

IN THE SUPREME COURT OF PENNSYLVANIA

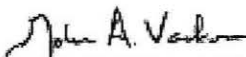
OFFICE OF DISCIPLINARY COUNSEL, : No. 2214 Disciplinary Docket No. 3
Petitioner :
v. : No. 140 DB 2015
: Attorney Registration No. 80716
JAMES EDWARD ELAM, :
Respondent : (Philadelphia)

ORDER

PER CURIAM

AND NOW, this 10th day of November, 2015, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is hereby granted, and James Edward Elam is suspended on consent from the Bar of this Commonwealth for a period of eighteen months to run consecutively to the three-year suspension ordered by this Court on May 30, 2012. Respondent shall comply with all the provisions of Pa.R.D.E. 217.

A True Copy John A. Vaskov, Esquire
As Of 11/10/2015

Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

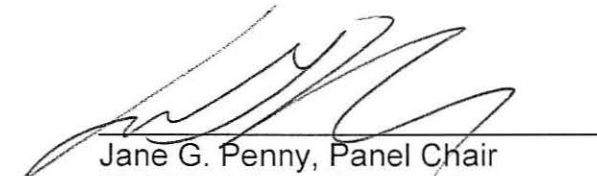
OFFICE OF DISCIPLINARY COUNSEL : No. 140 DB 2015
Petitioner :
v. : Attorney Registration No. 80716
JAMES EDWARD ELAM :
Respondent : (Philadelphia)

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 Jane G. Penny, Lawrence M. Kelly, and Tracey McCants Lewis, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on August 31, 2015.

The Panel approves the Joint Petition consenting to an eighteen month suspension to run consecutive to the three-year suspension imposed by the Court on May 30, 2012 at No. 160 DB 2010 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.


Jane G. Penny, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 10/9/2015

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : 140 DB 2015
Petitioner :
: Nos. C1-11-353, C1-12-378,
: and C1-13-1012
v. :
: Atty. Reg. No. 80716
JAMES EDWARD ELAM, :
Respondent : (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 Respondent, James Edward Elam, by Respondent's counsel, Samuel C. Stretton, Esquire, 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. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, 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 an attorney admitted to practice law

FILED

08/31/2015

The Disciplinary Board of the
Supreme Court of Pennsylvania

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, James Edward Elam, was admitted to the practice of law in Pennsylvania on December 12, 1997.

3. Respondent had an office for the practice of law located at 210 West Rittenhouse Square, Suite 400, Philadelphia, PA 19103.

4. By Supreme Court Order dated November 17, 2010, effective December 18, 2010, Respondent was administratively suspended from the practice of law in Pennsylvania for failing to comply with Pa.R.D.E. 219.

5. Respondent received the Supreme Court's Order of November 17, 2010.

6. By letter dated on or after December 18, 2010, the Disciplinary Board advised Respondent of the duties of and restrictions on administratively suspended attorneys.

7. Respondent received the Disciplinary Board's letter.

8. Respondent is not a member of any other state bar.

9. By Order dated May 30, 2012, the Pennsylvania Supreme Court:

- a. suspended Respondent from the practice of law for three years;
- b. ordered that Respondent comply with all of the provisions of Pa.R.D.E. 217; and
- c. ordered that Respondent pay the Disciplinary Board's costs pursuant to Pa.R.D.E. 208(g).

10. By letter dated May 31, 2012, from Ms. Bixler to Respondent, Ms. Bixler:

- a. notified Respondent that the Supreme Court had entered an Order dated May 30, 2012, suspending Respondent for three years and directing that Respondent comply with Pa.R.D.E. 217;
- b. enclosed a copy of that Order;
- c. enclosed Standard Guidance of the Disciplinary Board to Lawyers who have been Suspended Over One Year;
- d. enclosed a copy of Pa.R.D.E. 217 and D.Bd. Rules, Subchapter E, concerning the duties of a formerly admitted lawyer;
- e. enclosed forms for Respondent to complete regarding notice to his clients of Respondent's suspension (DB-23, 24, and 25); and

f. reiterated that Respondent was required to comply with the rules.

11. Respondent received Ms. Bixer's letter and enclosures.

12. Respondent received notice of the Supreme Court's Order.

13. 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.

