

IN THE SUPREME COURT OF THE STATE OF DELAWARE

In the Matter of a Member	§	
of the Bar of the Supreme Court	§	
of the State of Delaware,	§	
	§	No. 232, 2010
VINCENT M. AMBERLY,	§	
Respondent.	§	Board Case No. 2009-0390-B

Submitted: May 24, 2010

Decided: June 1, 2010

Corrected: June 2, 2010

Before **STEELE**, Chief Justice, **JACOBS**, and **RIDGELY**, Justices.

ORDER

This 2nd day of June 2010, the Court having reviewed the Report of the Board on Professional Responsibility, the Objections of the Office of Disciplinary Counsel and Respondent's response to objections of the Office of Disciplinary Counsel,

IT IS ORDERED that the Board's findings (copy attached) are hereby adopted with the exception of the recommendation for a 30-day suspension identical to the District of Columbia. The misconduct involving false statements to a tribunal and misleading statements to counsel for the Virginia State Bar Disciplinary Board warrant substantially different discipline in Delaware. Respondent is hereby suspended from the practice of law in Delaware for a period of six months and shall pay the costs of these proceedings.

BY THE COURT:

/s/ Henry duPont Ridgely
Justice



COHEN SEGLIAS PALLAS GREENHALL & FURMAN PC

Nemours Building, Suite 1130
1007 Orange Street
Wilmington, DE 19801
T: 302.425.5089 F: 302.397.2508
rbeste@cohenseglia.com
www.cohenseglia.com

April 22, 2010

BY HAND

Stephen D. Taylor, Court Administrator
Supreme Court of Delaware
Elbert N. Carvel State Office Building
820 N. French Street
P. O. Box 1997
Wilmington, DE 19899-1997

**Re: In the Matter of the Bar of the Supreme Court of Delaware:
Vincent A. Amberly, Respondent; Board Case No. 2009-0390-B**

Dear Mr. Taylor:

Enclosed is the original of our Panel recommendation in the above-captioned matter.
Please call me if the Court should require anything further.

Very truly yours,

ROBERT K. BESTE, JR.

RKB/msj
Enclosure

cc: Michael S. McGinnis, Esquire (w/ encl.) (by First-Class Mail and Electronic Mail)
Vincent M. Amberly, Esquire (w/ encl.) (by First-Class Mail and Electronic Mail)
Wayne J. Carey, Esquire (w/ encl.) (by Electronic Mail)
Edward Bassett, Esquire (w/ encl.) (by Electronic Mail)

BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF THE STATE OF DELAWARE

Original

In the Matter of a
Member of the Bar of the
Supreme Court of Delaware:

VINCENT M. AMBERLY,
Respondent.

)
) CONFIDENTIAL
)
)
) Board Case No. 2009-0390-B
)

Before Wayne Carey, Esquire, Edward J. Bassett,
and Robert K. Beste, Jr., Esquire (Chair)

Michael S. McGinnis, Esquire for Petitioner, OFFICE OF DISCIPLINARY COUNSEL

Vincent M. Amberly, Esquire, *Pro Se*

Dated: April 22, 2010

**BOARD ON PROFESSIONAL RESPONSIBILITY
OF THE SUPREME COURT OF THE STATE OF DELAWARE**

**In the Matter of a
Member of the Bar of the
Supreme Court of Delaware:**

**VINCENT M. AMBERLY,
Respondent.**

)
) **CONFIDENTIAL**
)
)
) **Board Case No. 2009-0390-B**
)

This is a disciplinary proceeding filed by the Office of the Disciplinary Counsel (“ODC” or “Petitioner”) against Vincent M. Amberly, Esquire (“Amberly” or “Respondent”). The ODC filed its Petition for discipline (“the Petition”) on October 5, 2009. Respondent is an attorney licensed to practice law in the Commonwealth of Virginia, the State of Delaware, and the District of Columbia, as well as before the United States Patent and Trademark Office.

The Petition arises out of Respondent’s representation of a client in two lawsuits against the client, in the Fairfax County, Virginia, General District Court. Martin B. Katz, the plaintiff in that Virginia litigation against Respondent’s client, filed complaints against Respondent as a result of the alleged actions of Respondent in the Virginia court, in September and October of 2005.

