BEFORE THE BOARD OF PROFESSIONAL CONDUCT
OF
THE SUPREME COURT OF OHIO

In re:

Complaint against

Brian Allan Maciak, Esq.
SVP & General Counsel
TBC Corporation
4300 TBC Way
Palm Beach Gardens, FL 33410

Attorney Registration No. (0072793)

Respondent,

Disciplinary Counsel
250 Civic Center Drive, Suite 325
Columbus, Ohio 43215-7411

Relator.

No. 16 - 035

COMPLAINT AND CERTIFICATE

(Rule V of the Supreme Court Rules for the Government of the Bar of Ohio.)

FILED
SEP 08 2016
BOARD OF PROFESSIONAL CONDUCT

Now comes the relator and alleges that Brian Allan Maciak, an Attorney at Law, duly admitted to the practice of law in the state of Ohio, is guilty of the following misconduct:

1. Respondent, Brian Allan Maciak, was admitted to the practice of law in the state of Ohio on November 20, 2000.

2. Respondent is subject to the Rules of Professional Conduct and the Rules for the Government of the Bar of Ohio.

3. Respondent has a record of prior discipline in the following matters:

   (a) By order filed December 3, 2007, the Supreme Court suspended respondent from the practice of law in Ohio for failure to register for the 2007 attorney registration biennium on or before September 1, 2007. *In re Attorney Registration Suspension of*

Brian Allan Maciak, December 4, 2007 Administrative Actions, 2007-Ohio-6463. He was subsequently reinstated to practice effective January 24, 2008. *In re Attorney Registration Suspension of Brian Allan Maciak*, March 27, 2008 Case Announcements, 2008-Ohio-1397.

(b) By order filed December 29, 2011, the Supreme Court suspended respondent from the practice of law in Ohio for failing to comply with continuing legal education requirements. *In re Continuing Legal Education Sanction of Brian Allan Maciak*, December 29, 2011 Administrative Actions, 2011-Ohio-6770. Respondent was subsequently reinstated to practice effective November 25, 2015.

4. Respondent is not admitted to practice of law in any jurisdiction other than the State of Ohio.

5. From November 2000 through October 2015, respondent engaged in the regular practice

COUNT ONE
Unauthorized Practice of Law in Florida

6. In 2009, Respondent moved to Florida. Respondent is not admitted to the practice of law in Florida. Upon moving to Florida, Respondent did not make any inquiry into the actions he was required to take in order to be authorized to practice law in the state of Florida.

7. In 2009, respondent was hired by TBC Corporation in Florida. From approximately April 2009 through October 2015, respondent held the position of Vice President, General Counsel for TBC Retail Group, Inc. in Juno Beach, Florida or the position of Senior Vice President, General Counsel for TBC Corporation in Palm Beach Garden, Florida.

8. As General Counsel for TBC Retail Group, Inc., respondent was responsible for, among other things, hiring and managing outside legal counsel, drafting and negotiating legal documents and assisting with human resources issues. Respondent was also responsible for supervising another attorney and a paralegal.

9. As General Counsel for TBC Corporation, respondent was responsible for, among other things, hiring and managing outside legal counsel, advising regarding the company's intellectual property portfolio worldwide, drafting and negotiating legal documents and assisting with human resources issues. Respondent was also responsible for managing the TBC Corporation legal department, which consisted of three other attorneys and three paralegals.

10. Section 454.23 of the Florida Statues provides that any person not licensed or otherwise authorized to practice law in Florida who practices law or holds himself or herself out to the public as qualified to practice law in Florida, or who willfully pretends to be, or willfully takes or uses any name, title, addition, or description implying that he or she is qualified, or recognized by law as qualified, to practice law in Florida, commits a felony of the third degree.

11. Effective April 21, 1994, the Supreme Court of Florida adopted Chapter 17 of the Rules Regulating the Florida Bar ("RRTFB") to authorize attorneys licensed to practice law in jurisdictions other than Florida to be permitted to undertake specified activities in Florida while exclusively employed by a business organization without the requirement of taking the bar examination. In accordance with Rule 17-1.2(a) of the RRTFB, in order to become an authorized house counsel ("AHC") in Florida, a lawyer who is not licensed to practice law in Florida must (a) be exclusively employed by a business organization

located in the state of Florida, reside or relocate to Florida and receive compensation for activities performed for that business organization; (b) comply with the registration requirements set forth in Rule 17-1.4 for certification as an AHC; and (c) be certified as an AHC by the Supreme Court of Florida.

