

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

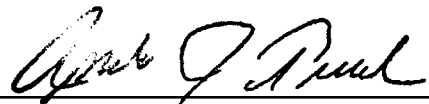
OFFICE OF DISCIPLINARY COUNSEL	:	No. 159 DB 2019
Petitioner	:	
	:	
v.	:	Attorney Registration No. 52918
	:	
TIMOTHY J. MCMAHON	:	
Respondent	:	(Cumberland County)

ORDER

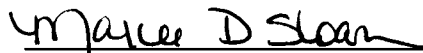
AND NOW, this 2nd day of October, 2019, in accordance with Rule 215(g), Pa.R.D.E., the three-member Panel of the Disciplinary Board having reviewed and approved the Joint Petition in Support of Discipline on Consent filed in the above captioned matter; it is

ORDERED that the said TIMOTHY J. MCMAHON be subjected to a **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a) and Rule 205(c)(9) of the Pennsylvania Rules of Disciplinary Enforcement.

BY THE BOARD:


Board Chair

TRUE COPY FROM RECORD
Attest:


Marcee D. Sloan
Board Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
Petitioner,	:	No. <u>159</u> DB 2019
	:	
v.	:	Attorney Reg. No. 52918
	:	
TIMOTHY J. MCMAHON,	:	
Respondent	:	(Cumberland 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 Nicholas K. Weiss, Disciplinary Counsel, and Respondent, Timothy J. McMahon, by his counsel Craig Evan Simpson, Esq., 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.

2. Respondent, Timothy J. McMahon, was born on November 13, 1961, and was admitted to practice law in Pennsylvania on November 10, 1988. Respondent is on active status and maintains a registered mailing address of 4456 Dunmore Drive, Harrisburg, Pennsylvania 17112.

FILED 09/04/2019 The Disciplinary Board of the Supreme Court of Pennsylvania

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

4. Respondent has no prior history of discipline.

SPECIFIC FACTUAL ADMISSIONS

5. Respondent's misconduct pertains to his behavior at the 2017 Dauphin County Bench-Bar Conference ("Conference"), which resulted in Respondent pleading guilty to two criminal offenses.

6. On or around July 28-30, 2017, Respondent attended the Conference, which was held in Bedford County at the Omni Bedford Springs Resort.

7. Respondent was, at that time, a Managing Partner at Marshall, Dennehey, Warner, Coleman, & Goggin, P.C. ("Marshall Dennehey"), where he had spent the entirety of his 32-year legal career.

8. On the first evening of the Conference, Respondent went to the resort's bar.

9. Seated near Respondent were female members of the Bar who were in attendance at the Conference.

10. As the evening progressed, Respondent consumed numerous alcoholic beverages and became increasingly intoxicated.

11. If this matter were to proceed to hearing, Petitioner would present that:

a. Respondent began making unwanted and inappropriate advances toward the female attorneys seated near him;

b. Respondent touched two of the female attorneys on sensitive areas of their bodies;

- c. after those two attorneys got away from him, Respondent began similar behavior toward a third female attorney at the bar;
- d. at some point, others attempted to intervene and stop Respondent's conduct toward the third female attorney, but Respondent persisted in his behavior;
- e. Respondent then tried to order another alcoholic beverage, but was informed by resort staff that he had been cut off; and
- f. Respondent thereafter became belligerent and had to be escorted back to his room by four security staff members.

12. Respondent would testify that, due to his inebriation on the night in question, he is unable to recollect the conduct referenced above, but does not contest the same.

13. Based on his behavior, Respondent was asked to resign from Marshall Dennehey.

14. Respondent was also dismissed from the Dauphin County Bar Association.

15. On June 29, 2018, the Bedford County District Attorney's Office charged Respondent with the following:

- a. two counts of Indecent Assault Without the Consent of the Other;
- b. two counts of Disorderly Conduct – Engaging in Fighting;
- c. one count of Harassment – Course of Conduct with No Legitimate Purpose;
and
- d. one count of Harassment – Subject Another to Physical Contact.

16. On February 21, 2019, Respondent entered into a plea agreement, wherein he agreed to plead guilty to Harassment – Course of Conduct with No Legitimate Purpose, 18 Pa.C.S.