A hearing was held before Virginia State Bar Disciplinary Board (“VA Board”), on November 16, 2007. The Virginia State Bar Disciplinary Board made the following “Findings of Fact:”

I. FINDINGS OF FACT

1. At all times relevant to the matters set forth herein, Vincent Mark Amberly (hereinafter “Respondent”), was an attorney licensed to practice law in the Commonwealth of Virginia.

2. Mr. Martin B. Katz (hereinafter “Complainant”) instituted two lawsuits against the Respondent’s clients in the Fairfax County, Virginia, General

District Court. The Complainant and Respondent appeared in that Court on September 19, 2005, a return date on one of the cases.

3. In open Court on September 19, 2005, the Respondent handed the Complainant a copy of a Motion to Consolidate, and presented argument thereon to the Court. The Respondent stated to the presiding judge that the Respondent would be filing a Counterclaim, but he did not furnish a copy of the Counterclaim to the Court or to the Complainant on the occasion of the court appearance. Following their court appearance, the Respondent filed the Motion to Consolidate and a Counterclaim, with the Clerk of the Court. The Counterclaim contained no certificate of service.

4. Later that same day, September 19, 2005, the Complainant requested a copy of the Counterclaim during a telephone call with the Respondent. On September 20, 2005, the Respondent sent the Complainant an e-mail, stating, among other things, that "I will forward to you a hard copy of the Counterclaim that we filed with the Court yesterday," and "I will be in touch with you shortly regarding the further status of the case."

5. On September 26, 2005, the Complainant sent the Respondent an e-mail stating, among other things, that he had not received the Counterclaim from the Respondent.

6. On September 30, 2005, the Respondent sent the Complainant an e-mail, stating as follows:

Attached please find the Counterclaim that we filed on behalf of the Trent Group, Inc. The details in this document are sufficient to constitute a Bill of Particulars, and put you on notice of your clients [sic.] claim against you.

7. On September 30, 2005, the Respondent mailed to the Complainant a copy of the Counterclaim containing the following certificate of service, signed by the Respondent:

I HEREBY CERTIFY that on the 19th day of September, 2005, a true and correct copy of the foregoing Counterclaim, was attempted delivery by hand to Martin B. Katz at the Courthouse, but he refused delivery, on the 30th of September, 2005, a true and correct copy of the foregoing Counterclaim, was delivered to Martin B. Katz, 9822 Hill Street, Kensington, MD 20895, and via electronic trans-Mission or e-mail to the Plaintiff Martin B. Katz.

8. The Respondent made representation as contained in the foregoing certificate of service in open court on October 6, 2005, in response to the Complainant's motion to dismiss the Counterclaim.

9. The Respondent's statements in the certificate of service that he attempted hand delivery of the Counterclaim to the Complainant, and that the Complainant refused such delivery, were false, and were made by the Respondent with knowledge of their falsity.

10. Despite the fact that Respondent did not furnish the Complainant with a copy of the Counterclaim before September 30, 2005, despite the contents of the telephone conversations and e-mails between the Complainant and the Respondent wherein Complainant sought a copy of the Counterclaim and the Respondent promised to provide it, and notwithstanding the representation in the certificate of service set forth above, the Respondent made the following representation in a letter to Bar Counsel dated December 19, 2005:

On September 30, 2005, the day after the deadline the Court had set for service of my client's Bill of Particulars for the Counterclaim, Mr. Katz and I discussed whether or not I would be filing a Bill of Particulars and would instead rely upon the facts in the Counterclaim that I had given to him on the return day September 19th. At that time, Mr. Katz advised me that he had never received a copy of the Counterclaim. I told him that we had discussed the Counterclaim on numerous occasions and that I had handed it to him at the September 19th hearing, but he claimed that he never received it. I immediately sent him a copy of the Counterclaim via e-mail, as well as copy via first-class mail. ***

11. Respondent's representations to Bar Counsel, set forth above, were misleading in that they were calculated to induce Bar Counsel to conclude a) that Respondent had in fact furnished the Counterclaim with a copy of the Counterclaim on September 19, 2005, and b) that Respondent first learned from the Complainant on September 30, 2005, that Complainant did not have a copy of the Counterclaim.

