

BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : DISCIPLINARY BOARD DOCKET
PETITIONER : NO. 36 DB 2025
V. :
: ATTORNEY REG. NO. 60474
JOHN W. PAUCIULO, ESQUIRE, : (CHESTER COUNTY)
RESPONDENT :
:

BRIEF OF THE RESPONDENT, JOHN W. PAUCIULO, ESQUIRE, TO THE
HEARING COMMITTEE ON THE ISSUE OF DISMISSAL BY LACHES DUE TO THE
DELAY OR DISMISSAL BY DISCIPLINARY BOARD RULE 85.10

The Respondent, John Pauciulo, had a Petition for Discipline filed by the Office of Disciplinary Counsel against him dated March 31st, 2025. This was sent to Mr. Stretton on behalf of Mr. Pauciulo on April 1st, 2025.

The Petition for Discipline outlines in detail alleged disciplinary violations. Mr. Pauciulo has vigorously challenged these allegations and filed a detailed Answer requesting a dismissal.

Mr. Pauciulo represented Dean Vagnozzi and his company since approximately 2004 or 2005. Mr. Pauciulo never represented PAR or its officers or shareholders.

The Respondent, John Pauciulo, Esquire, was the Chairman of the Corporate Transaction Practice Group of Eckert Seamans Cherin & Mellott. Over the years, he and colleagues from Eckert Seamans Cherin & Mellott advised Dean Vagnozzi about financial dealings and sales. Never did Mr. Pauciulo receive anything

other than payment for his legal fees, which were reasonably billed. He had no interest in investments in any of these companies and acted only as their Corporate Advisor.

In reference to this Motion, the truly relevant time period is from 2015 to early 2020. Mr. Pauciulo received a DB-7 Letter from the Office of Disciplinary Counsel in July of 2023. According to a Brief filed by the Office of Disciplinary Counsel, an anonymous Complaint had been made in March of 2020 and another Complaint in 2022. The Respondent has never received copies of those Complaints. The Petition for Discipline was not filed until March 31st, 2025. The Respondent had cooperated with the Office of Disciplinary Counsel and filed a detailed Answer to the DB-7 Letter in 2023. As seen from the Answer to the Petition for Discipline, Mr. Pauciulo has denied any misconduct. Also as noted in the Answer, Mr. Pauciulo was retained to do some background check on PAR funding, and he did so. But then was told to stop any further investigation in 2016 by his client, Dean Vagnozzi. In his Answer to the Petition for Discipline, Mr. Pauciulo raised the Doctrine of Laches and the four-year time limitation in Disciplinary Board Rule 85.10.

Somewhat surprisingly, the Office of Disciplinary Counsel filed a Brief on the Doctrine of Laches and statute of limitations before Mr. Stretton briefed the subject. Mr. Stretton had raised these issues in the New Matter to his Answer

to the Petition for Discipline and indicated he would file a Brief on the issues to the Hearing Committee at the Pre-Trial Conference. Instead of waiting, since it is Mr. Stretton's issue, the Office of Disciplinary Counsel now has raised the issues.

In reading the Office of Disciplinary Counsel's Brief, the Brief is somewhat upsetting because it goes out of its way to discredit Mr. Pauciulo. The Brief accuses Mr. Pauciulo of deceit, of hiding information, and other misconduct. None of these allegations are accurate. Therefore, based on these incorrect and false statements by the Office of Disciplinary Counsel, there will have to be a full hearing on this Motion where testimony can be presented in detail prior to any Disciplinary Hearing. Otherwise, this panel would be tainted by the allegations made by the Office of Disciplinary Counsel in their Brief, which should have not been filed until Mr. Stretton filed his Brief, since it is Mr. Stretton's Petition and issue. Mr. Stretton raised the issue in the New Matter and told the Chairman of the Pre-Trial Conference he was raising the issue, and the Chair then asked Mr. Stretton to do so in a Brief, which he is now doing and which is due on July 11th, 2025.

The key time periods in evaluating this Motion to Dismiss on the Doctrine of Laches and four-years Disciplinary Board Rule 85.10 are as follows.

A) April and May of 2016, when due diligence was conducted by the Respondent with respect to PAR. It should be remembered, Mr. Pauciulo never represented PAR at any time.

B) In 2018 to 2020, ongoing investments made by Dean Vagnozzi in PAR.

C) In April to May of 2020, PAR sent its Notice of Default to its investors, which include Mr. Vagnozzi's funds. Mr. Vagnozzi's funds and other funds offered investors "exchange notes" as a means of attempting to restructure the investment in PAR. While that was happening, Mr. Pauciulo appeared in two videos with Mr. Vagnozzi in reference to the exchange notes offering.

