

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1507 Disciplinary Docket No. 3
: :
Petitioner : 104 DB 2009
: :
v. : Attorney Registration No. 57360
: :
ROBERT TOLAND, II, : (Chester County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 20th day of November, 2014, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated September 3, 2014, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Robert Toland, II, is suspended on consent from the Bar of this Commonwealth for a period of three years retroactive to November 30, 2007, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola
As Of 11/20/2014

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

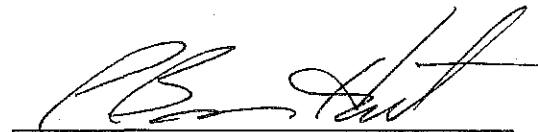
OFFICE OF DISCIPLINARY COUNSEL : No. 1507 Disciplinary Docket No. 3
Petitioner :
 : No. 104 DB 2009
v. :
 : Attorney Registration No. 57360
ROBERT TOLAND, II :
Respondent : (Chester County)

RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members P. Brennan Hart, R. Burke McLemore, Jr., and Lawrence M. Kelly, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on August 4, 2014.

The Panel approves the Joint Petition consenting to a three year suspension retroactive to November 30, 2007 and recommends to the Supreme Court of Pennsylvania that the attached Petition be granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.



P. Brennan Hart, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date:

9/3/2014

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : *No. 1507 DD 3*
Petitioner :
: No. 104 DB 2009
v. :
: Atty. Reg. No. 57360
ROBERT TOLAND, II :
Respondent : (Chester County)

**JOINT PETITION IN SUPPORT
OF DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215 (d)**

Petitioner, the Office of Disciplinary Counsel (hereinafter, "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Bruce H. Bikin, Disciplinary Counsel, and Respondent, Robert Toland II, (hereinafter, "Respondent"), respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

1. ODC, whose principal office is situated at the Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all

FILED

AUG - 4 2014

Office of the Secretary
The Disciplinary Board of the
Supreme Court of Pennsylvania

disciplinary proceedings brought in accordance with the various provisions of the aforesaid Enforcement Rules.

2. Respondent, Robert Toland II, was born on March 8, 1960, and was admitted to practice law in the Commonwealth on December 8, 1989. Respondent's law license is currently suspended. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent's affidavit stating, *inter alia*, he consents to the recommended discipline is attached hereto as Exhibit A.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

Criminal History

4. Respondent was arrested in 1982 and 1992 for Driving Under the Influence ("DUI") and received Accelerated Rehabilitative Disposition (ARD) in both matters.

5. On February 17, 1998 Respondent pled guilty to DUI in a negotiated plea.

6. On December 19, 2002, Respondent was arrested and charged with Driving while having a blood alcohol level of .08% (now repealed) pursuant to 75 Pa C.S. § 3731 and other offenses. The other offenses were nolle prossed and

Respondent pled guilty to Driving while having a blood alcohol level of .08% (now repealed) pursuant to 75 Pa C.S. § 3731.

7. Pursuant to Respondent's guilty plea on April 9, 2003, Respondent was sentenced to two (2) days in prison and 1 year of probation, 80 hours of community service, a \$300 fine and a variety of assessments and treatments for possible alcohol-related issues.

8. Subsequently, Respondent was arrested for a DUI on September 14, 2006, in Delaware County, Pa. He was convicted on October 24, 2008 in Com. v. Robert Toland II, CP-23-CR-0008633-2007 of DUI: Highest Rate of Alcohol, 1st Offense, pursuant to 75 Pa C.S. § 3802 (c).

9. Respondent was sentenced to 12 to 24 months and fined \$2,500.00. Other conditions of his sentence included attending and successfully completing Alcohol Highway Safety School and undergoing Court Reporting Network (CRN) Evaluation.

10. Respondent began his prison sentence on January 17, 2009.

11. On January 17, 2011, Respondent was paroled from prison and placed on probation for three years.

12. On September 26, 2011, while on parole and probation from imprisonment for his October 24, 2008 conviction for DUI, Respondent was arrested for DUI in Delaware County, Pa. On October 7, 2011, he was returned to prison for violation of his probation for the October 24, 2008 conviction.

13. On February 28, 2012, Respondent pled guilty and was convicted in Com. v. Robert Toland II, CP-23-CR-0006941-2011 of DUI: Highest Rate of Alcohol, 3rd Offense, 75 Pa C.S. § 3802 (c).

14. Respondent was sentenced to a minimum of 14 months and a maximum of 36 months confinement for his February 28, 2012 conviction. Further, Respondent was to undergo psychiatric evaluation, undergo psychological evaluation, pay a \$300 mandatory cost assessed pursuant to the Substance Education and Demand Reduction Fund, comply with general DUI Rules and Regulations governing probation and parole, and comply with directives of the Court to continue any substance abuse programs, pay a fine of \$2,500.00, and be in the probation system for two years. Respondent was also sentenced to five (5) years of consecutive probation to follow this sentence for the

violation of his probation from the October 24, 2008 conviction.

