

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2234 Disciplinary Board No. 3
	:	
Petitioner	:	No. 141 DB 2016
	:	
	:	Attorney Registration No. 32706
v.	:	
	:	(Allegheny County)
JAMES R. COONEY,	:	
	:	
Respondent	:	
	:	

ORDER

PER CURIAM

AND NOW, this 10th day of November, 2016, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is granted, and James R. Cooney is suspended on consent from the Bar of this Commonwealth for a period of two years. The suspension is stayed in its entirety, and he is placed on probation for a period of two years, subject to the following conditions:

1. Respondent shall abstain from using alcohol, or any other mind-altering drugs;
2. Respondent shall comply with all terms and conditions imposed by the Allegheny County Adult Probation Office stemming from his sentence imposed at case CP-02-CR-0008959-2011;
3. A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule §89.293(c);

4. Respondent shall undergo or submit to any counseling, out-patient or in-patient treatment, prescribed by his treating physician or alcohol counselor;
5. Respondent shall file with the Secretary of the Board quarterly written reports, with copies to Disciplinary Counsel;
6. With the sobriety monitor, Respondent shall:
 - a. meet at least twice monthly;
 - b. maintain weekly telephone contact;
 - c. provide the necessary properly executed written authorizations to verify his compliance with the required substance abuse treatment; and
 - d. cooperate fully.
7. The appointed sobriety monitor shall:
 - a. monitor Respondent's compliance with the terms and conditions of the order imposing probation;
 - b. assist Respondent in arranging any necessary professional or substance abuse treatment;
 - c. meet with Respondent at least twice monthly, and maintain weekly telephone contact with Respondent;
 - d. file with the Secretary of the Board quarterly written reports with copies to Disciplinary Counsel; and,
 - e. immediately report to the Secretary of the Board any violations by Respondent of the terms and conditions of the probation.

A True Copy Patricia Nicola
As Of 11/10/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2234 Disciplinary Docket No. 3

:
Petitioner : No. ¹⁴¹ DB 2016 – Disciplinary Board

v.

JAMES R. COONEY,

: Attorney Registration No. 32706

:
Respondent : (Allegheny County)

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

OFFICE OF DISCIPLINARY COUNSEL

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CHIEF DISCIPLINARY COUNSEL

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Disciplinary Counsel
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and

James R. Cooney, Esquire
Respondent
I.D. No. 32706
960 Penn Avenue, Ste. 1200
Pittsburgh, PA 15222
(412) 392-0330

and

Robert O Lampl, Esquire
Counsel for Respondent
I.D. No. 19809
960 Penn Avenue, Ste. 1200
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(412) 392-0330

FILED

9/1/2016

The Disciplinary Board of the
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2234 Disciplinary Docket No. 3

Petitioner : No. DB 2016 – Disciplinary Board

v.

JAMES R. COONEY,

: Attorney Registration No. 32706

Respondent : (Allegheny County)

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

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Samuel F. Napoli, Disciplinary Counsel, and Respondent, John E. Gomolchak, file this Joint Petition in Support of Discipline on Consent Under Rule 215(d), Pa.R.D.E., and respectfully represents as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, James R. Cooney, was born in 1954. He was admitted to practice law in the Commonwealth of Pennsylvania on December 5, 1980. Respondent's

attorney registration mailing address is 960 Penn Avenue, Ste. 1200, Pittsburgh, PA 15222. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

I. FACTUAL ALLEGATIONS ADMITTED

A. 2011 CONVICTION

3. On June 5, 2011, Respondent was arrested and charged with five counts of Driving Under the Influence of Alcohol or Controlled Substance, and related summary offenses.

4. On July 26, 2011, a Criminal Information was filed against Respondent in the Court of Common Pleas of Allegheny County, and docketed at number CP-02-CR-0008959-2011, charging him with violations of:

(a) 75 Pa.C.S. §3802(d)(1), Driving While His Blood Contained Any Amount Of A Schedule I, Schedule II, or Schedule III Controlled Substance;

(b) 75 Pa.C.S. §3802(d)(2), Driving While Under The Influence Of A Drug Or Combination Of Drugs;

(c) 75 Pa.C.S. §3802(d)(3), Driving While Under The Combined Influence Of Alcohol And A Drug Or Combination Of Drugs;

(d) 75 Pa.C.S. §3802(b), Driving After Imbibing A Sufficient Amount Of Alcohol Such At The Alcohol Concentration In His Blood Or Breath Was .100 Percent Within Two Hours After Driving;

(e) 75 Pa.C.S. §3802(a)(1), Driving Under The Influence Of Alcohol; and,

(f) Three related summary offenses.

5. On November 21, 2011, Respondent entered a plea of guilty to Count I of the Criminal Information, the remaining charges were withdrawn, and Respondent was sentenced to alternative confinement of four days and probation of six months, subject to conditions.

