

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1591 Disciplinary Docket No. 3
Petitioner :
 : No. 108 DB 2008
v. :
 : Attorney Registration No. 40085
JAMES EDWARD HARVIN, :
Respondent : (Allegheny County)

ORDER

PER CURIAM:

AND NOW, this 16th day of June, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 5, 2010, it is hereby

ORDERED that James Edward Harvin is suspended from the Bar of this Commonwealth for a period of one year and one day 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 203(g), Pa.R.D.E.

A True Copy Patricia Nicola

As of: June 16, 2010

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 108 DB 2008
Petitioner	:	
v.	:	Attorney Registration No. 40085
JAMES EDWARD HARVIN	:	
Respondent	:	(Allegheny 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 July 21, 2008, Office of Disciplinary Counsel filed a Petition for Discipline against James Edward Harvin. The Petition charged Respondent with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising from allegations that he engaged in the unauthorized practice of law. Respondent did not file an Answer to Petition for Discipline.

A disciplinary hearing was held on June 8, 2009, before a District IV Hearing Committee comprised of Chair Robert J. Behling, Esquire, and Members Thomas Farrell, Esquire, and Susan M. Lapenta, Esquire. Respondent appeared pro se.

The Hearing Committee filed a Report on October 5, 2009, finding that Respondent engaged in professional misconduct and recommending that he be suspended for one year and one day.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on January 20, 2010.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Ave., 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 an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with various provisions of said Rules.

2. Respondent is James Edward Harvin. He was born in 1957 and was admitted to practice law in the Commonwealth of Pennsylvania in 1983. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of professional discipline in Pennsylvania. He received an Informal Admonition in 2006 for failing to take action on a client's matter.

4. Respondent is a formerly admitted attorney in Pennsylvania.

5. Respondent was transferred to inactive status pursuant to Rule 219, Pa.R.D.E. by Order of the Supreme Court of Pennsylvania dated November 15, 2006, for failing to file a periodic assessment and pay an annual registration fee.

6. By certified letter dated November 15, 2006, Elaine Bixler, Secretary of the Board, informed Respondent that he was transferred to inactive status effective December 15, 2006, for failing to file a periodic assessment and pay an annual fee.

7. Along with the November 15, 2006 letter, Ms. Bixler forwarded to Respondent all pertinent rules and forms associated with Respondent's inactive status, along with a Statement of Compliance.

8. Ms. Bixler's November 15, 2006 letter was sent to Respondent at his home address as shown on the Attorney Registration records, but it was returned to Ms. Bixler's office as unclaimed.

9. On March 5, 2007, Mark A. Pastore, an Investigator with Office of Disciplinary Counsel, attempted to contact Respondent by telephone to inform him of his inactive status.

10. Mr. Pastore was unable to contact Respondent because the law office telephone number listed on the attorney registration records was disconnected.

11. Mr. Pastore attempted to contact Respondent at home but was not successful and left a message for Respondent to return the call.

12. Respondent did not return Mr. Pastore's call nor did he otherwise communicate with Mr. Pastore.

13. By letter dated March 7, 2007, sent certified and regular mail to Respondent at his home address of 1149 Jefferson Road, Penn Hills PA 15235, Angelea Allen Mitas, Disciplinary Counsel-in Charge, District IV, advised Respondent that the Court Administrator's Office indicated that he was still on inactive status, reminded him that those who remain on inactive status for three years or more cannot be restored to active status without filing a Petition for Reinstatement and suggested that if he desired to inquire about the process necessary to return to active status he contact the Attorney Registrar.

14. On March 9, 2007, Respondent signed as having received Ms. Mitas' March 7, 2007 letter.

15. Respondent was aware that he was placed on inactive status.

16. Respondent did not provide the required notices to all clients, all opposing attorneys and others of his transfer to inactive status.

17. Respondent did not file the required verified statement with the Disciplinary Board, which is required to be filed within ten days of the transfer to inactive status.

18. Prior to Respondent's transfer to inactive status, on April 10, 2005, Kimberly Lowe signed a fee agreement whereby Respondent agreed to represent her in a claim for damages against Joseph Butler.

19. In about late November or early December 2006, Ms. Lowe telephoned Mr. Harvin and informed him that she wanted to settle the matter with Mr. Butler as quickly as possible.

20. From November/December 2006, approximately once a week Ms. Lowe made telephone calls to Respondent at his office and at his home, leaving messages requesting that he return her calls.

21. Respondent did not return Ms. Lowe's calls, nor did he otherwise communicate with her.

22. Subsequent to Respondent's transfer to inactive status, he remained attorney of record and continued to practice law by representing Ms. Lowe in the pursuit of her claims for damages against Mr. Butler.

23. On April 9, 2007, Respondent filed a Praecipe for Writ of Summons on behalf of Ms. Lowe in the Court of Common Pleas of Allegheny County.

24. When she had not heard from Respondent, on or about April 9, 2007, Ms. Lowe contacted the Prothonotary's Office of Allegheny County and learned that Respondent had filed the Praecipe.

25. From April 9, 2007, when she learned that Respondent had filed the Praecipe for Writ of Summons, until August 24, 2007, Ms. Lowe made telephone calls to

Respondent at his office and his home, approximately once a week, leaving messages requesting that he return her calls.

26. Respondent did not return Ms. Lowe's calls, nor did he otherwise communicate with her.

27. In the Praecipe for Writ of Summons, Respondent represented to the Court and to the Prothonotary that he was active and able to represent Ms. Lowe.

28. At no time after he was transferred to inactive status did Respondent move to withdraw as attorney for Ms. Lowe, nor did he notify Ms. Lowe that he had been transferred to inactive status, and he continued to represent her in this matter.

