

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1479 Disciplinary Docket No. 3
Petitioner :
v. : No. 47 DB 2009
: Attorney Registration No. 25573
MICHAEL T. JOYCE, :
Respondent : (Erie County)

ORDER

PER CURIAM:

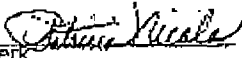
AND NOW, this 14th day of June, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated February 10, 2012, it is hereby

ORDERED that Michael T. Joyce is disbarred from the Bar of this Commonwealth retroactive to June 11, 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.

Messrs. Justice Eakin and McCaffery did not participate in this matter.

A True Copy Patricia Nicola
As Of 6/14/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1479 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 47 DB 2009
v.	:	
	:	Attorney Registration No. 25573
MICHAEL T. JOYCE	:	
Respondent	:	(Erie 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

On June 11, 2009, the Supreme Court of Pennsylvania entered an Order placing Respondent, Michael T. Joyce, on temporary suspension and referring the matter to the Disciplinary Board. By Petition for Discipline filed on November 15, 2010, Office of Disciplinary Counsel charged Respondent with professional misconduct arising out of Respondent's criminal conviction of the crimes of mail fraud and engaging in monetary transactions in property derived from specified unlawful activity. Respondent filed an Answer to Petition on December 13, 2010.

A disciplinary hearing was held on March 9, 2011 before a District IV Hearing Committee comprised of Chair Steven R. Wolf, Esquire, and Members William D. Philips, Esquire, and Elizabeth L. Hughes, Esquire. Respondent was represented by John E. Quinn, Esquire. Petitioner introduced Exhibits PE 1-9. Respondent did not appear as he is incarcerated. He introduced Exhibits RE 1-9. RE 9 included Respondent's Statement Under Oath taken at Respondent's place of incarceration. Respondent called four witnesses.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on July 22, 2011 and recommended that Respondent be disbarred retroactive to June 11, 2009, the date of Respondent's temporary suspension.

Respondent filed a Brief on Exceptions on August 16, 2011 and requested oral argument before the Board.

Petitioner filed a Brief Opposing Exceptions on September 6, 2011.

Oral argument was held on October 11, 2011, before a three member panel of the Board.

This matter was adjudicated by the Board at the meeting on October 18, 2011.

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 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters 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.

2. Respondent is Michael T. Joyce. He was born in 1949 and was admitted to practice law in the Commonwealth in 1977. His attorney registration mailing address is P.O. Box 1000, Morgantown, WV 26507. 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 of the Supreme Court dated June 11, 2009, Respondent was placed on temporary suspension due to his conviction in the United States District Court for the Western District of Pennsylvania of the crimes of mail fraud and engaging in monetary transactions in property derived from specified unlawful activity.

5. From January 1, 1998 through December 31, 2007, Respondent was a Judge of the Superior Court of Pennsylvania.

6. In 2007, Respondent was a candidate for retention as a Superior Court Judge for an additional ten-year term.

7. On August 15, 2007, an Indictment was filed against Respondent in the United States District Court for the Western District of Pennsylvania.

8. In the Indictment, Respondent was charged with three counts of the offense of "Fraud and Swindles" (mail fraud), in violation of 18 U.S.C. Sections 1342 and 2, and six counts of the offense of "Engaging in monetary transactions in property derived from specified unlawful activity" in violation of 18 U.S.C. Sections 1957 and 2.

9. The criminal charges against Respondent were based upon his false assertions to his motor vehicle insurance company, Erie Insurance Exchange, and the

motor vehicle insurance company of another driver with whom he was involved in a motor vehicle accident, State Farm Insurance.

10. Respondent obtained through his false statement \$390,000 from Erie Insurance Exchange and \$50,000 from State Farm Insurance.

11. In making false claims to the insurance companies, Respondent used his judicial letterhead for his correspondence and, in a Narrative which he provided to Erie Insurance Exchange, repeatedly referred to himself as a Judge.

12. After being indicted, Respondent withdrew from the scheduled retention election and, when his term expired at the end of the day on December 31, 2007, he was no longer a Judge of the Superior Court of Pennsylvania.

13. In early January of 2008, Respondent resumed active status as an attorney admitted to practice law in Pennsylvania, and remained on active status until his temporary suspension from the practice of law.

14. On November 19, 2008, after a jury trial, Respondent was found guilty of two counts of the offense of "Fraud and Swindles" and six counts of the offense of "Engaging in monetary transactions in property derived from specified unlawful activity." One count of mail fraud had been withdrawn by the prosecution.

