

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL, : No. 2421 Disciplinary Docket No. 3  
: :  
Petitioner : No. 149 DB 2017  
: :  
v. : Attorney Registration No. 315038  
: :  
MICHAEL PATRICK KOVALCIN, : (Centre County)  
: :  
Respondent :

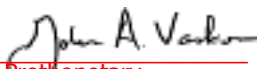
**ORDER**

**PER CURIAM**

**AND NOW**, this 21<sup>st</sup> day of November, 2017, 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 Michael Patrick Kovalcin is suspended on consent from the Bar of this Commonwealth for a period of one year and one day. He shall comply with all the provisions of Pa.R.D.E. 217.

Respondent shall pay the costs incurred by the Disciplinary Board in the investigation and prosecution of this matter.

A True Copy John A. Vaskov, Esquire  
As Of 11/21/2017

Attest:   
Deputy Prothonotary  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner,	:	No. <del>149</del> DB 2017
	:	
v.	:	Attorney Reg. No. 315038
	:	
MICHAEL PATRICK KOVALCIN,	:	(Centre County)
Respondent	:	
	:	

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 Kristin A. Wells, Disciplinary Counsel, and Respondent, Michael Patrick Kovalcin, file this Joint Petition in Support of Discipline on Consent under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E.") and respectfully state and aver the following:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, PA 17106, is invested, pursuant to Pa.R.D.E. 207, 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.

**FILED**  
**9/26/2017**  
**The Disciplinary Board of the**  
**Supreme Court of Pennsylvania**

2. Respondent, Michael Patrick Kovalcin, was born on April 13, 1984, was admitted to practice law in Pennsylvania on December 17, 2012, has a registered public address of 317 East Presqueisle Street, Philipsburg, Pennsylvania 16866, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent is represented by Attorney Robert Davis, Jr., 121 Pine Street, First Floor, Harrisburg, Pennsylvania 17101.

4. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

SPECIFIC FACTUAL ADMISSIONS AND  
RULES OF PROFESSIONAL CONDUCT VIOLATED

5. Respondent's misconduct involves his failure to cooperate with his prior firm partner or the partner's counsel in dissolving the firm, neglect of two client matters, and inability to account for client funds in excess of \$10,000.00.

6. In or about January 2013, Respondent and Joseph Scipione, Esq. formed the law firm of Scipione & Kovalcin, P.C. (hereinafter referred to as "S&K").

7. While Respondent and Attorney Scipione maintained separate clients, they shared a Fulton Bank IOLTA account.

8. Beginning in or about 2016, S&K experienced severe financial distress due to a large amount of debt that Respondent incurred in the name of the firm without Attorney Scipione's consent.

9. When Attorney Scipione's attempts to remedy the situation with Respondent failed, Attorney Scipione decided to wind up and dissolve S&K.

10. Despite several requests from Attorney Scipione and his counsel, Respondent failed to provide information concerning his clients.

11. After Respondent effectively abandoned S&K, Attorney Scipione determined that there were insufficient funds in the IOLTA account to cover amounts owed to third parties in Respondent's cases, totaling a little in excess of \$10,000.00.

12. Respondent does not dispute that the account held insufficient funds, but attributes the deficiency to poor record keeping and accounting.

13. In ***Shreve v. Main***, No. 2015-10415 (McKean C.P.), and ***Main v. Shreve***, No. 2015-10816 (McKean C.P.), Respondent represented Gloria Shreve relative to her landlord-tenant and ejection matters.

14. By Order dated July 20, 2015, the 2015-10415 matter was dismissed due to Respondent's failure to respond to Preliminary Objections.

15. In ***In re Xtreme Machining, LLC***, No. 16-70309-JAD (W.D. Pa.), Respondent represented a creditor, Robert and Tress Eminhizer, relative to their property damage claim.

16. Respondent had previously been representing the Eminhizers relative to a dispute that arose between the Eminhizers and Xtreme Manufacturing regarding the terms of an installment sales agreement, which culminated in Xtreme Manufacturing's removal of equipment from the property, allegedly causing damage to the building.

