

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1304 Disciplinary Docket No. 3  
Petitioner :  
 : Nos. 96 and 138 DB 2007  
v. :  
 : Attorney Registration No. 26100  
JEFFERY L. KRAIN, :  
Respondent : (Philadelphia)

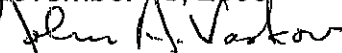
ORDER

**PER CURIAM:**

**AND NOW**, this 18<sup>th</sup> day of November, 2008, upon consideration of the Report and Recommendations of the Disciplinary Board dated July 23, 2008, the Petition for Review and response thereto, it is hereby

ORDERED that Jeffery L. Krain is suspended from the Bar of this Commonwealth for a period of four 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 John A. Vaskov  
As of: November 18, 2008  
Attest:   
Deputy Prothonotary  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1304 Disciplinary Docket
Petitioner	:	No. 3
	:	
v.	:	Nos. 96 & 138 DB 2007
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	:	Attorney Registration No. 26100
JEFFERY L. KRAIN	:	
Respondent	:	(Philadelphia)

REPORT AND RECOMMENDATIONS OF  
THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES  
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On June 29, 2007, Office of Disciplinary Counsel filed a Petition for Discipline against Respondent, Jeffery L. Krain. The Petition charged Respondent with professional misconduct arising out of allegations that he engaged in the unauthorized practice of law for seven years in violation of the Order of the Supreme Court of Pennsylvania dated November 17, 2000 that transferred him to inactive status. Respondent filed an Answer to

Petition for Discipline on July 30, 2007. During the proceedings Petitioner and Respondent agreed to consolidate Respondent's criminal conviction of willful failure to file for and pay taxes to the Commonwealth of Pennsylvania with the allegations of unauthorized practice.

Pre-hearing conferences were held on September 7, 2007 and October 15, 2007. A disciplinary hearing was held on October 30, 2007, and November 8, 2007, before a District I Hearing Committee comprised of Chair Edward F. Shay, Esquire, and Members Robert E. Welsh, Jr., Esquire, and Kristi A. Buchholz, Esquire. Respondent was represented by Gary P. Heslin, Esquire. Petitioner introduced into evidence the Joint Stipulations of Fact; Respondent's Waiver of Enforcement and Disciplinary Board Rules; Supplemental Joint Stipulations, and exhibits. Respondent testified on his own behalf and introduced one exhibit.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on February 11, 2008, finding that Respondent engaged in professional misconduct and recommending that he be disbarred.

Respondent filed a Brief on Exceptions on March 3, 2008 and requested oral argument before the Disciplinary Board.

Petitioner filed a Brief Opposing Exceptions on March 24, 2008.

Oral argument was held on May 19, 2008 before a three member panel of the Disciplinary Board.

This matter was adjudicated by the Disciplinary Board at the meeting on May 21, 2008.

## II FINDINGS OF FACT

The Board makes the following findings of facts:

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent is Jeffery L. Krain. He was born in 1952 and was admitted to practice law in the Commonwealth in 1977. Respondent's attorney registration address is 1310 Two Penn Center, Philadelphia PA 19102. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior record of discipline.

4. By Order dated November 17, 2000, effective December 17, 2000, the Supreme Court of Pennsylvania placed Respondent on inactive status due to Respondent's failure to comply with the requirements of the Pennsylvania Rules of Continuing Legal Education. Thus, as of December 17, 2000, Respondent was prohibited from practicing law in Pennsylvania.

5. By letter to Respondent dated November 17, 2000, Elaine M. Bixler, Secretary of the Disciplinary Board:

a. advised Respondent that he had been transferred to inactive status;

b. advised Respondent of his responsibilities under Pa.R.D.E. 217 and Rule 91.91 through 91.99 of the Disciplinary Board Rules;

c. enclosed Forms DB-23(i) and DB-24(i) (Non-litigation and Litigation Notice of Disbarment, Suspension or Transfer to Inactive Status) and Form DB-25(i) (Statement of Compliance); and

d. informed Respondent that in order to resume active status he was required to comply with the Pennsylvania Rules of Continuing Legal Education before a request for reinstatement to the Disciplinary Board would be considered.

6. Respondent received the letter and was aware that he had been transferred to inactive status.

7. Respondent failed to file the Verified Statement of Compliance within ten days after the effective date of the transfer to inactive status, as required by Rule 217(e), Pa.R.D.E.

8. Respondent remains on inactive status and ineligible to practice law in the Commonwealth of Pennsylvania.

9. Each year between 2000 and 2006, Respondent received a letter from the Continuing Legal Education Board advising him that he was on inactive status and was not authorized to practice law in Pennsylvania.

10. On August 14, 2006, Respondent filed a civil action on behalf of Floressa Thompson against Walmart Stores in the Court of Common Pleas of Philadelphia County.

11. Respondent failed to advise opposing counsel, Roberto K. Paglione, Esquire that Respondent was on inactive status and therefore ineligible to practice law in Pennsylvania.