12. At all times relevant hereto, Vincent Mark Amberly's address of record with the Virginia State Bar has been Vincent Mark Amberly, c/o Litman Law, 3717 Columbia Pike, Arlington, Virginia 22204. The respondent received proper notice of this proceeding as required by Part Six, Section IV, paragraph 13(E) and (I)(a) of the Rules of the Virginia Supreme Court.

See Opinion dated January 23, 2008, attached hereto as Exhibit "1."

The Virginia Board found, in its Opinion dated January 3, 2008, that Respondent violated the Rules of Professional Conduct in several respects:

(a) Respondent violated Rule 3.3, by knowingly making a false statement of fact or law to a tribunal;

(b) Respondent violated Rule 4.1, by making a false statement of fact or law to others;

(c) Respondent violated Rule 8.1, for knowingly making a false statement of material fact in a certification filed by Respondent as a condition of maintaining or renewing a license to practice law in Virginia; and

(d) Respondent violated Rule 8.4, by engaging in dishonesty, fraud, deceit or misrepresentation, which reflects adversely on the lawyer's fitness to practice law.

After deliberation, the Virginia Board imposed a sanction of "Admonition with Terms," and required Respondent to complete three hours of continuing legal education on Virginia Court Procedures, and for which no legal education credit was to be sought. Further, Respondent was to complete three hours of continuing education on Ethics, for which no continuing legal education credits were to be sought. The costs were also assessed against Respondent.

DISTRICT OF COLUMBIA PROCEEDINGS

Respondent has also been admitted to practice law in the District of Columbia since 1982. The findings of the Virginia Board were subsequently presented to the District of Columbia Board on Professional Responsibility (hereinafter "DC Board"). The matter before the DC Board was heard as a reciprocal disciplinary proceeding. The DC Bar Counsel and Respondent provided submissions to the DC Board. Evidently, no actual hearing was held before the DC Board.

D.C. Bar R. XI §11 is similar to Rule 18 of the Delaware Lawyers' Rules of Disciplinary Procedure (hereinafter "Procedural Rules"). The DC Board found no evidence that Respondent

was denied due process, or that there was any infirmity of proof in the Virginia proceeding. DC Bar Counsel took the position that, had the matter been an original proceeding in the District of Columbia, Respondent's misconduct would have warranted substantially different discipline than that provided by the Virginia Board; the DC Board would have asked for more significant sanctions. Respondent, through counsel, asked that the DC Board impose sanctions the same as the Virginia Board. The DC Board reviewed numerous precedents in its jurisdiction, showing that intentional, false, and misleading statements made to a court and to disciplinary authorities normally results in suspension. There are several DC Board cases, as cited in the Opinion of the DC Board, which show that, if there is no significant prior record, a thirty-day suspension is appropriate. For the reasons more fully set forth in its Opinion dated June 13, 2008, the DC Board concluded that identical reciprocal discipline was "not appropriate," and recommended the Court impose substantially different reciprocal discipline of a thirty-day suspension. (Exhibit "2").

The District of Columbia Court of Appeals then considered the recommendation of the DC Board; and, by Opinion dated June 25, 2009, suspended Respondent from the practice of law in the District of Columbia, for thirty days. (Exhibit "3").

DELAWARE PROCEEDINGS

Pursuant to Rule 18 of the Procedural Rules, on October 5, 2009, the Delaware Office of Disciplinary Counsel ("ODC") presented its petition to the Delaware Supreme Court, together with the Amended Order of Admonition with Terms that was entered by the VA Board, and also the Opinion and Order entered by the District of Columbia Court of Appeals dated June 25, 2009. ODC requests that the Board on Professional Responsibility of the Supreme Court of the State of Delaware ("Delaware Board") recommend the Delaware Supreme Court conclude,

similar to the DC proceedings, that Respondent's misconduct established in Virginia warrants "substantially different discipline" under Procedural Rule 18(d). ODC seeks a suspension of no less than six months.

