

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2741 Disciplinary Docket No. 3
: :
Petitioner : No. 58 DB 2020
: :
v. : Attorney Registration No. 80472
: :
EDWARD HARRINGTON HEYBURN, : (Out of State)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 22nd day of June, 2021, upon consideration of the Report and Recommendations of the Disciplinary Board, Edward Harrington Heyburn is suspended from the Bar of this Commonwealth for three years. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

Chief Justice Baer and Justice Dougherty dissent and would suspend for five years.

A True Copy Patricia Nicola
As Of 06/22/2021


Attest:
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 58 DB 2020
	:	
v.	:	Attorney Registration No. 80472
	:	
EDWARD HARRINGTON HEYBURN, Respondent	:	(Out of State)

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 April 13, 2020, Office of Disciplinary Counsel charged Respondent, Edward Harrington Heyburn, with violation of the Pennsylvania Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement in connection with Respondent’s Motion for Admission *Pro Hac Vice* filed in the Monroe County Court of Common Pleas and his failure to respond to Petitioner’s investigative inquiries. Respondent filed an Acceptance of Service of the Petition for Discipline on May 1, 2020, but failed to file an Answer.

Following a prehearing conference on July 6, 2020, a District II Hearing Committee (“Committee”) conducted a disciplinary hearing on November 4, 2020. Petitioner offered into evidence a Stipulation of Fact executed by the parties on November 2, 2020 and Exhibits ODC-1 through ODC-12, which were admitted without objection. Respondent testified on his own behalf and offered no exhibits or other witnesses.

On December 4, 2020, Petitioner filed a brief to the Committee requesting that the Committee recommend to the Board that Respondent be suspended for a period of one year and one day. Respondent did not file a brief to the Committee.

By Report filed on January 13, 2021, the Committee concluded that Respondent violated the rules as charged in the Petition for Discipline and recommended that he be suspended for a period of one year and one day.

The parties did not take exception to the Committee’s Report and recommendation.

The Board adjudicated this matter at the meeting on April 14, 2021.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106 is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth and to

prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Edward Harrington Heyburn, born in 1966 and admitted to practice law in the Commonwealth of Pennsylvania in 1997. Respondent lives in New Jersey and maintains an active license in that jurisdiction. N.T. 17.

3. On March 21, 2006, Respondent was transferred to inactive status for noncompliance with Pennsylvania Continuing Legal Education requirements. Respondent is currently on administrative suspension in the Commonwealth of Pennsylvania and lives in New Jersey.

4. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

5. On April 13, 2020, Petitioner filed a Petition for Discipline against Respondent charging him with violation of Rules of Professional Conduct (“RPC”) 3.3(a)(1), 8.4(a), 8.4(b), 8.4(c), 8.4(d), and Pennsylvania Rule of Disciplinary Enforcement (“Pa.R.D.E.”) 203(b)(7).

6. Respondent did not file a response to the Petition for Discipline. N.T. 21.

7. Under the provisions of Pa.R.D.E. 208(b)(3), the factual allegations contained in the Petition for Discipline are deemed admitted.

8. Anthony R. Fiore, Esquire is a partner at the law firm of Gage Fiore, LLC, in Lawrenceville, New Jersey.

9. Mr. Fiore is a member in good standing of the bars of Pennsylvania and New Jersey.

10. Mr. Fiore and Respondent first met in approximately 1993 when they were adverse counsel in a litigated matter.

11. From sometime in January 2016 through 2018, Respondent acted as of counsel to the Gage Fiore firm and was co-counsel with Mr. Fiore on approximately 15 New Jersey matters.

12. In 2011, an associate in Mr. Fiore's firm filed a complaint in the matter captioned *Susan Dogan, individually and as Executrix of the Estate of Jesse L. Dogan, v. Pocono Medical Center, Dr. Vincent Francescangeli and Dr. Patricia Rylko*, Court of Common Pleas of Monroe County, No. 2011-01367 ("Dogan Matter").

13. In 2015, Mr. Fiore assumed representation of Ms. Dogan.

14. In or around December 2017, Respondent agreed to act as co-counsel on behalf of Ms. Dogan.

15. Sometime in January 2018, Mr. Fiore requested Brenna Burcher, his litigation support professional, to prepare a draft Motion for Admission *Pro Hac Vice* in the Dogan Matter on behalf of Respondent.