§ 2709(a)(3), a Summary Offense, and Disorderly Conduct – Engaging in Fighting, 18 Pa.C.S. § 5503(a)(1), a Third Degree Misdemeanor.¹

17. On March 22, 2019, the Court entered Respondent's guilty plea.
18. As to the harassment conviction, Respondent was sentenced to:
 - a. 90 days probation;
 - b. wear SCRAM bracelet for 90 days and pay costs therefor;
 - c. undergo sex offender evaluation and drug and alcohol evaluation;
 - d. complete all treatment recommended by both evaluations;
 - e. have no contact with the victims;
 - f. pay costs and applicable statutory fees;
 - g. pay county supervisory fee; and
 - h. pay \$300.00 fine.
19. As to the disorderly conduct conviction, Respondent was sentenced to:
 - a. one year probation, consecutive to the 90 day probation entered on the harassment conviction;
 - b. pay costs and applicable statutory fees;
 - c. pay county supervisory fee; and
 - d. pay \$1,000.00 fine.
20. Respondent did not appeal his conviction or sentence.
21. Respondent has paid all court-ordered fines.
22. Respondent has completed his initial 90-day probation phase.
23. Respondent has completed his court-ordered drug and alcohol evaluations.

¹ The remaining charges were *nolle prossed* by agreement.

DISCIPLINARY RULE VIOLATIONS

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

- a. RPC 8.4(b) – “It is professional misconduct for a lawyer to ... commit a criminal act that reflects adversely on the lawyer’s honesty, trustworthiness or fitness as a lawyer in other respects;” and
- b. Pa. R.D.E. 203(b)(1) – “The following shall also be grounds for discipline ... conviction of a crime.”

SPECIFIC JOINT RECOMMENDATIONS FOR DISCIPLINE

Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent is a Public Reprimand. There is no *per se* rule for discipline cases, *see Office of Disciplinary Counsel v. Robert S. Lucarini*, 472 A.2d 186, 190 (Pa. 1983), rather, each case is considered based on the facts and circumstances presented. In *In re Anonymous*, No. 116 DB 93, 31 Pa. D&C4th 199 (1995), the respondent received a Public Reprimand for inappropriately touching his victim. Ultimately, the victim chose not to bring indecent assault charges against the respondent. In *Office of Disciplinary Counsel v. Christian V. Badali*, No. 8 DB 2016 (2016), Badali received a Public Reprimand for engaging in a consensual sexual relationship with a client, which he lied about when confronted by his law partners. In *Office of Disciplinary Counsel v. Richard A. Behrens*, No. 198 DB 2009, (D.Bd. Rpt. 12/2/2011) (S.Ct. Order 4/24/2012), the Court suspended Behrens for one-year and one-day based on his conviction for the indecent assault of his 18-year-old niece. Notably, Behrens also admitted to inappropriately touching his 14-year-old adopted daughter, and claimed to have a sex addiction. In *Office of Disciplinary Counsel v. Anthony L.V. Picciotti*, No. 77 DB 1997, 49 Pa. D&C4th 119 (2000), Picciotti received a

suspension of three years based on his conviction of indecent assault for inappropriate physical contact with one of his clients. In *Office of Disciplinary Counsel v. Thomas C. Gordon*, No. 127 DB 1994, (D.Bd. Rpt. 4/6/1998) (S.Ct. Order 6/2/1998), the Court suspended Gordon for five years following his conviction for three separate incidents in which he indecently assaulted a client, a client's wife, and another client's fiancé. Notably, Gordon did not show remorse for his actions, and continued to proclaim his innocence notwithstanding his criminal convictions.

Unlike *In re Anonymous*, Respondent received a criminal conviction as a result of his behavior at the Conference. In contrast to *Badali*, Respondent's victims did not consent to his unwanted sexual advances. Respondent's misconduct was arguably less severe than that in *Behrens*, in that Respondent's victims were not minors and there is no evidence that Respondent suffers from any sort of addiction that may lead to future misconduct. While Respondent's victims were not his clients, they were his professional colleagues. Compare *Picciotti*, No. 77 DB 1997, with *Gordon*, No. 127 DB 1994. It is also significant that Respondent's actions took place in public, and risked bringing the profession into disrepute.

