

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1378 Disciplinary Docket No. 3
Petitioner :
 : No. 176 DB 2007
v. :
 : Attorney Registration No. 2529
JOSEPH A. CANUSO, :
Respondent : (Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 29th day of July, 2008, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated April 11, 2008, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Joseph A. Canuso be subjected to public censure by the Supreme Court.

A True Copy Patricia Nicola

As of: July 29, 2008

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

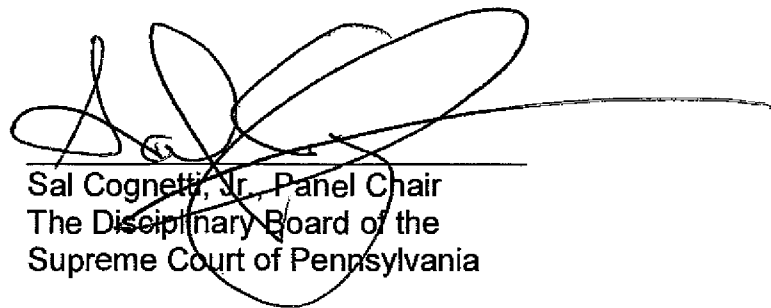
OFFICE OF DISCIPLINARY COUNSEL : No. 176 DB 2007
Petitioner :
v. : Attorney Registration No. 2529
JOSEPH A. CANUSO :
Respondent : (Philadelphia)

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 Sal Cogneetti, Jr., Smith Barton Gephart and William A. Pietragallo, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on March 13, 2008.

The Panel approves the Joint Petition consenting to a Public Censure 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.


Sal Cogneetti, Jr., Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: April 11, 2008

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: :
: No. 176 DB 2007
v. :
: Atty. Reg. No. 2529
JOSEPH A. CANUSO, :
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 Richard Hernandez, Disciplinary Counsel, and by Respondent, Joseph A. Canuso, 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:

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

FILED

MAR 13 2008

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

2. Respondent, Joseph A. Canuso, was admitted to practice law in the Commonwealth on or about January 12, 1970. Respondent maintains an office for the practice of law at 123 South Broad Street, Suite 1812, Philadelphia, PA 19109.

3. 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.

4. Petitioner filed a Petition for Discipline against Respondent with the Secretary of the Disciplinary Board on December 5, 2007. Respondent was served with that Petition on December 18, 2007.

5. Respondent did not file an Answer to the Petition for Discipline with the Secretary of the Disciplinary Board.

**SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED**

6. Respondent hereby stipulates that the following factual allegations drawn from the Petition for Discipline are true and correct and that he violated the charged Rules of Professional Conduct as set forth herein.

CHARGE I: SCOTT RANDALL MEANS A/K/A DAREN WILLIAMS

7. On December 8, 2004, Respondent was appointed to represent Scott Randall Means a/k/a Daren Williams ("Mr.

Means") on pending criminal charges in the Court of Common Pleas of Philadelphia County.

8. On March 13, 2006, Mr. Means was convicted of murder, aggravated assault, and related weapon offenses.

9. On April 13, 2006, Mr. Means filed a *pro se* Notice of Appeal with the Superior Court.

a. Mr. Means' appeal was docketed at No. 1111 EDA 2006.

10. By letter to Respondent dated April 20, 2006, from the Honorable Sheila Woods-Skipper, Judge Woods-Skipper:

- a. enclosed a copy of the *pro se* Notice of Appeal filed with the court; and
- b. stated that the Notice of Appeal was being forwarded to Respondent as the attorney of record.

11. Respondent received the letter from Judge Woods-Skipper.

12. By letter dated April 25, 2006, from Charles R. Lanzaletti to Respondent, Mr. Lanzaletti:

- a. advised Respondent that Mr. Means had filed an appeal to the Superior Court; and
- b. requested that Respondent enter his appearance with the Superior Court.

13. Respondent received the letter from Mr. Lanzalotti.

14. On April 26, 2006, Respondent was appointed to represent Mr. Means on appeal.

15. Respondent received notice of his appellate appointment.

16. On June 2, 2006, Judge Woods-Skipper ordered, pursuant to Pa.R.A.P. 1925(b), that a detailed statement of matters complained of on appeal be filed with the Clerk of Courts and be served on the trial judge within fourteen days of the Order.

