

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 135 DB 2021
Petitioner :
v. : New York Bar Registration No. 1939776
JAY L. YACKOW :
Respondent : (Out of State)

ORDER

AND NOW, this 28th day of April 2022, in accordance with Rule 215(g), Pa.R.D.E., the three-member Panel of the Disciplinary Board having reviewed and approved the Joint Petition in Support of Discipline on Consent filed in the above captioned matter; it is

ORDERED that Jay L. Yackow be subjected to a **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a) and Rule 205(c)(9) of the Pennsylvania Rules of Disciplinary Enforcement.

BY THE BOARD:

Board Chair

TRUE COPY FROM RECORD

Attest:



Marcee D. Sloan
Board Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania



BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: 135 DB 2021
v. :
: New York Bar Registration No. 1939776
JAY L. YACKOW, :
Respondent : (Out of State)

JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215(d)

Petitioner, Office of Disciplinary Counsel (ODC) by Thomas J. Farrell, Chief Disciplinary Counsel, and Kristin A. Wells, Disciplinary Counsel, and Respondent, Jay L. Yackow, Esquire, file this Joint Petition in Support of Discipline on Consent under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”) and in support thereof state:

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

2. Respondent, Jay L. Yackow, was born on August 31, 1958, and was admitted to practice law in New York on March 23, 1983; his New York attorney registration number is 1939776.

3. Respondent’s registered address with the New York State Bar is Jay L. Yackow Attorney at Law, 355 Post Avenue, Suite 201, Westbury, New York 11590.

FILED
04/21/2022
The Disciplinary Board of the
Supreme Court of Pennsylvania

4. Respondent is not, and has never been, licensed to practice law in the Commonwealth of Pennsylvania.

5. Although not admitted in Pennsylvania, Respondent is subject to the disciplinary authority of this jurisdiction under RPC 8.5(a).

6. Pursuant to Pa.R.D.E. 201(a)(6), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

CHARGE I: The Shamokin Commons Matter

7. Respondent and two of his long-time New York clients were named as defendants in the matter captioned and docketed at *Phillip J. Dawson, Executor, as Personal Representative of the Estate of Leonard J. Dobson, and Theresa Weyman v. Shamokin Commons, LLC, et al.*, CV-19-341 (Northumberland Co.) (“Dawson litigation”).

8. On September 22, 2020, Respondent filed a Pre-Hearing Memorandum on behalf of himself and his two New York clients (collectively “Dawson defendants”).

9. Respondent failed to seek and receive *pro hac vice* admission in Pennsylvania prior to submitting the Pre-Hearing Memorandum, or any time thereafter.¹

10. On September 22, 2020, the Court held a conference in the Dawson litigation.

11. Respondent appeared virtually at the conference as counsel for the Dawson defendants.

12. During the conference, Plaintiff’s attorney, Brian Shook, Esquire, moved to strike Respondent’s argument and enjoin Respondent from acting as counsel in the Dawson litigation

¹ Pennsylvania Bar Admissions Rule 301 sets forth the requirements for *pro hac vice* admission, which include paying a fee to the IOLTA Board and being sponsored by a member of the Bar of this Commonwealth.

because Respondent was not licensed in Pennsylvania and had not obtained *pro hac vice* admission for purposes of the Dawson litigation.

13. The court took no action on Attorney Shook's oral motion to strike and enjoin Respondent from acting as counsel in the Dawson litigation.

14. Following the September 22, 2020, conference, Respondent took no action to obtain *pro hac vice* admission for the Dawson litigation.

15. On February 23, 2021, Respondent filed in the Dawson litigation a:

- a. Notice of Appearance as counsel for the Dawson defendants; and
- b. Memorandum in Opposition to Plaintiff's Renewed Motion to Set Aside Transfer ("Memorandum").

16. In the Memorandum, Respondent alleged that, despite Respondent's numerous requests to Attorney Shook that he serve the Dawson defendants through Respondent at his New York office address, Attorney Shook continued to "intentionally, annoyingly and obnoxiously" serve the Dawson defendants personally at their addresses.

17. By emails dated March 21 and April 6, 2021, Respondent again directed Attorney Shook to send all notices and filings to Respondent as counsel for the Dawson defendants.

18. By his conduct as alleged in paragraphs 7 through 17, above, Respondent violated the following Rules:

- a. RPC 1.16(a)(1), which states that 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 a violation of the Rules of Professional Conduct or other law;

b. RPC 5.5(a), which states that 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; and

c. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

CHARGE II: ODC Investigation

19. On July 20, 2021, ODC sent to Respondent a DB-7 Request for Statement of Respondent's Position letter ("DB-7 letter") concerning the above allegations.