15. On January 24, 2013, Respondent was paroled from prison and placed on probation.

16. In 1999, Respondent received a private reprimand as a result of a 1997 conviction for driving under the influence of alcohol.

17. On October 22, 2004, Respondent received a two year stayed suspension and was placed on probation as a result of Respondent's April 9, 2003 conviction.

18. One of the conditions of the Respondent's probation was that he "shall abstain from using alcohol or any other mind altering chemical."

19. On several occasions between June 3, 2005, and September 8, 2006, Respondent failed to meet with the Board-appointed Sobriety Monitor and appeared to be under the influence of alcohol or other mind altering drug during a telephone conversation with the Board-appointed Monitor. These were specific violations of the terms and conditions of Respondent's probation.

20. As a result of Respondent's violations of the terms of his probation, Respondent's disciplinary probation was revoked on consent and he was suspended for one year

and one day by Order of the Supreme Court of Pennsylvania, November 28, 2006. The term of that discipline ended on November 29, 2007.

21. Respondent has not filed a Petition for Reinstatement from the November 28, 2006 suspension and his law license remains suspended.

22. This Consent Petition concerns Respondent's 2012 conviction for DUI. He was sentenced to 12-24 months on February 28, 2012. Respondent was paroled on January 24, 2013. Disciplinary matter C2-08-1121 was instituted as a result of the 2012 conviction.

23. Respondent believes has finally "hit bottom" and gotten into recovery. He has been sober and has not consumed any alcohol since he was imprisoned on October 7, 2011, more than two years ago. More significantly, Respondent has not consumed any alcohol during the more than one year since his release from prison.

24. Respondent attends meetings in Alcoholics Anonymous (AA) regularly and has a sponsor in the program (Jim B.) who has more than 30 years of sobriety.

25. Respondent was one of the five founding editors of the Villanova Environmental Law Journal while in law school. He clerked for a federal judge, the Honorable

Herbert J. Hutton, after graduation and then practiced environmental and product liability law at the Philadelphia law firm of White and Williams where he founded the Appellate Practice Group. Respondent subsequently left White and Williams with several other partners to form the law firm Campbell, Campbell, Edwards & Conroy where he was a member of the Board of Directors. His focus on appellate practice allowed him to become a successful appellate practitioner in Pennsylvania.

26. Respondent believes his activities while in prison demonstrate his commitment to the law and using the law to help others. While in the Delaware County Prison (the George W. Hill Correctional Facility), Respondent worked in the law library and helped other inmates with a variety of legal matters, ranging from the criminal charges they were facing to domestic relations disputes. He helped one inmate with an immigration/deportation matter.

27. Respondent wrote several booklets to assist inmates, including *The Phases of a Criminal Trial* (2012) and *The Pennsylvania Sentencing Guidelines: A How-to Manual* (2012). Respondent tutored inmates seeking their GED while in prison and completed the Thresholds program. (Copies of

the booklets and certificates are attached hereto as Exhibit B.)

28. After being transferred to the State Correctional System (SCI Chester), Respondent was enrolled in and completed the "Six Month Inpatient- Therapeutic Community Program" (by Gaudenzia) which is designed to assist inmates remain clean and sober when released from prison. (A copy of the certificate is attached as Exhibit C.)

29. Since being released from prison in January, 2013, Respondent has invested significant time in helping other alcoholics get into sobriety. On February 11, 2014, Respondent engaged in a one-on-one intervention (referred to as a "twelfth step" in AA parlance) with an alcoholic - who was also an attorney licensed in Pennsylvania - to get her into an in-patient treatment facility. He continues working with her family and the result at the present time is not clear.

30. Prior to his 2011 DUI, Respondent had (a) been to several in-patient treatment facilities for more than a year; (b) engaged in several years of one-on-one and group treatment with other attorneys suffering from addictive disease with a psychiatrist who specializes in such treatments (Richard F. Limoges, M.D.); (c) been in prison

and undergone a program of recovery from alcohol addiction; and (d) regularly attended AA meetings. None of these attempts to escape the grip of alcohol was effective because Respondent had not "hit bottom" and was not yet ready for recovery. Nonetheless, he learned a great deal about addiction from these programs and counseling. Respondent regrets he did not reach his bottom years earlier.