6. Respondent successfully completed his probation.

7. Respondent did not report this conviction as required by Rule 214(a), Pa.R.D.E.

B. 2015 CONVICTION

8. On January 25, 2015, Respondent was arrested and charged with six counts of Driving Under The Influence Of Alcohol Or A Controlled Substance, and two related summary offenses.

9. On May 11, 2015, a Criminal Information was filed against Respondent in the Court of Common Pleas of Allegheny County, docketed at CP-02-CR-0005700-2015, charging him with:

(a) 75 Pa.C.S. §3802(d)(1) and §3803(b)(4), Driving While In His Blood Was Any Amount Of A Schedule I, Schedule II, or Schedule III Controlled Substance, Where He Had One Or More Prior Offenses Of Driving Under The Influence Of Alcohol Or Controlled Substance;

(b) 75 Pa.C.S. §3802(d)(2) and §3803(b)(4), Driving While Under The Influence Of A Drug Or Combination Of Drugs Where He Had One Or More Prior Offenses Of Driving Under The Influence Of Alcohol Or Controlled Substance;

(c) 75 Pa.C.S. §3802(d)(3) and §3803(b)(4), Driving While Under The Combined Influence Of Alcohol And A Drug Or Combination Of Drugs Where He Had One Or More Prior Offenses Of Driving Under The Influence Of Alcohol Or A Controlled Substance;

(d) 75 Pa.C.S. §3802(b), Driving After Imbibing A Sufficient Amount Of Alcohol Such That The Alcohol Concentration In His Blood Or Breath Was .113 Percent Within Two Hours After He Had Driving;

(e) 75 Pa.C.S. §3802(a)(1) and §3804(b), Driving Under The Influence Of Alcohol Where There Was An Accident Resulting In Bodily Injury, Serious Bodily

Injury Or Death Of Another Person Or Damage To Another Vehicle Or Other Property;

- (f) 75 Pa.C.S. §3802(a)(1), Driving Under The Influence Of Alcohol; and,
- (g) Two related summary offenses.

10. On October 28, 2015, Respondent entered a plea of guilty to Count I of the Criminal Information, the remaining charges were withdrawn, and Respondent was sentenced to be placed in an intermediate punishment program for 90 days with work release, 18 months' probation, and restitution to the owner of the vehicle involved in the related accident.

11. Respondent is still on probation, and is in compliance with its terms.

C. PRIOR DISCIPLINE

12. On July 25, 2006, Respondent was suspended for one year, retroactive to May 19, 2005.

13. Respondent's suspension was based upon his May 20, 2003 conviction for the unauthorized practice of law in the Court of Common Pleas of Erie County, which matter was docketed at No. CP-25-CR-0002947-2002.

14. Respondent's conviction for the unauthorized practice of law was due to his engaging in the practice of law while on inactive status.

15. Respondent was reinstated to the practice of law by Supreme Court Order dated March 19, 2007.

**D. ADDITIONAL STIPULATED FACTS
BETWEEN RESPONDENT AND PETITIONER**

16. Respondent has suffered from alcoholism for many years, but spent much of that time in recovery.

17. In 2011 and 2015, Respondent suffered from relapses of his alcoholism.

18. In early November of 2015, Respondent enrolled in an outpatient rehabilitation/detoxification program at UPMC's Western Psychiatric Institute and Clinic, which he successfully completed.

19. At about that same time, Respondent began regularly attending meetings of Alcoholics Anonymous, and continues to do so.

20. Respondent has a Sponsor for Alcoholics Anonymous, to whom he speaks on a regular basis.

21. Respondent keeps regular appointments, every 6 to 8 weeks, with his psychiatrist, Sylvia R. Mendelson, M.D., who specializes in substance abuse treatment.

E. PRECEDENTS AND RECOMMENDATION
FOR DISCIPLINARY SANCTION

22. The cases concerning *multiple* convictions of an attorney for driving under the influence of alcohol have resulted in a range of discipline. Each case is fact specific. In the matter of ***Office of Disciplinary Counsel v. Robert Toland, II***, No. 101 DB 2003, Respondent Toland was initially charged with driving under the influence on four separate occasions. The nature of the crimes warranted a sanction other than the usual private reprimand. The Supreme Court suspended Mr. Toland from the practice of law for a period of two years with the suspension being stayed in its entirety, and he was placed on probation subject to certain terms and conditions. After a violation of those terms and conditions, the parties submitted a Joint Petition for Discipline on Consent, agreeing that a probation violation hearing need not be held as a result of the Supreme Court's Order imposing a stayed suspension. The Disciplinary Board approved the Joint Petition, and the Supreme Court agreed. Mr. Toland's probation was revoked and he was suspended from the practice of law for one year and one day.

