

14-1119

**BEFORE THE LAWYER DISCIPLINARY BOARD
STATE OF WEST VIRGINIA**

In Re: Kevin E. McCloskey, a member
of the Pennsylvania Bar

Bar No.: none
I.D. No.: 14-03-152

STATEMENT OF CHARGES

OCT 30 2014

To: Kevin E. McCloskey, Esquire
236 Donna Avenue
Morgantown, West Virginia 26505

YOU ARE HEREBY notified that a Hearing Panel Subcommittee of the Lawyer Disciplinary Board will hold a hearing pursuant to Rules 3.3 through 3.16 of the Rules of Lawyer Disciplinary Procedure, upon the following charges against you:

1. Kevin E. McCloskey (hereinafter "Respondent") is a lawyer known to have engaged in the practice of law in Ohio County, West Virginia, and in Hancock County, West Virginia, and, as such, is subject to the disciplinary jurisdiction of the Supreme Court of Appeals of West Virginia and its properly constituted Lawyer Disciplinary Board.

**Complaint of the Office of Disciplinary Counsel
I.D. No.14-03-152**

2. Upon information and belief, Respondent is licensed to practice law in the Commonwealth of Pennsylvania, and has been assigned Attorney Registration No. 95072.

3. On March 5, 2014, the Office of Disciplinary Counsel received a complaint form from Stuart A. McMillan, Esquire, joined by Mark A. Kepple, Esquire, in which they alleged, upon information and belief, that in late 2013 and early 2014, Respondent was practicing law without a license and was representing to have a West Virginia bar number when he was not licensed to practice law in West Virginia. Attorneys McMillan and Kepple attached a pleading to the complaint from the Circuit Court of Ohio County, West Virginia, in which Respondent filed a “Praecipe for Entry of Appearance” in the civil action styled *Shane N. Sneddon v. Daniel W. Jasper and William J. Wentzel*, No. 13-C-385. In the aforementioned pleading, dated December 10, 2013, Respondent entered an appearance on behalf of defendant Daniel W. Jasper and signed the same “Kevin McCloskey, Esquire, WVATTY I.D. NO. 11529.”
4. Upon receipt of the above-referenced complaint, the Office of Disciplinary Counsel confirmed that West Virginia bar number 11529 belongs to Benjamin Cline McKinney, Esquire. Attorney McKinney was admitted to the West Virginia bar on April 26, 2011 and is employed as an associate attorney with the law firm Steptoe & Johnson, PLLC, 1085 Van Voorhis Road, Suite 400, Morgantown, West Virginia 26507.
5. By letter dated March 12, 2014, the Office of Disciplinary Counsel initiated a complaint against Respondent pursuant to Rule 2.4 of the West Virginia Rules of

Lawyer Disciplinary Procedure. A complaint was sent to Respondent requesting a verified response to the same within 20 days of receipt.¹

6. By letter dated March 12, 2014, the Office of Disciplinary Counsel requested that Madeleine J. Nibert, Esquire, Bar Admissions Administrator for the West Virginia Board of Law Examiners, provide any information regarding any application by bar exam or reciprocity for admission to the practice of law by Respondent.
7. On March 13, 2014, the Office of Disciplinary Counsel received a facsimile from the Honorable James P. Mazzone in reference to a civil action styled *Laura J. Fisher, Individually and as Parent and Natural Guardian of Katelynn M. Smith and Maeghan B. Fisher, infants, and Jeffrey Fisher v. Kylie Matics and Joseph D. Matics*, No. 14-C-19, which was pending in the Circuit Court of Hancock County, West Virginia. The facsimile included a letter to the Court, dated March 3, 2014, from Attorney Kepple, in which he advised the Court that Respondent was not licensed to practice law in West Virginia. On or about February 10, 2014, Respondent had entered an appearance on behalf of defendants Kylie Matics and Joseph D. Matics and signed the same “Kevin McCloskey, Esquire, PA I.D. NO. 95072.”
8. On March 13, 2014, the Office of Disciplinary Counsel requested certified copies of the case files in the aforementioned matters pending before the Circuit Court of

¹ The complaint was sent to Respondent at 428 Forbes Avenue, Suite 909, Pittsburgh, Pennsylvania 15219, which was the address that Respondent noted on the pleading he filed in the Circuit Court of Ohio County, West Virginia on or about December 10, 2013.

