

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1519 Disciplinary Docket No. 3
Petitioner :
 : No. 108 DB 2009
v. :
 : Attorney Registration No. 34269
MICHAEL JOSEPH PANICHELLI, :
Respondent : (Philadelphia)

ORDER

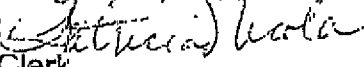
PEIR CURIAM:

AND NOW, this 31st day of August, 2009, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated July 29, 2009, 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 Michael Joseph Panichelli is suspended on consent from the Bar of this Commonwealth for a period of eighteen months and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola

As of: August 31, 2009

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

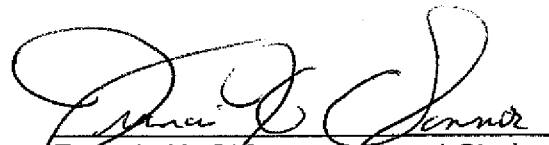
OFFICE OF DISCIPLINARY COUNSEL : No. 108 DB 2009
Petitioner :
v. : Attorney Registration No. 34269
MICHAEL JOSEPH PANICHELLI :
Respondent : (Philadelphia)

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 Francis X. O'Connor, Stephan K. Todd and Mark S. Baer, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on July 15, 2009.

The Panel approves the Joint Petition consenting to an 18 month suspension 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.


Francis X. O'Connor, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: July 29, 2009

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : 108 DB 2009
Petitioner :
v. : File No. C1-08-1035
MICHAEL JOSEPH PANICHELLI, :
Respondent : Atty. Reg. No. 34269
: (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and Harriet R. Brumberg, Disciplinary Counsel, and by Respondent, Michael Joseph Panichelli, and Samuel D. Miller, III, Esquire, attorney for Respondent, file this Joint Petition In Support of Discipline on Consent under Pennsylvania Rule of Disciplinary Enforcement (Pa.R.D.E.) 215(d), and respectfully represent that:

I. BACKGROUND

1. ODC, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."), with the power and

FILED

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

duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Michael Joseph Panichelli, was born on July 8, 1952, and was admitted to practice law in the Commonwealth of Pennsylvania on October 26, 1981.

3. At all relevant times, Respondent maintained an office for the practice of law at Marshall, Dennehey, Warner, Coleman & Goggin, PC (Marshall, Dennehey), 1845 Walnut Street, Philadelphia, PA 19103.

4. Respondent, who is currently on CLE inactive status, is subject to the jurisdiction of the Disciplinary Board of the Supreme Court. Pa.R.D.E. 201(a)(3).

II. FACTUAL ADMISSIONS AND VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT

5. Respondent specifically admits to the truth of the factual allegations and conclusions of law contained in paragraphs 1 through 23.

6. From July 2004 until November 7, 2008, Respondent was a shareholder in the law firm of Marshall, Dennehey, assigned to the firm's Professional Liability Department.

7. As a result of Respondent's failure to take continuing legal education as required by Pa.C.L.E. 105(a)(3), the Supreme Court ordered that Respondent be placed on inactive status:

- a. from January 12, 2005, through July 1, 2005;
and
- b. from August 26, 2006, through November 3, 2008.

8. Respondent received notice that he had been transferred to inactive status:

- a. effective January 12, 2005; and
- b. effective August 26, 2006.

9. Respondent failed to file a verified statement of compliance within ten days after the effective date of Respondent's transfer to inactive status, as required by Pa.R.D.E. 217(e).

10. Respondent failed to notify Respondent's law firm and clients that Respondent was transferred to inactive status and ineligible to practice law.

11. As a shareholder of Marshall, Dennehey, during the time period January 12, 2005 through July 1, 2005, and the time period August 26, 2006 through November 3, 2008, Respondent handled:

- a. forty-one Pennsylvania Superior Court cases;
- b. three Pennsylvania Commonwealth Court cases;
- c. thirteen Pennsylvania Supreme Court cases;
- d. fourteen Third Circuit Court of Appeals cases; and
- e. two United States District Court for the Eastern District of Pennsylvania cases.

12. In the above-listed cases, Respondent:

- a. filed legal pleadings and briefs;
- b. corresponded with the court;
- c. met with or spoke to clients;
- d. gave clients legal advice; and
- e. met with or spoke to third parties on behalf of clients.

13. Respondent practiced law in Pennsylvania in violation of the regulation of the legal profession in Pennsylvania.

14. On or about November 3, 2008, following Marshall, Dennehey's discovery that Respondent was on inactive status, Marshall, Dennehey withdrew Respondent's entry of appearance on twenty-seven active Pennsylvania cases.

15. As a shareholder of Marshall, Dennehey, during the time period January 12, 2005 through July 1, 2005, and the time period August 26, 2006 through November 3, 2008,

Respondent assisted Marshall, Dennehey's trial attorneys in 319 legal matters, including providing legal research, assistance in drafting legal pleadings, and assistance in drafting substantive motions.

