

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 36 DB 2025
v. :
: Atty. Reg. No. 60474
JOHN W. PAUCIULO, :
Respondent : (Chester County)

REPLY OF OFFICE OF DISCIPLINARY COUNSEL TO
RESPONDENT'S BRIEF "ON THE ISSUE OF DISMISSAL BY
LACHES...OR DISMISSAL BY... RULE 85.10"

ODC respectfully requests that the Hearing Committee consider the following Reply to Respondent's above-captioned submission of July 10, 2025.

Preliminarily, Respondent appears to take issue with ODC having filed a brief on the instant issue prior to Respondent filing his own brief. (Respondent's Brief at 3). This complaint is without merit. At the Pre-Hearing Conference, after a discussion of the limitations issue, the Chair stated that, "[i]f you want to give us bench briefs on the issues before the start of the hearing, please feel free to do that, either party." (Pre-Hearing Conference transcript (PHC) at p. 55). The Pre-Hearing Order does not prescribe any particular date for motions. Since the limitations issue had been raised by Respondent in the

Answer to the Petition and at the Pre-Hearing, and ODC had not had *any* opportunity to provide its position on the issue, our filing was timely and appropriate. Although Respondent does not like our submission on this issue (Respondent's Brief at 3), ODC's brief merely cited to the matters alleged in the Petition in the context of the applicable Board Rule. Those allegations are already public and should come as no surprise. In sum, the filing was proper.

Respondent is correct about one thing, however: that "the truly relevant time period" is from 2015 [2016 in ODC's view] to early 2020," and "...most of the events at issue occurred in the 2016-2020 time period," which were "the critical times." (Respondent's Brief at 2, 11). We agree. This being the case, the ordinary, "garden variety" statute of limitations set forth in Disciplinary Board Rules and Procedures ("Board Rules" or "Rule") 85.10 reflects that the proceeding is timely. Rule 85.10 prohibits *only* consideration of a complaint "arising out of acts or omissions occurring more than four years prior to the date of the complaint...." The time period here fits the time period mandated by the Rule: the events occurred no more than four years before the filing of the disciplinary complaint. Even Respondent appears to concede that this is not a "stale matter" under the Board Rules, stating

that “[t]he Disciplinary Board has held several times [that] the Complaint made, not the Petition for Discipline, is the Complaint” referred to in Rule 85.10. (Respondent’s Brief at 14).

Respondent’s principal argument, instead, is that the case should be dismissed “on the basis of the Doctrine of Laches.” (Respondent’s Brief at 5). Respondent fails, however, to cite an attorney disciplinary case where the matter was dismissed on the ground of laches. Also, Respondent states that “...the Office of Disciplinary Counsel will have to explain” the reasons for what Respondent perceives as a “delay.” (Respondent’s Brief at 11). Not two pages earlier, however, he recognizes that it is *his* burden to demonstrate “unreasonable delay and prejudice.” (Respondent’s Brief at 9, citing ***Commonwealth ex rel. Attorney General v. Griffin***, 946 A.2d 668, 676 (Pa. 2008)). Respondent has failed to carry his burden.

In making his argument that laches has any application here, Respondent is misconstruing the law, in that he is equating “prejudice” with “convenience.” Because he may not have ready access to documents or other evidence, he claims he is prejudiced. This is not the legal meaning of that term. “Prejudice” means that one is *foreclosed* from obtaining evidence, not that one simply must use legal

process to obtain it. In *In re Oxman*, 496 Pa. 534 (1981), cited by Respondent, the Supreme Court declined to dismiss a disciplinary proceeding where Oxman claimed “substantial actual prejudice,” since any delay, “ha[d] not impeded [respondent’s] right to a fair hearing.” *Id.* at 541-42. In *Fulton v. Fulton*, 106 A.3d 127 (Pa.Super. 2014), also cited by Respondent, the court described what constitutes prejudice, which provides a stark contrast to the facts of this matter:

It is well-settled law that the doctrine of laches is applicable peculiarly where the difficulty of doing justice arises through the death of the **principal participants in the transactions complained of, or of the witnesses...to the transactions, or by reason of the original transactions having become so obscured by time as to render the ascertainment of the exact facts impossible.**

(Id. at 134) (emphasis added).