16. Ms. Burcher prepared the initial draft of the Motion after consulting with Respondent, who provided her with a sample Motion for Admission *Pro Hac Vice*.

17. In connection with the Motion, Ms. Burcher sent to the Pennsylvania IOLTA Board a check for \$100 and a *pro hac vice* submission form filled out by Respondent.

18. The form filled out by Respondent contained the following directions: "Use this form if you are an attorney who is qualified to practice in another state or in a foreign jurisdiction, **is not admitted to practice law in Pennsylvania**, and is seeking to be specially admitted to the Bar of the Commonwealth of Pennsylvania in

order to appear before a Pennsylvania court in connection with a particular case.”
(emphasis provided)

19. The form filled out by Respondent requested him to “[l]ist all foreign, state and federal jurisdictions in which [he has] been qualified, licensed or admitted to practice law and are currently active and in good standing, the year of licensure, and [his] license or bar card number, if applicable.”

20. On the form, Respondent listed only New Jersey as a jurisdiction he was admitted to practice law, even though he had been admitted in Pennsylvania in 1997.

21. On January 19, 2018, Ms. Burcher, at the direction of Mr. Fiore, filed a Motion for Admission *Pro Hac Vice* Pursuant to Pa.R.C.P. 1012.1, requesting the Monroe County Court of Common Pleas admit Respondent to the practice of law in the Commonwealth of Pennsylvania in the Dogan Matter.

22. The signed verifications of Mr. Fiore and Respondent and a Certificate of Service were attached in support of the Motion.

23. Both verifications declared under penalty of perjury that the averments were true and correct and that it was understood that false statements made therein were subject to the penalties of 18 Pa.C.S.A. § 4904 relating to unsworn falsification to authorities.

24. Mr. Fiore averred in paragraph 3 of the Motion that Respondent “has never been the subject of any disciplinary proceedings.”

25. Mr. Fiore’s averment that Respondent had never been the subject of any disciplinary proceeding was based on representations by Respondent to him and Ms. Burcher. Mr. Fiore’s averment that Respondent had never been the subject of any disciplinary proceeding was false. At the time Respondent signed his verification, he had

been the subject of two disciplinary proceedings in New Jersey culminating in the administration of censures by the New Jersey Supreme Court on November 13, 2013 and June 18, 2015, and was the subject of disciplinary proceedings in a third matter, which eventually resulted in the administration of a censure by the New Jersey Supreme Court on July 9, 2018.

26. On November 13, 2013, the New Jersey Supreme Court imposed a censure on Respondent for his violation of attorney advertising rules, lack of diligence, failure to communicate with the client, failure to safeguard property, failure to cooperate with ethics investigators and misrepresentation by silence. In that matter, two Disciplinary Review Board Members voted for a three-month suspension.

27. On June 18, 2015, the New Jersey Supreme Court imposed a second censure on Respondent for gross neglect, lack of diligence, failure to communicate, and misrepresentations to the client. The Office of Attorney Ethics recommended a three-month suspension and two Disciplinary Review Board Members voted for a three-month suspension.

28. On July 9, 2018, the New Jersey Supreme Court imposed a third censure on Respondent for negligent misappropriation of client trust funds and record-keeping violations. One Disciplinary Review Board Member voted for a three-month suspension.

29. Prior to filing the Motion for Admission *Pro Hac Vice*, Respondent was provided and had reviewed the entire Motion and both verifications and affirmatively represented to Mr. Fiore and Ms. Burcher that the allegations pertaining to Respondent were true and correct.

30. Prior to the filing of the Motion, neither Ms. Burcher nor Mr. Fiore were aware that Respondent had been the subject of any disciplinary proceedings in New Jersey.

31. Prior to the filing of the Motion, neither Ms. Burcher nor Mr. Fiore were aware that Respondent had been admitted to the practice of law in the Commonwealth of Pennsylvania.

32. Prior to the filing of the Motion, Respondent never advised Ms. Burcher or Mr. Fiore that he had been admitted to practice law in the Commonwealth of Pennsylvania.

33. Respondent's verification at paragraph 3 alleged, *inter alia*, "I presently am not, and have never been the subject of any disbarment or suspension proceedings before this or any Court."

34. Respondent's averment that he had never been the subject of a suspension proceeding before any court was false, and Respondent knew it was false.

