

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1302 Disciplinary Docket No. 3
Petitioner :
v. : Nos. 176 DB 2006 and 5 DB 2007
: Attorney Registration No. 67742
JOEL H. CAVADEL, :
Respondent : (York County)

ORDER

PER CURIAM:

AND NOW, this 12th day of March, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated August 30, 2007, it is hereby

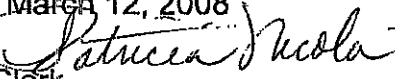
ORDERED that Joel H. Cavadel is suspended from the Bar of this Commonwealth for a period of two years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

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: March 12, 2008

Attest:


Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	Nos. 176 DB 2006 & 5 DB 2007
Petitioner	:	
	:	
v.	:	Attorney Registration No. 67742
	:	
JOEL H. CAVADEL	:	
Respondent	:	(York 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 October 27, 2006, Office of Disciplinary Counsel filed a Petition for Discipline at No. 176 DB 2006 against Respondent, Joel H. Cavadel. The Petition charged Respondent with the unauthorized practice of law while on inactive status. Respondent did not file an Answer to the Petition for Discipline. On January 22, 2007, Office of Disciplinary

Counsel filed a second Petition for Discipline at No. 5 DB 2007 against Respondent, charging him with the unauthorized practice of law. Respondent failed to file an Answer to the second Petition for Discipline. Petitioner filed a Motion to Consolidate Petitions on January 22, 2007. By Order of the Disciplinary Board dated February 13, 2007, the Motion to Consolidate was granted.

A disciplinary hearing was held on February 16 and February 22, 2007, before a District III Hearing Committee comprised of Chair Philip J. Murren, Esquire, and Members William A. Fetterhoff, Esquire, and Michael T. Hudock, Esquire. Respondent appeared pro se.

The Hearing Committee filed a Report on April 17, 2007, finding that Respondent engaged in professional misconduct as charged in the Petitions for Discipline, and recommending that he be suspended for one year and one day.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on July 21, 2007.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, 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, Joel H. Cavadel, was born in 1951 and was admitted to the practice of law in Pennsylvania in 1993. He maintains his office and residence at 3545 Harrowgate Road, York, Pennsylvania 17402. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. By Order dated April 17, 2006, Respondent was suspended from the practice of law in the Commonwealth of Pennsylvania for a period of nine months, effective May 17, 2006. This was reciprocal discipline from Respondent's nine month period of suspension in the Immigration Court.

Kelechi Nwozuzu Matter

4. In or about June 17, 2005, Kelechi Nwozuzu was served with a Notice of Appear and a hearing was scheduled for June 28, 2005, before Immigration Judge Walter Durney.

5. The June 28, 2005 hearing was continued until August 4, 2005, at which time Respondent entered his appearance by presenting Judge Durney a Notice of Entry of Appearance which listed Respondent as a member in good standing of the Bar of Pennsylvania.

6. On August 4, 2005, Respondent was on inactive status in Pennsylvania and was not in good standing, having been transferred to inactive status by Order of the Supreme Court of Pennsylvania dated March 25, 2003, effective April 24, 2003, as a result of his failure to comply with the Pennsylvania Rules for Continuing Legal Education.

7. Respondent's Notice of Entry of Appearance contained a material misrepresentation of fact in that he was not in good standing in Pennsylvania and was not authorized to practice before the Pennsylvania Courts or the Immigration Courts.

8. On August 24, 2005, Respondent filed an Application for Citizenship, Form N-600, on behalf of his client. Respondent dated the Application August 20, 2005, and signed it as "Attorney at Law", thereby holding himself out as being able to practice law when he was precluded from doing so.

9. At about that time Respondent received a money order from his client's father in the amount of \$500. Respondent had not previously represented his client and failed to communicate to him in writing the basis or rate of his legal fee for representing him.

10. On September 12, 2005, the Philadelphia District Office of the U.S. Citizenship and Immigration Service rendered a decision denying Mr. Nwozuzu's citizenship.

11. A hearing was continued to September 20, 2005 to allow Respondent time to prepare and file an I-598 Asylum petition. However, Respondent never filed one.

12. On September 20, 2005, the case was rescheduled to October 20, 2005, for Respondent to file an Application for Cancellation of Removal, Form 42A.

13. While Judge Durney's file did not contain a copy, Respondent apparently filed a Form 42A at some point in time.

14. By Order of the Board of Immigration Appeals dated November 14, 2005, Respondent was suspended for nine months from practice before the Board of Immigration Review, the Immigration Courts, and the Department of Homeland Security, precluding Respondent from further representing his client.

15. Respondent failed to advise his client of his suspension and failed to provide his client with any accounting of the services Respondent had rendered, refund any unearned fees, or return his papers.

16. On November 23, 2005, Respondent filed a Statement of Compliance with the Disciplinary Board wherein he certified that he had fully complied with the Order effective April 24, 2003, by which he had been transferred to inactive status, with the applicable provisions of the Pennsylvania Rules of Disciplinary Enforcement and with the applicable Disciplinary Board Rules.