17. The Eminhizers were owners of the building in which Xtreme Manufacturing operated, and which at the time contained approximately \$507,000.00 worth of property belonging to Xtreme Manufacturing and its customers.

18. Upon Respondent's advice, the Eminhizers prevented Xtreme Manufacturing from entering the building, thereby depriving it of property that was subject to the bankruptcy action.

19. Xtreme Manufacturing, through its counsel, James R. Walsh, Esq., sent several written demands to Respondent and attempted to negotiate a resolution to the Eminhizer's continued refusal to permit access to the building.

20. By email dated May 18, 2016, Attorney Walsh provided Respondent with his final proposed revisions to the resolution; however, Respondent failed to respond.

21. By email dated May 20, 2016, Attorney Walsh noted Respondent's unresponsiveness and advised that if he did not respond by three o'clock, Attorney Walsh would be filing a Motion to Compel.

22. Respondent failed to respond to this communication or otherwise facilitate Xtreme Manufacturing's access to the building.

23. On May 24, 2016, Xtreme Manufacturing filed a Motion to Compel seeking enforcement of the automatic stay and an Order requiring that the Eminhizers turn over Xtreme Manufacturing's property, damages, and sanctions.

24. Respondent failed to file a timely response to the Motion to Compel.

25. On May 31, 2016, a hearing was held on the Motion to Compel.

26. During the proceeding, in response to Chief Judge Jeffery A. Deller's inquiry, Respondent admitted that he was not licensed to practice before the United States Bankruptcy Court for the Western District of Pennsylvania.

27. As a matter of courtesy, Chief Judge Deller permitted Respondent to participate in the hearing.

28. At the conclusion of the proceeding, in response to Chief Judge Deller's inquiry, Respondent stated that he would file a response to the Motion to Compel within the next couple of days.

29. Chief Judge Deller ordered Respondent to have a response filed within a week.

30. Chief Judge Deller also issued an Order from the bench directing the Eminhizers to make debtor's property immediately available.

31. Respondent failed to file a response to the Motion to Compel within the timeframe set by Chief Judge Deller's Order, or at any point thereafter.

32. Respondent avers that he did prepare a response, but was unable to file it due to his unfamiliarity with the online filing system.

33. By Order dated May 31, 2016, the Court continued the hearing to June 14, 2016.

34. During the approximately two week interim, Respondent failed to obtain admission to practice before the United States Bankruptcy Court for the Western District of Pennsylvania or secure local counsel for purposes of submitting electronic filings.

35. During the June 14<sup>th</sup> hearing, in response to Chief Judge Deller's inquiry, Respondent claimed that he had not filed a response to the Motion to Compel due to issues he encountered surrounding scheduling the training necessary for permission to file electronically.

36. This was the first time the Eminhizers learned of Respondent's failure to file a response to the Motion to Compel.

37. Chief Judge Deller admonished Respondent for his failure, noting that Respondent should have obtained local counsel to file a response on his behalf.

38. In concluding the proceeding, Chief Judge Deller ordered Respondent to file a response to the Motion to Compel and a separate response to Xtreme Manufacturing's claim for damages and sanctions within 14 days, and an evidentiary hearing would be scheduled.

39. Chief Judge Deller further highlighted that his order provided Respondent with "by far a large enough window to associate with local counsel."

40. Respondent failed to file a response to the Motion to Compel or a response to Xtreme Manufacturing's claim for damages and sanctions within 14 days or thereafter.

41. Respondent further failed to take steps to associate with local counsel or obtain admission before the United States Bankruptcy Court for the Western District of Pennsylvania.

42. By Order dated June 21, 2016, an evidentiary hearing on the Motion to Compel was scheduled for September 22, 2016.

43. The Order further provided that discovery was to commence immediately.

44. Respondent failed to participate in discovery or file pre-trial documents.

45. Respondent further failed to respond to Attorney Walsh's four attempts to contact him *via* telephone to discuss possible stipulations.