12. On October 16, 2006, Mr. Paglione filed a motion to disqualify Respondent as counsel.

13. On October 18, 2006, Respondent withdrew his appearance.

14. On September 6, 2006, Respondent filed a civil action on behalf of Isaiah Rahatt against Walmart in the Court of Common Pleas of Philadelphia County.

15. Respondent failed to advise his client and opposing counsel, Gina MacNeill, Esquire, that he was on inactive status and ineligible to practice law in Pennsylvania.

16. On October 19, 2006, Ms. MacNeill filed a motion to disqualify Respondent as counsel.

17. By Order dated November 13, 2006, the court granted the motion to disqualify Respondent as Mr. Rahatt's counsel.

18. Respondent withdrew his appearance on November 20, 2006.

19. From December 17, 2000, the effective date of Respondent's transfer to inactive status, to the present, Respondent failed to withdraw his appearance, and entered his appearance and/or actively engaged in the practice of law in approximately 339 cases in the Court of Common Pleas of Philadelphia County or the Orphans' Court of Philadelphia County.

20. In four matters Respondent entered his appearance and subsequently withdrew his appearance.

21. Respondent handled non-litigation matters on behalf of clients.

22. In all of the court cases, Respondent failed to notify the court and opposing counsel that he was on inactive status and ineligible to practice law.

23. In some of the cases, Respondent received, disbursed or otherwise handled client funds.

24. On June 14, 2004, Respondent entered a plea of guilty to the offenses of Willful Failure to File Sales Tax Returns, (Counts 1 – 5), in violation of 72 P.S. §7268(b); Willful Failure to Remit Sales Tax, (Counts 6 – 10), in violation of 72 P.S. § 7268(b); Willful Failure to File Employer Withholding Tax Returns, (Counts 11-13), in violation of 72 P.S. §7353(c); and Willful Failure to Pay Over Withheld State Income Tax, (Counts 14-16), in violation of 72 P.S. §7353(b), in the Court of Common Pleas of Dauphin County.

25. On October 7, 2004, Respondent was sentenced to 18 months probation on each count, to run concurrently, and was ordered to pay a fine of \$1,200 and \$492 in court costs.

26. From 1997 through 2002, Respondent owned and operated Italia Restaurante and Pizza Company, a restaurant in Philadelphia.

27. Respondent's conviction involved the operation of his restaurant.

28. Between October 20, 2001 and February 20, 2002, Respondent failed to file sales tax returns and remit payment in the amount of \$14,657.70. Between October 20, 2001 and February 20, 2002, Respondent failed to file withholding tax returns and remit payment in the amount of \$3,222.45.

29. By Order dated April 18, 2005, Respondent was granted an early discharge from probation.

30. The crimes of which Respondent was convicted are misdemeanors punishable by a maximum term of imprisonment and a fine as follows:

- a. Counts 1–5; one year, \$1,000;
- b. Counts 6–10; one year, \$1,000;
- c. Counts 11–13; two years, \$5,000;
- d. Counts 14–16; two years, \$25,000.

31. Each crime of which Respondent was convicted constitutes a "serious crime" as defined by Pa.R.D.E. 214(i).

32. Respondent failed to report his conviction to the Secretary of the Disciplinary Board as required by Pa.R.D.E. 214(a).

33. Respondent is licensed to practice law in the State of New Jersey.

34. Respondent failed to promptly report his conviction to New Jersey pursuant to New Jersey Supreme Court Rule 1:2013.

35. Respondent has seven open judgments in the Court of Common Pleas of Philadelphia County.

36. Respondent has satisfied two IRS judgments in the Court of Common Pleas of Philadelphia County.

37. Respondent's practice of law was his only source of income and when notified of his transfer to inactive status he decided against closing his practice because he needed money for his restaurant, for his family, to pay debts to the IRS and to pay his mortgage.

38. Respondent engaged other lawyers to handle his cases but acknowledged that too many cases went unattended and required litigation where a timely settlement might otherwise have been possible.

39. Respondent's personal life involved the care of his elderly father who suffered from kidney disease and from 2000 to 2004 required daily assistance. From 2004 to the present Respondent cared for his father approximately three times each week.

40. While Respondent offered expressions of remorse, the Hearing Committee found them to be insubstantial and unconvincing.

### 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 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.

2. Former RPC 5.5(b) (effective April 1, 1988, superseded effective May 15, 2004) – A lawyer shall not practice law in a jurisdiction where to so do would be in violation of regulations of the profession in that jurisdiction.

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

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

5. Pa.R.D.E. 203(b)(1) – Conviction of a crime, which under Enforcement Rule 214 may result in suspension, is an independent basis for discipline.

