

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1801 Disciplinary Docket No. 3  
Petitioner :  
 : No. 201 DB 2011  
v. :  
 : Attorney Registration No. 23113  
SAMUEL FOLEY, JR., :  
Respondent : (Philadelphia)

**ORDER**

**PER CURIAM:**

**AND NOW**, this 14<sup>th</sup> day of August, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 22, 2014, it is hereby

ORDERED that Samuel Foley, Jr., 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.

A True Copy Patricia Nicola  
As Of 8/14/2014

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1801 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 201 DB 2011
v.	:	
	:	Attorney Registration No. 23113
SAMUEL FOLEY, JR.	:	
Respondent	:	(Philadelphia)

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 the Supreme Court dated October 4, 2012, Samuel Foley, Jr. was placed on temporary suspension from the practice of law in the Commonwealth of Pennsylvania following his criminal conviction of one count of manufacture, delivery or possession of a controlled substance with intent to manufacture or deliver; one count of criminal conspiracy; one count of criminal use of a communication facility; and one count of intentional possession of a controlled substance by a person not registered. Office of

Disciplinary Counsel filed a Petition for Discipline against Respondent on April 11, 2013. Respondent filed an Answer to Petition on June 5, 2013.

A disciplinary hearing was held on August 15, 2013, before a District I Hearing Committee comprised of Chair Melissa J. Oretsky, Esquire, and Members Steven J. Cooperstein, Esquire, and Tara Lewis Kelly, Esquire. Respondent appeared *pro se*.

Following the submission of Briefs by the parties, the Hearing Committee filed a Report on January 9, 2014, concluding that Respondent violated the Rules as charged in the Petition for Discipline, and recommending that he be disbarred retroactive to October 4, 2012, the date of the temporary suspension.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on March 11, 2014.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

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

2. Respondent is Samuel Foley, Jr. He was born in 1951 and was admitted to the practice of law in the Commonwealth in 1976. His attorney registration mailing address is 5629 N. Warnock Street, Philadelphia PA 19141. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of discipline in Pennsylvania.

4. By Order dated October 4, 2012, the Supreme Court of Pennsylvania placed Respondent on temporary suspension and referred Respondent's criminal conviction, as described below; to the Disciplinary Board pursuant to Pa.R.D.E. 214(f)(1).

5. On June 25, 2009, Respondent accepted and signed for four boxes delivered by the United Parcel Service ("UPS") to Respondent's office located at 5104 North Broad Street, Philadelphia, PA 19141. (Stip. 9)

6. The four boxes Respondent accepted and signed for contained 243 pounds of marijuana with an estimated street value of \$486,000. (Stip. 9) An undercover Philadelphia police officer posed as the UPS driver. (ODC-2, Transcript of May 19, 2011 trial proceedings, pp. 7-15, 39-40)

7. After Respondent was put on notice of his rights, an agent from the Pennsylvania Attorney General's Office asked Respondent for the identity of the person for whom he had accepted delivery of the marijuana, but Respondent declined to cooperate. (ODC-2, pp. 37-38)

8. On June 30, 2011, following a bench trial held on May 19, 2011, Respondent was convicted in the Court of Common Pleas of Philadelphia County in a case captioned *Commonwealth v. Samuel Foley*, Cp-51-CR-0009173-2009, of one count of manufacture, delivery or possession of a controlled substance with intent to manufacture or

deliver, a felony, the controlled substance being not less than 240 pounds of marijuana; one count of criminal conspiracy, a third degree felony; one count of criminal use of communication facility, a third-degree felony; and one count of intentional possession of a controlled substance by a person not registered, a misdemeanor. (ODC-2; ODC-3. Transcript of June 30, 2011 trial proceeding; Stip. 9)

9. On October 28, 2011, the Honorable John J. O'Grady, Jr. sentenced Respondent as follows:

- a. on the conspiracy count, 11½ to 23 months of house arrest;
- b. on the felony drug count, a concurrent term of 11½ to 23 months of house arrest;
- c. on the use-of- communication- facility count a consecutive term of five years of probation; and
- d. fines and costs in the amount of \$2,742.50 and \$60 to the Crime Victim's Compensation Fund – Victim/Witness Services Fund.

(ODC-4, Order of Court of Common Pleas of Philadelphia County, dated October 28, 2011; Stip. 12)

10. Respondent is currently making payments towards the criminal case fines and costs. (Hrg. Tr. At 91)

11. The crimes of which Respondent was convicted are punishable as follows:

- a. manufacture, delivery, or possession of a controlled substance with the intent to manufacture or deliver; imprisonment not exceeding five years and/or a fine not exceeding \$15,000, 35 Pa.C.S.A. §780-113(f)(2);

b. criminal use of communication facility: imprisonment of not more than seven years and/or a fine of not more than \$15,000, 18 Pa.C.S.A. §7512(b);

c. criminal conspiracy: imprisonment of not more than seven years and/or a fine of not more than \$15,000, 18 Pa.C.S.A. §§905(a), 106(b)(4), and 1101(3); and

d. Intentional possession of a controlled substance by a person not registered: imprisonment not exceeding one year and/or a fine not exceeding \$5,000, 35 Pa.C.S.A. §780-113(b).