17. Respondent received the June 2, 2006 Order to file a 1925(b) statement within fourteen days of the Order.

18. Respondent failed to file a 1925(b) statement within fourteen days of the Order.

19. On June 8, 2006, Respondent entered his appearance on behalf of Mr. Means in No. 1111 EDA 2006.

20. Thereafter, Respondent failed to take any action to represent Mr. Means in his appellate matter.

21. On June 9, 2006, Mr. Means filed a *pro se* Motion to Remand For Evidentiary Hearing and Appointment of Appeal Counsel.

22. Respondent received a copy of Mr. Means' motion.

23. By *Per Curiam* Order dated June 27, 2006, the Superior Court:

- a. denied Mr. Means' request for the appointment of counsel in light of the fact that Respondent had entered his appearance on June 8, 2005 [sic];
- b. denied Mr. Means' request for a hearing on ineffective assistance of counsel;
- c. denied Mr. Means' motion to amend his *pro se* Notice of Appeal;
- d. cited cases explaining counsel's obligations to petition for remand upon review of *pro se* allegations of ineffective assistance of counsel; and
- e. directed the prothonotary to forward Mr. Means' *pro se* motions to Respondent.

24. Respondent received a copy of the Superior Court's Order.

25. Respondent received Mr. Means' motions from the prothonotary.

26. Upon review of Mr. Means' *pro se* allegations of ineffective assistance of counsel, Respondent did not petition for remand.

27. On July 10, 2006, Mr. Means filed a Motion for Reconsideration *En Banc* of the Superior Court's June 27, 2006 Order.

28. By *Per Curiam* Order dated July 18, 2006, the Superior Court:

- a. denied Mr. Means' motion for *en banc* reconsideration;
- b. cited cases explaining counsel's obligations to petition for remand upon review of *pro se* allegations of ineffective assistance of counsel; and
- c. directed the prothonotary to forward Mr. Means' *pro se* motions to Respondent.

29. Respondent received the Superior Court's Order.

30. Respondent received Mr. Means' motions from the prothonotary.

31. Upon review of Mr. Means' *pro se* allegations of ineffective assistance of counsel, Respondent did not petition for remand.

32. On August 17, 2006, Mr. Means filed a "Motion to Recognize Appellant's Right to Appeal and the Effective Assistance of Counsel on Appeal."

33. By letter dated August 21, 2006, from Judge Woods-Skipper to Respondent, Judge Woods-Skipper:

- a. reminded Respondent of her June 2, 2006 Order to file a 1925(b) statement; and
- b. informed Respondent that if she did not receive a 1925(b) statement from Respondent by August 24, 2006, then all of appellant's issues would be deemed waived.

34. Respondent received Judge Woods-Skipper's letter.

35. Respondent failed to file a timely 1925(b) statement by August 24, 2006.

36. By *Per Curiam* Order dated September 11, 2006, the Superior Court denied Mr. Means' motion to reconsider and directed the prothonotary to forward a copy of the *pro se* motion to Respondent.

37. Respondent received Mr. Means' *pro se* motion to reconsider.

38. By Opinion dated September 28, 2006, Judge Skipper-Woods held that all of Mr. Means' issues on appeal were deemed waived by Respondent's failure to file a 1925(b) statement.

39. From time to time, Mr. Means, his family, and prison staff attempted to contact Respondent, via letters and telephone calls, to obtain information about the status of Mr. Means' appeal.

a. Respondent received the letters and telephone calls.

b. Respondent failed to respond and provide the requested information.

40. On November 20, 2006, Mr. Means filed a *pro se* application for relief.

41. By *Per Curiam* Order dated December 15, 2006, the Superior Court:

a. ordered Respondent to file appellant's brief within thirty days;

b. directed the prothonotary to forward copies of Mr. Means' *pro se* motion to Respondent; and

c. directed Respondent to provide Mr. Means with a copy of the Superior Court's Order.

42. Respondent received the Superior Court's Order.

43. Respondent failed to file the brief for appellant.

44. On January 18, 2007, Mr. Means filed a *pro se* application for remand for evidentiary hearing and appointment of counsel.

45. Respondent received Mr. Means' application.

46. By *Per Curiam* Order dated February 6, 2007, the Superior Court:

- a. found that Respondent had "wholly failed to represent Appellant in this matter";
- b. found that Respondent "failed to comply with the Order of December 15, 2006 to file a brief on Appellant's behalf";
- c. withdrew Respondent's appearance on behalf of Mr. Means;
- d. directed the trial court to appoint new counsel for Mr. Means; and
- e. directed the trial court to withhold any attorney fee and ordered Respondent to reimburse Philadelphia County for any attorney fees Respondent may have received.