D) On July 28th, 2020, the SEC in Miami filed a TRO against PAR, Mr. Vagnozzi, and others. There were news articles in the Philadelphia Inquirer on this subject.

E) On July 7th, 2022, Mr. Pauciulo had an administrative settlement with the SEC in Miami on a no admit/no-deny basis, and that becomes effective that date.

F) On July 19th, 2023, the Office of Disciplinary Council sent a DB-7 Letter to the Respondent's counsel, Samuel C. Stretton, Esquire.

G) On August 15th, 2023, Mr. Stretton, on behalf of Mr. Pauciulo, sent a detailed response to the DB-7 Letter to Assistant Disciplinary Counsel Jeff Krulik, Esquire.

H) On March 31st, 2025, the Office of Disciplinary Council filed the current Petition for Discipline. The Petition was filed four and a half to five years after the last significant events had occurred. After the Petition for Discipline was filed, Mr. Stretton filed a detailed Answer, raising the Doctrine Laches and statute of limitations.

A. THE CASE SHOULD BE DISMISSED ON THE DOCTRINE OF LACHES

Mr. Stretton respectfully contends because of the substantial delay of filing the Petition for Discipline there should be a dismissal of these allegations against Mr. Pauciulo on the basis of the Doctrine of Laches, which is an equitable doctrine.

The Doctrine of Laches is an equitable doctrine that bars stale claims because of the prejudice to the party. The Doctrine of Laches is set forth in Fulton v. Fulton 106 A.3d 127 (Pa. Sup. Ct., 2014):

"The Doctrine of Laches is an equitable bar to the prosecution of stale claims and is the practical application of the maxim of those who sleep on their rights must awaken to the consequences that have disappeared --- the question of whether Laches applies is a question of law --- the question of Laches itself however, is a factual --- and is determined by examining the circumstances of each case," Id 130.

In the case of Giddings v. State Board of Psychology 669 A.2d 431 (Pa. Comm. Ct., 1995), the Commonwealth Court noted that the Doctrine of Laches requires not only unjustifiable

delay but also showing that opposing rights were prejudiced as a result of the delay, (see Giddings v. State Board of Psychology 669 A.2d 431 (Pa. Comm. Ct., 1995). In Giddings, in fact, the Court held there could be no Laches if there were not clean hands.

"The Board held that the appellant is precluded from asserting Laches because he does not assert this equitable doctrine would clean hands. We agree. The doctrine of clean hands is grounded in a historical notion of a court of equity as a vehicle for affirmatively enforcing the requirements of conscious and good faith, and thus, any willful acts concerning the cause of action which rightfully can be said to transgress equitable standards of conduct is a sufficient cause for closing the door of a court of equity to one tainted when inequitableness ---," Id 434, 435.

In this case, clearly, John Pauciulo has clean hands. The Office of Disciplinary Counsel, due to their excessive delay, does have unclean hands.

The Doctrine of Laches was mentioned infrequently in several disciplinary cases over the years. One of the first times where it was not allowed was a case that Mr. Stretton worked with then Disciplinary Counsel-in-Charge, John Herron, back in 1977 and 1978 of In Re Oxman 437 A.2d 1169 (Pa., 1981). The Oxman case primarily stood for the concept that double jeopardy does not apply in attorney disciplinary matters. The Pennsylvania Supreme Court noted at that time that the primary

purpose of attorney discipline is to protect the public, and the Court noted:

"If the conduct of a member of the bar disqualifies him from the practice of law, it would not be in the public interest to dismiss the disciplinary proceeding for no reason other than the bar's failure to prosecute them with proper dispatch," Id 1172.

The court went on to say:

"While due process may require dismissal of disciplinary charges if an inordinate delay has caused substantial actual prejudice," Id 1172.

The Court then in Oxman noted:

"While we expressly and emphatically disapprove of delay in these disciplinary proceedings, the record confirms that it was inadvertent and that it has not impeded appellant's right to a fair hearing. We thus conclude that the disciplinary counsel correctly refused to dismiss the petition for imposition of discipline," Id 1173.

The Court returned to the issue of Laches and equity in a case handled by Mr. Stretton entitled In Re Iulo 766 A.2d 335 (Pa., 2001). Mr. Iulo was primarily a reciprocal discipline case arising out of a disbarment in New Jersey. It was one of the few disciplinary cases where reciprocal discipline was not entered. But the Court also discussed Laches:

"Respondent also argues reciprocal discipline is barred in this case by Laches. Laches is an equitable doctrine which precludes a party from pursuing a complaint when it is guilty of lack of diligence in asserting its rights such that the passage of time has caused prejudice to the opposing party," Id 338.