II. FACTUAL ADMISSIONS AND VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT

14. Respondent specifically admits to the truth of the factual allegations and conclusions of law contained in paragraphs 1 through 68.

CHARGE I: PENNSYLVANIA SEC MATTER

15. By letter dated March 16, 2011, from Respondent to the Pennsylvania Securities Commission (SEC), Respondent:

a. wrote on stationery with the letterhead "Elam Law Firm" and included a Philadelphia law office address;

b. stated that he was enclosing "the required documents to file a private placement memorandum for Not A Fire Exit, LLC";

- c. signed his name over the typed signature line, which stated: "James E. Elam, Esq."; and
- d. enclosed a completed PSC Form E, in which Respondent handwrote in answer to question (D), which requested the name and address of counsel to Issuer: "James Elam, Esq., 210 West Rittenhouse Sq. Phila., PA 19103."

16. By Respondent's completing the PSC Form E and submitting it to the SEC for filing on behalf of "Not a Fire Exit, LLC," Respondent engaged in the unauthorized practice of law on behalf of a client.

17. By Respondent's sending the March 16, 2011 letter to the SEC on stationery with the letterhead and signature line described in ¶ 15(a) and (c), *supra*, Respondent falsely held himself out to the SEC as a person currently eligible to practice law in Pennsylvania.

18. By Respondent's handwriting of his name and address after question (D), Respondent falsely held himself out to the SEC as a person currently eligible to practice law in Pennsylvania.

19. Respondent used letterhead that was false and misleading in that Respondent was not eligible to practice law in Pennsylvania.

20. Respondent's signature line containing the professional designation of "Esq." was false and misleading in that Respondent was not eligible to practice law in Pennsylvania.

21. By letter dated April 4, 2011, from Respondent to the SEC, Respondent:

- a. wrote on stationery with the letterhead "Elam Law Firm" and a Philadelphia law office address;
- b. stated that Respondent was enclosing "the required additional documents to file a private placement memorandum for Not A Fire Exit, LLC";
- c. noted that he was attaching a corrected cover page and a \$400 check;
- d. signed his name over the typed signature line, which stated: "James E. Elam, Esq.;" and
- e. enclosed a completed PSC Form E, in which Respondent handwrote in answer to question (D) requesting the name and address of counsel to Issuer: "James Elam, Esq., 210 West Rittenhouse Sq. Phila., PA 19103."

22. By Respondent's completing the corrected PSC Form E and submitting it to the SEC for filing with the \$400 check on behalf of "Not a Fire Exit, LLC," Respondent engaged in the unauthorized practice of law.

23. By Respondent's sending the April 4, 2011 letter to the SEC on stationery with the letterhead and signature line described *supra*, Respondent falsely held himself out to the SEC as a person currently eligible to practice law in Pennsylvania.

24. By Respondent's handwriting his name and address after question (D), Respondent falsely held himself out to the SEC as a person currently eligible to practice law in Pennsylvania.

25. Respondent used letterhead that was false and misleading in that Respondent was not eligible to practice law in Pennsylvania.

26. Respondent's signature line containing the professional designation of "Esq." was false and misleading in that Respondent was not eligible to practice law in Pennsylvania.

27. On May 19, 2011, ODC sent Respondent a DB-7 Request for Statement of Respondent's Position alleging Respondent's misconduct in his SEC filings.

28. Respondent received ODC's DB-7 Request.

29. By his conduct as alleged in paragraphs 15 through 28 above, Respondent violated the following Rules:

- a. RPC 4.1(a), which states that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person;
- b. 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;
- c. 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;
- d. RPC 7.5(a), which states that a lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government, government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. If otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession;
- e. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- f. 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; and

- g. Pa.R.D.E. 203(b)(3), which states that wilful violation of any other provision of the Enforcement Rules, shall be grounds for discipline, via the Enforcement Rules charged in subsections (h) through (m), *infra*:
- h. Pa.R.D.E. 217(a)(former), 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, administrative 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, administrative suspension or transfer to inactive status and shall advise said clients to seek legal advice elsewhere;
- i. Pa.R.D.E. 217(d)(former), which states that orders imposing suspension, disbarment, administrative suspension or transfer to inactive status shall be effective 30 days after entry. The formerly admitted attorney, after entry of the disbarment, suspension, administrative 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;
- j. Pa.R.D.E. 217(j)(1), which states that 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;