12. Respondent did not seek certification by the Supreme Court of Florida as an AHC at any time prior to November 25, 2015. He was ultimately certified as an AHC in Florida on December 9, 2015.

13. From approximately April 2009 through October 2015, respondent engaged in the unauthorized practice of law in the state of Florida.

14. As Vice President, General Counsel for TBC Retail Group, Inc. or Senior Vice President, General Counsel for TBC Corporation, respondent hired Steven Victor Miller to work as an attorney at TBC Corporation's offices in Palm Beach Garden, Florida. Mr. Miller, Registration Number 0064935, was admitted to practice law in the State of Ohio on November 13, 1995. Mr. Miller was not admitted to practice law in Florida and was not certified as an AHC in Florida until January 25, 2016. From approximately July 2010 through October 2015, Mr. Miller held the position of Senior Corporate Counsel for TBC Corporation and served on respondent's legal team. From approximately July 2010 through October 2015, respondent supervised Mr. Miller. Mr. Miller engaged in the unauthorized to practice law in the state of Florida from approximately July 2010 through October 2015. From approximately July 2010 through October 2015, respondent failed to take any action to facilitate Mr. Miller securing eligibility to practice law in the state of Florida. From approximately July 2010 through October 2015, respondent failed to take

any action to limit, through supervision, the activities of Mr. Miller so that he was not engaging in the unauthorized practice of law in the state of Florida.

15. As Vice President, General Counsel for TBC Retail Group, Inc. or Senior Vice President, General Counsel for TBC Corporation, respondent hired Douglas Ross Sergent to work as an attorney at TBC Corporation's offices in Palm Beach Garden, Florida. Mr. Sergent, Registration Number 0071151, was admitted to practice law in the State of Ohio on November 8, 1999. Mr. Miller was not admitted to practice law in Florida and was not certified as an AHC in Florida until January 25, 2016. From approximately June 2012 through October 2015, Mr. Sergent held the position of Vice President, Assistant General Counsel for TBC Corporation and served on respondent's legal team. From approximately June 2012 through October 2015, respondent supervised Mr. Sergent. Mr. Sergent engaged in the unauthorized to practice law in the state of Florida from approximately June 2012 through October 2015. From approximately June 2012 through October 2015, respondent failed to take any action to facilitate Mr. Sergent securing eligibility to practice law in the state of Florida. From approximately June 2012 through October 2015, respondent failed to take any action to limit, through supervision, the activities of Mr. Sergent so that he was not engaging in the unauthorized practice of law in the state of Florida.

16. Respondent's conduct, as alleged in Count One of the Complaint in this matter, violates the following provisions of the Ohio Rules of Professional Conduct:

(a) By engaging in the practice of law in the state of Florida, from approximately April 2009 through October 2015, respondent violated Prof. Cond. R. 5.5(a) [A lawyer

shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so];

(b) By ratifying Mr. Miller's violation of the Ohio Rules of Professional Conduct, from approximately July 2010 through October 2015, respondent violated Prof. Cond. R. 5.1(c)(1) [A lawyer shall be responsible for another lawyer's violation of the Ohio Rules of Professional Conduct if the lawyer, with knowledge of the specific conduct, ratifies the conduct];

(c) By ratifying Mr. Sergent's violation of the Ohio Rules of Professional Conduct, from approximately June 2012 through October 2015, respondent violated Prof. Cond. R. 5.1(c)(1) [A lawyer shall be responsible for another lawyer's violation of the Ohio Rules of Professional Conduct if the lawyer, with knowledge of the specific conduct, ratifies the conduct];

(d) By aiding in the unauthorized practice of law by Mr. Miller, from approximately July 2010 through October 2015, respondent violated Prof. Cond. R. 5.5(a) [A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so]; and

(e) By aiding in the unauthorized practice of law by Mr. Sergent, from approximately June 2012 through October 2015, respondent violated Prof. Cond. R. 5.5(a) [A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so].

COUNT TWO
Practicing Under Suspension

17. Respondent failed to register for the 2007 attorney registration biennium on or before September 1, 2007; failed to register for the 2013 attorney registration biennium on or

before September 1, 2013; and failed to register for 2015 attorney registration biennium on or before September 1, 2015.