- a. Respondent failed to practice law under the direct supervision of a member in good standing of the Pennsylvania Bar who was responsible for ensuring that Respondent complied with Pa.R.D.E. 217(j); and
- b. Respondent failed to file a Notice of Employment with the Disciplinary Board identifying Respondent's supervising attorney and certifying that Respondent activities would be monitored for compliance with Pa.R.D.E. 217(j).

16. Respondent made a false communication about himself or failed to act to prevent a false statement about himself in that while Respondent was on inactive status, Respondent was listed as an active bar member on Marshall, Dennehey's Internet web site.

17. By his conduct, Respondent violated the following Rules of Professional Conduct:

- a. RPC 5.5(a), which states that 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. RPC 7.1, which states that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;
- c. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice;
- d. Pa.R.D.E. 203(b)(3), which states that it is grounds for discipline for a lawyer to willfully violate any other provision of the Enforcement Rules, via former Pa.R.D.E. 217(a), which states that a formerly

admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension or transfer to inactive status and shall advise said clients to seek legal advice elsewhere;

- e. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 217(b), which states that a formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings, and the attorney or attorneys for each

adverse party in such matter or proceeding, of the disbarment, suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension or transfer to inactive status. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney. In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension or transfer to inactive status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is pending for leave to withdraw. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the formerly admitted attorney;

- f. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 217(c)(1), which states that a formerly

admitted attorney shall promptly notify, or cause to be notified... of the transfer to inactive status..., by registered or certified mail, return receipt requested, all persons or their agents or guardians to whom a fiduciary duty is or may be owed at any time after the transfer to inactive status;

g. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 217(c)(2), which states that a formerly admitted attorney shall promptly notify, or cause to be notified, of the... transfer to inactive status, by registered or certified mail, return receipt requested, all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing;

h. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 217(d), which states that Orders imposing

suspension, disbarment or transfer to inactive status shall be effective 30 days after entry. The formerly admitted attorney, after entry of the disbarment, suspension or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date the formerly admitted attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date;

- i. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 217(e), which states that within ten days after the effective date of the... transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing: (1) that the provisions of the order and these rules have been fully complied with; and (2) all other state and federal and administrative

jurisdictions to which such person is admitted to practice. Such statement shall also set forth the residence and other address of the formerly admitted attorney where communications to such person may thereafter be directed;

- j. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 217(j)(1), which states that a formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements: All law-related activities of the formerly admitted attorney shall be conducted under the direct supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this subdivision (j). If the formerly admitted attorney is employed by a law firm, an attorney of the firm shall be designated by the firm as the supervising attorney for purposes of this subdivision;

k. Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(j)(1), which states that a formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements: All law-related activities of the formerly admitted attorney shall be conducted under the supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this subdivision (j). If the formerly admitted attorney is engaged by a law firm or other organization providing legal services, whether by employment or other relationship, an attorney of the firm or organization shall be designated by the firm or organization as the supervising attorney for purposes of this subdivision;

1. Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(j)(2), which states that for purposes of this

subdivision (j), the only law-related activities that may be conducted by a formerly admitted attorney are the following: (i) legal work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents; (ii) direct communication with the client or third parties to the extent permitted by paragraph (3); and (iii) accompanying a member in good standing of the Bar of this Commonwealth to a deposition or other discovery matter or to a meeting regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client;

- m. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 217(j)(3), which states that a formerly admitted attorney may not engage in any form

of law-related activities in this Commonwealth except in accordance with the following requirements: A formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney;

- n. Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(j)(3), which states that a formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements: A formerly admitted attorney may have direct communication with a client

or third party regarding a matter being handled by the attorney, organization or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney;

- o. Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(j)(4), which states that without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (iv) representing himself or herself as a lawyer or person of similar status; (v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph

(3); (vi) rendering legal consultation or advice to a client; and (vii) appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body; and

p. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 217(j)(5), which states that the supervising attorney and the formerly admitted attorney shall file with the Disciplinary Board a notice of employment, identifying the supervising attorney, certifying that the formerly admitted attorney has been employed and that the formerly admitted attorney's activities will be monitored for compliance with this subdivision (j). The supervising attorney and the formerly admitted attorney shall file a notice with the Disciplinary Board immediately upon the termination of the employment of the formerly admitted attorney; and

q. Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(j)(5), which states that the supervising attorney and the formerly admitted attorney shall file with the Disciplinary Board a notice of engagement, identifying the supervising attorney and certifying that the formerly admitted attorney's activities will be monitored for compliance with this subdivision (j). The supervising attorney and the formerly admitted attorney shall file a notice with the Disciplinary Board immediately upon the termination of the engagement between the formerly admitted attorney and the supervising attorney.