- k. Pa.R.D.E. 217(j)(4)(ii), 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: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (ii) performing any law-related services from an office that is not staffed by a supervising attorney on a full time basis;
- l. Pa.R.D.E. 217(j)(4)(iv), 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: 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; and
- m. Pa.R.D.E. 217(j)(4)(v), 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: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (v) having any contact with clients either in person, by

telephone, or in writing, except as provided in paragraph (3).

CHARGE II: MOTION PICTURE PROJECT

30. On or before June 7, 2011, two individuals (hereinafter "Investors") retained Respondent to represent them in facilitating the investment of their funds in a movie (hereinafter "Project") to be produced by a company operated by Ms. Gigi Garner (hereinafter "the Company").

- a. Respondent failed to provide the Investors with a fee agreement that set forth the basis or rate of Respondent's fee.

31. Respondent negotiated a Memorandum of Understanding (MOU) between the Investors and the Company.

32. On or before June 7, 2011, Respondent drafted a MOU that provided that:

- a. in consideration of the Investors' paying \$200,000 to the Company for the Project, the Investors had a right to receive their investment plus 15% of the gross revenues of the Project and 20% of the Company's equity interest in the Project;
- b. the Investors understood that part of their investment would be used to raise the remaining funds for the Project (with a

projected budget of \$900,000), including \$25,000 of Respondent's legal fees;

- c. one of the Investors would receive a character role of reasonable prominence in the Project; and
- d. the Investors would wire Respondent funds to be placed in Respondent's escrow account in accordance with the wiring instructions attached as Exhibit "A."

33. Exhibit "A" attached to the MOU stated that:

- a. the name on Respondent's bank account was "The Elam Law Firm";
- b. Respondent's email address was "theelamlawfirm@gmail.com";
- c. Respondent's bank account was at Wells Fargo Bank; and
- d. the bank account number for The Elam Law Firm was xxxx1837.

34. On or before June 9, 2011, the Investors wired \$200,000 into Respondent's escrow account at Wells Fargo Bank.

35. By letter dated June 9, 2011, from Respondent to the Company, Respondent:

- a. used stationary with the letterhead that stated "Elam Law Firm";
- b. printed "theelamlawfirm@gmail.com" as Respondent's email address on the stationery;
- c. listed Respondent's law firm address as 210 West Rittenhouse Square, Suite 400, Philadelphia, PA 19103;
- d. wrote that Respondent was confirming his receipt of the \$200,000 from the Investors into Respondent's Wells Fargo business account for the Company's usage on the film; and
- e. signed the letter as "James E. Elam, Esq."

36. Respondent received \$5,000 from the Investors for Respondent's legal services.

37. While on administrative suspension, Respondent engaged in law-related activities prohibited by Pa.R.D.E. 217(j)(4), in that Respondent:

- a. performed law-related activities from an office that was not staffed by a supervising attorney on a full-time basis;
- b. represented himself as a lawyer eligible to practice law;

- c. had contacts with clients in person, by telephone, and in writing;
- d. provided legal advice;
- e. negotiated and transacted a matter on behalf of clients; and
- f. handled client funds.

38. While on administrative suspension, Respondent engaged in the unauthorized practice of law, in that Respondent rendered services requiring application of legal principles to a given set of facts.

39. Until at least June 9, 2011, Respondent maintained an office for the practice of law at 210 West Rittenhouse Square, Suite 400, Philadelphia, PA 19103.

40. Respondent's letterhead contained a false communication about Respondent in that Respondent's letterhead identified Respondent's firm as the "Elam Law Firm," when Respondent was not an active member of the Pennsylvania Bar.

41. Respondent's signature line on the June 9, 2011 letter contained a false communication about Respondent's legal services in that as an administratively suspended lawyer, Respondent cannot use the professional designation of "Esq."