47. Respondent received a copy of the Superior Court's Order.

48. Respondent admits that by his conduct as set forth in Paragraphs 7 through 47 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;

- c. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;
- d. RPC 1.4(b), which states that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and
- e. 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.

COUNT II: DARRELL BETHA

49. On March 2, 2006, the Honorable Harold M. Kane sentenced Darrell Betha to life imprisonment for his murder conviction in a case captioned ***Commonwealth v. Betha***, No. 203, November Term, 2004 (Philadelphia County).

- a. Respondent represented Mr. Betha at his criminal trial.

50. On March 8, 2006, Respondent filed a Notice of Appeal with the Superior Court.

- a. The Superior Court docketed Mr. Betha's appeal at No. 729 EDA 2006.

51. On April 19, 2006, Respondent was appointed to represent Mr. Betha in his appellate matter.

- a. Respondent received notice of his court appointment.

52. Thereafter, Respondent failed either to file an entry of appearance with the Superior Court or to seek leave to withdraw from the court appointment.

53. On August 10, 2006, Judge Kane issued an Order for a 1925(b) Statement.

- a. Respondent received a copy of Judge Kane's Order.

54. By letter dated September 19, 2006, from Mr. Betha to Respondent, Mr. Betha:

- a. states that he is concerned because Respondent has not contacted him regarding his appeal;
- b. advises Respondent that he wants to be informed as to the issues raised in the 1925(b) Statement;
- c. suggests that he has additional issues that may be raised on appeal;
- d. requests copies of Respondent's jury notes for his records; and

e. requests a response from Respondent at Respondent's earliest convenience.

55. Respondent received Mr. Betha's letter.

56. Respondent failed to answer Mr. Betha's letter and provide Mr. Betha with the information that he requested.

57. By letter dated December 13, 2006, from Mr. Betha to Respondent, Mr. Betha:

a. reminds Respondent that Respondent has failed to respond to his earlier letter regarding his pending appeal;

b. repeats his request for a copy of the 1925(b) Statement and jury notes; and

c. requests a copy of the transcripts and autopsy pictures.

58. Respondent received Mr. Betha's letter.

59. Respondent failed to answer Mr. Betha's letter and provide him with the information that he requested.

60. From time to time, Mr. Betha's wife would call Respondent's office requesting information regarding the status of her husband's appeal.

a. Respondent did not answer Mrs. Betha's telephone calls and provide her with the requested information.

61. On June 8, 2007, the Superior Court received the trial court record.

62. By letter dated June 8, 2007, from ODC to Respondent, ODC:

- a. informed Respondent that we received a complaint from Mr. Betha concerning Mr. Betha's perception that Respondent had not communicated with him or diligently handled his appellate matter;
- b. reminded Respondent of Respondent's duties pursuant to RPC 1.3 and RPC 1.4;
- c. requested that Respondent write to Mr. Betha and explain the status of his appellate matter;
- d. requested that Respondent send to ODC a copy of his letter to Mr. Betha; and
- e. requested that Respondent inform the Superior Court of his new attorney registration address.

63. Respondent received ODC's letter.

64. Respondent did not respond to ODC's letter and requests.

65. By *Per Curiam* Order dated June 8, 2007, the Superior Court ordered Respondent to file Mr. Betha's brief on or before July 18, 2007.

a. Respondent received a copy of the Superior Court's Order.

66. Respondent failed to file Mr. Betha's appellate brief by July 18, 2007.

67. By *Per Curiam* Order dated August 22, 2007, the Superior Court dismissed Mr. Betha's appeal due to Respondent's failure to file the appellate brief.

68. Respondent admits that by his conduct as set forth in Paragraphs 49 through 67 above, Respondent violated the following Rules of Professional Conduct:

a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;

b. RPC 1.4(a)(2), which states that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;

c. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;

- d. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;
- e. RPC 1.4(b), which states that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; and
- 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.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

69. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a public censure.

70. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating that he consents to the recommended discipline, including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

71. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances:

- a. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and his consent to receiving a public censure; and
- c. Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his consent to receiving a public censure.