III. JOINT RECOMMENDATION FOR DISCIPLINE

18. Discipline imposed for an attorney's unauthorized practice of law generally ranges from a three-month suspension to a two-year suspension. *In re Ferleger*, 78 Pa. D.&C. 4th 437, 446 (2005). Attorneys who handle many client matters while on inactive status often receive greater discipline than attorneys who handle few client matters while on inactive status. Compare *Office of Disciplinary Counsel v. Buffington*, 45 DB 2004, D.Bd. Rpt. 6/22/2005 (S.Ct. Order 9/20/2006) (attorney received six-

month suspension for handling three client matters and appearing as arbitrator while on inactive status), with *Office of Disciplinary Counsel v. Gustee Brown*, 71 Pa. D.&C.4th 99 (2004) (public defender who represented 120 defendants while on inactive status received a suspension of one year and one day) and *Office of Disciplinary Counsel v. John F. Egan*, No. 175 DB 2007, D.Bd. Rpt. 1/11/08 (S.Ct. Order 5/8/2008) (attorney who engaged in the unauthorized practice of law during a seven-year period, including litigating matters before the Philadelphia Court of Common Pleas, Zoning Board of Adjustment, and federal district court, received an eighteen-month suspension on consent).

Attorneys who engage in misconduct in addition to the unauthorized practice of law may receive greater discipline. See, e.g., *Office of Disciplinary Counsel v. Stephen W. Simpson*, No. 6 DB 2004, D.Bd. Rpt. 5/12/2005 (S.Ct. Order 7/22/2005) (Supreme Court imposed a two-year suspension on an attorney who handled over 100 legal matters while on inactive status and mishandled funds in his IOLTA account); *Office of Disciplinary Counsel v. Lawrence E. Andrews*, 189 DB 2006, D.Bd. Rpt. 3/27/2007 (S.Ct. Order 5/30/2007) (government attorney who practiced law for seventeen years while on inactive status and made

misleading statements to ODC concerning his practice of law received a two-year suspension on consent).

An attorney who can establish mitigating circumstances pursuant to *Office of Disciplinary Counsel v. Braun*, 520 Pa. 157, 553 A.2d 894 (1989), may have the quantum of discipline for his or her unauthorized practice of law reduced. See, e.g., *Office of Disciplinary Counsel v. James R. Cooney*, Nos. 50 DB 2005 and 57 DB 2001, D.Bd. Rpt. 4/21/2006 (S.Ct. Order 7/25/2006) (an attorney who was convicted of the unauthorized practice of law and engaged in at least five additional incidents of unauthorized practice received a one-year suspension retroactive to the date of the attorney's temporary suspension; discipline was mitigated to one-year suspension due to "compelling" mitigating circumstances).

19. ODC and Respondent represent that there is the following mitigating evidence:

- a. Respondent has recognized his wrongdoing and admitted to all of his misconduct;
- b. Respondent expressed remorse for his misconduct; and
- c. Respondent has no record of discipline.

20. Respondent has been and is being treated for Major Depression. If this matter were to proceed to a

hearing, Respondent would proffer evidence of that treatment and attempt to establish a causal connection between his Major Depression and his failure to maintain active status as an attorney, in order to meet his burden of establishing mitigation under *Office of Disciplinary Counsel v. Braun*, 520 Pa. 157, 553 A.2d 894 (1989).

21. During a combined three-year period of inactive status, Respondent engaged in the unauthorized practice of law in 73 court cases and assisted attorneys in his firm with their handling of 319 legal matters. Respondent engaged in no other misconduct during his periods of inactive status. Given the vast number of law-related matters in which Respondent was involved, Respondent should receive a suspension of eighteen months, as did Respondent Eagen, who likewise handled numerous litigation matters while on inactive status. An eighteen-month suspension is the appropriate quantum of discipline for Respondent's violations of RPC 5.5(a), RPC 7.1, RPC 8.4(d), and Pa.R.D.E. 203(b)(3) via Pa.R.D.E. 217(a), (b), (c)(1), (c)(2), (d), (e), and (j)(1) through (j)(5).

22. Based upon the precedents identified in paragraph 18, *supra*, and the need to maintain the integrity of the profession, protect the courts, and deter other attorneys from engaging in similar contemptuous conduct, Petitioner

and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of eighteen months.

23. Respondent hereby consents to the discipline being imposed by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania recommending that the Supreme Court enter an Order:
 1. suspending Respondent from the practice of law for eighteen months; and
 2. directing Respondent to comply with all provisions of Pa.R.D.E. 217.

b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition, and that all expenses be paid by Respondent before the imposition of discipline under Pa.R.D.E. 215(g).

Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

6/23/09
Date

By

Harriet R. Brumberg
Harriet R. Brumberg
Disciplinary Counsel

7/1/09
Date

By

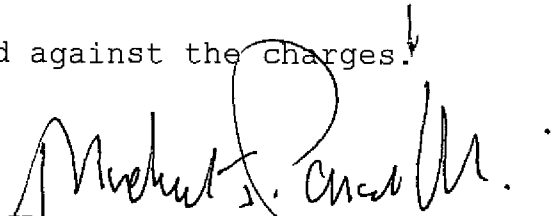
Michael Joseph Panichelli
Michael Joseph Panichelli
Respondent

6/23/09
Date

By

Samuel D. Miller
Samuel D. Miller, III, Esquire
Counsel for Respondent

4. He consents because he knows that if charges predicated upon the matter under investigation were filed, he could not successfully defend against the charges!



Michael J. Panishelli
Respondent

Sworn to and subscribed

before me this 13th

day of July, 2009



Notary Public