42. By his conduct as alleged in paragraphs 30 through 41 above, Respondent violated the following Rules:

- a. RPC 1.5(b), which states that when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation;
- b. 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;
- c. 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;
- d. RPC 7.5(a), which states that a lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government, government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. If otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession;
- e. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

- f. 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; and
- g. Pa.R.D.E. 203(b)(3), which states that wilful violation of any other provision of the Enforcement Rules, shall be grounds for discipline, via the Enforcement Rules charged in subsections (h) through (s), *infra*:
- h. Pa.R.D.E. 217(c)(1)(former), which states that a formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or 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 disbarment, suspension, administrative suspension or transfer to inactive status. The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is disbarred, suspended, administratively suspended or on inactive status;
- i. Pa.R.D.E. 217(c)(2)(former), which states that a formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or 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. The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is disbarred, suspended,

administratively suspended or on inactive status;

- j. Pa.R.D.E. 217(j)(1), which states that 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;
- k. 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;
- l. Pa.R.D.E. 217(j)(3), which states that 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;

- m. Pa.R.D.E. 217(j)(4)(i), 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: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (i) performing any law-related activity for a law firm, organization or lawyer if the formerly admitted attorney was associated with that law firm, organization or lawyer on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective date of disbarment or suspension;
- n. Pa.R.D.E. 217(j)(4)(ii), 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: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (ii) performing any law-related services from an office that is not staffed by a supervising attorney on a full time basis;
- o. Pa.R.D.E. 217(j)(4)(iv), 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: 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;
- p. Pa.R.D.E. 217(j)(4)(v), 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: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3);
- q. Pa.R.D.E. 217(j)(4)(vi), 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: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (vi) rendering legal consultation or advice to a client;
- r. Pa.R.D.E. 217(j)(4)(ix), 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: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (ix) negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction; and
- s. Pa.R.D.E. 217(j)(4)(x), 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: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: receiving, disbursing or otherwise handling client funds.

CHARGE III: RUFFHOUSE RECORDS AND FREEWAY

43. Prior to July 2013, Respondent was retained to represent Ruffhouse Records in negotiating and drafting a contract to produce and market a recording artist who shall be referred to as "KS."

44. Ruffhouse Records agreed to pay Respondent \$4,500 for his legal work.

45. Respondent represented himself to third parties as a lawyer eligible to practice law in Pennsylvania.

46. As of July 2, 2013, Respondent received \$500 in legal fees from Ruffhouse Records for the representation.

47. While on suspension, Respondent engaged in law-related activities prohibited by Pa.R.D.E. 217(j)(4).

48. KS recorded demonstration recordings of songs for Ruffhouse Records, some of which Ruffhouse Records delivered to Universal Music Group (UMG) for UMG's consideration.

49. In and around October 2013, the recording artist Freeway retained Respondent to provide legal representation.

50. Respondent negotiated and drafted a Producer contract for Freeway to record two songs, titled "No Doubt" and "Money is My Medicine," that were co-written and co-produced by individuals known as "Jerz" and "Justin."

a. The two songs were to be distributed by Babygrande Records.

51. Bernard M. Resnick, Esquire, received a copy of the Producer contract on behalf of his client, Justin.

52. Mr. Resnick proposed edits to the Producer contract and sent the edited contract to Jerz's attorney, Jason Berger, Esquire.

53. After Mr. Berger reviewed Mr. Resnick's suggested edits, he sent the edited contract to Chad Betsey, Respondent's assistant.

54. Respondent received a copy of the edited contract.

55. Respondent made additional changes to Freeway's Producer contract with Jerz and Justin.

56. By email dated October 24, 2013, Mr. Betsey sent the revised Producer contract to Respondent and Mr. Berger.

57. While on suspension, Respondent engaged in law-related activities prohibited by Pa.R.D.E. 217(j)(4), in that Respondent:

- a. represented himself as a lawyer eligible to practice law;
- b. had contacts with a client in person, by telephone, and in writing;
- c. rendered legal consultation and advice; and
- d. negotiated and transacted a matter on behalf of a client.

58. While on suspension, Respondent engaged in the unauthorized practice of law, in that Respondent rendered services requiring application of legal principles to a given set of facts.