18. As previously indicated in ¶3(a) above, by order filed December 3, 2007 in Case No. 2007-Ohio-6463, the Supreme Court suspended respondent from the practice of law in Ohio for failure to register for the 2007 attorney registration biennium on or before September 1, 2007. Respondent was served with notice of the Order of Suspension by certified mail at his residence address listed with the Supreme Court's Office of Attorney Services, i.e., 628 Parkside Dr. Avon Lake, OH 44012.

19. By order filed January 24, 2008, the Supreme Court reinstated respondent to the practice of law in Ohio. *In re Attorney Registration Suspension of Brian Allan Maciak*, March 27, 2008 Case Announcements, 2008-Ohio-1397. Respondent was served with notice of the Order of Reinstatement by certified mail at his residence address listed with the Supreme Court's Office of Attorney Services, i.e., 2053 Azalea Trail, Irving, TX 75063.

20. Respondent failed to comply with continuing legal education ("CLE") requirements for the 2007-2008 compliance period. Notice of noncompliance was mailed to respondent at his residence address listed with the Supreme Court's Office of Attorney Services, i.e., 2053 Azalea Trail, Irving, TX 75063.

21. By order filed December 23, 2009, the Supreme Court imposed a monetary sanction of $320.00 on respondent for not completing the requisite CLE hours required by former Gov. Bar R. X(3), not filing a final reporting transcript on or before January 31, 2009, as required by former Gov. Bar R. X(3)(B)(1), and not filing evidence of compliance or coming into compliance as required by former Gov. Bar R. X(6)(B). *In re Continuing Legal Education Sanction of Brian Allan Maciak*, December 28, 2009 Case

Announcements, 2009-Ohio-6833. Respondent was served with notice of the Suspension and Sanction Order by certified mail at his employer address listed with the Supreme Court's Office of Attorney Services, i.e., 823 Donald Ross Road, Juno Beach, FL 33408.

22. The December 23, 2009 Sanction Order further rendered respondent "not in good standing" until such time as respondent complied with this sanction. The Supreme Court received respondent's payment for the $320.00 monetary sanction on October 26, 2015.

23. As of October 27, 2015, respondent's CLE transcript for the 2007-2008 compliance period indicated he completed only 10.25 total hours, including no ethics hours, no professionalism hours and no substance abuse hours.

24. Respondent failed to comply with CLE requirements for the 2009-2010 compliance period. Notice of noncompliance was mailed to respondent at his employer address listed with the Supreme Court's Office of Attorney Services, i.e., 823 Donald Ross Road, Juno Beach, FL 33408.

25. As previously indicated in ¶3(b) above, by order filed December 29, 2011, the Supreme Court suspended respondent from the practice of law in Ohio and imposed a monetary sanction of $680.00 on respondent for not completing the requisite CLE hours required by former Gov. Bar R. X(3), not filing a final reporting transcript on or before January 31, 2011, as required by former Gov. Bar R. X(3)(B)(1), and not filing evidence of compliance or coming into compliance as required by former Gov. Bar R. X(6)(B). *In re Continuing Legal Education Sanction of Brian Allan Maciak*, December 29, 2011 Administrative Actions, 2011-Ohio-6770. Respondent was served with notice of the Suspension and Sanction Order by certified mail at his employer address listed with the

Supreme Court's Office of Attorney Services, i.e., 823 Donald Ross Road, Juno Beach, FL 33408.

26. As of October 27, 2015, respondent's CLE transcript for the 2009-2010 compliance period indicated he completed only 7.00 total hours, including no ethics hours, no professionalism hours and no substance abuse hours.

27. Respondent failed to comply with CLE requirements for the 2011-2012 compliance period.

28. As of October 27, 2015, respondent's CLE transcript for the 2011-2012 compliance period indicated he completed 30.50 total hours, including 2.0 ethics hours, no professionalism hours and no substance abuse hours.

29. Respondent failed to comply with CLE requirements for the 2013-2014 compliance period.

30. As of October 27, 2015, respondent's CLE transcript for the 2013-2014 compliance period indicated he completed 9.75 total hours, including no ethics hours, no professionalism hours and no substance abuse hours.

