee in an unemployment compensation matter was false and perjurious. The deadline for appealing an adverse decision to a referee was June 9, 2005. Mr. Hall faxed the appeal on June 10, 2005 and included a date of June 9, 2005 on the cover sheet and appeal. He continued to maintain that the fax had been sent on June 9, 2005, and testified

under oath at an evidentiary hearing as to that date. In *Office of Disciplinary Counsel v. Itzchak E. Kornfeld*, 177 DB 2007 (Pa. 2009) , an attorney missed an appeal deadline and used correction fluid to alter the date on a certificate of mailing and submitted the altered document. He exacerbated his dishonest conduct by giving false testimony at an evidentiary hearing as to the alterations. Mr. Kornfeld consented to a two year retroactive suspension.

In his zeal to represent his client and obtain for her a more desirable sentence, Respondent engaged in very questionable judgment by redacting information that was unfavorable to his client, submitting the altered document to the court, and failing to revise his Sentencing Memorandum to reflect new information. These acts may have been influenced by the confluence of serious personal problems with professional pressures experienced by Respondent at the time of the misconduct. Nevertheless, these problems do not excuse Respondent's behavior, nor has he taken the position that they do.

Instead, these factors help to distinguish Respondent's behavior from the cases where suspension was imposed. The most notable difference between Respondent's actions and those of the attorneys who were suspended is that the suspended attorneys gave false testimony under oath before a court or tribunal, thereby compounding the seriousness of the underlying actions. Respondent did not engage in false testimony before the court and apologized to the court for the altered document that was submitted.

Respondent has expressed sincere remorse and has accepted full responsibility for his misconduct. He has been a practicing lawyer since 1998 with no discipline of record. Five members of the bar appeared and testified credibly to

Respondent's good character in general, and his very good reputation for truth and honesty. All of the witnesses were familiar with the great degree of remorse expressed by Respondent for his conduct. Respondent offered testimony to the effect that he has already taken steps to improve his decision – making process in cases, such as monitoring his caseload in order to prevent being overwhelmed, and personally reviewing documents to be filed with a court.

The totality of the circumstances and the relevant cases persuade the Board that this matter is not a suspension matter, but is better addressed by a public censure. Public censure is a form of public discipline that will inform the public of the details of Respondent's misconduct, while still permitting a properly-chastised but nonetheless reputable member of the bar to continue practicing law in that community.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Blair Harry Hindman, be subjected to a Public Censure by the Supreme Court.

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: _____
David A. Fitzsimons, Board Member

Date: December 8, 2014