

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : Nos. 1413 and 1472 Disciplinary Docket
Petitioner : No. 3
v. : Nos. 121 DB 2008 and 41 DB 2009
: Attorney Registration No. 25357
JOHN C. McFADDEN, :
Respondent : (Delaware County)

ORDER

PER CURIAM:

AND NOW, this 23rd day of November, 2009, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated September 4, 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 John C. McFadden is suspended on consent from the Bar of this Commonwealth for a period of two years, retroactive to October 6, 2008, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola

As of: November 23, 2009

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL : Nos. 1413 & 1472 Disciplinary Docket No. 3
Petitioner :
 : Nos. 121 DB 2008 & 41 DB 2009
v. :
 : Attorney Registration No. 25357
JOHN C. MCFADDEN :
Respondent : (Delaware 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 David A. Nasatir, Albert Momjian and Stewart L. Cohen, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on August 5, 2009.

The Panel approves the Petition consenting to a two year suspension retroactive to October 6, 2008 and recommends to the Supreme Court of Pennsylvania that the attached Joint 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.


David A. Nasatir, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: September 4, 2009

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :No.1413 Disciplinary Docket No.3
Petitioner :No.1472 Disciplinary Docket No.3
 : 121 DB 2008 + 41 DB 2009
v. : Attorney Reg. No. 25357
 :
JOHN C. MCFADDEN, :
Respondent : (Delaware County)

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

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Patricia A. Dugan, Disciplinary Counsel, and Respondent, John C. McFadden, by Samuel C. Stretton, Esquire, file this Joint Petition In Support Of Discipline on Consent under Rule 215(d) Pa.R.D.E., and respectfully represent that:

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and 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.

FILED

AUG 05 2009

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

2. Respondent, John C. McFadden was born on January 23, 1947, and was admitted to practice law in the Commonwealth on October 11, 1977. He resides at 4620 Woodland Avenue, Drexel Hill, Pennsylvania 19026.

3. By Order dated October 6, 2008, the Supreme Court of Pennsylvania placed Respondent on temporary suspension and referred the matter to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E., (No.1413 Disciplinary Docket No. 3).

4. By letter dated November 13, 2008, Respondent's counsel provided a Statement of Compliance in accordance with Pa.R.D.E. 217 to the Office of the Secretary of the Disciplinary Board.

5. By Order dated June 3, 2009, the Supreme Court of Pennsylvania upon notice of Respondent's conviction for terroristic threats and his summary convictions for public drunkenness and disorderly conduct referred the matter to the Disciplinary Board pursuant to Rule 214(f)(1) and (g), Pa.R.D.E.

6. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

7. Respondent's affidavit stating, *inter alia*, his consent to the recommended discipline is attached hereto as Exhibit A.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

8. From October of 2007 to May of 2008, as described in paragraphs 9 through 23, Respondent was arrested and charged with a variety of crimes including terroristic threats, criminal mischief, disorderly conduct and public drunkenness.

9. The crimes were not against any of Respondent's clients, nor were his clients involved in any way.

10. On January 5, 2008, Respondent was arrested by the Media Borough Police Department and charged with criminal trespass-break into structure, criminal mischief-tamper with property, and disorderly conduct-hazardous or physically offensive condition by Bill Nos. 614A-08, 614B-08 and 614C-08, docket no. CP-23-CR-614-2008.

11. On December 30, 2007, Respondent was arrested by the Media Borough Police Department and charged with loitering and prowling, criminal mischief-tamper with property, criminal mischief-damage property, disorderly conduct and public drunkenness by Bill Nos. 684A-08, 684B-08 and 684C-08, Docket no. CP-23-CR-684-2008.

12. On April 21, 2008, Respondent pled guilty to two counts of criminal mischief, 18 Pa.C.S.A. §3304(a)(2), in the Delaware County Court of Common Pleas, each graded as a misdemeanor of the second degree. The Honorable Barry C. Dozor

sentenced Respondent to 97 days to 23 months incarceration on each sentence running concurrently.

13. Respondent was also ordered to comply with out-patient alcohol and psychological treatment, counseling therapy as well as medication therapy.

14. Respondent was ordered to continue treatment with Dr. Theron Male and if accepted at Mirmont, to participate in treatment and any recommendations therein.

15. Respondent did not report his misdemeanor convictions to the Secretary of the Disciplinary Board, as required by Pa.R.D.E. 214(a).

16. On May 7, 2008, Respondent was arrested by the Media Police Department for aggravated assault, terroristic threats, simple assault, disorderly conduct, harassment and public drunkenness by Bill Nos. 4346A-08, 4346B-08, 4346C-08, 4346D-08 and 4346E-08, docket no. CP-23-CR-4346-2008.