15. On March 10, 2009, Judge Maurice B. Cohill, Jr., of the United States District Court for the Western District of Pennsylvania, sentenced Respondent to imprisonment of 46 months at each count, to be served concurrently.

16. Judge Cohill also ordered, in part, that upon release from imprisonment:

- (a) Respondent be on supervised release for a total term of three years; and

(b) Respondent make restitution in the amount of \$440,000 which consists of \$390,000 to Erie Insurance Exchange and \$50,000 to State Farm Insurance.

17. By Opinion filed on April 6, 2010, the United States Court of Appeals for the Third Circuit affirmed the verdict of the jury and the sentence of the District Court.

18. By Order dated August 13, 2010, Respondent's Petition for Panel Hearing with Suggestion for Rehearing En Banc was denied by the United States Court of Appeals for the Third Circuit.

19. Respondent presented the testimony of three character witnesses.

20. Krista Ott, Esquire, Mark Gusek, and Maureen Lally Green, Esquire all testified credibly as to Respondent's good reputation in the community for honesty, truth and integrity.

21. Alexander H. Lindsay, Jr., Esquire was Respondent's counsel on appeal and testified as to the prosecution's theory of the case against Respondent. He did not offer character testimony.

22. Respondent did not appear nor did he testify at the disciplinary hearing due to his incarceration in West Virginia, but instead submitted a Statement Under Oath.

(RE-9)

23. Respondent does not believe he did anything wrong and is remorseful for the pain and anguish that has been caused to himself, his family, his friends, and his employees.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Disciplinary Enforcement:

1. Pa.R.D.E. 214(i) - The crimes for which Respondent was convicted are punishable by imprisonment for not more than 20 years and ten years, respectively. Each is a "serious crime."

2. Pa.R.D.E. 203(b)(1) - Respondent's conviction is an independent basis for discipline.

IV. DISCUSSION

Respondent is charged with professional misconduct arising out of his conviction of the crimes of mail fraud and engaging in monetary transactions in property derived from specified unlawful activity. When an attorney has been convicted of a serious crime, the sole issue to be determined is the extent of final discipline to be imposed. Pa.R.D.E. 214(f)(1); Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1193 (Pa. 1982).

While the events surrounding the criminal charge must be taken into account when determining the appropriate discipline, there is absolutely no question presented as to whether the misconduct occurred, as the certificate of conviction serves as conclusive evidence of the commission of a crime. Office of Disciplinary Counsel v. Costigan, 584 A.2d 296 (Pa. 1990); Office of Disciplinary Counsel v. Valentino, 730 A.2d 479 (Pa. 1999).

The Board must analyze the underlying conduct in the context of the aggravating and mitigating circumstances and case precedent in order to reach an appropriate recommendation. Office of Disciplinary Counsel v. Chung, 695 A.2d 405 (Pa. 1997).

The Hearing Committee has recommended that Respondent be disbarred retroactive to June 11, 2009, the date of Respondent's temporary suspension imposed by

the Supreme Court. Respondent objects to this recommendation and contends that a lengthy suspension of three or four years, retroactive to the date of temporary suspension, is the appropriate sanction.

Respondent engaged in the egregious acts of mail fraud and money laundering by making false assertions to motor vehicle insurance companies, by which offenses he fraudulently obtained \$440,000 in insurance benefits. Respondent's conviction and sentence of imprisonment for 46 months reflect the seriousness of his misconduct and weigh in favor of at least a lengthy suspension. During the entirety of his criminal conduct, Respondent was a Judge of the Superior Court of Pennsylvania and held a position of authority and power.

Respondent points to several cases similar to the instant matter in support of a lengthy suspension. In Office of Disciplinary Counsel v. Michael W. McCarrin, 164 DB 2000, 643 Disciplinary Docket No. 3 (Pa. May 25, 2006), the attorney was convicted of nine counts of federal mail fraud and two counts of money laundering involving a scheme to defraud a car dealership. Therein, the Board noted that in cases involving mail fraud, the sanctions ranged from a three year suspension to disbarment but that disbarment was not automatic. The Supreme Court imposed a suspension of five years on Mr. McCarrin. In the matter of Office of Disciplinary Counsel v. Chung, 695 A.2d 405 (Pa. 1997), Mr. Chung was convicted of three counts of mail fraud involving a scheme of submitting false financial information in order to obtain loans for his clients. Mr. Chung was suspended for a period of five years.