31. By way of further mitigation, Respondent believes that he has learned a great deal from his time in prison and from his subsequent efforts at rehabilitation and staying sober. He believes the lessons he has learned will aid him in avoiding further problems with alcohol and that he will not engage in this conduct in the future.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED**

32. By his conduct alleged in paragraphs 4 through 27, Respondent violated the following Rule of Professional Conduct and Rule of Disciplinary Enforcement:

RPC 8.4(b) and Pa. R. D. E. 203(b)(1).

SPECIFIC RECOMMENDATION FOR DISCIPLINE OF ROBERT TOLAND II

As with all matters predicated on a criminal conviction, "the issue before the Board is the extent of

discipline to be imposed on Respondent." Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1193 (Pa., 1982). As the Court wrote in Office of Disciplinary Counsel v. Troback, 477 Pa. 318, 320, 383 A.2d 952 (Pa., 1978), it is the Court's duty to "weigh the impact of the conviction upon the measure of discipline."

Respondent herein received a two year suspension that was stayed on October 22, 2004, as a result of Respondent's April 9, 2003 conviction for DUI. Prior to the expiration of that stayed suspension, Respondent was arrested for another DUI violation on September 14, 2006, in Delaware County, Pa. for which he was convicted on October 24, 2008.

Pursuant to disciplinary action taken as a result of Respondent's September 14, 2006 arrest for DUI (for which he was convicted on October 24, 2008), Respondent's disciplinary probation was revoked and he was suspended for one year and one day by Order of the Supreme Court of Pennsylvania, November 28, 2006. The term of that discipline ended on November 29, 2007. However, Respondent has not filed a Petition for Reinstatement and his law license remains suspended. Respondent was then arrested once more and charged with DUI in 2011, while still on

probation from his 2008 conviction. He was convicted in 2012 and in prison until January 24, 2013.

In Office of Disciplinary Counsel v. Kimberly Neeb, 68 DB 2006 (Pa. 2006), Neeb was arrested on two occasions within a six month period of time and charged with DUI. She was convicted of both DUI charges and sentenced to one year supervised probation for the first conviction and six months of Intermediate Punishment of supervised probation for the second conviction. When Neeb violated her probation on multiple occasions, she was sentenced to serve six months imprisonment.

The Supreme Court accepted the Joint Petition on Consent and recommendation of the Disciplinary Board based thereon and imposed a suspension of one year and one day. The October 13, 2006 Order of suspension was made retroactive to June 14, 2006.

In Office of Disciplinary Counsel v. Gary C. Hoicker, 53 DB 2009 (Pa., 2010), Respondent was convicted in Delaware County of driving under the influence of alcohol and a controlled substance (cocaine) and recklessly endangering another person. The DUI conviction was Respondent's second conviction for DUI. Respondent was also convicted in Montgomery County of the summary offense

of harassment. Respondent had a history of prior discipline consisting of a private reprimand and two years' probation with sobriety conditions for his first DUI conviction with Respondent successfully completing the probation. Respondent received Braun mitigation in connection with his prior discipline for DUI and established through an expert report that the Braun mitigation should be extended to this conviction for DUI as well. Respondent received a two year suspension, stayed in full with probation for 2 1/2 years with conditions.

In Office of Disciplinary Counsel v. Mark Eugene Johnston, 169 DB 2002, 69 DB 200, & 89 DB 2003 (Pa. 2005), Johnston was arrested on two occasions within a six month period of time and charged with DUI. He was subsequently arrested on a third DUI charge within the following two years. Three separate Petitions for Discipline were filed and by Order of the Disciplinary Board dated December 2, 2003, the three Petitions for Discipline were consolidated. Of the nine separate charges of professional misconduct contained in the three Petitions, five involved convictions of crimes and/or related summary offenses, one involved a violation of probation, one involved a false application for the Accelerated Rehabilitative Disposition program, and

two involved failure to report criminal convictions to the Disciplinary Board. Respondent filed Answers to all of the Petitions.

Johnston presented no mitigating factors, other than the fact he had no history of prior discipline. While Johnston testified that much of his misconduct was attributable to alcoholism, he failed to corroborate this representation with other evidence, nor did he offer any expert testimony on the subject. The Board found that Johnston did not establish that his alcoholism caused his misconduct, and that he was not entitled to mitigation. Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989).

"Respondent's multiple convictions and related actions can only be described as egregious in quantity and quality. Respondent has demonstrated a blatant disregard for the laws of this Commonwealth and the rules and regulations of the legal profession." "There is a clear need to impose a sanction that will protect the public and maintain the integrity of the bar." Office of Disciplinary Counsel v. Mark Eugene Johnston, 160 DB 2002, 69 DB 2003 & 89 DB 2003 (Pa. 2005). Although the Disciplinary Board recommended a

two year suspension, the Court imposed a three year suspension.