20. In the DB-7 letter, ODC advised Respondent that "[b]ecause a lawyer can be subject to discipline for making a deliberately false statement or deliberately failing to disclose a material fact in connection with a disciplinary matter, [he] should be careful to be accurate in [his] factual statements."

21. By letter dated August 25, 2021, Respondent submitted a response, wherein Respondent falsely:

a. denied that he had ever appeared, either virtually or in person, for any proceeding in the Dawson litigation;

b. insisted that his involvement in the Dawson litigation was limited to the submission of papers; and

c. stated that he was unaware that his submission of papers required *pro hac vice* admission.

22. By letter dated September 2, 2021, ODC provided Respondent with a copy of the transcript from the September 22, 2020, conference, which showed that Respondent was a participant in the conference and requested that Respondent provide an updated response.

23. In his response, Respondent stated that he had forgotten that he appeared for the September 22nd conference, noting that he was caring for his dying brother at the time of the conference.

24. In a subsequent letter dated September 17, 2021, to ODC, Respondent noted that:

- a. Attorney Shook had made the court aware of Respondent's lack of admission;
- b. the court took no action to admonish Respondent or enjoin his continued representation of the Dawson defendants;
- c. in submitting his filings and appearing for the September 22nd conference, he requested the assistance of the Judge's legal secretaries; and
- d. the Judge's failure to take any action and the legal secretaries' willingness to assist him "further cemented" his lack of realization that he was not permitted to serve as counsel in the Dawson litigation.

25. On December 15, 2021, ODC sent to Respondent, by certified and first-class mail, a DB-7A Supplemental Request for Statement of Respondent's Position letter ("DB-7A letter") alleging that Respondent's statements in response to the DB-7 letter and ODC's September 2, 2021, follow-up letter were false and misleading.

26. In the DB-7A letter, ODC advised Respondent that if he did not respond or provide good cause for failing to respond within 30 days, ODC may seek to impose discipline for his violation of Pa.R.D.E. 203(b)(7).

27. On December 20, 2021, Respondent, or someone on his behalf, signed for the certified mailing.

28. Respondent's response to the DB-7A letter was due by January 14, 2022.

29. Respondent failed to respond to the DB-7A letter or provide ODC with good cause for his failure to respond.

30. On January 28, 2022, Respondent was personally served with a Petition for Discipline concerning the above-stated allegations.

31. Respondent's answer to the Petition for Discipline was due within 20 days of service, by February 17, 2022.

32. Respondent failed to file an answer to the Petition for Discipline.

33. By his conduct as alleged in paragraphs 19 through 32, above, Respondent violated the following Rules:

a. RPC 8.1(a), which states, in pertinent part, that a lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact;

b. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

c. Pa.R.D.E. 203(b)(7), which states that 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 a ground for discipline.

SPECIFIC JOINT RECOMMENDATIONS FOR DISCIPLINE

Petitioner and Respondent jointly recommend that Respondent receive a public reprimand for his misconduct. This recommendation is supported by precedent.

In *Office of Disciplinary Counsel v. Evan T.L. Hughes*, 40 DB 2018 (D. Bd. Order 3/26/2018), the Disciplinary Board imposed a public reprimand for, *inter alia*, Respondent Hughes' violation of RPC 1.4(b) (communication), RPC 3.3(a)(1) (candor to tribunal), RPC 5.5(a) (unauthorized practice of law), RPC 7.1 (communication regarding lawyer's services), RPC 8.4(a) (misconduct), RPC 8.4(c) (misrepresentation), RPC 8.4(d) (prejudice to administration of justice), the corresponding New Jersey Rules of Professional Conduct, and Pa.R.D.E 203(b)(7) (failure to respond to DB-7 letter). In one of two matters at issue in the disciplinary proceeding,² Respondent Hughes was retained by a criminal client to represent him in a New Jersey matter despite that he was not licensed to practice in New Jersey. Respondent Hughes failed to advise the client, opposing counsel, or the court that he was not licensed to practice in New Jersey and failed to seek *pro hac vice* status for purposes of handling the New Jersey criminal matter. Respondent Hughes appeared for a hearing and a status hearing and filed pretrial memorandums for both hearings. On the day the criminal trial was set to commence, a licensed New Jersey attorney filed a Notice of Motion for *Pro Hac Vice Admission* of Evan T.L. Hughes, Esq. ODC sent Respondent Hughes a DB-7 letter addressing, in part, the above-stated facts. Respondent Hughes failed to respond to ODC's DB-7 letter or provide good cause for his failure to respond. ODC then recommended that Respondent receive a public reprimand, and the Disciplinary Board approved the recommendation. However, Respondent Hughes demanded the filing of formal charges, requiring ODC to file a Petition for Discipline. Prior to the date Respondent Hughes' answer to the Petition for Discipline was due, and without having responded

² The other matter concerned Respondent Hughes' neglect of and failure to communicate with a Pennsylvania criminal client.

thereto, Respondent Hughes advised ODC that he would accept the public reprimand, which the Disciplinary Board thereafter imposed.