17. Respondent's certification was false in that he had continued to practice law after his transfer to inactive status and failed to comply with the various requirements of Pa.R.D.E. 217.

18. For example, in addition to representing Mr. Nwozuzu and others before the Immigration Court, in 2005 Respondent represented the defendant in the York

County case of Jeffrey Rice, Sr. v. RVTI, Inc., t/d/b/a Cottman Transmission, in which Respondent filed a counterclaim.

19. As a result of Respondent's false certification to the Disciplinary Board, his filing of the 2005-2006 PA Attorney Annual Fee Form, and his payment of the applicable fees, Respondent was reinstated to practice law in Pennsylvania on November 23, 2005.

20. Throughout October, November, and December 2005, Respondent was repeatedly called concerning the Nwozuzu matter to determine the status of the case and to obtain a refund of fees and return of papers. Respondent failed to return most of the calls, failed to make any refund or accounting and failed to turn over any documentation.

21. On December 22, 2005, Judge Durney's legal assistant called Respondent and advised him to obtain new counsel for Mr. Nwozuzu and to return his documents. Respondent indicated that he would submit the documents.

22. Despite two or three additional calls from Judge Durney's chambers, Respondent failed to obtain new counsel for Mr. Nwozuzu or return his papers. Judge Durney appointed successor counsel for Mr. Nwozuzu.

23. By letter dated March 23, 2006, Mr. Nwozuzu requested that Respondent mail his documents to his family or the Immigration Court, and also requested a full refund.

24. Respondent failed to respond, provide an accounting, refund any unearned fees, or return Mr. Nwozuzu's documents.

Viola Marzec Matter

25. At all times relevant, Respondent was suspended from the practice of law in Pennsylvania pursuant to Order of the Supreme Court dated April 17, 2006, effective May 17, 2006, and could not lawfully practice law or hold himself out as being able to practice law.

26. On October 23, 2006, Respondent called Viola Marzec at her cell phone number and left a voice mail message that he wanted to talk to her about her alleged harassment of his client, Mykola Romanyuk.

27. Several minutes later, Respondent called Ms. Marzec at her home phone number and when she answered Respondent identified himself as Mr. Romanyuk's lawyer.

28. During this phone conversation, Respondent discussed the alleged harassment and advised Ms. Marzec to stop harassing Mr. Romanyuk.

29. Later on October 23, 2006, Respondent and Mr. Romanyuk went to the Springettsbury Township Police station and complained to Corporal David Kennedy about alleged harassment from Ms. Marzec. Respondent presented himself as Mr. Romanyuk's lawyer.

30. On October 24, 2006, the Manheim Township Police secured an arrest warrant for Mr. Romanyuk relative to Ms. Marzec's complaint against him.

31. Respondent advised the police that he was Mr. Romanyuk's lawyer.

32. On October 25, 2006, Respondent appeared before Magisterial District Judge David P. Miller and represented Mr. Romanyuk at his preliminary arraignment.

33. Bail was set, which Respondent personally posted on October 25, 2006.

34. On October 31, 2006, Investigator John R. Stewart of the Office of Disciplinary Counsel, personally served a Petition for Discipline upon Respondent at his home relative to separate charges. At that time, Investigator Stewart advised Respondent that Office of Disciplinary Counsel had received a complaint from Ms. Marzec and that he should not be representing Mr. Romanyuk.

35. On November 3, 2006, Respondent called District Judge Miller and advised that he would not be representing Mr. Romanyuk.

36. Respondent did not advise anyone that he had contact with in this matter that he was suspended from the practice of law in Pennsylvania and could not lawfully represent Mr. Romanyuk.

Additional Findings

37. Krishen K. Nayak, M.D., is a psychiatrist who testified on behalf of Respondent at the disciplinary hearing. Respondent has known Dr. Nayak for approximately 27 years and has been treated for depression by Dr. Nayak since 1981.

38. Respondent currently suffers from major depressive disorder, Adult Attention Deficit Disorder, and diabetes.

39. Dr. Nayak opined that Respondent had been in a continuous state of depression for about a year or so, with symptoms such as apathy, low mood, and not responding to phone calls or e-mails.

40. Respondent was taking the drug Zoloft during the time frame 2003–2006. Dr. Nayak opined that Respondent would have been worse off without the drug, but he was not completely well.

41. Dr. Nayak plans to start Respondent on a new drug called Abilify, which treats both the ADHD and the depression.

42. Dr. Nayak opined that lack of truthfulness and disregard for the truth are not symptoms of depression.

43. Dr. Nayak never read the Petition for Discipline filed against Respondent and was not aware of the details of Petitioner's alleged misconduct.

44. Dr. Nayak did not offer an opinion that Respondent's medical conditions were causally related to his professional misconduct.