17. On August 18, 2008, Respondent entered a nolo contendere plea to the offense of terroristic threats, a misdemeanor of the first degree, in the Delaware County Court of Common Pleas. The Honorable Barry C. Dozor sentenced Respondent to 3 years probation. Respondent was also ordered to undergo a psychological evaluation and a psychiatric evaluation and to comply with any recommendation of the Diagnostic Services

Department of the Delaware County Adult Probation and Parole Services.

18. The May 7, 2008 arrest occurred while Respondent was on parole for his two criminal mischief convictions. One of Respondent's conditions of parole was that he remain arrest-free.

19. On September 3, 2008, the Honorable Barry C. Dozor held a Gagnon II hearing. Judge Dozor determined that Respondent had violated his parole and sentenced Respondent to serve his full back time of 477 days. In addition Judge Dozor ordered Respondent to:

- a.) follow any and all recommendations for treatment and medication;
- b.) be medication compliant;
- c.) not consume any alcohol for the duration of parole;
- d.) be immediately paroled to an electronic monitor program (EMP) for three (3) months; and
- e.) initiate treatment therapy with Dr. Theron Male within seven (7) days of release.

20. Respondent did not report his misdemeanor conviction to the Secretary of the Disciplinary Board, as required by Pa.R.D.E. 214(a).

21. On March 18, 2008, Respondent pled guilty to the summary offenses of public drunkenness and disorderly conduct in Magisterial District #32-1-25, (Criminal Nos. NT-310-07 and NT-176-08). The Honorable Robert R. Burke sentenced Respondent to pay fines and costs totaling \$152.00 and \$263.00 respectively.

22. On May 20, 2008, Respondent pled guilty to the summary offense of public drunkenness in two cases in Magisterial District #32-2-48, (Criminal Nos. NT-176-08 and NT-175-08). The Honorable Walter A. Strohl sentenced Respondent to pay fines and costs totaling \$161.00 and \$186.00 respectively.

23. On November 21, 2008, Respondent pled guilty to the summary offense of public drunkenness in Magisterial District #32-1-29, (Criminal No. NT-1019-07). The Honorable John C. Tuten sentenced Respondent to pay fines and costs totaling \$236.00.

24. Respondent has paid in full all fines, costs and restitution. He has been making timely payments for his outstanding Electronic Home Monitoring fees, which must be paid in full by August 8, 2011.

25. Respondent cooperated with the Office of Disciplinary Counsel, as evidenced by his agreement to be placed on temporary suspension and the *Joint Petition in Support of Discipline on Consent pursuant to Pa.R.D.E. 215(d)*.

26. Respondent has no prior history of discipline.

27. By his conduct as alleged in Paragraphs 9 through 23 above, Respondent has violated the following Rule of Professional Conduct and Pennsylvania Rule of Disciplinary Enforcement:

- a. **RPC 8.4(b)**, which states it is professional misconduct to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
- b. **Pa.R.D.E. 203 (b)(1)**, which states the following shall also be grounds for discipline: Conviction of a crime which under Enforcement Rule 214 (relating to attorneys convicted of crimes) may result in suspension.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE CONSISTING OF A
TWO-YEAR SUSPENSION RETROACTIVE TO THE DATE OF THE TEMPORARY
LICENSE SUSPENSION

28. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension from the practice of law for a period of two years.

29. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this petition is Respondent's executed affidavit required by Rule 215, Pa.R.D.E., stating that he consents to the recommended discipline which includes the mandatory acknowledgements required by Rule 215 (d) (1) through (4), Pa.R.D.E.

30. In support of Petitioner's and Respondent's joint recommendation, it is respectfully submitted that the following mitigating circumstances are present:

- a. On December 18, 2008, Dr. Theron C. Male, Ph.D. CTS opined in a letter to Respondent's counsel that Respondent's irrational and illegal behavior in recent years was fully due to the onset of a manic phase of a bipolar disorder.
- b. Dr. Male also indicated that Respondent began psychiatric monitoring and medication with Noah Freedman, MD, in Drexel Hill, Pennsylvania.
- c. On June 12, 2009, Respondent's counsel informed Disciplinary Counsel that Respondent has been

sober since May of 2008 and attends Alcoholics Anonymous meetings on a regular basis.

31. In Pennsylvania, there is no *per se* discipline for a particular type of misconduct, but instead each case is reviewed individually as established in the case of *Office of Disciplinary Counsel v. Lucarini*, 417 A.2d 186 (Pa. 1983).