By letter dated December 31, 2009, ODC advised the Delaware Supreme Court that this matter was a reciprocal discipline case, and suggested that the only issue before the Delaware Board was whether it was to make a recommendation to the Delaware Supreme Court, that ODC had met its burden under Procedural Rule 18(d)(4), demonstrating Respondent's professional misconduct in this matter, as conclusively established by the VA Board, imposing the public sanction of an "admonition with terms" warrants "substantially different discipline" in Delaware. ODC further suggested the Panel Chair schedule a telephone conference to discuss and consider the future course of proceeding before the Delaware Board.

Following such request, a telephone conference was conducted on January 14, 2010. Participating were the Panel Chairman and one other member of the Delaware Board Panel, Mr. Bassett¹; Respondent; and Mr. Michael McGinnis on behalf of ODC. During the telephone conference, ODC took the position, consistent with its letter of December 31, 2009, that the Delaware Board and the proceedings were bound by the factual findings of the VA Board, and the sole issue before the Delaware Board was whether ODC met its burden of showing under Rule 18(d)(4), that the facts, as determined by the VA Board, warrant "substantially different discipline" in Delaware. If that burden was met, ODC sought a six-month suspension. ODC believed a hearing was not required or necessary, but that ODC had no objection to oral argument, if the Board believed it would be helpful. Respondent agreed on the legal issue that he was bound by the facts, as determined by the VA Board; but argued a "substantially different discipline" was not warranted; and requested a hearing to present testimony and/or argument, as

¹ Mr. Carey was out of town on January 14, and unable to participate by teleconference.

to whether there should be “substantially different discipline,” and to address a recommendation for appropriate sanctions. The Board members ruled, as both ODC and Respondent agreed, that the Delaware Board would be bound by the Virginia findings of fact. The Delaware Board believed, however, that a hearing should be held, at which time additional argument and/or evidence could be presented on the issue of whether a “substantially different discipline” was warranted; and, if so, what sanctions should be imposed.

A hearing was held before the Delaware Board on January 27, 2010. ODC again took the position it had met its Rule 18(d)(4) burden, to warrant “substantially different discipline” in Delaware, and sought a six-month suspension.

Respondent again concurred that he was bound by the factual findings of the VA Board. Respondent argued, although he is bound by those factual findings, the VA Board had an opportunity to review all of the facts [which the Delaware Board cannot do under Rule 18(d)(4)]; and, with all such facts, it ruled a reprimand with conditions was appropriate. Respondent argued, if all facts were considered by the Delaware Board, it would conclude that the VA Board’s sanction was appropriate, and not impose a substantially different sanction than that of the VA Board, i.e. a reprimand. Respondent points out that this is not a case of misappropriation of funds, or multiple complaints. (Tr. 20). Respondent indicated that, although he currently does not actively practice in Delaware, he was proud of his Delaware reputation, and had worked with a well-known Delaware firm, and later with the Delaware Attorney General’s Office, and believes these proceedings have damaged his reputation in Delaware and elsewhere. (Tr. 21). Respondent candidly admits that, initially, he may not have taken this matter... “seriously,...but, I assure you I do now. I take it very seriously.” (Tr. 22). Respondent argues further that the Complaint did not have a substantive impact upon anyone, and there was no client involved. (Tr.

22). Respondent asserts that the counterclaim he filed on behalf of his client was ultimately dropped, and therefore the Complainant was not materially affected. (Tr. 22). Respondent argues further the errors he made were a result of inexperience. This was his first experience in a small claims court, and he did not understand the rules. (Tr. 22-23). Respondent now practices only in areas of law that he knows, and these types of mistakes are not apt to reoccur. (Tr. 24). Respondent notes he has been required to take six hours of CLE, without getting any credit (Tr. 26); he was laid off in March, 2009, which he at least indirectly and to some extent, blamed on his problems with the disciplinary proceedings (Tr. 26); and he further notes that, at the time of these proceedings, he was been involved in a divorce, and opposing counsel used claims about Respondent's ethical deficiencies which he believes affected the outcome of his divorce. (Tr. 28). Finally, Respondent notes that, although he is not currently represented by counsel in Delaware, he has incurred \$15,000.00 in attorney's fees throughout these disciplinary proceedings. (Tr. 32). In other words, Respondent argues he has suffered substantially and enough.

