

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL	:	No. 111 DB 2015
Petitioner	:	
	:	
v.	:	Attorney Registration No. 25873
	:	
DONALD P. RUSSO	:	
Respondent	:	(Northampton County)

PUBLIC REPRIMAND

Donald P. Russo, you stand before the Disciplinary Board, your professional peers and members of the public for the imposition of a Public Reprimand. It is an unpleasant task to publicly reprimand one who has been granted the privilege of membership in the bar of this Commonwealth. Yet as repugnant as this task may be, it has been deemed necessary that you receive this public discipline. We note that you agreed to a Public Reprimand by a Joint Petition in Support of Discipline on Consent.

Mr. Russo, you are being reprimanded today for your misconduct in two matters. In 2006, you agreed to represent Michael S. Surdovel in connection with prosecution of a potential Federal False Claims Act claim. In February 2007, you filed on behalf of the United States of America and Mr. Surdovel, under seal, a complaint under the *qui tam* provision of the False Claims Act, in the United States District Court for the Eastern District of Pennsylvania. You failed to serve the *Qui Tam* complaint on the United States Attorney as required by the False Claims Act. Although you claimed you served the complaint, you did not send it by certified mail return receipt requested and had no proof that service was actually made. In 2009, your associate called AUSA

Margaret Hutchinson and inquired about the status of the Action. Ms. Hutchinson informed the associate that you had not served the required documents on the United States and advised you to perfect service or dismiss the action and pursue a claim in state court. However, between August 2009 and August 2010, you took no action to serve the complaint or provide additional information to the United States.

In August 2010, you again inquired of the status of the *Qui Tam* Action. Again, you were informed of your obligation to serve the United States and that your continued failure to do so would result in the Government moving to dismiss the matter. You still took no action to serve the complaint.

In March 2012, you filed a Motion to Lift Seal in the Action. This was the first activity on the court's docket in the five-year history of the *Qui Tam* Action. You never served the Motion to Lift Seal on the government. The government moved to dismiss. Although you filed a memorandum in opposition, you did not timely serve it on the government.

By Order dated November 25, 2013, Judge Lawrence Stengel granted the United States' motion to dismiss and dismissed with prejudice the *Qui Tam* action. Judge Stengel's Memorandum noted your "egregious procedural errors" and "extreme failures to prosecute."

The second matter involves your professional liability insurance coverage. On September 15, 2012, your policy expired. You allowed it to lapse for almost five months and failed to notify your clients and the Disciplinary Board of this fact. You obtained new coverage in February 2013.

Your conduct in this matter has violated the following Rules of Professional Conduct and Rule of Disciplinary Enforcement:

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.
2. RPC 1.2(a) – Subject to paragraphs (c) and (d), a lawyer shall abide by a client's decisions concerning the objectives of the representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation.
3. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
4. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.
5. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.
6. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
7. RPC 1.4(c) - A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per

year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client.


8. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.
9. Pa.R.D.E. 219(d)(3) – On or before July 1 of each year all persons required by this rule to pay an annual fee shall file with the Attorney Registration Office a signed form in accordance with the following procedures: (3) Every person who has filed such a form shall notify the Attorney Registration Office in writing of any change in the information previously submitted within 30 days after such change.

Your misconduct in this matter is aggravated by a history of discipline. In July 2010, you received an Informal Admonition and in October 2011, you received a Private Reprimand. In mitigation, we note that you demonstrated remorse and cooperated with Office of Disciplinary Counsel. During the time frame in question, you experienced some personal and financial difficulties which impacted your law practice.

Mr. Russo, your conduct in this matter is now fully public. This Public Reprimand is a matter of public record.

As you stand before the Board today, we remind you that you have a continuing obligation to abide by the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This Public Reprimand is proof that Pennsylvania lawyers will not be permitted to engage in conduct that falls below professional standards. Be mindful that any future dereliction will subject you to disciplinary action.

This Public Reprimand shall be posted on the Disciplinary Board's website at www.padisciplinaryboard.org.



Designated Member
The Disciplinary Board of the
Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Philadelphia, Pennsylvania, on December 14, 2015.

ACKNOWLEDGMENT

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in his presence and in the presence of the designated panel of The Disciplinary Board at the District I Office located at 1601 Market Street, Suite 3320, Philadelphia, PA on December 14, 2015.



Donald P. Russo