59. By his conduct as alleged in paragraphs 43 through 58 above, Respondent violated the following Rules:

- 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(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

- d. 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; and
- e. Pa.R.D.E. 203(b)(3), which states that wilful violation of any other provision of the Enforcement Rules, shall be grounds for discipline, via the Enforcement Rules charged in subsections (f) through (m); *infra*:
- f. Pa.R.D.E. 217(c)(1)(former), which states that a formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or 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 disbarment, suspension, administrative suspension or transfer to inactive status. The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is disbarred, suspended, administratively suspended or on inactive status;
- g. Pa.R.D.E. 217(c)(2)(former), which states that a formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or 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. The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is disbarred, suspended,

administratively suspended or on inactive status;

- h. Pa.R.D.E. 217(j)(1), which states that 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;
- i. Pa.R.D.E. 217(j)(3), which states that 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;
- j. Pa.R.D.E. 217(j)(4)(ii), 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: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (ii) performing any law-related services from an office that is not staffed by a supervising attorney on a full time basis;

- k. Pa.R.D.E. 217(j)(4)(iv), 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: 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;
- l. Pa.R.D.E. 217(j)(4)(v), 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: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3); and
- m. Pa.R.D.E. 217(j)(4)(ix), 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: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (ix) negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction.

III. JOINT RECOMMENDATION FOR DISCIPLINE

60. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of eighteen months, to run consecutive to Respondent's three-year suspension imposed in No. 160 DB 2010.

61. 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).

62. Petitioner and Respondent respectfully submit that there are the following aggravating factors:

- a. Respondent has a record of public discipline. By Supreme Court Order dated May 30, 2012, effective June 30, 2012, Respondent was suspended from the practice of law for three years for mishandling one client matter and misappropriating the client's funds in that matter. *Office of Disciplinary Counsel v. James Edward Elam,*

No. 160 DB 2010, D.Bd. Rpt. 12/3/2011 (S.Ct. Order 5/30/2012);

b. Respondent has a record of private discipline. On February 12, 2008, Respondent received an Informal Admonition with Condition for failing to perform legal work, communicate with his client, and refund his unearned fee in violation of RPC: 1.3; 1.4(a)(2); 1.4(a)(3); 1.4(a)(4); 1.5(b); 1.16(d); and 8.4(d). (C1-07-948); and

c. Respondent failed to satisfy the condition of his Informal Admonition imposed in C1-07-948, in that Respondent did not complete three hours of law office management continuing legal education courses and provide ODC with written proof of completing the required number of course hours.

63. Petitioner and Respondent respectfully submit that there are the following mitigating factors:

a. By virtue of Respondent's signing this Discipline on Consent, Respondent has cooperated with ODC; and

- b. Respondent has expressed recognition of his misconduct.

64. The Pennsylvania Supreme Court generally imposes the discipline of suspension on attorneys who engage in the unauthorized practice of law while on administrative suspension [formerly known as "inactive status"] or while serving a term of court-ordered suspension. *Office of Disciplinary Counsel v. Forrest, Jr.*, 134 DB 2003, D.Bd. Rpt. 12/30/2004, p. 12 (S.Ct. Order 3/24/2005). The discipline imposed for limited instances of unauthorized practice of law may be less than a one-year-and-one-day suspension. See *Office of Disciplinary Counsel v. John V. Buffington*, No. 45 DB 2004, D.Bd. Rpt. 06/22/2005 (S.Ct. Order 9/22/2005) (Buffington, who continued to serve as an arbitrator for the Philadelphia Court of Common Pleas and handled three legal matters following his transfer to administrative suspension, received a six-month suspension); *Office of Disciplinary Counsel v. Michael A. Roselle*, No. 148 DB 2008, D.Bd. Rpt. 10/03/2008 (S.Ct. Order 12/15/2008) (on consent) (Roselle engaged in the unauthorized practice of law in one client matter while serving a suspension of one year and one day; Supreme Court imposed a six-month suspension on Roselle, to run consecutive to the one-year-and-one-day suspension).