The above cited disciplinary matters are the most similar to the instant case in that there was a history of repetitive DUI convictions over a short or overlapping time frame. Respondent Toland also had overlapping convictions for DUI and had discipline imposed for the first of those convictions. That initial suspension remains in place (from 2006) while the nature and extent of Respondent's discipline for the second conviction is being considered herein.

Respondent's law license has been suspended for over seven (7) years, well in excess of any of the comparable cases cited above. Some of that time Respondent has spent in prison as a result of his DUI convictions. However, he was released from prison on January 24, 2013, and has been "clean and sober" for over a year since his release.

Though Respondent has not offered any Braun mitigation evidence, he has provided substantial indication though his actions while in prison and subsequent to his release that he not only appreciates the nature and quality of his actions that led to his suspension, but has taken

affirmative steps to wrest control of his life from his addiction to alcohol.


WHEREFORE, Joint Petitioners respectfully pray that your Honorable Board:

- a. Approve this Petition; and
- b. File a recommendation for a three year suspension, retroactive to November 30, 2007, and this Petition with the Supreme Court of Pennsylvania.

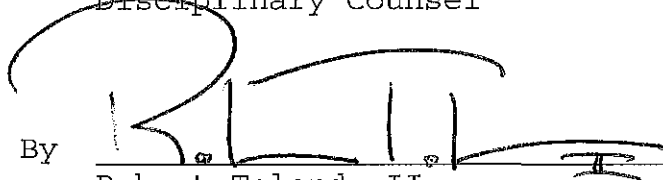
Respectfully and jointly submitted,
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

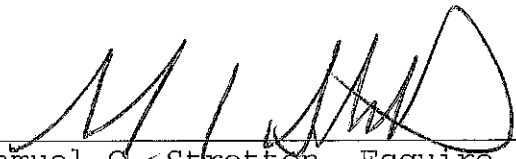
Date: July 13, 2014

By 
Bruce H. Bikin
Disciplinary Counsel

Date: 7/31/14

By 
Robert Toland, II
Respondent

Date: 7/24/14

By 
Samuel C. Stretton, Esquire
Counsel for Respondent

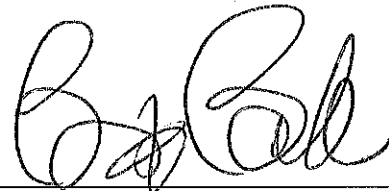
BEFORE THE DISCIPLINARY BOARD OF THE
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ROBERT TOLAND, II :
Respondent : (Chester County)

VERIFICATION

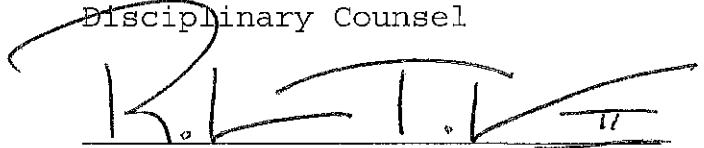
The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Pursuant to P.A.R.D.E. 215(d)* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

Date: July 23, 2014



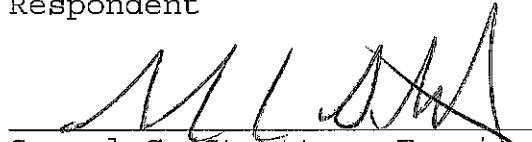
Bruce H. Bikin
Disciplinary Counsel

Date: 7/31/14



Robert Toland, II
Respondent

Date: 7/24/14



Samuel C. Stretton, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 104 DB 2009
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ROBERT TOLAND, II :
Respondent : (Chester County)

AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

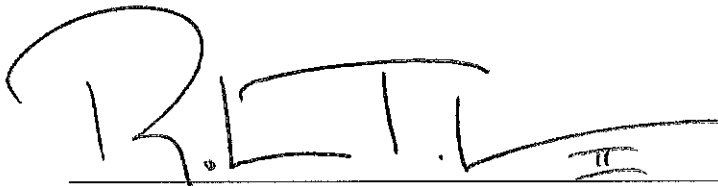
Respondent, Robert Toland, II, hereby states that he consents to the imposition of a suspension of three (3) years, retroactive to November 30, 2007, jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition in Support of Discipline on Consent and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted with Samuel C. Stretton, Esquire, in connection with the decision to consent to discipline;

2. He is aware that there is presently pending a disciplinary proceeding at No. 104 DB 2009 involving allegations that he has been guilty of misconduct as set forth in the Joint Petition;

3. He acknowledges that the material facts set forth in the Joint Petition are true; and

4. He consents because he knows that if the charges pending at No. 104 DB 2013 continued to be prosecuted, he could not successfully defend against them.



Robert Toland, II, Esquire
Respondent

Sworn to and subscribed

before me this 31

day of July, 2014.



Notary Public