Ohio County, West Virginia and the Circuit Court of Hancock County, West Virginia. Upon receipt of the case files, the Office of Disciplinary Counsel discovered that on or about February 20, 2014, in the case styled *Laura J. Fisher, Individually and as Parent and Natural Guardian of Katelynn M. Smith and Maeghan B. Fisher, infants, and Jeffrey Fisher v. Kylie Matics and Joseph D. Matics*, No. 14-C-19, which was pending in the Circuit Court of Hancock County, West Virginia, Plaintiffs' counsel had filed a "Motion to Strike Entry of Appearance." In support of the Motion, Plaintiffs' counsel asserted "[u]pon information and belief, counsel for the Defendants, Kevin McCloskey is not licensed to practice law in the State of West Virginia," and, "[a]s such, his Entry of Appearance in this matter should be stricken." Thereafter, on or about February 21, 2014, Attorney Kepple and the law firm of Bailey & Wyant, PLLC entered a Notice of Appearance on behalf of the Defendants. Similarly, on or about February 21, 2014, in the case styled *Shane N. Sneddon v. Daniel W. Jasper and William J. Wentzel*, No. 13-C-385, which was pending in the Circuit Court of Ohio County, West Virginia, Attorney Kepple and the law firm of Bailey & Wyant, PLLC entered a Notice of Appearance on behalf of Defendant Jasper, presumably after it was discovered that Respondent is not licensed to practice law in West Virginia.

9. On March 14, 2014, the Office of Disciplinary Counsel received a letter from Ms. Nibert from the West Virginia Board of Law Examiners, which included a copy of

documents from Respondent's file with the Board of Law Examiners. Ms. Nibert provided the aforementioned file pursuant to the "Affidavit of Authorization and Release" Respondent executed on or about October 18, 2006 as part of his bar application, in which Respondent acknowledged his understanding that the information about him in the possession of the Board of Law Examiners could be disclosed among the Board, the West Virginia State Bar, and disciplinary agencies, but that it would otherwise be kept confidential. Ms. Nibert confirmed that Respondent has never been admitted to practice law in West Virginia.

10. Because Respondent failed to file a response to the complaint as directed, by letter dated April 10, 2014, the Office of Disciplinary Counsel directed Respondent to file a response to the complaint by April 22, 2014, and advised Respondent that his failure to respond would result in a subpoena being issued for his appearance at the Office of Disciplinary Counsel for a statement, or the allegations in the complaint would be deemed admitted and the matter would be referred to the Investigative Panel of the Lawyer Disciplinary Board. The letter was sent to Respondent at 428 Forbes Avenue, Suite 909, Pittsburgh, Pennsylvania 15219 via certified and first class mail.
11. On or about April 13, 2014, the Office of Disciplinary Counsel received copies of the letters previously sent to Respondent at 428 Forbes Avenue, Suite 909, Pittsburgh, Pennsylvania 15219. The letters, which were addressed to Respondent and were unopened, arrived in an envelope addressed to the Office of Disciplinary

from Karen L. Hughes, Esquire, Employees of Government, Employees Insurance Company, 428 Forbes Avenue, Suite 909, Pittsburgh, Pennsylvania 15219, along with an unsigned, handwritten note attached to the “green card,” which read “Mr. McCloskey is no longer employed at this law firm. Thank you.”

12. On or about April 14, 2014, Respondent called the Office of Disciplinary Counsel and advised that he no longer worked at the 428 Forbes Avenue, Suite 909, Pittsburgh, Pennsylvania 15219 address and provided his telephone number, (412) 952-2738. On or about April 17, 2014, Respondent again called the Office of Disciplinary Counsel and provided the following address at which he could receive correspondence: 1251 Meadowbrook Drive, McMurray, Pennsylvania 15317. By letter dated April 17, 2014, the Office of Disciplinary Counsel provided Respondent with copies of the two letters that had been previously sent to Respondent advising him of the complaint, and directed him to file a response to the complaint within 20 days, pursuant to Rules 2.4 and 2.5 of the West Virginia Rules of Lawyer Disciplinary Procedure. The April 17, 2014 letter was sent to Respondent at the 1251 Meadowbrook Drive, McMurray, Pennsylvania 15317 address.
13. On or about April 17, 2014, the Office of Disciplinary Counsel confirmed via electronic mail correspondence with the West Virginia State Bar that Respondent had not filed applications for admission *pro hac vice* to the West Virginia State Bar in the years 2012, 2013 or 2014.