Like Respondent Hughes, Respondent Yackow undertook to provide legal representation to a client in a state in which he is not licensed to practice law without obtaining *pro hac vice* status. Pursuant to such representation, both Respondent Hughes and Respondent Yackow submitted filings and appeared for pre-trial proceedings. In the face of ODC's investigation, both Respondent Hughes and Respondent Yackow failed at one point or another to submit their position to ODC's allegations. Despite this, unlike Respondent Hughes, Respondent Yackow has fully accepted responsibility for his misconduct by readily agreeing to consent discipline in this matter.

The limited nature of Respondent Yackow's unauthorized practice of law weighs against the imposition of a discipline greater than a public reprimand. Indeed, other attorneys who engaged in more extensive unauthorized practice of law in addition to other misconduct have received a public reprimand, as illustrated by the first two cases that follow. In a third matter, which is also discussed below, the attorney received a public reprimand for unauthorized practice that involved substantial harm to the efficient operation of a court, which was not the case here. While the violations in that case did not include a violation of RPC 8.4(c), which prohibits misrepresentation, they did include a willful violation of Pa.R.D.E 217(j)(4)(iii), which prohibits a formerly admitted attorney from representing himself as a lawyer or person of similar status and could include misrepresentation by an omission that is the equivalent of an affirmative false statement.

In Office of Disciplinary Counsel v. Zachary Douglas Cregar, 95 DB 2016 (D. Bd. Order 11/14/2016), the Disciplinary Board imposed a public reprimand on Respondent Cregar for his improper engagement in law-related activities over a period of approximately three and one-half years after voluntarily assuming inactive status and making numerous misrepresentations, the latter of which served as an aggravating factor. Respondent Cregar's misrepresentations were both affirmative and by omission. Respondent Cregar failed to inform his employer, Liberty Mutual, of his inactive status and then obtained a position as General Counsel with Aldus Partners under the guise that he was actively admitted to practice law in Pennsylvania. When Respondent Geiger eventually filed a Petition for Reinstatement, he failed to disclose that he had been hired and begun working for Altus Partners as General Counsel.³ ODC sent Respondent Cregar a DB-7 letter. Respondent Cregar responded to the DB-7 letter by falsely denying that he had engaged in any law-related activity while on inactive status. Respondent Cregar then filed a second Petition for Reinstatement wherein he falsely stated that he had not engaged in any law-related activity while working for Liberty Mutual and had informed Altus Partners from the outset that he was on inactive status. ODC thereafter filed a Petition for Discipline, which Respondent Cregar answered denying any misconduct. ODC and Respondent Cregar then entered into a Consent Petition for a public reprimand, noting Respondent Cregar's multiple misrepresentations in aggravation. The Disciplinary Board accepted the joint recommendation.

In Office of Disciplinary Counsel v. Royce W. Smith, 1 DB 2018 (D. Bd. Order 1/22/2018), the Disciplinary Board imposed a public reprimand on Respondent Royce for his unauthorized practice of law in eight client matters over the course of approximately 45 days while he was administratively suspended and for his misrepresentations on his Statement of

³ Respondent Cregar's initial Petition for Reinstatement was returned due to failure to show good cause for his requested Continuing Legal Education waiver.

Compliance. Respondent Royce was administratively suspended following his failure to file his annual attorney registration and pay the attendant fee. While on administrative suspension, Respondent Royce submitted numerous court filings; appeared as counsel at two depositions, a settlement conference, and an arbitration proceeding where he obtained a defense verdict; and negotiated a settlement in another matter. On his Statement of Compliance, Respondent Royce stated that he had no active clients to inform of his administrative suspension and that he had informed the courts before which he was admitted to practice of his administrative suspension. Both of these statements were misrepresentations.

In the third matter, *Office of Disciplinary Counsel v. Steven M. Mezrow*, 152 DB 2014 (D. Bd. Order 11/17/2014), the Board imposed a public reprimand on Respondent Mezrow, who engaged in the unauthorized practice of law by representing clients in a civil jury trial in the Philadelphia Court of Common Pleas over the course of ten days while on administrative suspension for failure to complete his annual registration. Respondent Mezrow's unauthorized practice of law interfered with the efficient operation of a court and in that respect substantially prejudiced the administration of justice. Upon becoming independently aware of Respondent Mezrow's administrative suspension, the presiding judge declared a mistrial and directed Respondent Mezrow's law firm to pay the costs incurred by the defense.