29. At no time did Respondent notify Jeffery A. Ramaley, Esquire, attorney for Joseph Butler, that he had been transferred to inactive status, as required by Rule 217(b), Pa.R.D.E.

30. At no time did Respondent notify the Court of Common Pleas of Allegheny County that he had been transferred to inactive status, as required by Rule 217(c)(2), Pa.R.D.E.

31. On or about August 24, 2007, Mr. Ramaley filed a Motion to Withdraw Respondent's appearance, with the concurrence of Ms. Lowe.

32. By Order dated August 24, 2007, the Court granted Mr. Ramaley's Motion and Respondent's appearance was withdrawn.

33. Respondent remains on inactive status.

34. Respondent's attorney registration address is listed as 239 Fourth Avenue, Suite 1707, Pittsburgh PA 15222, even though he does not maintain an office at that location.

35. Respondent vacated his office in downtown Pittsburgh and failed to notify Attorney Registration of a new address.

36. Respondent testified at the disciplinary hearing.

37. Respondent did not dispute the allegations. In explanation for his misconduct, he stated that he underwent back surgery in December of 2005 and complications arose. He did not feel fully better until July of 2006.

38. From February 2006 until July 2006, Respondent went to his office a couple of times a week, for a few hours. He was not generating any money and did not pay his attorney registration fees.

39. Respondent stated he was not aware that Ms. Lowe tried to contact him but cannot dispute that she did.

III. CONCLUSIONS OF LAW

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

1. RPC 1.4(a)(1) - A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules.

2. RPC 1.4(a)(2) - A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

3. RPC 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.

4. RPC 1.4(a)(5) - A lawyer shall consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

5. RPC 1.4(b) - A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

6. RPC 1.16(a)(1) - Except as stated in paragraph (c), 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 violation of the Rules of Professional Conduct or other law.

7. 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.

8. RPC 4.1(a) - In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

9. RPC 5.5(a) - A lawyer shall not practice law in a jurisdiction in violation of the regulations of the legal profession in that jurisdiction, or assist another in doing so.

10. RPC 5.5(b)(2) - A lawyer who is not admitted to practice in this jurisdiction shall not hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

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

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

13. Pa.R.D.E. 217(b) - A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matters or proceedings, of the disbarment, suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension or transfer to inactive status.

14. Pa.R.D.E. 217(e) - Within ten days after the effective date of the disbarment, suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing: (1) that the provisions of the order and these rules have been fully complied with; and (2) all other state, federal and administrative jurisdiction to which such person is admitted to practice. Such statement

shall also set forth the residence or other address of the formerly admitted attorney where communications to such person may thereafter be directed.

15. Pa.R.D.E. 219(d)(3) - On or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the Administrative Office a signed statement on the form prescribed by the Administrative Office in accordance with the following procedures: (3) Every person who has filed such a statement shall notify the Administrative Office in writing of any change in the information previously submitted within 30 days after such change.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges of professional misconduct issued against Respondent as a result of his unauthorized practice of law while on inactive status. Respondent did not respond to the charges; therefore, the factual allegations are deemed admitted pursuant to Pa.R.D.E. 208(b)(3). At the hearing, Respondent admitted that he did not disagree with the factual allegations. He presented no documents and, other than his own testimony, he did not present any witnesses.

The evidence of record demonstrates that Respondent was transferred to inactive status on December 16, 2006, for failing to file a periodic assessment form and pay an annual fee. Furthermore, Respondent received notice that he was transferred to

inactive status by Supreme Court Order and not permitted to practice law in Pennsylvania. He was notified of his obligations pursuant to inactive status. Despite this notification, in April 2007, Respondent filed a Praecipe for Writ of Summons on behalf of his client, Kimberly Lowe. Ms. Lowe had retained Respondent in 2005 to pursue her claim for damages. During this representation, Respondent failed to return Ms. Lowe's telephone calls and respond to requests for information. Following his transfer to inactive status, Respondent did not advise his client, opposing counsel or the court of his inability to practice law. Respondent continued to represent his client until August 24, 2007, when his appearance was withdrawn by motion of opposing counsel. Respondent never filed with the Board a verified statement showing that he complied with the provisions of the order transferring him to inactive status, nor did he notify the Attorney Registrar of his new address.

Respondent did not try to excuse his misconduct or blame others for his actions or inactions. Respondent presented no mitigation other than to describe his back surgery and its consequences on his personal life and law practice. The Hearing Committee found him to be candid and forthright.

Aggravating circumstances include Respondent's Informal Admonition in 2006 for his lack of diligence and lack of communication in representing a client. Respondent's representation of Ms. Lowe overlapped the time frame of his prior discipline and his misconduct is similar in nature to the misconduct forming the basis of the Informal Admonition.

The Supreme Court of Pennsylvania has previously considered cases of attorneys practicing law while on inactive status. In several cases, the final discipline has been a suspension of one year and one day. Office of Disciplinary Counsel v. Sharon Goldin-Didinsky a/k/a Sharon Goldin Ciborowski, No. 87 DB 2003, 969 Disciplinary Docket No. 3 (Pa. Dec. 13, 2004); Office of Disciplinary Counsel v. Harry Curtis Forrest, Jr., 72 Pa. D. & C. 4th 339 (2004). By suspending attorneys for the unauthorized practice of law, the Supreme Court has sent a message that the public needs to be protected from such misconduct.

The Board recommends that Respondent be suspended for one year and one day. This discipline is commensurate with Respondent's failure to act diligently on behalf of his client, his failure to adequately communicate with his client, and most critically, his engagement in the unauthorized practice of law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, James Edward Harvin, be Suspended from the practice of law for a period of one year and one day.

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: 
Mark S. Baer, Board Member

Date: March 5, 2010