(Stip. 14)

12. On March 29, 2012, Respondent filed with the Superior Court of Pennsylvania an appeal, which was docketed at 891 EDA 2012. (ODC-5, Appeal Docket Sheet, Superior Court of Pennsylvania, Docket Number 891 EDA 2012; Stip. 15)

13. On February 19, 2013, the Superior Court affirmed Respondent's conviction. (ODC-6, Decision of Superior Court in *Commonwealth v. Foley*, No. 891 EDA 2012; Stip. 17)

14. Respondent has open judgments in the Court of Common Pleas of Philadelphia County in the following matters:

a. *Commonwealth of Pennsylvania v. Foley*, November Term 2011, No. 40081; \$2,886.44; and

b. *Internal Revenue Service v. Foley*, October Term 2007, No. 20426; \$61,700.37.

(ODC-7; ODC-8; Stip. 22)

15. Respondent was placed on temporary suspension by Order of the Supreme Court of Pennsylvania dated October 4, 2012. (Stip. 7)

16. Respondent failed to report his criminal conviction to the Eastern District as required by that Court's Civ. Rule 83.6, Rule I(A). (ODC-10; Stip. 26)

17. Respondent failed to report his Pennsylvania temporary suspension to the Eastern District as required by that Court's Civ. Rule 83.6, Rule II(A). (ODC-10; Stip. 27)

18. By Order dated November 21, 2012, Respondent was placed on temporary suspension from the practice of law in the United States District Court for the Eastern District of Pennsylvania, effective thirty days from October 4, 2012, and until further order of the Eastern District. (Stip. 25; ODC-9)

19. Respondent acknowledges that he has been convicted of crimes but has failed to admit that he committed those crimes and has failed to accept responsibility for his misconduct.

20. Respondent failed to cooperate with law enforcement officials.

21. Respondent's hearing testimony was not credible.

22. Respondent lacks genuine remorse.

23. Respondent's character witnesses – John Macklin, Debra Richburg-Warren, and John McDaniel – were not persuasive.

24. Respondent conceded in his testimony at the August 15, 2013 disciplinary hearing that "a suspension of a couple of years" was appropriate. (N.T. 75)

25. Respondent is currently a priest in an African religion.

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. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects.

2. Pa.R.D.E. 203(b)(1) – Conviction of a crime shall be grounds for discipline.

IV. DISCUSSION

The only issue for our consideration in the instant matter is the appropriate level of discipline for Respondent, whose criminal convictions conclusively establish violations of the Rules of Disciplinary Enforcement and Rules of Professional Conduct. After considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4<sup>th</sup> 115 (2004), we recommend that Respondent be disbarred.

It is undisputed that Respondent has been convicted of the crimes of: i) manufacture, delivery or possession of a controlled substance with intent to manufacture or deliver; ii) criminal conspiracy; iii) criminal use of communication facility; and iv) intentional possession of a controlled substance by a person not registered. Respondent’s convictions arose from participation in a scheme whereby he signed for and accepted delivery of four boxes containing approximately 243 pounds of marijuana with a street



value approaching half a million dollars. The seriousness of the misconduct is reflected in both the quantity and street value of the drugs.

In determining the appropriate measure of discipline, the Board and our Supreme Court consider applicable precedent, which provides a benchmark to determine the severity of the misconduct in relation to the discipline. *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186 (Pa. 1983). Although there is no *per se* rule for discipline in a criminal conviction case involving similar facts to the instant matter, case law has established that the range of discipline for Respondent's offense is at least a suspension of one year and one day to disbarment. Discipline within this range requires a reinstatement proceeding and future proof of fitness.

Where a respondent was convicted of intent to deliver a substantial quantity of drugs and declined to cooperate with law enforcement, disbarment has been imposed. *Office of Disciplinary Counsel v. Simon*, 507 A.2d 1215 (Pa. 1986). Mr. Simon was convicted of federal drug charges after he acted as a middle man for the sale and purchase of four ounces of cocaine. He was convicted of unlawfully, willfully and knowingly conspiring to import, distribute and possess with intent to distribute, and unlawfully, knowingly and intentionally possessing, with the intent to distribute, cocaine. Although the Board recommended a suspension of two years, the Court imposed disbarment, noting that "[f]acilitating the sale and purchase of cocaine, alone, warrants disbarment." *Id.* at 1220. Aggravating factors included Mr. Simon's refusal to tell authorities the identity of the ultimate purchaser. Disbarment was imposed despite the fact that Mr. Simon had no prior record of professional discipline and was active in his community.