While these cases are instructive as to sanctions imposed on attorneys for mail fraud and similar crimes, it is critical to note that none of these cited cases involved discipline of a member of the judiciary. Holding a public office at the time of the

misconduct is considered an aggravating factor as it speaks directly to the integrity of the legal system by placing the reputation of those tasked with protecting the public at issue. Office of Disciplinary Counsel v. John T. Olshock, 298 DB 2002, 862 Disciplinary Docket No. 3 (Pa. Oct. 24, 2003). Because Respondent was a judge at the time of the criminal acts, the matter brought negative attention to the legal system.

Petitioner directs the Board to cases involving criminal convictions of members of the judiciary who were serving in that capacity at the time the offenses occurred. One such case, Office of Disciplinary Counsel v. Melograne, 888 A.2d 753 (Pa. 2005), addressed the higher standard that a judge must be held to. The Court was clear in its determination that Mr. Melograne's "unique posture as a judicial official" made his offenses even more serious than that of an attorney for purposes of discipline. Mr. Melograne was a district justice who conspired with employees of the trial court to fix cases. Disbarment was the result in the matter, despite Mr. Melograne's presentation of mitigating factors.

Rolf Larson was a sitting Supreme Court Justice at the time of his misconduct, which involved a criminal conviction for criminal conspiracy to violate the Controlled Substance, Drug, Device and Cosmetic Act. Office of Disciplinary Counsel v. Rolf R. Larsen, 19 DB 2003, No. 807 Disciplinary Docket No. 3 (Pa. Nov. 30, 2006). The Board found that the mere act of engaging in criminal conduct while serving in such capacity was a clear violation of the public trust. While the Board recommended that Mr. Larsen be suspended, the Court disagreed and disbarred him, retroactive to the temporary suspension.

Respondent offered evidence of his military service, his prior unblemished disciplinary record, and endorsement of good character from colleagues as mitigating

factors. However, a review of Respondent's Statement Under Oath contains little expression of remorse for what occurred. Respondent repeatedly asserts that he did not engage in wrongdoing. "I do not feel, and I do not feel to this day, that I did anything wrong." RE-9 p. 65. "The bottom line is that I'm serving time and I'm doing what the law provides, even though I don't like it and I don't agree with it." RE-9 p. 66. As to remorse, Respondent's Statement made clear that any such feelings were directed to the pain and anguish that was caused to himself, his family, his friends, and his employees. RE-9 p. 66.

Respondent repeatedly attempts to justify his actions, and continues to argue the underlying events of the conviction, despite the fact that Respondent's criminal conviction is conclusive evidence of his commission of a crime and the Board may not consider any such arguments. The Hearing Committee correctly disallowed any testimony of that sort.

This is a difficult case, involving as it does a former appellate court judge who served this Commonwealth and enjoyed the esteem of colleagues for many years. However difficult, we must come to the inescapable conclusion that the facts of this matter and the case precedent warrant the disbarment of Respondent. The Board's responsibility is to protect the public and to maintain the integrity of the profession and the legal system. Office of Disciplinary Counsel v. Christie, 639 A.2d 782 (Pa. 1994). The preservation of the public's trust in the legal system remains paramount.

For these reasons, the Board recommends that Respondent be disbarred, retroactive to the date of Respondent's temporary suspension on June 11, 2009.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Michael T. Joyce, be Disbarred from the practice of law retroactive to June 11, 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: Charlotte S. Jefferies
Charlotte S. Jefferies, Board Member

Date: February 10, 2012

Board Member Buchholz recused.



THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

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February 10, 2012

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**Expenses Incurred in the Investigation and Prosecution
of the above-captioned proceedings***

06/11/2009	2 Copies of Supreme Court Order	\$	1.00
11/15/2010	2 Copies of Petition for Discipline		7.00
12/13/2010	2 Copies of Answer to Petition for Discipline		4.00
07/22/2011	2 Copies Hearing Committee Report		12.00
02/09/2011	Transcripts of Prehearing Conference Held 02/03/2011		95.00
03/28/2011	Transcripts of Hearing held 03/09/2011		319.00
02/10/2012	Administrative Fee		<u>250.00</u>

TOTAL AMOUNT DUE \$699.00

Make Check Payable to PA Disciplinary Board

PAYMENT IS REQUIRED UPON RECEIPT OF ORDER

* Submitted pursuant to Rule 208(g) of the Pa.R.D.E. and §93.111 of the Disciplinary Board Rules.