14. On or about July 10, 2014, the Office of Disciplinary Counsel received an “Affidavit of Benjamin Cline McKinney,” which was executed on June 24, 2014. In the Affidavit, Attorney McKinney stated that he is an attorney practicing with the law firm of Steptoe & Johnson, PLLC, 1085 Van Voorhis Road, Suite 400, Morgantown, West Virginia 26505² and that he was assigned West Virginia bar number 11529 upon his admission to practice law in the State of West Virginia on April 26, 2011. Attorney McKinney further stated that on or about March 11, 2014, he was notified of reports that Respondent had affixed his West Virginia bar number on pleadings filed in the Circuit Court of Ohio County, West Virginia under Respondent’s name. Attorney McKinney additionally stated that he never gave Respondent or any other individual permission to use his West Virginia bar number on pleadings, and that he was not aware that Respondent had affixed his West Virginia bar number to any document prior to March 11, 2014.
15. By letter dated August 20, 2014, the Office of Disciplinary Counsel sent two original Subpoena *duces tecum* to Angie Mitas, Esquire, Disciplinary Board of the Supreme Court of Pennsylvania, 437 Grant Street, Pittsburgh, Pennsylvania 15219 to be served upon Respondent. The Subpoena *duces tecum* commanded Respondent’s presence to testify in the taking of a sworn statement at the Office of Disciplinary Counsel on September 30, 2014 at 2:00 p.m., and to produce any and

² It appears that the Affidavit contains a typographical error, in that the zip code for the law firm’s address in Morgantown, West Virginia is 26507, as opposed to 26505.

all documentation pertaining to the complaint pending against him before the Office of Disciplinary Counsel.

16. On September 10, 2014, the Office of Disciplinary Counsel received correspondence dated September 8, 2014 from Mark A. Pastore, Investigator, which included an "Affidavit of Service" executed September 8, 2014 and one of the aforementioned original Subpoena *duces tecum*. Mr. Pastore stated that on September 8, 2014 at 8:59 a.m., he personally served the Subpoena *duces tecum* upon Respondent in the lobby of the Frick Building, 437 Grant Street, Suite 1300, Pittsburgh, Pennsylvania 15219. Mr. Pastore further stated that Respondent acknowledged that his current address is 236 Donna Avenue, Morgantown, West Virginia 26505.
17. On September 29, 2014 at 2:35 p.m., the Office of Disciplinary Counsel received a letter from Respondent, which was sent via facsimile and was on letterhead that included the 236 Donna Avenue, Morgantown, West Virginia 26505 address, the telephone number (412) 952-2738 and the electronic mail address kevinemccloskeyesq@gmail.com. The letter, which was dated September 25, 2014, acknowledged that Respondent had received the above-referenced Subpoena *duces tecum* on or about September 9, 2014, stated that Respondent would be unable to appear pursuant to the Subpoena and requested that the Subpoena be withdrawn and reissued. The letter also stated that Respondent had "not been granted an opportunity to review any other paperwork [aside from the Subpoena]

and/or documentation concerning this alleged complaint,” and that the Subpoena was “the only document [Respondent has] received” from the Office of Disciplinary Counsel.

18. On September 29, 2014 at approximately 4:50 p.m., Joanne M. Vella Kirby, Lawyer Disciplinary Counsel with the Office of Disciplinary Counsel called Respondent at (412) 952-2738, the number Respondent provided on his letter sent the same day via facsimile, and left a voice mail message in which she informed Respondent that his request to withdraw the Subpoena was denied and that Respondent would be required to appear for his sworn statement, as commanded pursuant to the Subpoena, on September 30, 2014 at 2:00 p.m. Renée N. Frymyer, Lawyer Disciplinary Counsel, and Mary E. Casto, Legal Assistant were present and heard Disciplinary Counsel Vella Kirby leave the aforementioned voice mail message for Respondent.
19. Respondent did not appear for the scheduled sworn statement.
20. Thereafter, on or about October 1, 2014, the Office of Disciplinary Counsel sent Respondent a letter via electronic mail and regular U.S. mail. The letter confirmed that on September 29, 2014 at approximately 4:50 p.m., Disciplinary Counsel Vella Kirby left a voicemail message for Respondent on the telephone number he provided on his September 29, 2014 letter, in which Respondent was informed that he was not relieved of his obligation to appear pursuant to the Subpoena and that he would be expected to appear at the Office of Disciplinary Counsel. The letter

further confirmed that Respondent failed to appear, as required by the Subpoena, at the Office of Disciplinary Counsel on September 30, 2014 at 2:00 p.m.

21. On October 6, 2014, the Office of Disciplinary Counsel received a letter from Respondent, dated October 2, 2014, in which Respondent stated that upon review of his telephone records from September 29, 2014, “it appears that [he] did not receive a phone call or voicemail” from the Office of Disciplinary Counsel, and further requested that the Office of Disciplinary Counsel “[p]lease check to ensure that [the Office of Disciplinary Counsel] has the proper contact information.”
22. Because Respondent engaged in the practice of law in West Virginia without a license when he signed his name to a pleading, dated December 10, 2013, before the Circuit Court of Ohio County, West Virginia and represented that he had a West Virginia bar number when he was not licensed to practice law in West Virginia, Respondent has violated Rule 5.5(a) of the Rules of Professional Conduct, which provides as follows:

Rule 5.5. Unauthorized practice of law.