45. Respondent testified on his own behalf. He admitted that he received and read the letter from the Supreme Court notifying him of his transfer to inactive status but he did not believe the letter as he thought he had resolved the problem. Respondent referred to the letter as a "paper problem."

46. Respondent was told by another attorney that his name appeared in the York Legal Record on the inactive status list, but Respondent thought it was a mistake and still did not believe that he was inactive.

47. At no time did Respondent contact the Disciplinary Board to check the status of his license.

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)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

2. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

3. RPC 1.5(b) – When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing representation.

4. RPC 1.15(b) – Upon receiving property of a client or third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

5. RPC 1.16(a)(1) – 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.

6. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

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 5.5(a) – 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.

9. 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.

10. 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.

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(c),(d),(e) – A formerly admitted attorney shall provide notification of the disbarment, suspension or transfer to inactive status; orders imposing disbarment, suspension or transfer to inactive status shall be effective 30 days after entry; within ten days after the effective date of the disbarment, suspension or transfer to inactive status order, the formerly admitted attorney shall file a verified statement of compliance with the Board.

14. Respondent did not meet his burden of proof pursuant to Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (1989), that his misconduct was causally related to his psychiatric disorder.

IV. DISCUSSION

This matter is before the Board for consideration of the Petitions for Discipline filed against Respondent charging him with the unauthorized practice of law. Respondent did not file an Answer to the Petitions; therefore, the facts contained therein are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E.

The facts themselves are straightforward. In the Kelechi Nwozuzu matter, Respondent represented his client while he was on inactive status in Pennsylvania. This representation commenced in 2005, two years after Respondent's transfer to inactive status. Furthermore, during the course of the Nwozuzu matter Respondent was suspended by the Immigration Court for nine months and failed to advise his client of that fact, nor did he provide a refund to his client or return his client's documents.

In order to reactivate his Pennsylvania license, Respondent filed a Statement of Compliance with the Disciplinary Board certifying that he had fully complied with the Supreme Court's Order transferring him to inactive status. This was a false certification as Respondent had continued to practice law while on inactive status. The false certification resulted in Respondent's reinstatement to the practice law.

In the Viola Marzec matter, which occurred subsequent to Respondent's suspension of nine months in Pennsylvania, Respondent held himself out as a licensed lawyer and informed those involved in the matter that he was the lawyer representing Mykola Romanyuk. Respondent ceased his representation of Mr. Romanyuk only after

being informed by an investigator with Office of Disciplinary Counsel that he was not permitted to practice law.

Respondent presented expert testimony in an attempt to demonstrate mitigating circumstances. Dr. Krishen Nayak offered testimony that Respondent suffers from depression, ADHD and diabetes, but was unfamiliar with the details of Respondent's misconduct and did not offer an opinion that the depression and other disorders substantially caused Respondent's misconduct. This expert testimony is not sufficient to meet Respondent's burden of proof by clear and convincing evidence pursuant to Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989). Respondent is not entitled to mitigation.

Respondent offered his own testimony to the effect that he did not know he was unable to practice law. Respondent had an obligation to know the status of his privilege to practice law, and his alleged ignorance of that knowledge does not negate his professional misconduct. Respondent received, opened and read a letter from the Supreme Court regarding his inactive status. He was advised by an attorney friend that his transfer to inactive status was reported in the local legal reporter. Despite all of the evidence to the contrary, Respondent chose to believe that he was not inactive and never once called the Disciplinary Board to ascertain the truth of his status. Respondent chose to proceed in ignorance rather than take the initiative to remedy the situation.

The Hearing Committee has recommended a suspension of one year and one day to address Respondent's misconduct. This sanction requires Respondent to

petition for reinstatement should he wish to practice law in the future. In numerous cases of the unauthorized practice of law, a suspension of one year and one day has been handed down, reflecting the Court's position that practicing law without a license is a serious act of professional misconduct. Office of Disciplinary Counsel v. Harris, No. 150 DB 2002, 69 Pa. D. & C. 4th 440 (2004); Office of Disciplinary Counsel v. Burd, No. 132 DB 2003, 71 Pa. D. & C. 4th 560 (2005); Office of Disciplinary Counsel v. Forrest, 134 DB 2003, 72 Pa. D. & C. 4th 339 (2005). Considering the length of time that Respondent continued to practice law while on inactive status and thereafter while under suspension and the number of cases involved, as well as other acts of misconduct, including misrepresentation, the Board is persuaded that a suspension of two years is appropriate.

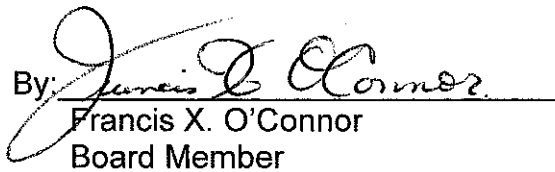
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Joel H. Cavadel, be Suspended from the Bar of this Commonwealth for a period of two years.

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: 
Francis X. O'Connor
Board Member

Date: August 30, 2007

Board Members Newman and Raspanti did not participate in the adjudication.