The court in Iulo noted that he was disbarred in New Jersey in 1989. The Court noted as follows:

"By waiting until 1999 to pursue reciprocal discipline, Respondent claims he has suffered prejudice. Respondent has been admitted to the Bar of Pennsylvania and taken in the obligations and encumbrances of a legal practice in this jurisdiction. To disbar Respondent now after allowing him to undertake the efforts of opening a practice in Pennsylvania would be unjust," Id 338.

The Court then rejected Laches, indicating since Mr. Iulo only became a lawyer in Pennsylvania in 1999, there would be no failure of due diligence by the Office of Disciplinary Counsel.

The Courts in Pennsylvania have held the Doctrine of Laches is applicable to disciplinary matters, but it is a difficult doctrine to prevail on. There have been other licensing boards where the Doctrine of Laches has prevailed. For instance, in the case of Shah v. State Board of Medicine 589 A.2d 783 (Pa. Comm. Ct., 1991), a four-and-a-half-year delay of a patient in reporting the physician resulted in the case being dismissed under the Doctrine of Laches, particularly since there were changes in the patient's account, key witnesses were unavailable, and witnesses did not remember specific details, Id 803, 804.

In the case of Commonwealth of Pennsylvania, ex rel., Pennsylvania Attorney General v. Griffin 946 A.2d (Pa., 2008), Judge Griffin was ultimately removed under a Quo Warranto

Petition because of an old prior conviction. Mr. Stretton handled and argued that case. The Doctrine of Laches was discussed by the Pennsylvania Supreme Court.

"Laches bar relief on the plaintiff's lack of due diligence in failing to timely institute an action results in prejudice to another. Because it is an affirmative defense, the burden of proof is on the defendant or Respondent to demonstrate --- unreasonable delay and prejudice --- thus the party asserting Laches as a defense must present evidence demonstrating prejudice from a lapse of time --- such as that the witness has died or become unavailable, that substantiating records were lost, or that the defendant has changed their position in anticipation, the opposing party has waived his claims --- further the question of Laches is factual and is determined by examining the circumstances of such case," Id 676, 677.

The Pennsylvania Supreme Court did not grant the Laches in the Griffin case, but noted Laches may apply in circumstances where there has been gross and unreasonable delay by the government, Id 677 and 678.

In this case there is severe prejudice to Mr. Pauciulo. A key witness, a lawyer who worked with him on many of these cases has died of pancreatic cancer and is no longer available. Further, years have passed now and it is difficult to be precise and to recall the details of what happened eight to ten years ago. Clearly, there is prejudice to Mr. Pauciulo since he has left the Eckert Seamans Cherin & Mellott firm and has begun his own practice, and his practice is starting to build. To at this

late date bring these disciplinary actions many years later, again, results in prejudice.

One of the stronger cases in professional discipline for dismissing a case under the Doctrine of Laches is a case Mr. Stretton handled entitled In Re DeLeon 902 A.2d 1027 (Pa. Ct. of Judicial Discipline, 2006). This was a judicial disciplinary trial involving a Municipal Court Judge who was campaigning for a position on the Pennsylvania Supreme Court during a year where there was no election. The Opinion dismissing the case on Laches was written by then Chief Judge Richard Sprague of the Court of Judicial Discipline. The Court found the delay was prejudicial. The Court noted the old rule of a 180-day time period, had been extended several times. The Court of Judicial Discipline noted that the Board should conduct its investigation with expedition and noted that the Board:

“--- not dawdle long, all the while leaving the judicial officer under investigation to wonder whether he will be facing formal charges or not. It follows that this requirement cannot be met nor this goal achieved without the concomitant requirement that the Board proceed with diligence in conducting its investigation,” Id 1031.

The Court of Judicial Discipline noted the Board extended its investigation for a period of two and a half years. The Court noted the following:

“We believe that such lengthy, unexplained delay such as occurred in this case, coupled with an egregious lack of diligence on the part of the Board such as is

present in this case, which results in prejudice to the respondent, can only be remedied by dismissal of the charges," Id 1031.

The Court of Judicial Discipline then discussed the subject of prejudice since they had found undue delay. The Court said lengthy delay can presume prejudice:

"However, there can come a time in a given case where the delay is so lengthy that prejudice can be presumed. We do not here specify what that length of time is or may be in any case --- save this case. We hold that in this case the delay was such that prejudice may be presumed," Id 1032.