A lawyer shall not:

- (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction[.]

23. Because Respondent engaged in the practice of law in West Virginia without a license when he signed his name to a pleading, dated February 10, 2014, before the Circuit Court of Hancock County, West Virginia, Respondent has violated Rule 5.5(a) of the Rules of Professional Conduct, which provides as follows:

Rule 5.5. Unauthorized practice of law.

A lawyer shall not:

- (a) practice law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction[.]

24. Because Respondent failed to comply with the Office of Disciplinary Counsel's lawful requests for information, he has violated Rule 8.1(b) of the Rules of Professional Conduct, which provides as follows:

Rule 8.1. Bar admission and disciplinary matters.

[A] lawyer in connection with ... a disciplinary matter, shall not:

* * *

- (b) ... knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this rule does not require disclosure of information otherwise protected by Rule 1.6.

25. Because Respondent engaged in the practice of law in West Virginia without a license as set forth above in Paragraphs 22 and 23, Respondent has violated Rules 8.4(b)³; 8.4(c) and 8.4(d) of the Rules of Professional Conduct, which provide as follows:

Rule 8.4. Misconduct.

It is professional misconduct for a lawyer to:

* * *

³ W.Va. Code §30-2-4. Practice without license or oath; penalty; qualification after institution of suits.

It shall be unlawful for any natural person to practice or appear as an attorney at law for another in a court of record in this state, or to make it a business to solicit employment for any attorney, or to furnish an attorney or counsel to render legal services, or to hold himself out to the public as being entitled to practice law, or in any other manner to assume, use, or advertise the title of lawyer, or attorney and counselor at law, or counselor, or attorney and counselor, or equivalent terms in any language, in such manner as to convey the impression that he is a legal practitioner of law, or in any manner to advertise that he, either alone or together with other persons, has, owns, conducts or maintains a law office, without first having been duly and regularly licensed and admitted to practice law in a court of record of this state, and without having subscribed and taken the oath required by the next preceding section. Any person violating the provisions of this section shall be guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than on thousand dollars; but this penalty shall not be incurred by any attorney who institutes suits in the circuit courts after obtaining a license., if he shall qualify at the first term thereafter of a circuit court of any county of the circuit in which he resides.

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

26. As an aggravating factor, Respondent has exhibited a pattern and practice of misconduct by engaging in the practice of law in a jurisdiction when not authorized to do so. On or about October 8, 2013, The Disciplinary Board of the Supreme Court of Pennsylvania administered a Public Reprimand against Respondent, in pertinent part, because Respondent violated Rule 5.5(b)(2) of the Pennsylvania Rules of Professional Conduct, which provides as follows:

Rule 5.5. Unauthorized practice of law; Multijurisdictional Practice of Law.

* * *

(b) A lawyer who is not admitted to practice in this jurisdiction shall not:

* * *

(2) hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

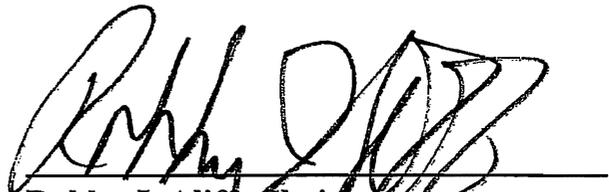
Furthermore, in or about October of 2007, Respondent received an Informal Admonition by The Disciplinary Board of the Supreme Court of Pennsylvania for having violated Rule 5.5(b)(2) of the Pennsylvania Rules of Professional Conduct.

* * *

Pursuant to Rule 2.9(d) of the Rules of Lawyer Disciplinary Procedure, the Investigative Panel has found that probable cause exists to formally charge you with a

violation of the Rules of Professional Conduct and has issued this Statement of Charges. As provided by Rules 2.10 through 2.13 of the Rules of Lawyer Disciplinary Procedure, you have the right to file a verified written response to the foregoing charges within 30 days of service of this Statement of Charges by the Supreme Court of Appeals of West Virginia. Failure to file a response shall be deemed an admission of the factual allegations contained herein.

STATEMENT OF CHARGES ORDERED on the 11th day of October, 2014,
and **ISSUED** this 15th day of October, 2014.



Robby J. Aliff, Chairperson
Investigative Panel
Lawyer Disciplinary Board