65. The Supreme Court often increases the length of the suspension to no less than one year and one day when an attorney's unauthorized practice of law is knowing and deceitful. See, e.g., *Office of Disciplinary Counsel v. Sharon Goldin-Didinsky*, 87 DB 2003, D.Bd. Rpt. 8/27/2004 (S.Ct. Order 12/4/2004) (Supreme Court imposed a suspension of one year and one day on Goldin-Didinsky, who handled two client matters while on inactive status, misled Pennsylvania courts to believe that she had an office in Pennsylvania by using letterhead with a fraudulent Pennsylvania address, and was evasive with the court administrator regarding her attorney status); *Office of Disciplinary Counsel v. Moeller*, No. 53 DB 2000, D.Bd. Rpt. 5/16/2002 (S.Ct. Order 7/1/2002) (Supreme Court imposed a suspension of one year and one day on Moeller, who created stationery with letterhead stating that he was admitted to practice law in Pennsylvania and provided an address for a purported Pennsylvania law office, whereas Moeller knew he was not active in Pennsylvania, had no law office in Pennsylvania, and the address on his letterhead was simply a mail drop arrangement he had with a relator); *Office of Disciplinary Counsel v. Thomas Joseph Coleman*, No. 98 DB 2003, D.Bd. Rpt. 1/24/2005 (S.Ct. Order 4/19/2005) (Coleman, who was inactive for nine years and continued to sign legal

documents knowing that he was on inactive status, was suspended for two years for his knowing and defiant conduct); and *Office of Disciplinary Counsel v. Robert Chase Cheek*, No. 129 DB 1998, D.Bd.Rpt. 1/11/2000 (S.Ct. Order 3/13/2000) (Supreme Court suspended Cheek for three years where Disciplinary Board found that Cheek's contemptuous conduct of appearing in eight cases after he received notice of his inactive status displayed disdain for the Supreme Court's order).¹

66. Respondent engaged in the unauthorized practice of law in four unrelated matters. While acting in two of these matters, Respondent was on administrative suspension, and in the other two matters, Respondent was serving a term of suspension.

Respondent's misconduct was similar to the misconduct of the attorneys in *Goldin-Didinsky*, *Moeller*, *Coleman*, and *Cheek* in that it was knowing. Respondent received the

¹ See also *Office of Disciplinary Counsel v. LaJuan Frederick Martin*, No. 130 DB 2013, D.Bd. Rpt. 6/12/2014 (S.Ct. Order 11/20/14) (on consent) (Supreme Court imposed a suspension of one year and one day on Martin, who while on administrative suspension in Pennsylvania, knowingly engaged in the unauthorized practice of law in one client matter in Maryland, where he was not admitted to practice law, and failed to disclose his unauthorized practice of law and income therefrom in seeking reinstatement to the Pennsylvania Bar; Martin used office space at a friend's law firm for Martin's real estate business, made misrepresentations to a potential client of his friend's law firm that Martin was an attorney in good standing, met with the potential client outside of the law office, provided the potential client with a written fee agreement from Martin's non-existent "firm," and drafted legal documents for the client to file in court).

Supreme Court's Order placing him on administrative suspension as well as correspondence from the Disciplinary Board alerting Respondent to the restrictions placed on administratively suspended attorneys. Nonetheless, shortly thereafter, in the *Pennsylvania SEC* matter, Respondent held himself out as an attorney to the SEC, using stationery with letterhead from his former law office, providing an address of a nonexistent law office, and including the professional designation of "Esq." after his name. The SEC informed ODC of Respondent's transgressions and ODC promptly sent Respondent a DB-7 Request informing Respondent that his conduct before the Pennsylvania SEC may have violated the Rules of Professional Conduct.

Undaunted, Respondent again held himself out as an attorney to third parties and used both stationery and the escrow account from the "Elam Law Firm" in the *Motion Picture Project* matter. Even after the Supreme Court ordered that Respondent be suspended from the practice of law for three years, Respondent continued to engage in the unauthorized practice of law, in that he knowingly continued to hold himself out to third parties as an attorney, engaged in prohibited law-related activities, and received a legal fee for doing so.