23. The case of ***Office of Disciplinary Counsel v. Mark Eugene Johnston***, Nos. 160 DB 2002, 69 DB 2003 and 89 DB 2003 is very similar to the instant matter due to Johnston's criminal convictions in which alcohol was the main focus. Johnston did not exhibit remorse, and presented no mitigating factors other than having no prior disciplinary history. Although a Hearing Committee had recommended a suspension of three years, a majority of the Disciplinary Board recommended to the Supreme Court that Respondent Johnston be suspended for two years. The Supreme Court imposed a two-year

suspension.

24. In *Office of Disciplinary Counsel v. Flaherty, No. 128 DB 1996* (1998), Mr. Flaherty received a suspension of one year and one day after entering a guilty plea to three counts of Driving Under the Influence. He had been arrested twice for Driving Under the Influence prior to his admission to the Bar and had received ARD for the first arrest. In determining the appropriate disciplinary sanction, the Disciplinary Board considered that Mr. Flaherty, while admitting to alcohol abuse, did not seek help or counseling for the problem nor did he show remorse or contrition for his actions. He also failed to provide sufficient evidence to show the alcohol abuse and its causal relationship to his misconduct. The Disciplinary Board recommended that the attorney receive a public censure, but on March 25, 1998, the Supreme Court ordered the more severe punishment of suspension for one year and one day.

25. It is the recommendation of the Office of Disciplinary Counsel that for the pending matter, Respondent, because of his mitigation, and treatment, be suspended from the practice of law for a period of two years, to be stayed in its entirety, subject to the following conditions:

- (a) Respondent shall abstain from using alcohol or any other mind altering chemical;

(b) Comply with all terms and conditions imposed by the Allegheny County Adult Probation Office stemming from Respondent's sentence imposed at case CP-02-CR-0008959-2011;

(c) A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule 89.293(c);

(d) Respondent shall undergo or submit to any counseling, out-patient or in-patient treatment, prescribed by his treating physician or alcohol counselor;

(e) Respondent shall file with the Secretary of the Board quarterly written reports, with copies to Disciplinary Counsel;

(f) With the sobriety monitor, Respondent shall:

(i) meet at least twice a month;

(ii) maintain weekly telephone contact;

(iii) provide the necessary properly executed written authorizations to verify his compliance with the required substance abuse treatment; and,

(iv) cooperate fully.

(g) The appointed sobriety monitor shall:

- (i) monitor Respondent's compliance with the terms and conditions of the order imposing probation;
- (ii) assist Respondent in arranging any necessary professional or substance abuse treatment;
- (iii) meet with Respondent at least twice a month, and maintain weekly telephone contact with Respondent;
- (iv) file with the Secretary of the Board quarterly written reports with copies to Disciplinary Counsel; and,
- (v) immediately report to the Secretary of the Board any violations by the Respondent of the terms and conditions of the probation.

Respondent is to pay costs as determined by the Board and Supreme Court.

26. WHEREFORE, Petitioner and Respondent respectfully request that:

- (a) Pursuant to Pa.R.D.E. 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 its recommendation with the Supreme Court of Pennsylvania recommending that the Supreme Court enter an Order that Respondent receive a stayed suspension of two years with probation for two years, subject to the condition. A proposed Consent Order, executed by the parties, is attached.

(b) Pursuant to Pa.R.D.E. 215(i), a Three Member Panel of the Disciplinary Board enter an Order for Respondent to pay the necessary expenses incurred in the investigation of the 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 submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By Samuel F. Napoli
Samuel F. Napoli
Disciplinary Counsel

and

By James R. Cooney
James R. Cooney, Esquire
Respondent

and

By Robert O. Lampl
Robert O Lampl, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
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JAMES R. COONEY,

: Attorney Registration No. 32706

Respondent : (Allegheny County)

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

Respondent, James R. Cooney, Esquire, hereby states that he consents to the imposition of a suspension of one year and one day which is stayed in its entirety and be placed on probation for a period of one year, subject to supervision of a practice monitor as jointly recommended by Petitioner, Office of Disciplinary Counsel and Respondent in the Joint Petition In Support Of Discipline On Consent and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and, he has been advised to consult with counsel in connection with the decision to consent to the imposition of discipline;

2. He is aware that there is a pending 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 the charges pending against him
continue to be prosecuted in the pending proceeding, he could not successfully defend
against them.

James R. Cooney
James R. Cooney, Esquire
Respondent

Sworn to and subscribed
before me this 31st
day of August, 2016.

Jeannine R. Schemm
Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Jeannine R. Schemm, Notary Public
City of Pittsburgh, Allegheny County
My Commission Expires Jan. 10, 2017
MEMBER, PENNSYLVANIA ASSOCIATION OF NOTARIES

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JAMES R. COONEY,

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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.

8/31/16
Date

Samuel F. Napoli
Samuel F. Napoli
Disciplinary Counsel

8/31/16
Date

James R. Cooney
James R. Cooney, Esquire
Respondent

8/31/16
Date

Robert O Lampl
Robert O Lampl, Esquire
Counsel for Respondent