31. As of October 27, 2015, respondent's CLE transcript for the then current 2015-2016 compliance period indicated he completed no hours.

32. As previously indicated in ¶7 above, from approximately April 2009 through October 2015, respondent held the position of Vice President, General Counsel for TBC Retail Group, Inc. in Juno Beach, Florida or the position of Senior Vice President, General Counsel for TBC Corporation in Palm Beach Garden, Florida.

33. Respondent did not notify TBC Corporation of his December 29, 2011 suspension from the practice of law until after relator's investigation commenced in October 2015.

34. Respondent's conduct, as alleged in Count Two of the Complaint in this matter, violates the following provisions of the Ohio Rules of Professional Conduct:

(a) By engaging in the practice of law after he was suspended from the practice of law by the Supreme Court of Ohio on December 3, 2007, respondent violated Prof. Cond. R. 5.5(a) [a lawyer shall not practice law in a jurisdiction in violation of the regulation of the practice of law in that jurisdiction];

(b) By engaging in the practice of law after he was suspended from the practice of law by the Supreme Court of Ohio on December 29, 2011, respondent violated Prof. Cond. R. 5.5(a) [a lawyer shall not practice law in a jurisdiction in violation of the regulation of the practice of law in that jurisdiction];

(c) By failing to notify TBC Corporation of his suspension from the practice of law and consequent disqualification from continued representation of TBC Corporation, until after relator's investigation commenced in October 2015, respondent violated Prof. Cond. R. 1.4(a)(3) [a lawyer shall keep the client reasonably informed about the status of the client's matter]; and

(d) By continuing to represent TBC Corporation after his suspension from the practice of law, respondent violated Prof. Cond. R. 1.16(a)(1) [a lawyer shall not represent a client if the representation will result in violation of the Ohio Rules of Professional Conduct].

COUNT THREE
Investigation by Relator

35. As previously indicated in ¶7 above, from approximately April 2009 through October 2015, respondent held the position of Vice President, General Counsel for TBC Retail

Group, Inc. in Juno Beach, Florida or the position of Senior Vice President, General Counsel for TBC Corporation in Palm Beach Garden, Florida.

36. As previously indicated in ¶¶20-30 above, respondent failed to comply with CLE requirements for the 2009-2010, 2011-2012 and 2013-2014 compliance periods; the Supreme Court imposed a monetary sanction on respondent and rendered respondent "not in good standing" by order filed December 23, 2009; and the Supreme Court suspended respondent from the practice of law in Ohio by order filed December 29, 2011.

37. Records of the Office of Attorney Services reflect that respondent called the Office of Attorney Services on February 10, 2012 to inquire about his suspension from the practice of law in Ohio and how to remediate it.

38. Records of the Office of Attorney Services reflect that respondent logged onto the Attorney Services portal multiple times during the above-detailed periods of noncompliance, sanction and suspension:

(a) On August 28, 2009, respondent logged on at 12:31 PM, viewed his CLE transcript at 12:31 PM, edited his attorney information from 12:31 PM to 12:33 PM, began registration at 12:35 PM, and submitted payment for registration at 12:35 PM.

(b) On August 31, 2011, respondent logged on at 6:29 PM, began registration at 6:31 PM, and submitted payment for registration at 6:31 PM.

(c) On October 22, 2013, responded logged on at 2:01 PM, began registration at 2:02 PM, submitted payment for registration at 2:03 PM, and edited his attorney information at 2:04 PM.

(d) On October 22, 2013, responded logged on again at 2:06 PM and viewed his CLE transcript at 2:06 PM.

39. The Home screen of the Attorney Services portal contains a notification box if an attorney is currently suspended from the practice of law. The Home screen of the Attorney Services portal also indicates whether the attorney has or has not met his CLE requirements.

40. On February 16, 2015, Jeffrey Picker, Bar Counsel, UPL Department of The Florida Bar, sent a letter to respondent regarding his unauthorized practice of law in Florida. Mr. Picker's February 16, 2015 letter advised respondent that "[i]n order to work as General Counsel for a company in Florida, an attorney must be a member of The Florida Bar or certified as an [authorized house counsel ("AHC")]." Upon receiving Mr. Picker's February 16, 2015 letter, respondent called Mr. Picker. Within a few days of this telephone conversation with Mr. Picker, respondent reviewed the application for AHC and understood that the AHC application required a certificate of good standing from Ohio.