ODC counters that the Delaware Supreme Court has never recognized as a mitigating factor, in a reciprocity matter, the impact of prior disciplinary sanctions upon the attorney. ODC acknowledges that, while such may be a mitigating factor under the ABA Standards, there is no case in Delaware that applies that standard to a Delaware proceeding. ODC further points to In Re Katz, 981 A.2d 1133 (Del. 2009), where the Board on Professional Responsibility rejected the attorney's argument that his lack of experience in the practice of real estate law constituted a mitigating factor. See Opinion at p. 1146. ODC further points out that Respondent did not self-report to the Delaware Disciplinary authorities under Rule 18, regarding the existence of the reprimand in Virginia. Respondent counters he understood and expected the Virginia Bar would

send the decision to Delaware, because he had made it clear to them that he was a member of both the DC and Delaware Bars. He notes the DC Bar and the Trademark and Patent Offices contacted him, and he assumed their contact was a result of being contacted by the VA Bar, which he expected would also contact the Delaware Bar. (Tr. 39). ODC counters that assertion is unreasonable, due to the length of time that Respondent did not report the matter to Delaware, and also notes it is the attorney's responsibility to notify Delaware, and that Respondent is required to know the Rules. See Procedural Rules 18(a).

FINDINGS OF THE BOARD

Rule 18 of Procedural Rules

Rule 18 of the Procedural Rules, requires this Board to recommend to the Court that it shall impose discipline that is identical to that discipline imposed in another jurisdiction, unless it clearly appears on the face of the record on which discipline is predicated, that:

- (1) the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;
- (2) there was such infirmity of proof establishing the misconduct as to give rise to the clear conviction that the Court could not, consistent with its duty, accept as final the conclusion on that subject;
- (3) the imposition of the same discipline by the Court would result in grave injustice; or
- (4) the misconduct established warrants substantially different discipline or no discipline in this State; or
- (5) the reason for the original transfer to disability inactive status no longer exists.

If the Court determines that any of those elements exist, the Court shall enter such other order as it deems appropriate.

Neither party argues that Items (1) - (3) and (5) are applicable, and the Board finds those factors are not present. However, this Board feels compelled to find that, upon the face of the

record on which this Disciplinary Proceeding is predicated, it clearly appears that "...the misconduct established warrants substantially different discipline...in this State."

The Delaware Board is bound by the findings of the VA Board findings, that Respondent knowingly made false statements to the Virginia Court, and that Respondent made misleading statements to counsel for the VA Board, in that Board's investigation. The Delaware Supreme Court and this Board is guided by the precedents of the Delaware Supreme Court, and the ABA Standards for Imposing Lawyer Sanctions. In Re: Agostini, 632 A.2d 80 (Del. 1993).

Rule 6.12 of such Procedural Rules provides:

Suspension is generally appropriate when a lawyer knows that false statements or documents are being submitted to the court or that material information is improperly being withheld, and takes no remedial action, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

Suspension therefore seems appropriate when a lawyer: (1) knows that false statements or documents; (2) are being submitted to the court; (3) and takes no remedial action; (4) and causes injury or potential injury to a party to the legal proceeding or causes an adverse or potentially adverse effect on the legal proceeding. Clearly, since this Board is bound by the findings of the VA Board, the requirements of Rule 6.12 are met; and suspension is "generally appropriate."

The Board found Respondent's action to have been a knowing submission of a false statement to the Court; no remedial action was taken; and there was injury, and certainly potential injury to a party; and there was certainly an impact on the proceedings, since merely needing the court's involvement impacts the proceedings. Respondent argues there was no adverse impact to his client; but that is not the issue. Respondent also argues there was no real impact on the complainant, since the counterclaim was withdrawn; but, the complainant was still impacted.

Rule 6.13 of the Procedural Rules seems to be the next lower category of violation, and provides:

Reprimand is generally appropriate when a lawyer is negligent either in determining whether statements or documents are false or in taking remedial action when material information is being withheld, and causes injury or potential injury to a party to the legal proceeding, or causes an adverse or potentially adverse effect on the legal proceeding.