46. Respondent failed to advise the Eminhizers of the hearing.

47. As a result of his failure in this regard, the Eminhizers were deprived of their opportunity to attend the September 22<sup>nd</sup> hearing.

48. In or about August 2016, the Eminhizers contacted Respondent's office *via* telephone and were told by his secretary that Respondent had nothing listed on his calendar for their case.

49. Respondent returned the Eminhizer's telephone call, during which conversation he assured them that he was monitoring their case and had obtained admission before the United States Bankruptcy Court for the Western District of Pennsylvania.

50. This statement was false and misleading in that Respondent had not informed the Eminhizers of the September 22<sup>nd</sup> hearing date and had not obtained admission before the United States Bankruptcy Court for the Western District of Pennsylvania.

51. Respondent failed to appear at the September 22<sup>nd</sup> hearing.

52. As a result of his failure to appear, the proceeding was conducted by way of default with Xtreme Manufacturing's evidence as to damages and sanctions being deemed admitted.

53. In or about late-September 2016, the Eminhizers contacted Respondent *via* telephone and left a voicemail requesting an update regarding the case.

54. Respondent failed to return this communication.

55. On or about October 11, 2016, Respondent requested to have a meeting with the Eminhizers on October 14, 2016.

56. Respondent later cancelled this meeting.

57. By Order dated October 28, 2016, judgment was entered in favor of Xtreme Manufacturing and against the Eminhizers as follows:



- a. \$380,000.00 in compensatory damages;
- b. \$10,275.00 in sanctions; and
- c. \$10,275 in attorney's fees.

58. Respondent failed to advise the Eminhizers of the Order.

59. In or about early November 2016, the Eminhizers received a copy of the October 28<sup>th</sup> Order from the Court.

60. The Eminhizers immediately attempted to contact Respondent by calling his cell phone and his parents' home.

61. Respondent failed to respond to these communications.

62. On or about November 3, 2016, the Eminhizers left a voicemail at S&K.

63. Upon being advised of their voicemail, Attorney Scipione arranged a meeting with the Eminhizers for November 7, 2016.

64. From November 3<sup>rd</sup> through November 7<sup>th</sup>, Attorney Scipione attempted to contact Respondent on several occasions to discuss the Eminhizers' matter.

65. Respondent failed to respond to these communications.

66. On November 4, 2016, the Eminhizers came to Respondent's parents' home unannounced to discuss the judgment with him.

67. Upon being presented with the Order, Respondent became emotional, promised to do what he could to clear up the situation, and stated that if he could not do so, then the Eminhizers should sue him.

68. Respondent provided no explanation for his failure to properly represent the Eminhizers.

69. The Eminhizers thereafter terminated Respondent's representation.

70. Respondent unnecessarily delayed in providing the Eminhizers with a copy of their file.

71. By Order dated June 20, 2017, the Court approved a Global Resolution whereby Respondent's malpractice carrier paid out \$215,000.00 in full satisfaction of the judgment against the Eminhizers.

### DISCIPLINARY RULE VIOLATIONS

72. Respondent admits to violating the following Rules of Professional Conduct and Rules of Disciplinary Enforcement in this matter:

- a. 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;
- b. RPC 1.3                    A lawyer shall act with reasonable diligence and promptness in representing a client;
- c. 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;
- d. RPC 1.4(a)(3)            A lawyer shall ... keep the client reasonably informed about the status of the matter;
- e. RPC 1.4(a)(4)            A lawyer shall ... promptly comply with reasonable requests for information;
- f. 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;
- g. RPC 1.16(d)              Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as ... surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred;
- h. RPC 3.2                    A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client;

- i. RPC 8.4(d) It is professional misconduct for a lawyer to ... engage in conduct that is prejudicial to the administration of justice.