The Court also noted, in addition to the presumption, that the long delay did prejudice Judge DeLeon in his ability to prepare and present his case due to the passage of time.

At the hearing on this Motion, attorneys for the Office of Disciplinary Counsel will have to explain the reason for this long delay. The first complaint, according to them, was made in 2020, and then 2022. In 2023, a DB-7 Letter was filed in the spring, and then an Answer was filed in the summer. But the Complaint was not filed until almost two years after that and five years after the original conduct. There seems no good reason for such a long delay, particularly when most of the events at issue occurred in the 2016-2020 time period. They were the critical times. This long delay places Mr. Pauciulo at a very strong disadvantage because of the passage of time, the

death of a witness, the fact he is no longer with his law firm and does not have access to files, etc.

The suggestions in the Office of Disciplinary Counsel's Brief that Mr. Pauciulo hid matters is not supported by the record or testimony. He never did such a thing. He was only the attorney. In conclusion, this case should be dismissed on the Doctrine of Laches due to the excessive delay and the resulting of both actual and presumed prejudice.

B. THE CASE SHOULD BE DISMISSED ON THE BASIS OF DISCIPLINARY BOARD RULE 85.10, THE FOUR-YEAR TIME PERIOD RULE

The disciplinary system has a statute of limitations of sorts, which is set forth in the Disciplinary Board Rules, Rule 85.10. That Rule is entitled *Stale Matters*, which this case clearly is. Stale matters are referred to as follows in the Rule:

"The Office of Disciplinary Counsel or the Board should not entertain any complaint arising out of acts or omissions occurring more than four years prior to the date of the complaint, except as provided in subsection B," see Disciplinary Board Rule 85.10.

There are exceptions to the Rule under subsection B. One of the exceptions is that the case involves theft or misappropriation or conviction of a crime or a knowing act of concealment. There is no theft in this case with Mr. Pauciulo or misappropriation or conviction of a crime. There is no knowing act of concealment by him, and evidence would have to be

presented on that issue by the Office of Disciplinary Counsel, Mr. Pauciulo will testify that he never concealed anything.

This original complaint was made on March 31st, 2020 anonymously to the Office of Disciplinary Counsel. The Petition for Discipline was filed almost five years later. Obviously, the Respondent does not have this original Complaint. He has received no discovery. Similarly in 2022, apparently another Complaint was made. Again, no copy was given to Mr. Stretton. Mr. Stretton's position is, despite some contrary Disciplinary Board case law, is that a complaint is when the Office of Disciplinary Counsel actually files the Petition for Discipline. The Petition for Discipline is not a letter outlining the allegations. The Petition for Discipline was not filed until March 31st, 2025. This argument is the same as a statute of limitations in a civil case. People come into a lawyer's office and complaints are made. But the lawyer has to file a Civil Complaint in Court to toll any statute of limitations.

In this case, the Petition for Discipline was filed about five years from apparently the first Complaint, on March 31st of 2025. The DB-7 Letter was sent in the spring of 2023. The actual alleged misconduct occurred primarily in the years 2016 to 2020. The Office of Disciplinary Counsel would have been well aware of all of the issues since 2020. Certainly, after the 2023 Answer to the DB-7 Letter. Yet no Petition for Discipline was prepared

or filed until years later, almost a year and three quarters after the Answer to the DB-7 Letter (March 31st, 2025). There is no justifiable reason for that sort of delay in this case. Even in criminal cases, the statute of limitations is not tolled until a Criminal Complaint is filed with the Court.

The Pennsylvania Supreme Court has never truly defined what a complaint means in the context of Disciplinary Board Rule 85.10. The Disciplinary Board has held several times the Complaint made, not the Petition for Discipline, is the Complaint. But the Supreme Court has not decided this issue. The arguments on the time made in the Laches section are incorporated by reference into this section. Therefore, Mr. Pauciulo, by his counsel, Samuel C. Stretton, Esquire, respectfully contends that this case should also be dismissed also for failure of the Office of Disciplinary Counsel to comply with Rule 85.10, the four-year Rule.

Respectfully submitted,

s/Samuel C. Stretton
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CERTIFICATE OF COMPLIANCE

I, Samuel C. Stretton, Esquire, certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Respectfully submitted,

July 9, 2025
Date

s/Samuel C. Stretton
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CERTIFICATE OF SERVICE

I hereby certify I am this date serving a copy of the Brief in the captioned matter upon the following persons in the manner indicated below.

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Date

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