

**Supreme Court of the State of New York**  
**Appellate Division: Second Judicial Department**

D23986  
G/kmg

\_\_\_\_\_AD3d\_\_\_\_\_

A. GAIL PRUDENTI, P.J.  
WILLIAM F. MASTRO  
REINALDO E. RIVERA  
ROBERT A. SPOLZINO  
FRED T. SANTUCCI, JJ.

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2009-00123

OPINION & ORDER

In the Matter of Robert L. Shepherd, an attorney  
and counselor-at-law.

Grievance Committee for the Ninth Judicial District,  
petitioner; Robert L. Shepherd, respondent.

(Attorney Registration No. 1772755)

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Motion by the Grievance Committee for the Ninth Judicial District to strike the respondent's name from the roll of attorneys and counselors-at-law, pursuant to Judiciary Law § 90(4), upon his conviction of a felony. The respondent was admitted to the Bar at a term of the Appellate Division of the Supreme Court in the Second Judicial Department on January 27, 1982.

Gary L. Casella, White Plains, N.Y. (Forrest Strauss of counsel), for petitioner.

Robert L. Shepherd, Fort Lauderdale, Florida, respondent pro se.

PER CURIAM.

On September 18, 2008, the respondent pleaded guilty in the United States District Court for the Southern District of Florida, before the Honorable Donald M. Middlebrooks, to conspiracy to commit an offense against the United States, in violation of 18

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USC § 371, the said offense being, to wit: making materially false statements in a matter within the jurisdiction of the judicial branch of the government, in violation of 18 USC § 1001, both of which are federal felonies.

On December 1, 2008, the respondent was sentenced to a period of probation of 18 months, a fine in the sum of \$3,000, and an assessment in the sum of \$100, along with certain enumerated “special conditions.” On January 9, 2009, the respondent’s sentence was amended to delete the permanent disbarment provision of the original judgment.

As stated by the Court of Appeals in *Matter of Margiotta* (60 NY2d 147, 150):

“The Judiciary Law provides for automatic disbarment when an attorney is convicted of a felony. Under this section, an offense committed in any other State, district or territory of the United States where it is classified as a felony is determined to be a felony when ‘it would constitute a felony in this state.’ (Judiciary Law § 90, subd 4, par e.) For purposes of this determination, the felony in the other jurisdiction need not be a mirror image of the New York felony, precisely corresponding in every detail, but it must have essential similarity.”

In determining whether a foreign felony is “essential[ly] similar” (*id.* at 150) to a New York felony, this Court may consider other factors, including the plea allocution and/or trial record, in making its determination (*see Matter of Woghin*, \_\_\_\_\_AD3d\_\_\_\_\_, 2009 NY Slip Op 03530 [2d Dept 2009]; *Matter of Port*, 57 AD3d 139; *Matter of Ashley*, 263 AD2d 70; *Matter of Fury*, 145 AD2d 259). The plea minutes reveal that the respondent admitted that he falsely told the United States Probation Office that Robert C. Wilson, a federal supervisee, was working for him, knowing, in fact, that Wilson was working for James Gelinas, whom the United States Probation Office would not approve as an employer, as such employment would violate the terms of Wilson's supervision. Further, the respondent took money from Gelinas and Gelinas' company, Arrow Creek, and paid Wilson, pretending Wilson was working for the respondent, when, in fact, Wilson was actually working at Arrow Creek.

The respondent's admitted conduct establishes that he violated 18 USC § 1001 (*see Matter of Hug* (10 AD3d 126). It is well-settled that 18 USC § 1001 is “essential[ly] similar” to New York Penal Law § 175.35, offering a false instrument for filing in the first degree, a class E felony (*see Matter of Chu*, 42 NY2d 490; *Matter of Hug*, 10 AD3d at 126; *Matter of Gottlieb*, 240 AD2d 81; *Matter of Zadan*, 174 AD2d 65; *Matter of Krup*, 136 AD2d 351).

We find no merit to the respondent's contention that he is not subject to the automatic disbarment rule because of the government's failure to specifically charge him with "intent to defraud" (Penal Law § 175.35; *see Matter of Chu*, 42 NY2d at 494). In any event, the respondent admitted at his plea allocution that he committed the acts with intent to deceive.

Pursuant to Judiciary Law § 90(4)(a), the respondent ceased to be an attorney and counselor-at-law upon his conviction of a felony.

By virtue of his federal felony conviction, the respondent was automatically disbarred and ceased to be an attorney pursuant to Judiciary Law § 90(4)(a).

Accordingly, the motion to strike the respondent's name from the roll of attorneys, pursuant to Judiciary Law § 90(4)(b), is granted, effective immediately, to reflect the respondent's disbarment as of December 1, 2008.

PRUDENTI, P.J., MASTRO, RIVERA, SPOLZINO and SANTUCCI JJ., concur.

ORDERED that pursuant to Judiciary Law § 90(4)(a), the respondent, Robert L. Shepherd, is disbarred effective December 1, 2008, and his name is now stricken from the roll of attorneys and counselors-at-law; and it is further,

ORDERED that the respondent, Robert L. Shepherd, shall comply with this Court's rules governing the conduct of disbarred, suspended, and resigned attorneys (*see* 22 NYCRR 691.10); and it is further,

ORDERED that pursuant to Judiciary Law § 90, effective immediately, the respondent, Robert L. Shepherd, is commanded to desist and refrain from (1) practicing law in any form, either as principal or as agent, clerk, or employee of another, (2) appearing as an attorney or counselor-at-law before any court, Judge, Justice, board, commission, or other public authority, (3) giving to another an opinion as to the law or its application or any advice in relation thereto, and (4) holding himself out in any way as an attorney and counselor-at-law; and it is further,

ORDERED that if the respondent, Robert L. Shepherd, has been issued a secure pass by the Office of Court Administration, it shall be returned forthwith to the issuing agency and the respondent shall certify to the same in his affidavit of compliance pursuant to 22 NYCRR 691.10(f).

ENTER:



James Edward Pelzer  
Clerk of the Court