This Board finds Rule 6.13 not to be applicable, and reprimand is not “generally appropriate” because it requires a negligent standard, which cannot be applied to the present facts because of a finding that Respondent “knowingly” made false representations to the Court. While the finding of “misleading” statements to counsel for the VA Board is not clear, and could be considered negligent, this Board nonetheless must consider Respondent’s representation to the Court to be a knowing violation of the Rules, and Rule 6.13 does not apply.

The following factors should be considered by the Court and the Board, in determining an appropriate sanction, or whether a sanction should be substantially different. Those considerations are: (1) the nature of the duty violated; (2) the attorney’s mental state; (3) the actual or potential injury caused by the misconduct; and (4) the existence of aggravating or mitigating circumstances. In Re: Figliola, 652 A.2d 1071 (Del. 1995).

Nature of Duty Violated

The Board believes it is clear that Respondent’s conduct violates Rule 3.3(a)(1) of the Delaware Lawyer’s Rules of Professional Conduct (“DLRPC”), by knowingly making a false statement of fact to a tribunal. Comment 2 to Rule 3.3(a)(1) provides, the rule is to avoid conduct that undermines the integrity of the adjudicative process. The Board also finds that Respondent’s conduct violates DLRPC 4.1, when, in the representation of a client, the lawyer knowingly makes a false or material fact to a third party. In addition, Respondent’s conduct violates DLRPC

Rule 8.4(c), by engaging in conduct involving deceit or misrepresentation. Candor to any tribunal must be the hallmark of lawyer conduct.

Attorney's Mental State

As previously indicated, the VA Board determined, and this Board therefore determines, that Respondent's conduct was a "knowing" violation.

Actual or Potential Injury Caused

Here, the Board must also consider Respondent's argument that his client's counterclaim before the Virginia Court was ultimately dismissed, and that therefore the opposing party did not really suffer any damage in the Virginia proceedings. That position is wrong. Not only did Respondent cause injury, annoyance and aggravation to the opposing party, but the potential for harm in misrepresentations to the court is enormous, and would favor more significant penalty.

Existence of Aggravating and Mitigating Circumstances

The Board believes it most appropriate to consider aggravating and mitigating circumstances below in this report and while discussing the topic of the extent of a "substantially different discipline," rather than repeated findings here. Suffice it to say, the Board believes the aggravating and mitigating factors in summary, weigh in favor of a suspension.

Under the ABA Standards 6.12 and 7.2, and the other factors above it is clear a suspension is appropriate, which is a "substantially different discipline" than the reprimand given by the VA Board. Respondent argues the VA Board really saw all of the facts and felt a reprimand was appropriate; and if the Delaware Board could know all of the facts before the VA Board, the Delaware Board would conclude, like the VA Board, that a reprimand is appropriate. However, this Board is bound by the findings of the VA Board, that there was a knowing

misstatement to the Court, which alone warrants suspension. The real question is, “What period of suspension is appropriate?”

What Length of Suspension is Warranted?

ODC seeks a suspension of at least six-months. ODC cites In Re: Katz, 981 A.2d 1131 (Del. 2009), which involved a Delaware attorney, and involved multiple violations of DLRPC 1.1, 1.4(b), 1.7, 1.16(a), and 1.16 Interpretive Guidelines re: Residential Real Estate Transactions, and said Delaware attorney received a suspension of one year. It appears a total of six real estate transactions were involved. The Board believes the circumstances in the Katz decision are substantially more severe than the circumstances presented here.

ODC further points the Board to In Re: Becker, 869 A.2d 327 (Del. 2008). The attorney involved received a three-year suspension, based upon multiple violations of DLRPC 1.1, 1.2(a), 1.4(a), 1.4(b), 1.15(a), 1.15(d), 8.1, 8.1(b), 8.4(c), and 8.4(d), and also that the attorney knowingly made false statements of material fact in the course of the ODC investigation. The case involved mishandling of client funds on multiple occasions.

ODC further points the Board to In Re: Chasanov, 869, A.2d 327 (Del. 2005). The attorney received a suspension of six months. That case involved two separate matters, involving knowingly false statements made to the Family Court.

The Board concludes that all of these cases present substantially more severe circumstances than present in this matter, and that Respondent’s suspension should not be as severe or lengthy as in those matters.