Respondent's repeated conduct of using stationery with the letterhead of the Elam Law Firm, an escrow account entitled "The Elam Law Firm," and the professional designation of "Esq." after his name was analogous to the deceitful conduct of the attorneys in *Goldin-Didinsky, Moeller, and Martin*. Goldin-Didinsky and Moeller both used legal stationery with a non-existent law office address, whereas Martin created a fee agreement for a non-existent law firm. These three formerly admitted attorneys, like Respondent, knowingly gave documents to third parties that falsely communicated that they were an attorney in good standing.

67. But unlike the attorneys in *Goldin-Didinsky, Moeller, and Martin*, Respondent had a record of failing to comply with rules regarding his attorney license. Respondent had received an Informal Admonition with Condition, failed to comply with the Condition, was placed on administrative suspension for failing to complete his CLE requirements, and had received a three-year suspension. Respondent's pattern of practicing law without regard to the status of his law license should increase the quantum of discipline above that which was imposed in *Goldin-Didinsky, Moeller, and Martin*. Respondent's misconduct was not as extensive as the misconduct of the attorneys in *Coleman and Cheek*, however, which involved numerous client matters over many years.

68. Application of the foregoing precedent to the totality of Respondent's misconduct leads to the conclusion that Respondent's misconduct warrants a suspension of eighteen months. Accordingly, Petitioner and Respondent jointly agree to the imposition of an eighteen-month suspension to run consecutive to the three-year suspension Respondent received in No. 160 DB 2010.

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 that Respondent receive an eighteen-month suspension to run consecutive to the three-year suspension imposed in No. 160 DB 2010; and
- b. Pursuant to Pa.R.D.E. 215(g) and 215(i), the three-member panel of the Disciplinary Board enter an Order that Respondent pay the necessary costs and expenses incurred in the investigation and prosecution of this matter, the Board

Secretary immediately file the recommendation of the panel and the Petition with the Supreme Court without regard to Respondent's payment of costs and expenses, and all costs and expenses be paid by Respondent within thirty of the date of the panel's approval of the Discipline on Consent unless Respondent and the Board Secretary enter into a plan, confirmed in writing, to pay the necessary costs and expenses at a later date.

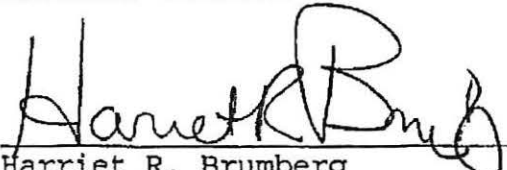
Respectfully and jointly submitted,
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

6/30/2015

Date

By



Harriet R. Brumberg
Disciplinary Counsel

8/25/2015

Date

By



James Edward Elam
Respondent

8/25/2015

Date

By



Samuel C. Stretton, Esquire
Counsel for Respondent

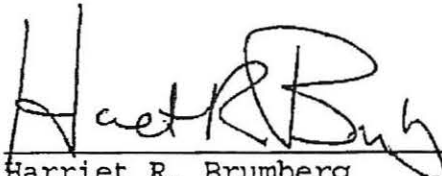
BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: Nos. C1-11-353, C1-12-378,
: and C1-13-1012
v. :
: Atty. Reg. No. 80716
JAMES EDWARD ELAM, :
Respondent : (Philadelphia)


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. § 4904, relating to unsworn
falsification to authorities.


6/30/2015
Date


Harriet R. Brumberg
Disciplinary Counsel

8/25/2015
Date


James Edward Elam
Respondent

8/25/15
Date


Samuel C. Stretton, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: Nos. C1-11-353, C1-12-378,
: and C1-13-1012
v. :
: Atty. Reg. No. 80716
JAMES EDWARD ELAM, :
Respondent : (Philadelphia)

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

Respondent, James Edward Elam, hereby states that he consents to the imposition of a suspension of eighteen months to run consecutive to the three-year suspension imposed in No. 160 DB 2010, 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 counsel in connection with the decision to consent to discipline;
2. He is aware that there is presently pending a proceeding 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 charges predicated upon the matters under investigation were filed, he could not successfully defend against them.



James Edward Elam
Respondent

Sworn to and subscribed
before me this 25th
day of August, 2015



Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
BETTY A. YORK, Notary Public
City of Philadelphia, Phila. County
My Commission Expires March 18, 2017