In contrast to many of the cases cited above, Respondent's misconduct did not involve ongoing inappropriate sexual behavior or multiple instances thereof. Rather, Respondent's misconduct was comprised of a single night of inappropriate actions that Respondent asserts were prompted by his over-imbibing. Moreover, Respondent was not in a position of power over any of the victims. See, e.g. *Badali*, No. 8 DB 2016; *Behrens*, No. 198 DB 2009; *Picciotti*, No. 77 DB 1997; *Gordon*, No. 127 DB 1994. Finally, in contrast to *Gordon*, Respondent has exhibited remorse and accepted responsibility for his actions.

The primary function of the disciplinary system is "not to punish but rather to protect the public and uphold the integrity of the profession." *Office of Disciplinary Counsel v. Clayton*

William Boulware, No. 97 DB 2011 (D.Bd. Opinion 9/4/2013). In this case, Respondent has already faced significant consequences for his misconduct. Specifically, he was forced to resign as Managing Partner at Marshall Dennehey, where he had spent his entire 32-year legal career. Respondent was also dismissed from the Dauphin County Bar Association. In light of the consequences Respondent has already faced, his misconduct does not warrant a suspension. A Public Reprimand strikes a balance between the need to meaningfully address the severity of Respondent's misconduct and the repercussions he has already suffered.

Throughout ODC's investigation, Respondent has expressed sincere remorse for his actions at the Conference. Importantly, Respondent claims that he has abstained from alcohol since the Conference. Respondent has complied with the terms of his probation and paid all court-ordered fines and costs. Respondent does not have any prior disciplinary history, and ODC's investigation has produced no evidence that Respondent poses an ongoing risk of similar behavior. By entering into this Joint Petition, Respondent has expressed recognition of his violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement and his understanding of the need for discipline.

Respondent hereby consents to the discipline being imposed upon him by this Honorable Board. 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).

WHEREFORE, Petitioner and Respondent respectfully request that your Honorable Board:

- (a) Approve this Petition and enter an Order imposing a Public Reprimand; and

(b) Pursuant to Pa.R.D.E. 215(i), enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter.

Respectfully submitted,

Date: SEPTEMBER 4, 2019

By: Nick Weiss
Nicholas K. Weiss
Disciplinary Counsel
Attorney Registration No. 324774
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

Date: SEPT. 3, 2019

By: Timothy J. McMahon
Timothy J. McMahon
Respondent
Attorney Registration No. 52918
4456 Dunmore Drive
Harrisburg, PA 17112
Telephone (570) 342-8194
117 657 2824

Date: August 23, 2019

By: Craig Evan Simpson
Craig Evan Simpson, Esq.
Counsel for Respondent
Attorney Registration No. 26485
1500 Ardmore Blvd., Suite 207
Pittsburgh, PA 15221
Telephone (412) 731-3123

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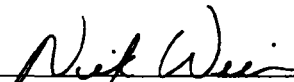
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Petitioner, : No. ___ DB 2019
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TIMOTHY J. MCMAHON, :
Respondent : (Cumberland County)

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.

Respectfully submitted,

Date: SEPTEMBER 4, 2019

By: 
Nicholas K. Weiss
Disciplinary Counsel
Attorney Registration No. 324774
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
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Date: SEPT. 3, 2019

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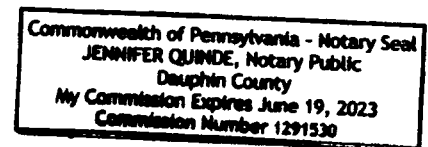
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Respondent : (Cumberland County)

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

I, Timothy J. McMahon, Respondent in the above-captioned matter, hereby consent to the imposition of a Public Reprimand, 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 am represented by counsel in this matter.

By: 
Timothy J. McMahon
Respondent



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Petitioner,	:	No. ___ DB 2019
	:	
v.	:	Attorney Reg. No. 52918
	:	
TIMOTHY J. MCMAHON,	:	
Respondent	:	(Cumberland County)
	:	

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:

Timothy J. McMahon
c/o Craig Evan Simpson, Esq.
1500 Ardmore Blvd., Suite 207
Pittsburgh, PA 15221


Date: SEPTEMBER 4, 2019

By: Nicholas K. Weiss
Nicholas K. Weiss
Disciplinary Counsel
Attorney Registration No. 324774
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature: 

Name: Nicholas K. Weiss, Esq.

Attorney No. (if applicable): 324774