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

a. Pa.R.D.E 217(a), 217(b), 217(c)(1) and 217(c)(2) by failing to notify clients, third parties, opposing counsel and the court of Respondent's transfer to inactive status;

b. Pa.R.D.E. 217(d) – by engaging as an attorney in new cases after Respondent’s transfer to inactive status.

c. Pa.R.D.E. 217(e) – by failing to file a verified statement of compliance with the Disciplinary Board Secretary within ten days after the effective date of his transfer to inactive status; and

d. Pa.R.D.E. 217(j)(1) and 217(j)(4)(iv) – (ix) – by engaging in law related activities without the direct supervision of a member in good standing of the Bar of the Commonwealth; by having contact with clients and rendering legal advice to clients; by representing himself as a lawyer or person of similar status; by appearing on behalf of any client in any legal proceeding or hearing; by negotiating with third parties on behalf of clients; and by receiving, disbursing or otherwise handling client funds.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges of misconduct filed against Respondent arising out of his unauthorized practice of law and his conviction for the crimes of willful failure to file and/or pay taxes to the Commonwealth of Pennsylvania. Respondent has admitted the material facts of the allegations. The stipulated facts and admitted conclusions of law demonstrate that Petitioner has met its

burden of proof by clear and satisfactory evidence that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement. Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000).

The process of determining the appropriate discipline necessarily involves analyzing the nature and gravity of the misconduct in the context of the aggravating and mitigating factors. Office of Disciplinary Counsel v. Lucarini, 472 A.3d 186 (Pa. 1983). The protection of the public and the integrity of the judicial system are of paramount importance so that the ultimate sanction imposed must reflect these goals of the disciplinary system. Office of Disciplinary Counsel v. Keller, 50 A.2d 872 (Pa. 1986).

Respondent has engaged in two discrete acts of misconduct. In 2000 Respondent was transferred to inactive status by Order of the Supreme Court for failing to fulfill his Continuing Legal Education requirements. Subsequently Respondent actively engaged in the practice of law in approximately 339 cases in the Court of Common Pleas of Philadelphia. Some of these matters involved the receiving and disbursing of client funds. Respondent also handled non-litigation matters for clients. This was not a situation where Respondent had no notice of his inactive status, or failed to comprehend the meaning of his transfer to inactive status. Respondent knew full well that he was not permitted to practice law. Tellingly, he explained that as his law practice was his sole source of income he decided against closing his practice as he needed to pay various bills. Respondent made an informed choice to ignore a Supreme Court Order prohibiting him from practicing law. At the time Respondent was placed on inactive status he thought that

he would try and attain his credits but he failed to do so in a prompt manner, and remains on inactive status at the current time, some seven years later. At the hearing Respondent testified that he had approximately 22 credits pending.

Respondent engaged in misconduct by his conviction of willful failure to file sales tax returns, willful failure to remit sales tax, willful failure to file employer withholding tax returns, and willful failure to pay over withheld state income tax. This criminal misconduct pertained to Respondent's ownership and operation of a restaurant in Philadelphia. These convictions resulted in 18 months probation on each count, to run concurrently. Respondent was granted early discharge from probation. He failed to report his conviction to the Disciplinary Board, as he claimed he was unaware of his obligation to do so.

The Supreme Court takes seriously the unauthorized practice of law. Depending on the presence of aggravating and mitigating factors and the degree of willfulness exhibited, suspensions ranging from three months to two years have been imposed in recent cases. Office of Disciplinary Counsel v. David Ferleger, 78 Pa. D. & C. 4<sup>th</sup> 437 (2005); Office of Disciplinary Counsel v. Sharon Goldin-Didinsky, 969 Disciplinary Docket No. 3 (Pa. Dec. 13, 2004); Office of Disciplinary Counsel v. Cooney, 990 Disciplinary Docket No. 3 (Pa. July 25, 2006). Based on the factors discussed in prior cases, the Board considers: the duration of the period of misconduct; the number of cases filed; and whether the inactive attorney acted intentionally or deceptively. Applying these factors in Respondent's case, the Board finds: the misconduct lasted a period of

seven years; impermissible activity involved 339 filed cases together with an unspecified number of other matters; Respondent acted intentionally in his choice to keep his law practice going while inactive and deceived others by not informing them of his inactive status. Respondent testified concerning his father's illness and the demands on Respondent due to care giving, as well as his financial obligations, including his restaurant. These explanations do not justify Respondent's flagrant violation of a court order. Respondent made no effort to curtail his misconduct, or to remedy his inactive status.

Respondent's unauthorized practice of law demands a lengthy suspension. Respondent's conviction of serious crimes is a separate and independent ground for discipline. His multiple counts of willful failure to pay or file taxes require an additional suspension.

The Hearing Committee recommended disbarring Respondent. While the Committee was understandably offended by the protracted and willful nature of the misconduct, the Board cannot agree that Respondent's disbarment in these circumstances is the appropriate sanction. Standing alone, each breach of responsibility warrants a suspension; cumulatively, the Board is persuaded that a four year period of suspension is proper punishment for Respondent and serves the purpose of the disciplinary system.

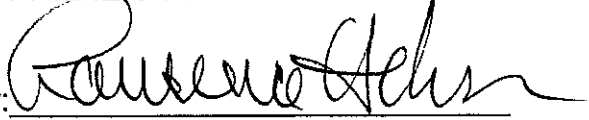
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Jeffery L. Krain, be suspended from the practice of law for a period of four 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:   
Laurence H. Brown, Board Member

Date: July 23, 2008

Board Member Baer did not participate in the adjudication.

Board Member Buchholz recused.