35. Respondent's verification did not comply with Pa.R.C.P. Rule 1012.1(c)(1) for the following reasons:

- a. Respondent did not identify Pennsylvania as a jurisdiction in which Respondent had been licensed and the corresponding bar license number;
- b. Respondent did not state that he had been disciplined by censures in New Jersey; and
- c. Respondent did not provide a description of the circumstances of the censures.

36. Respondent knew, or should have known, that his verification did not comply with Pa.R.C.P. Rule 1012.1(c)(1).

37. By letter addressed to Mr. Fiore dated January 19, 2018, the Pennsylvania IOLTA Board:

- a. returned the *pro hac vice* submission form and check for \$100 that Ms. Burcher had sent;
- b. informed Respondent that the fee had been increased by Order of the Court to \$375; and
- c. advised that the submission form was outdated and that the *pro hac vice* application should be completed and submitted online.

38. By Order dated January 22, 2018, Monroe County Court of Common Pleas President Judge Margherita Patti-Worthington denied Mr. Fiore's Motion because it failed to provide the required IOLTA fee certification.

39. On January 23, 2018, Respondent submitted online to the Pennsylvania IOLTA Board a second *Pro Hac Vice* application.

40. Similar to the first application submitted to the Pennsylvania IOLTA Board, the second application listed only New Jersey as a jurisdiction in which Respondent was licensed to practice law.

41. By letter dated January 23, 2018, the Pennsylvania IOLTA Board provided the fee payment certification in connection with the second *Pro Hac Vice* Motion.

42. On January 31, 2018, Ms. Burcher, at the direction of Mr. Fiore, filed the second Motion for Admission *Pro Hac Vice*.

43. With respect to the second Motion, the allegations contained therein were identical to the allegations contained in the first Motion.

44. By Order dated February 1, 2018, President Judge Patti-Worthington granted Mr. Fiore's second Motion and specially admitted Respondent to the bar of the Commonwealth of Pennsylvania in the Dogan Matter.

45. The Dogan matter proceeded to trial on September 30, 2019 through October 3, 2019.

46. Respondent and Mr. Fiore acted as co-counsel throughout the Dogan Matter trial.

47. At the Dogan Matter trial, Respondent's role included the direct examination of Ms. Dogan and plaintiff's medical expert, as well as cross-examination of the defendant and defendant's medical experts.

48. Respondent was apprised of the foregoing allegations by DB-7 Request for Statement of Respondent's Position dated December 3, 2019 ("DB-7").

49. The DB-7:

a. advised Respondent that failure to respond to the DB-7 without good cause is an independent ground for discipline pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement; and

b. warned Respondent that his failure to respond could cause the Office of Disciplinary Counsel to seek to impose discipline for Respondent's violation of Pa.R.D.E. 203(b)(7).

50. Petitioner sent the DB-7 to Respondent by certified mail and Respondent received it on December 5, 2019.

51. Respondent did not respond to the DB-7.

52. By letter dated January 7, 2020, Petitioner advised Respondent it had not received a response to the DB-7 and reminded Respondent that Petitioner could seek discipline against him for his violation of Pa.R.D.E. 203(b)(7).

53. Petitioner sent the January 7, 2020 letter to Respondent by certified mail and Respondent received the letter, but did not respond.

54. Respondent testified at the disciplinary hearing on November 4, 2020.

55. Respondent testified that he was unfamiliar with the process of being admitted *pro hac vice*. N.T. 11.

56. Even though Respondent had been admitted to the bar in Pennsylvania in 1997, he did not consider himself to be a Pennsylvania attorney because his “registration had lapsed.” N.T. 16.

57. Prior to the filing of the Motion for Admission *Pro Hac Vice*, Respondent had never discussed the issue of his prior discipline with Mr. Fiore and never thought to do so because he thought his discipline was public knowledge and “assumed anybody who Googled me knew” he had been publicly disciplined. N.T. 12, 15-16.

58. Even though Respondent admitted that he was unfamiliar with the *pro hac vice* process, he testified that he read over the documents “way too quickly.” *Id.*

59. At the time Respondent signed the verification he “was doing three things at once and did not fully understand that [he] had to report any prior ethical violations as part of that application.” N.T. 13.

60. Respondent took full responsibility, wished he had been “more careful” prior to signing the documents, did not intend to mislead the court but

acknowledged that he did mislead the court and violated the Rules of Professional Conduct. N.T. 12, 14.

