

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1720 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 4 DB 2010
v.	:	
	:	Attorney Registration No. 2834
MARVIN F. GOLFAND,	:	
Respondent	:	(Philadelphia)

**ORDER**

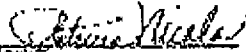
**PER CURIAM:**

**AND NOW**, this 10<sup>th</sup> day of June, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 10, 2011, the request for oral argument is denied and it is hereby

ORDERED that Marvin F. Galfand 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 6/10/2011

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 4 DB 2010
Petitioner	:	
	:	
v.	:	Attorney Registration No. 2834
	:	
MARVIN F. GOLFAND	:	
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

On January 11, 2010, Office of Disciplinary Counsel filed separate Petitions for Discipline against Marvin F. Galfand and Myrna W. Galfand, husband and wife. The Petitions alleged that Respondents violated Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of the unauthorized practice of law. Respondents filed separate Answers on March 19, 2010. By Order of the Disciplinary Board dated April 5, 2010, the Petitions were consolidated for hearing.

A pre-hearing conference was held on May 11, 2010 and a disciplinary hearing was held on June 17, 2010 before a District I Hearing Committee comprised of Chair Nicholas M. Centrella, Esquire, and Members Gerald E. Burns, III, Esquire, and Melissa J. Oretsky, Esquire. Respondents did not appear at the pre-hearing conference or at the disciplinary hearing.

Following the submission of briefs by all parties, the Hearing Committee filed a Report on October 4, 2010 and concluded that Respondents committed ethical misconduct. The Committee recommended that Marvin Galfand be disbarred, and further recommended that Mynra Galfand be suspended for one year and one day.

Respondents filed separate Briefs on Exceptions on October 25, 2010.

Petitioner filed a Brief Opposing Exceptions on November 4, 2010.

This matter was adjudicated by the Disciplinary Board at the meeting on January 19, 2011.

## 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, 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 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 the aforesaid Rules.

2. Respondent, Marvin F. Galfand, was born in 1939 and was admitted to practice law in the Commonwealth in 1965. Prior to his suspension from the Bar of Pennsylvania in 2006, he maintained his office at 2037 Locust St., Philadelphia PA 19103. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. By Order of the Supreme Court of Pennsylvania dated February 7, 2006, effective March 9, 2006, Marvin Galfand was suspended for one year and one day, and directed to comply with Pennsylvania Rules of Disciplinary Enforcement 217.

4. The acts which formed the basis of Mr. Galfand's suspension occurred from 2001 through 2003, and involved deceiving a client about the timing of receipt of settlement funds, misappropriation of those funds, and a pattern of commingling and conversion of client funds.

5. Respondent was a partner with Myrna W. Galfand, his wife, in the law firm of Galfand & Galfand, from at least 2000 until Mr. Galfand's suspension.

6. Mr. Galfand practiced law with Ms. Galfand at Galfand & Galfand on and after the date on which the acts which resulted in suspension occurred, through and including the effective date of the suspension.

7. From the time of Mr. Galfand's suspension in 2006, until at least June of 2009, Ms. Galfand continued to use the law firm name Galfand & Galfand in a pleading filed with the Court of Common Pleas of Philadelphia County, in her PA Attorney's Annual Fee Form, and in the Legal Directory.

8. Ms. Galfand has since removed the name Galfand & Galfand from the Legal Directory.

9. Ms. Galfand did not correct the firm name of Galfand & Galfand on her annual fee form.

10. In June of 2007, Mr. Galfand filed a Petition for Reinstatement. A hearing was held on September 27, 2007.

11. At the reinstatement hearing, Mr. Galfand testified that during the time of his suspension, he had been working with his wife, answering the telephone, speaking with clients, drafting pleadings, and answering interrogatories, among other things.

12. At the reinstatement hearing, in response to questions from Disciplinary Counsel, Mr. Galfand testified that he was unaware that pursuant to Pa.R.D.E. 217(j), he could not work in a firm where the misconduct leading to his suspension had occurred.

13. As of September 27, 2007, Mr. Galfand had actual knowledge that he was not permitted to perform law-related activities for his wife or her firm pursuant to Pa.R.D.E. 217(j).