#### SPECIFIC JOINT RECOMMENDATIONS FOR DISCIPLINE

Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent is a one-year and one-day Suspension. Respondent hereby consents to the discipline being imposed upon him 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 Respondent consents to the recommended discipline and including the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

In support of Petitioner and Respondent's Joint Recommendation, it is respectfully submitted as follows:

- a. The mitigating circumstances are that:
  - i. Respondent had been practicing law for only three years at the time his misconduct began;
  - ii. Respondent has presented evidence that he was suffering from Attention Deficit Hyperactivity Disorder (Inattentive Type) during the time his misconduct occurred; and
  - iii. Respondent is remorseful for his conduct and understands he should be disciplined, as evidenced by his consent to receiving a one-year and one-day suspension.

Discipline for misconduct arising from allegations of failure to diligently represent and communicate with clients supports a one-year and one-day suspension.

In *Office of Disciplinary Counsel v. Wray*, 19 DB 2017, the Court approved a

one-year and one-day suspension on consent for Wray's failure to report his criminal contempt conviction, neglect of and failure to communicate with seven criminal defendant clients over an approximately one year period, and failure to respond to ODC's DB-7 letter. Wray asserted that he had been suffering from anxiety and depression, for which he began treatment prior to ODC's involvement. In aggravation, Wray had a prior Informal Admonition.

In ***Office of Disciplinary Counsel v. Viscuso***, 108 DB 2016, the Court approved a one-year and one-day suspension on consent for, *inter alia*, Viscuso's neglect of one client matter, which involved his failure to appear for two hearings resulting in judgment and sanctions being entered against his client and failure to satisfy the judgment despite the client providing the funds to do so. Viscuso claimed that he had been participating in various forms of inpatient and outpatient drug and alcohol rehabilitation during the relevant time period.

In ***Office of Disciplinary Counsel v. Fanelli-Greer***, 69 DB 2015, the Court approved a one-year and one-day suspension on consent for, *inter alia*, Fanelli-Greer's neglect and failure to communicate in multiple client matters. Fanelli-Greer's neglect involved her repeated failure to meet filing deadlines in one federal matter and failure to take reasonable action to progress several of her client's cases.

The evidence provided by Respondent indicated that he commenced the practice of law with little mentoring, experience, or oversight. He quickly became overwhelmed, experiencing at times depression, anxiety, and avoidance, for which he only sporadically sought assistance. In the meantime, his practice and some of his clients clearly suffered adverse consequences. Fortunately, Respondent did carry malpractice insurance, which

provided coverage for the Eminhizers. Respondent's former partner, in conjunction with the malpractice carrier, has taken steps to analyze and remedy the IOLTA shortfall and ensure that third parties are made whole.


Considering all of the facts and circumstances, a suspension of one-year and one-day is necessary to protect the public, which is the overriding goal of the disciplinary system. Requiring Respondent to petition for reinstatement will place the onus on him to demonstrate that he has received treatment for his ADHD and is in a position to adequately represent clients. *See Office of Disciplinary Counsel v. Levin*, 124 DB 2004; *Office of Disciplinary Counsel v. Levande*, 72 DB 1999.

WHEREFORE, Petitioner and Respondent respectfully request that:

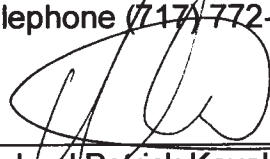
- (a) Pursuant to Pa.R.D.E. 215, a three-member panel of the Disciplinary Board review and approve the above Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania in which it is recommended that the Disciplinary Board of the Supreme Court of Pennsylvania enter an Order Suspending Respondent for one-year and one-day.