This Board is mindful of the decision in In Re: Figliolo, 652 A.2d 1071 (Del. 1995), and ADA Standard 2.3. That decision and Standard indicate that something such as a thirty-day suspension is impractical to institute and monitor; and a lawyer who is suspended needs adequate

time to notify clients, make arrangements for cases, resolve financial dealings, and remove oneself totally from the practice of law; and it is not practical to do this within a thirty-day time period. Those factors and arguments do not appear to hold much sway here, because Respondent is not practicing in Delaware, and a suspension from practice in Delaware would not require him to do anything.

Aggravating and Mitigating Factors

With those factors in mind, the Board now turns to the aggravating and mitigating factors found in ABA Standards 9.22 and 9.32. The Board will only review those aggravating and mitigating factors that have application, or that Respondent or ODC has argued should be applied.

Aggravating Factors

- (b) dishonest or selfish motive.

Respondent contends his mistakes were really a result of inexperience, and misunderstanding of the rules in the Virginia Court where the violations. To the contrary, however, Respondent finds himself in this dilemma, as a result of his own conduct (and perhaps selfish motive), in an improper certification to the Court. It is not necessarily the mistake in the local rules for which Respondent is to be sanctioned, it is more so what he did when he realized he had not followed the rules. To some extent therefore, Respondent's conduct is selfish, if he perhaps tried to cover up his mistakes.

- (e) bad faith obstruction of the disciplinary proceeding by intentionally failing to comply with the rules or orders of the disciplinary agency;

- (f) submission of false evidence, false statements, or other deceptive practices during the disciplinary process;

This Board finds that these two factors have no application to the Delaware proceedings. However, the VA Board found that Respondent's representations to VA Bar Counsel were misleading and calculated to induce VA Bar Counsel to conclude facts that were not accurate. See Item 10-11 of the Findings of the VA Board (Exhibit "1" hereto). It appears the contention there is that Respondent essentially told VA Bar Counsel the same thing he told the VA Court. Respondent puts forward that this shows his consistency as to what really happened, and ODC argues it is further wrongful conduct. This Board is frankly not fully satisfied with either contention, but does consider it as an aggravating factor since Respondent's version was found to be false.

(g) refusal to acknowledge wrongful nature of conduct.

While this may have been the case in the initial proceedings, it is not the case now. This Board was impressed that Respondent felt he had "learned his lesson," is now repentant, and now takes "...it very seriously." (Tr. 22).

Mitigating Factors

Again, the Board only lists those factors it considers to have application.

(a) absence of prior disciplinary record;

This factor mitigates in Respondent's favor, since there are no known prior disciplinary proceedings before any court, even though Respondent has been practicing in various courts since 1980.

(d) absence of dishonest or selfish motive;

The Board believes Respondent made a mistake in following the rules, and then got into trouble as a result of not knowing how to resolve the problem once he had created it. The Board does not believe Respondent was motivated by dishonest (although perhaps selfish) motive, but

primarily by inexperience in that particular court, in dealing with the type of problem he was dealing with.

(e) full and free disclosure to disciplinary board or cooperative attitude toward proceedings.

While the Board understands the issues above, regarding disclosure or misrepresentations to VA Bar Counsel, the Board concludes that Respondent has made full and free disclosure to this Board, and has been cooperative throughout the proceedings. The Board notes that Respondent has not contested many issues, did his best to walk the fine line between arguing what he wanted to argue, and the Board's finding that he was bound by the findings of the VA Board.

(f) inexperience in the practice of law;

While Respondent had been practicing law for twenty-five years when the offenses occurred, he was indeed inexperienced in this small claims court matter. That does not however excuse a false certification. The Board does believe the experience of these matters over the past five years has made a significant impression on Respondent and his inexperience will not cause this problem again.

(g) character and reputation;

Respondent indicates, and there is no evidence to the contrary, that his character and reputation is unsoiled. The Board was impressed by his conduct at the hearing.