14. Mr. Galfand testified at the reinstatement hearing that he was unaware that if he were to work in a law office as a suspended attorney, he would have to have an attorney supervising him, and he would have to notify the Disciplinary Board.

15. Mr. Galfand testified at his reinstatement hearing that neither he nor Ms. Galfand had ever filed a notice with the Disciplinary Board that he was being supervised by another lawyer.

16. To date, Mr. Galfand has not filed with the Board Secretary a Notice of Engagement stating that he is being supervised by any attorney, nor has any attorney filed a Notice stating that he or she is supervising Mr. Galfand, pursuant to Pa.R.D.E. 217(j).

17. Mr. Galfand was working with his wife during his suspension and was aware that she was using the firm name Galfand & Galfand.

18. By Order of the Supreme Court of Pennsylvania dated November 5, 2008, Mr. Galfand's Petition for Reinstatement was denied; his status continues to be that of a suspended attorney.

19. On March 20, 2008, Ms. Galfand filed an action on behalf of Raymond Johnson in the Court of Common Pleas of Philadelphia County.

20. The Complaint filed in the Johnson lawsuit, dated January 6, 2009, bears the name of Galfand & Galfand as "Attorney for Plaintiff." It also contains the telephone numbers of both Ms. Galfand and Mr. Galfand.

21. The Court file for the Johnson lawsuit contains an Affidavit of Service of Rule to File Complaint sent to Ms. Galfand by certified mail, return receipt requested, and attached a return receipt green card addressed to "Myrna Galfand, Esquire, Galfand & Galfand," signed as received by "M. Galfand."

22. Ms. Galfand's use of the firm name of Galfand & Galfand was misleading, as she was not associated with Mr. Galfand, who was ineligible to practice law.

23. Clark B. Leutze, Esquire, a Pennsylvania lawyer practicing in Philadelphia, testified at Respondents' disciplinary hearing. He was counsel to one of the defendants in the Johnson lawsuit, which was scheduled for arbitration in 2009.

24. On one of the dates scheduled for the arbitration, Mr. Galfand and Ms. Galfand appeared at the Arbitration Center of the Philadelphia Court of Common Pleas. Mr. Galfand spoke with Lou Hoit, who was in charge of scheduling at the Center, with Mr.

Leutze, and with another defense counsel, stating that his client was unable to appear that day, thereby obtaining a continuance.

25. At the Arbitration Center, Mr. Galfand did not inform Mr. Leutze that he was a suspended attorney. Mr. Galfand did all of the talking, not Ms. Galfand, and acted as if he were handling the case, according to Mr. Leutze.

26. Prior to the arbitration, on more than one occasion, Mr. Leutze telephoned Galfand & Galfand and spoke with Mr. Galfand.

27. Among other things, they discussed the fact that the plaintiff had not answered discovery, which Mr. Galfand said he would give to Mr. Leutze. They discussed the fact that the arbitration had been postponed, and Mr. Leutze's position that his client should be dismissed from the case.

28. During the conversations, Mr. Galfand did not inform Mr. Leutze that he was suspended.

29. Testifying at the disciplinary hearing were Rebecca Stump, Esquire and Tyrone Hankin, Esquire, both of whom were arbitrators in the Johnson lawsuit on June 8, 2009. David E. Goldberg, Esquire represented a defendant at the arbitration and also testified at the disciplinary hearing.

30. Mr. Galfand and Ms. Galfand appeared at the arbitration on the scheduled date and sat at counsel table on either side of plaintiff.

31. At the outset of the proceeding, Ms. Stump raised the issue of whether there was conflict of interest because Mr. Leutze was from the same law firm as she. With the other counsel in the arbitration, Mr. Galfand explained that Mr. Leutze's client had been dismissed from the action and there was no conflict.

32. Ms. Galfand told the arbitrators that she and Mr. Galfand were “husband and wife law partners.”

33. Mr. Galfand addressed the panel, delivering opening remarks concerning the nature of the case and what evidence would be presented.