Respectfully submitted,

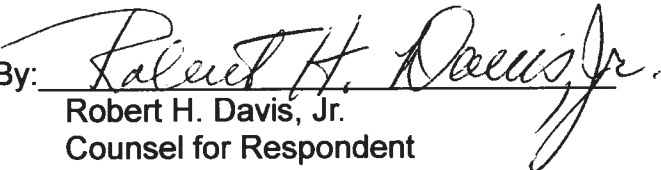
Date: 25 September 2017

By:   
Kristin A. Wells  
Disciplinary Counsel  
Attorney Registration No. 312080  
601 Commonwealth Avenue, Suite 5800  
P.O. Box 62675  
Harrisburg, PA 17106-2675  
Telephone (717) 772-8572

Date: 9/25/2017

By:   
Michael Patrick Kovalcin  
Respondent  
Attorney Registration No. 315038  
317 East Presqueisle Street  
Philipsburg, PA 16866  
Telephone (814) 343-1855

Date: 9-25-2017

By:   
Robert H. Davis, Jr.  
Counsel for Respondent  
Attorney Registration No. 46322  
121 Pine Street, First Floor  
Harrisburg, PA 17101  
Telephone (717) 238-6861

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,  
Petitioner,

v.

MICHAEL PATRICK KOVALCIN,  
Respondent

No. \_\_\_ DB 2017


Attorney Reg. No. 315038

(Centre County)

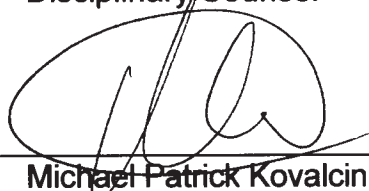
VERIFICATION

The statements made in the foregoing Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d) are true and correct to the best of my knowledge, information, and belief. This statement is made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

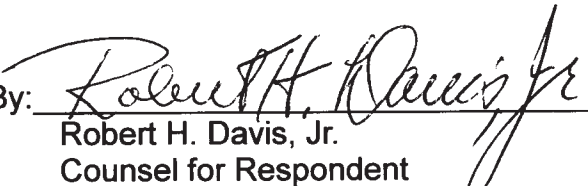
Date: 25 September 2017

By:   
Kristin A. Wells  
Disciplinary Counsel

Date: 9/25/2017

By:   
Michael Patrick Kovalcin  
Respondent

Date: 9-25-2017

By:   
Robert H. Davis, Jr.  
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner,	:	No. ___ DB 2017
	:	
v.	:	Attorney Reg. No. 315038
	:	
MICHAEL PATRICK KOVALCIN,	:	(Centre County)
Respondent	:	
	:	

RESPONDENT'S AFFIDAVIT UNDER RULE 215(d) OF THE  
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

I, Michael Patrick Kovalcin, Respondent in the above-captioned matter, hereby consent to the imposition of a one-year and one-day Suspension followed by a one year period of probation, as jointly recommended by the Petitioner, Office of Disciplinary Counsel, and myself, in a Joint Petition in Support of Discipline on Consent and further state:

1. My consent is freely and voluntarily rendered; I am not being subjected to coercion or duress; I am fully aware of the implications of submitting the consent;
2. I am aware there is presently pending a proceeding involving allegations that I have been guilty of misconduct as set forth in the Joint Petition;
3. I acknowledge that the material facts set forth in the Joint Petition are true;
4. I consent because I know that if the charges continued to be prosecuted in the pending proceeding, I could not successfully defend against them; and



5. I acknowledge that I am fully aware of my right to consult and employ counsel to represent me in the instant proceeding.

By: 

\_\_\_\_\_  
Michael Patrick Kovalcin  
Respondent  
Attorney Registration No. 315038  
317 East Presqueisle Street  
Philipsburg, PA 16866  
Telephone (814) 343-1855

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner,	:	No. __ DB 2017
	:	
v.	:	Attorney Reg. No. 315038
	:	
MICHAEL PATRICK KOVALCIN,	:	(Centre County)
Respondent	:	
	:	

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of Pa.R.A.P. 121.

First Class Mail as follows:

Michael Patrick Kovalcin  
c/o Robert H. Davis, Jr., Esq.  
121 Pine Street, First Floor  
Harrisburg, PA 17101

Date: 25 September 2017

By: Kristin A. Wells  
Kristin A. Wells  
Disciplinary Counsel  
Attorney Registration No. 312080  
601 Commonwealth Avenue, Suite 5800  
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