32. The imposition of a two-year suspension is consistent with the range of sanctions imposed. In the matter of *Office of Disciplinary Counsel v. Mark Eugene Johnston*, 160 DB 2002, 69 DB 2003, 89 DB 2003 (2005), the attorney pled guilty to several charges, including possession of a controlled substance, defiant trespass, driving under the influence of alcohol, false alarms to agencies of public safety, and a violation of probation. The attorney made a false application for admittance into the Accelerated Rehabilitative Disposition, (ARD) program and failed to report his convictions to the Disciplinary Board. As in Respondent's case the criminal activity took place over a period of time. Mr. Johnston presented no mitigating factors and his license was suspended for three years. In the matter of *Office of Disciplinary Counsel v. Kimberly Neeb*, 68 DB 2006 (2006), the attorney was arrested on two occasions within a six-month period for driving under the influence. The attorney was convicted of both offenses and violated her probation on multiple occasions.

The attorney was suspended from the practice of law for one year and one day.

WHEREFORE, Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e) and 215(g), a three member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file a recommendation with the Supreme Court of Pennsylvania that Respondent be suspended for a period of two years, retroactive to October 6, 2008 and that Respondent be ordered to pay all necessary expenses incurred in the investigation and prosecution in the matter as a condition to the grant of the Petition.

Respectfully submitted,
OFFICE OF DISCIPLINARY COUNSEL
PAUL J. KILLION,
Chief Disciplinary Counsel

8/3/09
Date

BY: Patricia A. Dugan
Patricia A. Dugan
Attorney Registration No. 87147
Disciplinary Counsel
Suite 170
820 Adams Avenue
Trooper, PA 19403

7/30/09
Date

BY: John C. McFadden
John C. McFadden
Respondent

7/25/09

Date

BY:



Samuel C. Stretton, Esquire
Counsel for Respondent
Attorney Registration No. 18491
301 S. High Street
P.O. Box 3231
West Chester, PA 19381-3231

VERIFICATION

The statements contained in the foregoing Joint Petition in Support of Discipline on Consent under Rule 215(d), Pa.R.D.E., are true and correct to the best of our 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.

8/3/09
Date

Patricia A. Dugan
Patricia A. Dugan,
Disciplinary Counsel

7/30/09
Date

John C. McFadden
John C. McFadden
Respondent

7/25/09
Date

Samuel C. Stretton
Samuel C. Stretton, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

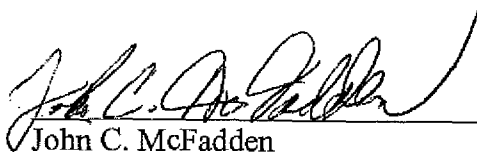
OFFICE OF DISCIPLINARY COUNSEL, : No. 1413 Disciplinary Docket No. 3
Petitioner : No. 1472 Disciplinary Docket No. 3
:
v. :
:
Attorney Reg. No. 25357
JOHN C. MCFADDEN, :
Respondent : (Delaware County)

AFFIDAVIT UNDER RULE 215 Pa.R.D.E.

Respondent, John C. McFadden, hereby states that he consents to the imposition of a suspension from the practice of law for a period of two years and further states that:

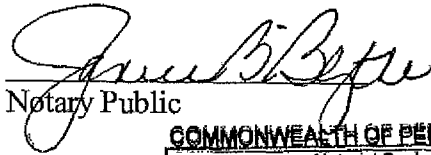
1. He is an attorney admitted to the Commonwealth of Pennsylvania, having been admitted to the bar on or about October 11, 1977.
2. He desires to submit a *Joint Petition in Support of Discipline on Consent pursuant to Pa.R.D.E. 215(d)*.
3. His consent is freely and voluntarily rendered; he is not being subject to coercion or duress; and he is fully aware of the implications of submitting this consent.
4. He has consulted with counsel, Samuel C. Stretton, Esquire, in connection with his decision to consent to discipline.
5. He is aware there is presently a proceeding involving allegations that he has been guilty of misconduct as set forth within the accompanying petition.
6. He acknowledges that the material facts within the petition are true.

7. He consents because he knows that if he continues to be prosecuted in the pending proceeding, he cannot successfully defend himself.



John C. McFadden
Respondent

Sworn to and Subscribed
before me this 30th day
of July, 2009.



Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Janice B. Blythe, Notary Public
Newtown Twp., Delaware County
My Commission Expires Jan. 29, 2013
Member, Pennsylvania Association of Notaries

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No.1413 Disciplinary Docket
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v. :
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JOHN C. MCFADDEN, :
Respondent : (Delaware County)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served by first class mail the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

By First Class Mail:

Respondent: John C. McFadden, Esquire
c/o Samuel C. Stretton, Esquire
301 South High Street
P.O. Box 3231
West Chester, PA 19381

August 3, 2009



Patricia A. Dugan
Disciplinary Counsel
Atty. Reg. No. 87147
District II Office
Disciplinary Board of the
Supreme Court of Pennsylvania
820 Adams Avenue, Suite 170
Trooper, PA 19403