34. Mr. Galfand did most of the talking.

35. Mr. Galfand indicated that he would be testifying as a witness in the case. Ms. Stump expressed her concern to her fellow arbitrators that since Mr. Galfand was counsel, he should not testify and be counsel in the matter.

36. Mr. Galfand took the lead in examining the plaintiff and did almost all of the questioning, asking about the accident, where it occurred, and the resultant injuries.

37. Ms. Stump did not initially realize that Ms. Galfand was an attorney for the plaintiff, and thought she was a witness or merely accompanying the plaintiff.

38. Ms. Galfand informed the arbitration panel that she was also the plaintiff’s attorney.

39. Mr. Hankin testified credibly that he believed during the arbitration that Mr. Galfand was counsel for plaintiff.

40. Mr. Hankin was certain that the Galfands presented themselves as representing the plaintiff, and both of them spoke during the arbitration.

41. At no time during the arbitration did either Mr. Galfand or Ms. Galfand tell the panel or anyone else that Mr. Galfand was suspended.

42. When the arbitration ended, Mr. Galfand and Ms. Galfand waited with Mr. Goldberg for the award, which was in favor of the defendants.



43. When Mr. Goldberg returned to his office and discussed the case with his colleagues at his law firm, it was suggested that Mr. Galfand was not a licensed attorney.

44. Mr. Goldberg accessed the Disciplinary Board's website and confirmed that Mr. Galfand was, in fact, a suspended lawyer.

45. Shortly thereafter, Mr. Goldberg sent an e-mail to Disciplinary Counsel Carmen Nasuti at the District I Office and told him he had taken part in an arbitration and later learned that one of the participating counsel was not a licensed lawyer.

46. In his verified Answer to Petition for Discipline and Brief to Hearing Committee, Mr. Galfand stated that he was present at the arbitration of the Johnson lawsuit as a "fact witness" and "not as an attorney," which was false.

47. By letter delivered on April 7, 2010, the Office of the Secretary of the Disciplinary Board notified Respondents of the dates of the pre-hearing conference and hearing in these disciplinary proceedings, which were held on May 11, 2010 and June 17, 2010.

48. On May 11, 2010, Respondent did not appear at the pre-hearing conference.

49. On June 17, 2010, Respondent did not appear at the disciplinary hearing.

50. The Chair of the Committee placed a telephone call to both Respondents. The calls were not returned.

51. Respondent filed a Brief to the Hearing Committee and Brief on Exceptions to the Hearing Committee's Report.

52. Mr. Galfand did not express sincere remorse for his misconduct.

### III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent, Marvin Galfand, violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

1. 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.

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

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

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

i. Pa.R.D.E. 217(j)(4)(i) – which prohibits a suspended attorney from performing any law-related activity for a law firm or lawyer if the suspended attorney was associated with that law firm or lawyer on or after the date on which the acts which resulted in the suspension occurred, through and including the effective date of the suspension;

ii. Pa.R.D.E. 217(j)(4)(iv) – which prohibits a suspended attorney from representing that he is a lawyer or person of similar status;

iii. Pa.R.D.E. 217(j)(4)(v) – which prohibits a suspended attorney from having any contact with clients either in person, by telephone, or in writing, except communications limited to ministerial matters such as scheduling,

billing, updates, confirmation of receipt or sending of correspondence and messages, and only if the suspended attorney clearly indicates that he is a legal assistant and identifies the supervising attorney;

iv. Pa.R.D.E. 217(j)(4)(vii) – which prohibits a suspended attorney from appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body;

v. Pa.R.D.E. 217(j)(4)(ix) – which prohibits a suspended attorney from negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction.

#### IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of a Petition for Discipline filed against Marvin Galfand. This Petition was consolidated for hearing with a Petition for Discipline filed against Myrna Galfand, Respondent's wife. The subject of the Petitions concerns Mr. Galfand's unauthorized practice of law and Ms. Galfand's assisting Mr. Galfand in the unauthorized practice of law. Although the Hearing Committee submitted a single report, the Board herewith submits to the Court separate reports for each Respondent.