(k) imposition of other penalties or sanctions;

Respondent has expended \$15,000 in attorney's fees, has been reprimanded by the VA Court; has been suspended for thirty days by the DC Court; has possibly been impacted in regard to both his employment and marital and divorce situation; and has suffered distress and

embarrassment at these proceedings in a third court; and, perhaps most importantly, will most likely be the subject of further proceedings in the United States Patent and Trademark Offices, where Respondent has his principal practice, and where he will perhaps suffer the most damage as a result of his actions. This Board feels that perhaps Respondent has suffered enough; that Respondent takes this matter very seriously, that Respondent will conduct himself in an appropriate and ethical fashion in the future; and Respondent has gained significant experience from these proceedings. Finally the Board feels a more serious sanction will not really benefit the Court, society, or the Delaware Bar.

(l) remorse;

Once again, the Board was impressed by Respondent's remorse and cooperation.

CONCLUSION

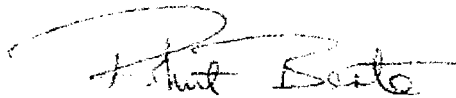
This Board is admittedly troubled by the conduct of Respondent in Virginia, but Respondent has no prior record, and has suffered significantly; and the Board is left with the conclusion the thirty-day suspension imposed by the District of Columbia Court of Appeals has taught Respondent the lesson he needs to learn; the system has served its purpose; and anything more than a thirty-day suspension will not effectively serve a purpose. This Board is also concerned that a longer suspension may be tantamount to a penalty for being admitted in Delaware. Further, a thirty-day suspension has the value of consistency in following the sanction imposed by the respected District of Columbia Court of Appeals.

This Board recommends that Respondent be suspended from the practice of law in Delaware for a period of thirty days, and that he pay the costs these proceedings in Delaware. The Board finds it unfortunate that there are no Delaware decisions that are of similar facts, but

notes the decisions reviewed by the DC Board seem closer in fact and substance than the Delaware decisions cited by ODC and imposing greater sanctions. See In Re: Rosen, 481 A.2d 451 (D.C. 1984) (Attorney with prior discipline who provided less than truthful statements in support of two separate motions for continuances, and in a third paper opposing a motion, was suspended for thirty days); In Re: Owens, 806 A.2d 1230 (D.C. 2002) (Attorney gave false statements to an Administrative Judge in order to cover fact that she attempted to eavesdrop on testimony, violating the Court's sequestration order, was suspended for thirty days); In Re: Uchendu, 812 A.2d 933 (D.C. 2002) (Attorney with no prior disciplinary record signed and notarized papers for clients, without showing his initials, and was suspended for thirty days). This Board is also mindful, and believes it to be significant, that the real impact to Respondent will be in the expected proceedings to take place in the United Patent and Trademark Offices.

Respectfully submitted,

Date: 4-22-10


Robert K. Beste, Jr., Esq. (I. D. No. 154), Chair

Date: 4/22/10


Wayne J. Carey, Esq. (I. D. No. 2041)

Date: _____

Edward Bassett

notes the decisions reviewed by the DC Board seem closer in fact and substance than the Delaware decisions cited by ODC and imposing greater sanctions. See In Re: Rosen, 481 A.2d 451 (D.C. 1984) (Attorney with prior discipline who provided less than truthful statements in support of two separate motions for continuances, and in a third paper opposing a motion, was suspended for thirty days); In Re: Owens, 806 A.2d 1230 (D.C. 2002) (Attorney gave false statements to an Administrative Judge in order to cover fact that she attempted to eavesdrop on testimony, violating the Court's sequestration order, was suspended for thirty days); In Re: Uchendu, 812 A.2d 933 (D.C. 2002) (Attorney with no prior disciplinary record signed and notarized papers for clients, without showing his initials, and was suspended for thirty days). This Board is also mindful, and believes it to be significant, that the real impact to Respondent will be in the expected proceedings to take place in the United Patent and Trademark Offices.

Respectfully submitted,

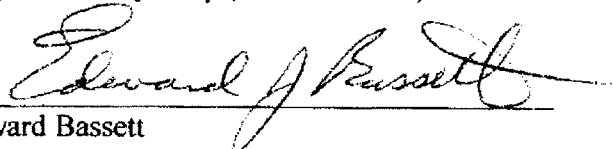
Date: _____

Robert K. Beste, Jr., Esq. (I. D. No. 154), Chair

Date: _____

Wayne J. Carey, Esq. (I. D. No. 2041)

Date: April 17, 2010



Edward Bassett