Here, Respondent was the central “player” in the provision of the investor money to Par or, as Dean Vagnozzi put it on his website, Respondent was “pivotal” to the operation of Vagnozzi’s investment business. (ODC-5). No one else played such a central role.

In support of his claim of prejudice, Respondent states that “a key witness, a lawyer” he worked with, is no longer available by reason of death. Respondent gives us no more information than this, not even the name of this person, which provides no basis to respond and gives

us considerable pause as to how important the individual really could be. In fact, Respondent has a robust witness list, which identifies another partner formerly of Eckert Seamans with whom he worked, (Witness List at 3), as well as Dean Vagnozzi, who was his client, and others involved in the underlying events. Respondent himself was deposed on three occasions by the SEC, and once that we are aware of in the civil litigation arising out of these matters, so he has that record. In two of those depositions, he himself was the 30(b)(6) witness for his law firm.

Respondent also complains that he has separated from his law firm and does not have “access to files, etc.” (Respondent’s Brief at 12). Under the Rules governing these proceedings, Respondent has subpoena power to obtain documents. (Pennsylvania Rule of Disciplinary Enforcement 213). To our knowledge, he has made no effort to use that power. There is, in addition, an entire *public* record of both the SEC civil fraud litigation (in which Respondent and many other “players” were deposed), as well as the criminal proceedings in the United States District Court for the Eastern District of Pennsylvania, in which the executives of Par entered guilty pleas and were sentenced. These documents are readily available on Pacer. Indeed,

this is where ODC obtained many of the documents on our Exhibit List. In a disciplinary case cited by Respondent in which the lawyer unsuccessfully sought dismissal on the grounds of laches, the Pennsylvania Supreme Court found that a delay in the proceeding exceeding three years had “not impeded [the lawyer’s] right to a fair hearing.” This was so because, *inter alia*, “...the transcript of the first proceeding was at all times available to the witnesses and was in fact used in the rehearing to refresh recollections where necessary.” *In re Oxman*, *supra*, at 541 n. 8. Indeed, the record in this matter is still being made, as evidenced by an article of July 8, 2025, which reported on the sentencing of Par executive Perry Abbonizio, who cooperated, pleaded guilty and was sentenced to six months in prison. (Inquirer, July 8, 2025, “A former Par Funding financial executive was sentenced to six months in prison for helping perpetrate the massive fraud”).

Respondent also complains that he has not gotten any “discovery” from ODC, but the undersigned has no record of his asking for non-privileged files, let alone being turned down. (Respondent’s Brief at 13). (ODC would be required to turn over any exculpatory material, if we were aware of such). Finally, we suggest that Respondent request any documents he needs from the legal

malpractice lawsuit Dean Vagnozzi filed against Respondent and Eckert Seamans, and subsequently settled for a handsome sum. Since Vagnozzi intends to testify for Respondent, it is entirely likely that he will willingly comply with a subpoena for the documents he collected in that litigation.

In sum, there is no bar to this proceeding, in law or in equity. To hold a separate hearing on this issue and re-present the same issues at the subsequent disciplinary hearing, as Respondent's Brief suggests at page 3, makes no sense based on: 1) the fact that this is not a stale matter under Board Rule 85.10; and 2) the sparse record of alleged prejudice presented in Respondent's Brief. At the Pre-Hearing, Respondent's counsel pronounced the Chair's ruling that the statute of limitations issue be determined on the Hearing record, and not in a pre-trial hearing, "fair," and given the need for the full factual context, it is. (PHC at 56). It is respectfully submitted that the Respondent's position on this issue be rejected.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas Farrell
Chief Disciplinary Counsel

By Amelia C. Kittredge
Amelia C. Kittredge
Disciplinary Counsel

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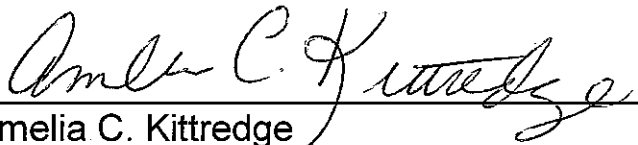
JOHN W. PAUCIULO,

Respondent : (Chester County)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by email the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22.

Dated this 14th day of July, 2025.



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CERTIFICATE OF COMPLIANCE

I 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.

Submitted by: ODC

Signature: 

Name: Amelia C. Kittredge

Attorney No.: 28760