In the matter of *Office of Disciplinary Counsel v. Anthony J. McKnight*, 154 DB 2001 (Pa. 2012), Mr. McKnight was disbarred for his conviction of two counts of

delivery of a controlled substance, one count of possession with intent to deliver, one count of criminal use of a communication facility, and one count of criminal conspiracy. The respondent delivered or intended to deliver a total of 146.5 grams of cocaine and 7.9 grams of heroin. He was sentenced to a term of imprisonment of not less than five years nor more than ten years. While this matter involved client misconduct in addition to the criminal conviction, the Board made clear in its Report that the criminal conduct was cause for severe discipline, and disbarment was imposed by the Court.

Here, in addition to the multiple serious offenses, several compelling aggravating factors are present. We note that even now, some four years after his arrest and two years following his conviction, Respondent has never accepted responsibility for his criminal conduct. Though he “acknowledge[s] the act that [he] committed,” (N.T. p. 80), he insists that he did nothing wrong and simply signed for a package. (N.T. p. 71) (“But to this day, I’ve affirmed and I’ve always affirmed that I never committed a criminal act. All I did was sign for a package that was delivered to the office.”)

Respondent also “understand[s] that I was convicted of a serious crime. And as a result of that I’m subject to discipline.” (N.T. p. 70) He goes on to state “that doesn’t mean that I did what I was convicted of.” (N.T. p.71) Respondent testified at the disciplinary hearing that there was “no breach of ethics involved” in what he did or was accused of doing and “no harm to the public, to the profession, or to the judicial system” from his convictions. (N.T. p. 77)

Respondent did the opposite of accepting responsibility: he blamed his conviction on others. He argues that he was “subjected to overzealous prosecution by the Commonwealth, who was determined to convict in spite of the lack of evidence of respondent’s involvement in a criminal conspiracy.” (Respondent’s Br. at 15) He claims

that the judge in his criminal trial applied the wrong standard (Respondent's Br. at 16), and claims that the legal system failed him because he "was not afforded the basic protections because he was placed in a position where he would have to prove his innocence in the face of unsupported inferences and baseless speculation." (Respondent's Br. at 17) We note that Respondent filed an appeal to the Superior Court, which was his opportunity to raise trial issues. The Superior Court affirmed his conviction.

Respondent's character witnesses were not compelling. None of them testified that Respondent has accepted responsibility for his misconduct. The witnesses appeared to believe there was a conspiracy by some unknown entity or individual against Respondent, or that the packages were delivered by mistake. (N.T. 24-25, 29, 35, 59-60)

In keeping with Respondent's view that he did nothing wrong and simply signed for a package, it is clear that he failed to show remorse. Though he acknowledged his actions and testified that he was "very sorry to be in this position and the circumstances" that brought him before the Hearing Committee (N.T. p. 80), Respondent has not sincerely recognized the gravity of harm his convictions have brought to the reputation of the bar or the negative impact that his convictions have had on the public. There is no question that the refusal to acknowledge one's guilt and a lack of remorse are aggravating factors that must be taken into account. *Office of Disciplinary Counsel v. Radbill*, 899 A.2d 1099 (Pa. 2006), *Office of Disciplinary Counsel v. John L. Chaffo, Jr.*, No. 8 DB 2011 (Pa. 2013)

After Respondent was arrested, he had the opportunity to assist law enforcement authorities in their investigation. (ODC-2, p. 35-39) However, he refused to cooperate. As noted above, our Supreme Court has considered the refusal to provide

authorities with information to be an aggravating factor. *Office of Disciplinary Counsel v. Simon*, 507 A.2d at 1220.

Finally, we view Respondent's lack of credibility at the disciplinary hearing to be an aggravating factor. The Hearing Committee made this determination after an opportunity to view Respondent on the witness stand. There is nothing of record to persuade us that the Committee erred in its determination of credibility. The Committee succinctly described the discrepancies in Respondent's testimony, including his testimony as to suffering from an impaired sense of smell, which he had no documentation to prove, and his testimony that anyone in his office would have signed for packages that were delivered, which was opposite to the testimony given at criminal trial that only Respondent and his son would accept and sign. (ODC 2, pp. 77-78)

We give little weight to Respondent's lack of prior criminal record and lack of prior professional discipline, and find that these factors do not mitigate a recommendation that Respondent be disbarred. The misconduct and aggravating factors viewed in light of discipline imposed in similar cases compel us to conclude that a prospective disbarment is the most appropriate discipline to address Respondent's criminal activity.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Samuel Foley, Jr., be Disbarred from the practice of law to take effect 30 days after the entry of the Court Order's.

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 K. Todd, Member

Date: April 22, 2014