61. Respondent apologized for his misconduct, expressed remorse and embarrassment and realized that he “should have slowed down, paid attention, and made sure the documents were accurate.” He further testified that he is “ready to accept whatever the consequences are.” N.T. 14, 25, 26.

62. Respondent cooperated with Petitioner by entering into stipulations as to the facts of the misconduct and the violations of the rules.

63. Respondent testified that at the time of the disciplinary hearing on November 4, 2020, he was the subject of another disciplinary proceeding in New Jersey where a recommendation had been made to suspend his license for three months. N.T. 17-18.

III. CONCLUSIONS OF LAW

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

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 8.4(a) – It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

3. 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;
4. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
5. RPC 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice; and
6. Pa.R.D.E. 203(b)(7) – 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 grounds for discipline.

IV. DISCUSSION

In this matter, the Board considers the Committee’s unanimous recommendation to suspend Respondent for one year and one day for making false statements in connection with a Motion for Admission *Pro Hac Vice* and failing to respond to Petitioner’s request for information. The parties did not take exception to the Committee’s recommendation.

Petitioner bears the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). Upon review, the Board concludes that Petitioner met its burden of proof. Petitioner served Respondent with the Petition for Discipline; however, Respondent failed to timely respond and failed to

establish good cause for his lack of response. Factual allegations in the Petition are deemed admitted if an answer to the Petition is not timely filed, pursuant to Pa.R.D.E. 208(b)(3). Petitioner's evidence, in the nature of the factual allegations, joint stipulations and Petitioner's exhibits, proved that Respondent's conduct violated the ethical rules charged in the Petition for Discipline. For the following reasons, the Board recommends that Respondent be suspended for a period of eighteen months.

Respondent stipulated to the facts demonstrating his misconduct in connection with the filing of the Motion for Admission *Pro Hac Vice* in the Monroe County Court of Common Pleas and his failure to respond to the DB-7. Respondent further stipulated that his actions violated Rules of Professional Conduct 3.3(a)(1), 8.4(a), 8.4(b), 8.4(c), 8.4(d), and Pennsylvania Rule of Disciplinary Enforcement 203(b)(7).

The record established that Respondent sought *pro hac vice* admission in the Monroe County Court of Common Pleas in order to try the Dogan Matter as co-counsel with Mr. Fiore. From the beginning, Respondent was not forthright in his representations on the various forms required to be submitted. Respondent was required to submit a form to the Pennsylvania IOLTA Board to receive a fee payment certification. Even a cursory review of the submission form by Respondent would have alerted him to the fact that the form did not apply to him, as he was admitted in Pennsylvania. Nevertheless, Respondent filled out the form, omitting any mention of his Pennsylvania admission and listing only New Jersey as a jurisdiction he was admitted to practice law.

Troublingly, Respondent's misrepresentations did not stop with the omissions on the IOLTA submission form. The Motion itself contained falsities related to Respondent's extensive disciplinary history in New Jersey. At the time he verified the averments continued in the Motion in January 2018, Respondent had been the subject of

two separate disciplinary proceedings that culminated in the administration of censures by the New Jersey Supreme Court in 2013 and 2015. In the 2015 proceeding, the Office of Attorney Ethics had sought Respondent's suspension. As well, in January 2018 Respondent was in the midst of a third proceeding in New Jersey, which resulted in the administration of a censure by the New Jersey Supreme Court in July 2018. Notwithstanding this lengthy history, Respondent knowingly misrepresented in the Motion for Admission *Pro Hac Vice* that he had never been the subject of any disciplinary proceeding and had never been the subject of any disbarment or suspension proceeding before any court.

The signed verifications of Mr. Fiore and Respondent that the averments were true and correct were attached in support of the Motion. In fact, Respondent never told Mr. Fiore that he had prior discipline and he allowed Mr. Fiore to verify false information under penalty of law. Prior to the filing of the Motion with the court, Respondent reviewed the entire document, knew that the Motion stated he had never been the subject of discipline, and reviewed both verifications. Despite knowing that the Motion contained falsities, Respondent did not correct the Motion and allowed the Motion to be filed with the court.