Respondent Yackow has been a practicing New York attorney for 38 years and has no prior history of discipline in New York or Pennsylvania. There is no indication that Respondent Yackow intended to violate the Rules of Professional Conduct and Rules of Disciplinary Enforcement in his representation of the Dawson Defendants or during ODC's investigation. Notably, Respondent Yackow had a long-standing attorney-client relationship with each of the New York based clients. This long-standing relationship coupled with the family illness with

which Respondent Yackow was dealing at the time distracted Respondent and blurred his judgment, such that he did not complete the necessary steps prior to acting as counsel in the Dawson litigation. If the matter proceeded to hearing, Respondent Yackow's position would be that he did not intend to mislead ODC by his statements in response to the DB-7 letter that turned out to be false, but he acknowledges that the statements were recklessly made because he relied solely on his memory when he could have taken investigative steps to determine whether he did or did not participate in the virtual conference. Further, Respondent Yackow has fully admitted to his misconduct and has expressed extreme remorse to ODC during discussions regarding consent discipline. As a result, Respondent Yackow is not likely to engage in misconduct in the future and a public reprimand will adequately address his misconduct in Pennsylvania.

Respondent hereby consents to the discipline being imposed upon him. Attached to this Petition is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), stating that Respondent consents to the recommended discipline and including the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

WHEREFORE, Petitioner and Respondent respectfully request that your Honorable Board:

- (a) Review and approve this Joint Petition and impose a public reprimand; and
- (b) Pursuant to Pa.R.D.E. 215(i), enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter.

Respectfully submitted,

Office of Disciplinary Counsel
Thomas J. Farrell
Chief Disciplinary Counsel

Date: 04/21/2022

By: *Kristin A. Wells*
Kristin A. Wells
Disciplinary Counsel
Attorney Registration No. 312080
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

Date: *April 21, 2017*

By: *Jay L. Yackow*
Jay L. Yackow
Respondent
355 Post Avenue, Suite 201
Westbury, New York 11590

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Respondent : (Out of State)

VERIFICATION

The statements made in the foregoing Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d) are true and correct to the best of my knowledge or information and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

Date: 04/21/2022

By: *Kristin A. Wells*
Kristin A. Wells
Disciplinary Counsel
Attorney Registration No. 312080 601
Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675 Telephone
(7) 772-8572

Date: *April 21, 2022*

By: _____
Jay L. Yackow
Respondent
355 Post Avenue, Suite 201
Westbury, New York 11590

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OFFICE OF DISCIPLINARY COUNSEL,	:	
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	:	Respondent
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RESPONDENT'S AFFIDAVIT UNDER RULE 215(d) OF THE
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

I, Jay L Yackow, Respondent in the above-captioned matter, hereby consent to the imposition of a public reprimand, as jointly recommended by the Petitioner, Office of Disciplinary Counsel, and myself, in a Joint Petition in Support of Discipline on Consent and further state:

1. My consent is freely and voluntarily rendered; I am not being subjected to coercion or duress; I am fully aware of the implications of submitting the consent;

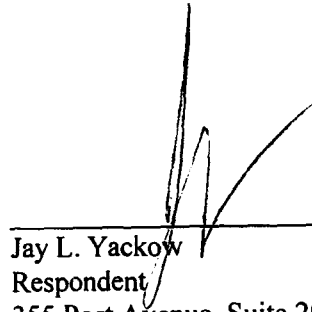
2. I am aware there is presently pending a proceeding involving allegations that I have been guilty of misconduct as set forth in the Joint Petition;

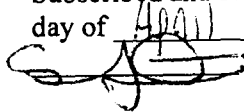
3. I acknowledge that the material facts set forth in the Joint Petition are true;

4. I consent because I know that if the charges continued to be prosecuted in the pending proceeding, I could not successfully defend against them; and

5. I am aware of my right to retain counsel in the instant proceeding. I have not retained, consulted, or acted upon the advice of counsel in connection with my decision to execute the Joint Petition.

Date: April 21, 2022

By: 
Jay L. Yackow
Respondent
355 Post Avenue, Suite 201
Westbury, New York 11590

Subscribed and sworn this 21st
day of April 2022 before
 Notary Public.

Emily L Stone
Notary Public, State of New York
Reg. No. 01ST6350368
Qualified in Nassau County
Commission Expires November 7 2024

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CERTIFICATE OF SERVICE

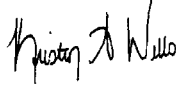
I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Disciplinary Board Rules and Procedures § 89.22 (service by a participant).

First Class Mail and email as follows:

Jay L. Yackow
Jay L. Yackow Attorney at Law
355 Post Avenue, Suite 201
Westbury, New York 11590

jyackow@yackowlaw.com

Date: 04/21/2022

By: 
Kristin A. Wells
Disciplinary Counsel
Attorney Registration No. 312080
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature: Kristin A. Wells

Name: Kristin A. Wells

Attorney No. (if applicable): 312080