Respondent in the instant matter filed an Answer to Petition for Discipline, a Brief to the Hearing Committee, and a Brief on Exceptions to the Hearing Committee's

Report. However, Respondent did not appear at the pre-hearing conference or the disciplinary hearing.

The record demonstrates that Respondent is a suspended attorney, having been suspended in 2006 for a period of one year and one day, and denied reinstatement by the Supreme Court in 2008. Subsequent to Respondent's suspension by the Supreme Court of Pennsylvania in 2006, he continued to practice law with his wife, Ms. Galfand. As law partners for many years, they held themselves out as Galfand & Galfand. This continued to be the case following Respondent's suspension. Ms. Galfand's use of the law firm name became false and misleading. Nevertheless she continued to use the law firm name on pleadings, attorney annual fee forms for the Disciplinary Board, and in her Legal Directory entry. Respondent was aware that the firm name of Galfand & Galfand was still being used, as he was answering the telephone and working for his wife.

In a Complaint filed in 2009 on behalf of Raymond Johnson, Ms. Galfand placed a heading with Galfand & Galfand as "Attorney for Plaintiff", and listed not only her telephone number, but that of Respondent. Clark Leutze, attorney for one of the defendants, used this number to call Galfand & Galfand and thus was able to speak to Respondent on several occasions concerning the case. Mr. Leutze had occasion to meet Respondent and his wife at the Arbitration Center, at which time Respondent communicated with Mr. Leutze and court personnel, to the exclusion of his wife, regarding obtaining a continuance of the Johnson matter.

The Johnson lawsuit went to arbitration at the Arbitration Center in Philadelphia in 2009. Two of the arbitrators, Rebecca Stump and Tyrone Hankin, and David Goldberg, counsel for one of the defendants, testified credibly and consistently at the

disciplinary hearing that they believed Respondent was the attorney for the plaintiff, and the Galfands were acting as co-counsel. The witnesses described Respondent as making an opening statement and conducting the examination of the plaintiff. Respondent denied that he was acting as an attorney in his verified Answer to Petition for Discipline.

The evidence of record demonstrates that Respondent was aware that he was not permitted to practice law. Petitioner's evidence showed that at Respondent's reinstatement hearing in 2007, he testified that post-suspension he had engaged in law-related activity for his wife and his former law firm, such as drafting pleadings and answering interrogatories. He was informed by Disciplinary Counsel that pursuant to the Rules of Disciplinary Enforcement, he was not allowed to work at his wife's law firm, as that is where the misconduct had occurred that resulted in his suspension. Respondent ignored the Rules, as the facts surrounding the Johnson lawsuit demonstrate. While this lawsuit was the only identified litigation, it followed a pattern by Respondent over the years of ignoring a Supreme Court order by failing to have his name removed from the law firm, and engaging in law-related activities at the law firm.

Suspended attorneys who continue to hold themselves out as licensed to practice law have received discipline ranging from a lengthier suspension to disbarment. Office of Disciplinary Counsel v. Criden, No. 48 DB 97, 42 Pa. D. & C. 4<sup>th</sup> 254 (1998) (consecutive four year suspension imposed after continued practice during a three year suspension); Office of Disciplinary Counsel v. Herman, 426 A.2d 101 (Pa. 1981) (disbarment ordered following respondent's continued practice of law while suspended for three years).

It appears from the case law that the Court is inclined to impose a more severe sanction on the attorney than the original sanction. The Hearing Committee in the instant matter has recommended disbarment, citing aggravating factors of Respondent's actual knowledge that he was engaged in wrongful activity, his false statements in his verified Answer that he was merely a "fact witness" at the Johnson arbitration, and not an attorney, his lack of remorse and his failure to appear at the hearing.

The Board's review of the facts and circumstances of Respondent's matter persuade us that disbarment is appropriate. Respondent's suspension did not give him any pause; he proceeded with his practice of law as before. The Supreme Court Order of suspension was meaningless to him, as his actions demonstrate. Such clear defiance of a court order must be dealt with firmly .

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Marvin F. Galfand, be Disbarred from the bar of 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: 

Albert Momjian, Board Member

Date: March 10, 2011

Board Member Todd did not participate in the adjudication.