41. Respondent did not log onto the Attorney Services portal between receiving Mr. Picker's February 16, 2015 letter and October 26, 2015.

42. On October 19, 2015, relator sent a Letter of Inquiry to respondent by certified mail at his employer address listed with the Supreme Court's Office of Attorney Services, i.e., 4300 TBC Way, Palm Beach Gardens, FL 33410. In its Letter of Inquiry, relator asked respondent to provide a written response to the allegations that he had engaged, and was continuing to engage, in the unauthorized practice of law in Florida. In its Letter of Inquiry, relator also asked respondent to provide a written response to various specific questions.

43. On November 10, 2015, respondent's counsel responded to relator's October 19, 2015 Letter of Inquiry.

44. On November 23, 2015, relator sent a letter to respondent's counsel, asking respondent provide a written response to various additional questions.

45. On January 15, 2016, respondent's counsel responded to relator's November 23, 2015 letter.

46. On February 26, 2016, relator sent a letter to respondent's counsel, asking respondent provide a written response to various additional questions.

47. On March 11, 2016, respondent's counsel responded to relator's February 26, 2016 letter.

48. After relator agreed to pay for respondent's air travel, respondent agreed to appear at a deposition at relator's office on May 3, 2016.

49. In his responses to relator and during his deposition testimony, respondent made false statements to relator, including but not limited to:

(a) He was unaware of his 2011 CLE suspension until he received relator's October 19, 2015 letter;

(b) He received no notification of his non-compliance with CLE requirements;

(c) He had no reason to know that he was suspended from the practice of law in Ohio; and

(d) He was not aware that his CLE transcript was available online;

50. Respondent's conduct, as alleged in Count Three of the Complaint in this matter, violates the following provisions of the Ohio Rules of Professional Conduct and the Supreme Court Rules for the Government of the Bar of Ohio:

(a) By continuing to engage in the practice of law from January 2012 until October 2015, respondent engaged in egregious conduct that adversely reflects upon his fitness to practice law in violation of Prof. Cond. R. 8.4(h);

(b) By making false statements or failing to disclose information to relator in connection with its disciplinary investigation of the allegations contained in this Complaint, respondent violated Prof. Cond. R. 8.1(b);

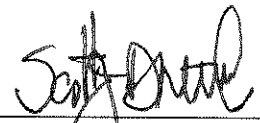
(c) By making false statements or failing to disclose information to relator in connection with its disciplinary investigation of the allegations contained in this Complaint, respondent violated Prof. Cond. R. 8.4(c) [it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation];

(d) By making false statements or failing to disclose information to relator in connection with its disciplinary investigation of the allegations contained in this Complaint, respondent engaged in egregious conduct that adversely reflects upon his fitness to practice law in violation of Prof. Cond. R. 8.4(h); and

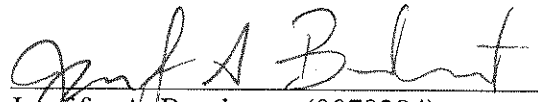
(e) By neglecting or refusing to assist in relator's disciplinary investigation of the allegations contained in this Complaint, respondent violated Gov. Bar R. V(9)(G).

CONCLUSION

Wherefore, pursuant to Gov. Bar R. V and the Rules of Professional Conduct, relator alleges that respondent is chargeable with misconduct; therefore, relator requests that respondent be disciplined pursuant to Rule V of the Rules of the Government of the Bar of Ohio.



Scott J. Drexel (0091467)
Disciplinary Counsel



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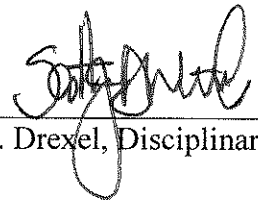
CERTIFICATE

The undersigned, Scott J. Drexel, Disciplinary Counsel, of the Office of Disciplinary Counsel of the Supreme Court of Ohio hereby certifies that Jennifer A. Bondurant is duly authorized to represent relator in the premises and has accepted the responsibility of prosecuting the complaint to its conclusion. After investigation, relator believes reasonable cause exists to warrant a hearing on such complaint.

Dated: September 8, 2016



Scott J. Drexel, Disciplinary Counsel