Based on these misrepresentations, President Judge Patti-Worthington granted the Motion and specially admitted Respondent under false pretenses to the Pennsylvania bar in the Dogan Matter, which proceeded to trial in September 2019. The questions on the *Pro Hac Vice* Motion were material as to Respondent's qualifications to practice law in Pennsylvania. His falsities denied the court its opportunity to properly assess Respondent's special admission.

Respondent's deceptive conduct is certainly serious; what makes this matter significantly more concerning to the Board is that Respondent had the opportunity to correct the filings and failed to do so. As the record established, the initial submission form to the IOLTA Board was returned based on an incorrect fee and an outdated form, and the initial Motion filed with the court was denied because it did not have the IOLTA fee certification. At that point, Respondent could have reassessed his responses to the questions on those documents. Instead, Respondent submitted a second IOLTA form and allowed the paraprofessional to file a second Motion with his attached verification, which documents contained the same false statements and omissions as the first set of documents.

Respondent's brief testimony at the disciplinary hearing did not elucidate his actions. His explanations for his serious and dishonest conduct were not expansive and were not particularly credible. Respondent testified that even though he had no experience filing *pro hac vice* motions, he was doing "three things at once" and reviewed the documents "way too quickly" and did not "fully understand," despite the direct question, that he had to report any prior ethical violations as a part of the Motion. As to the reason why he never informed Mr. Fiore of his prior discipline, Respondent attempted to explain that Mr. Fiore had never asked, then further testified he believed his discipline was public knowledge and assumed anyone could "Google" it. While this may have been the reason Respondent did not feel compelled to advise Attorney Fiore of his prior discipline, it does not explain his failure to advise the court, who should not have to "Google" an applicant's name to determine disciplinary history. Rather, the court relied on Respondent's averments contained in the Motion and admitted him under false pretenses.

In connection with the false information he provided on the submission form to the IOLTA Board, Respondent testified that even though he was admitted to the Pennsylvania bar in 1997, he did not consider himself a Pennsylvania attorney because his “registration had lapsed.” There is no evidence that Respondent sought clarification on his status in Pennsylvania. Again, Respondent’s explanation is not particularly convincing.

Petitioner’s attempts to investigate this matter were complicated by Respondent’s failure to respond to the DB-7 request for statement of position on two occasions. Similar to his attempts to explain his misconduct, Respondent offered no reasonable basis for not answering the DB-7, nor did he adequately explain the basis for his failure to answer the Petition for Discipline.

Although initially nonresponsive to Petitioner’s requests, Respondent belatedly cooperated by entering into stipulations and appearing at the prehearing conference and disciplinary hearing. Respondent offered his apologies, accepted responsibility for his actions and acknowledged that consequences would flow from his wrongdoing. While we recognize these mitigating factors, we agree with the Committee’s sound assessment that the seriousness of Respondent’s deceitful misconduct, his prior discipline in New Jersey and his failure to respond to Petitioner outweigh his eleventh hour acts of cooperation and contrition.

It is well-established that the goals of the attorney disciplinary system include protecting the public from unfit attorneys, maintaining the integrity of the bar and upholding respect for the legal system. ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872, 875 (Pa. 1986). Upon reviewing the totality of the facts and circumstances of this record, and after considering the goals of the disciplinary system and the

established precedent to ensure the application of consistent discipline, we conclude that Respondent's misconduct warrants an eighteen month period of suspension. **Office of Disciplinary Counsel v. Robert Lucarini**, 427 A.2d 186, 190 (Pa. 1983).

Although there is no per se discipline for attorneys who make intentional misrepresentations on applications for admission to courts, law school applications or bar admission applications, precedent establishes that this conduct is viewed as serious enough to warrant at least a term of suspension. See **Office of Disciplinary Counsel v. Jeffrey Aaron Blaker**, No. 107 DB 2013 (S. Ct. Order 11/15/2013) (one year consent suspension for respondent-attorney who failed to report several arrests on his application for admission to Villanova School of Law and subsequently made material misrepresentations on his Pennsylvania Bar application by lying about his state of mind at the time he had filled out the law school application); **Office of Disciplinary Counsel v. Edward John King**, No. 91 DB 2007 (S. Ct. Order 9/19/2007) (one year consent suspension for a respondent-attorney who failed to report two arrests on his Pennsylvania and New Jersey Bar applications and failed to report on his Pennsylvania Bar application that he provided false information on his law school application); **Office of Disciplinary Counsel v. Ronda B. Goldfein**, No. 8 DB 94, 29 Pa. D. & C. 4th 315 (1995) (one year suspension for respondent-attorney who failed to disclose her arrests on her Pennsylvania and New Jersey Bar applications and failed to disclose that she had failed several other bar examinations); **Office of Disciplinary Counsel v. Robert Philip Tuerk**, No. 51 DB 2014 (D. Bd. Rpt. 7/20/2015) (S. Ct. Order 10/15/2015) (one year and one day suspension imposed on respondent-attorney who knowingly failed to disclose on his admission application to the United States District Court for the Eastern District of Pennsylvania that he had been suspended for one year and one day by the Supreme