72. Respondent has the following record of discipline, which is an aggravating factor in determining the discipline to impose:

- a. On June 15, 1998, Respondent received an informal admonition for violating Rules of Professional Conduct 1.3 and 8.4(d). Respondent failed to timely file an appellate brief on behalf of his client with the Superior Court of Pennsylvania, which required the Superior Court of Pennsylvania

to expend its resources to address Respondent's failure to properly represent his client.

- b. On December 4, 2002, Respondent received a private reprimand for violating Rules of Professional Conduct 1.3, 1.4(a), 1.4(b), and 1.16(d). In a civil case, Respondent failed to serve a Writ of Summons on the defendant, to respond to his client's telephonic inquiries, to advise his client of an arbitration hearing, to appear at the arbitration hearing on behalf of his client, and to forward the client's file to new counsel after his client terminated Respondent's representation.

73. A public censure is within the range of discipline imposed on attorneys who engage in neglect and have a record of discipline. *E.g., Office of Disciplinary Counsel v. Neil Jokelson*, Nos. 58 and 102 DB 1998 (D.Bd. Rpt. 12/22/00) (S.Ct. Order 2/26/01) (attorney who neglected two client matters and had a history of private discipline for similar types of neglect received a public censure and probation with a practice monitor). In a recent consent discipline matter that resembles Respondent's disciplinary

matter, the Court approved and imposed a public censure on a respondent who had neglected two criminal appellate matters and had a record of private discipline in the nature of an informal admonition on two complaint matters and a private reprimand. *Office of Disciplinary Counsel v. Edward C. Meehan, Jr.*, No. 26 DB 2006 (Recommendation of the Three-Member Panel of the Disciplinary Board 6/27/06) (S.Ct. Order 9/18/06).

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 a Public Censure.
- b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition, and that all

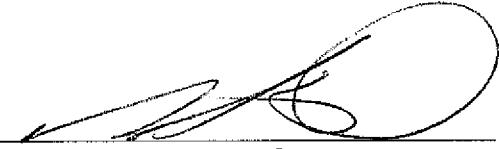
expenses be paid by Respondent before the
imposition of discipline under Pa.R.D.E.
215(g).

Respectfully and jointly submitted,

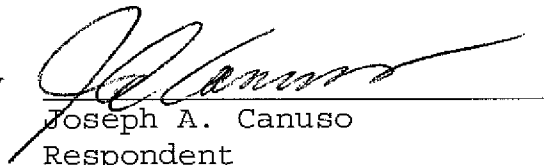
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

March 10, 2008
Date

By 
Richard Hernandez
Disciplinary Counsel

March 10, 2008
Date

By 
Joseph A. Canuso
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
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: :
: No. 176 DB 2007
v. :
: Atty. Reg. No. 2529
JOSEPH A. CANUSO, :
Respondent : (Philadelphia)


VERIFICATION

The statements contained in the foregoing Joint Petition In Support Of Discipline On Consent Under Pa.R.D.E. 215(d) are true and correct to the best of our knowledge, information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

March 10, 2008
Date


Richard Hernandez
Disciplinary Counsel

March 10, 2008
Date


Joseph A. Canuso
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
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AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

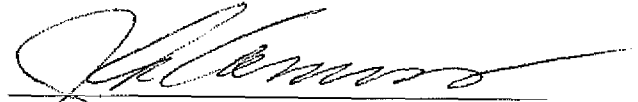
Respondent, Joseph A. Canuso, hereby states that he consents to the imposition of a Public Censure as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition In Support Of Discipline On Consent and further states that:

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 not consulted with counsel in connection with the decision to consent to discipline;

2. He is aware that there is presently pending a disciplinary proceeding at No. 176 DB 2007 involving allegations that he has been guilty of misconduct as set forth in the Joint Petition;

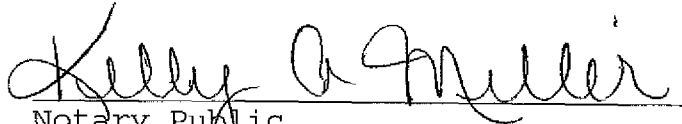
3. He acknowledges that the material facts set forth in the Joint Petition are true; and

4. He consents because he knows that if charges pending at No. 176 DB 2007 continued to be prosecuted, he could not successfully defend against them.



Joseph A. Canuso, Esquire
Respondent

Sworn to and subscribed
before me this 10th
day of March, 2008.


Notary Public