Court of Pennsylvania nearly twenty years prior for failing to disclose an arrest on his Pennsylvania Bar application; Tuerk falsely swore on his admission application to the federal court that he had complied with the admission requirements so that he could avoid the hearing required to establish his fitness; lack of sincere remorse and failure to accept responsibility were aggravating factors); **Office of Disciplinary Counsel v. Robert Turnbull Hall**, No. 49 DB 2011 (S. Ct. Order 7/12/2011) (two year consent suspension for respondent-attorney who omitted information related to his history of criminal convictions and a civil matter from his applications to two law schools and then made similar omissions on his applications to sit for the bar examinations in Pennsylvania and New Jersey; he falsely verified on the Pennsylvania application that he did not withhold relevant information and falsely certified on the New Jersey application that he provided truthful answers); **In re Anonymous (Daryl Brett Magid)**, 34 Pa. D. & C. 4th 292 (1996) (three year suspension imposed for a respondent-attorney who on his application to the Pennsylvania Bar, falsely and incompletely answered questions by denying that he had ever previously applied to sit for another bar examination or sought admission to the bar of another state; aggravating factors were that Magid evaded service of the Petition for Discipline, failed to file an Answer and failed to appear at the disciplinary hearing); **Office of Disciplinary Counsel v. Akim Frederick Czmus**, 889 A.2d 1197 (Pa. 2005) (respondent-attorney was disbarred for a continuous pattern of deceit and dishonesty, including failure to disclose on his law school application that he attended medical school, received medical licenses in several states, worked as a physician, and had his medical license revoked in two states; on his bar applications for admission to Pennsylvania and New Jersey, Czmus failed to include any mention of his medical education, career or disciplinary proceedings, among other omissions).

Here, Respondent deliberately chose to hide his Pennsylvania admission and his several instances of prior discipline in New Jersey in order to gain admission in Monroe County to try a personal injury matter. After reviewing the initial IOLTA submission and verifying the initial Motion containing false information, Respondent had a second opportunity to truthfully respond to the questions in the documents when the initial set was rejected; instead, Respondent chose to file documents containing falsities. Compounding his disciplinary problems, Respondent felt no duty to respond to Petitioner, nor did he bother filing an Answer to Petition for Discipline or submitting a brief to the Committee. Significantly, Respondent has three prior censures in New Jersey and testified that he is facing a fourth disciplinary recommendation in New Jersey for a three month period of suspension, although we note that at the time of the instant hearing Respondent was still on active status in New Jersey and the New Jersey Supreme Court had not acted on the recommendation.

Having analyzed the case precedent, we conclude that the weighty aggravating factors and paucity of mitigation support the imposition of a sanction greater than a suspension for one year and one day. In gauging the appropriate quantum of discipline within the range of sanctions imposed in like matters, we view Respondent's misconduct to be less serious than the **Hall** and **Magid** matters, which warranted two and three year suspensions, respectively. The respondent-attorney in **Hall** engaged in numerous falsities and omissions on law school applications to two different law schools, both of which granted him acceptance, and two bar admission applications, one of which, Pennsylvania, granted him admission to the bar. The sheer number of falsities in that matter constituted the basis for the two year suspension. Likewise, the instant matter is not as serious as that in **Magid**, where the aggravating factor of the respondent-attorney's

failure to appear at the disciplinary hearing elevated the sanction to a three year suspension.

An eighteen month period of suspension is appropriate and consistent to protect the public and maintain the integrity of the courts and the legal profession.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Edward Harrington Heyburn, be Suspended for eighteen months from the practice of law in 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: */s/ John C. Rafferty, Jr.*
John C. Rafferty, Jr., Member

Date: 04/28/2021

Members Dee, Mundorff and Repard recused.