

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1518 Disciplinary Docket No. 3
Petitioner :
 : No. 1 DB 2009
v. :
 : Attorney Registration No. 92235
MICHAEL J. BURKE, :
Respondent : (Philadelphia)

ORDER

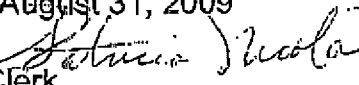
PER CURIAM:

AND NOW, this 31st day of August, 2009, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated July 29, 2009, 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 Michael J. Burke is suspended on consent from the Bar of this Commonwealth for a period of one year and one day retroactive to January 8, 2009, and he shall comply with all the provisions of Rule 217, Pa.R.D.E. Respondent shall also reimburse \$800.00 to Mr. Ank Truong within thirty days from the date of this Order.

A True Copy Patricia Nicola

As of August 31, 2009

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

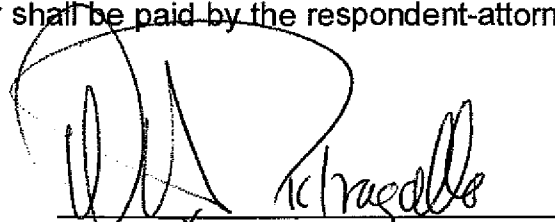
OFFICE OF DISCIPLINARY COUNSEL : No. 1 DB 2009
Petitioner :
v. : Attorney Registration No. 92235
MICHAEL J. BURKE :
Respondent : (Philadelphia)

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 William A. Pietragallo, Sal Cagnetti, Jr., and Charlotte S. Jefferies, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on January 6, 2009.

The Panel approves the Petition consenting to a one year and one day suspension with condition retroactive to the date of the Order of Inactive Status and recommends to the Supreme Court of Pennsylvania that the attached Joint 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.


William A. Pietragallo, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: July 29, 2009

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

1 DB 2009
OFFICE OF DISCIPLINARY COUNSEL, : ODC File Nos. C1-08-525,
Petitioner : C1-08-628, C1-08-693,
: C1-08-712, and C1-08-735
:
: Atty. Reg. No. 92235
MICHAEL J. BURKE, :
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 by Respondent, Michael J. Burke, Esquire, and John Rogers Carroll, Esquire, Respondent's counsel, 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 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

FILED

JAN 06 2009

Office of the Secretary
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, Michael J. Burke, was admitted to practice law on January 29, 2004.

3. Respondent's attorney registration address is 3301 South Galloway Street, Suite 250, Philadelphia, PA 19148.

4. 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

5. Respondent specifically admits to the truth of the factual allegations and conclusions of law contained in paragraphs 1 through 105.

Charge I: Kenneth Hall, Esquire, File Nos. C1-08-712 and C1-08-525

6. On April 17, 2006, Kenneth S. Hall, Esquire, attorney for plaintiff Juan Mercado, filed a complaint against defendants Jean Jeanty, Maud Fam, Inc., First Keystone Risk Retention Group, Inc. (First Keystone), and Beverly E. Moye, in the Court of Common Pleas of

Philadelphia County, in a case captioned **Mercado v. Jeanty, et al.**, No. 2047, April Term, 2006.

7. On July 31, 2006, Respondent entered his appearance on behalf of defendants Jean Jeanty, Maud Fam, Inc., and First Keystone.

8. On January 26, 2007, an arbitration panel entered an award in favor of plaintiff Juan Mercado and against defendants Jean Jeanty, Maud Fam, Inc., and First Keystone in the amount of \$25,000.

9. On October 10, 2007, plaintiff filed a Praecipe for Writ of Execution; on February 20, 2008, plaintiff filed a Praecipe to Reissue Writ of Execution.

10. Plaintiff scheduled a Sheriff Sale for Monday, April 21, 2008, at defendant First Keystone's office, 4421 Aramingo Avenue, Philadelphia, PA.

11. On April 21, 2008, Respondent:

- a. spoke to Mr. Hall and offered to settle the case for \$22,250;
- b. falsely informed Mr. Hall that Respondent had sufficient funds in Respondent's IOLTA account to pay the settlement offer, when in fact, Respondent had only \$10,305.26 in Respondent's account on April 21, 2008;

- c. faxed to Mr. Hall a cover letter, dated April 21, 2008, explaining that Respondent had agreed to settle the matter for \$22,250; and
- d. faxed to Mr. Hall a copy of check number 109, in the amount of \$22,250, dated April 21, 2008, written on Respondent's IOLTA account at Commerce Bank, account number 372826461.

12. Based on Mr. Hall's receipt of Respondent's faxed documents, Mr. Hall rescheduled the Sheriff Sale to Monday, May 19, 2008.

13. On or about May 9, 2008, Mr. Hall received Respondent's April 21, 2008 cover letter and check number 109, in the amount of \$22,250, written on Respondent's IOLTA account, dated April 21, 2008.

- a. On May 9, 2008, Mr. Hall deposited the \$22,250 check in his attorney escrow account at PNC Bank.

14. At the time Respondent wrote check number 109, in the amount of \$22,250, Respondent's IOLTA account did not contain sufficient funds to pay that check, and Respondent knew that to be the case.

- a. Because Respondent's IOLTA account did not contain sufficient funds to pay check number

109, an \$11,944.74 overdraft resulted in Respondent's IOLTA account.

15. Commerce Bank did not honor check number 109.

a. On May 12, 2008, Commerce Bank provided Respondent with written notice of its action not to honor check number 109.

16. On May 13, 2008, PNC Bank erroneously advised Mr. Hall that Respondent had funds in Respondent's IOLTA account sufficient to pay the \$22,250 check.

17. On May 14, 2008, Mr. Hall filed an Order to Satisfy Judgment in **Mercado v. Jeanty**, based on his erroneous belief that Respondent had sufficient funds in his IOLTA account to satisfy the judgment.

18. By letter May 13, 2008, received by Mr. Hall on May 19, 2008, PNC Bank notified Mr. Hall that check number 109 was being returned as "unpaid," because Respondent's account did not have sufficient funds available for withdrawal.

19. On May 16, 2008, First Keystone issued to Respondent checks to cover the settlement, which Respondent deposited into his escrow account that day.

20. On May 20, 2008, Commerce Bank honored Respondent's \$22,250 settlement check.

21. By letter dated May 20, 2008, to Respondent from Kathryn J. Peifer, Esquire, Executive Director, Pennsylvania Lawyers Fund for Client Security, Ms. Peifer requested a written documented explanation as to why the \$11,944.74 overdraft occurred.

22. Respondent received Ms. Peifer's letter.

23. By letter dated June 12, 2008, from Respondent to Ms. Peifer, Respondent wrote:

I was asked by my client, First Keystone Risk Retention Group, Inc. to issue this check against the escrow account with the understanding that they would deposit the additional amount necessary to cover the check. First Keystone did issue me a check to cover the expense. However, due to an oversight I did not immediately deposit it. Once I realized the error, I immediately made the deposit.

24. Respondent's statements to Ms. Peifer, that First Keystone had issued to Respondent a check to cover the April 21, 2008 settlement check and due to an oversight Respondent did not deposit the check, were false and Respondent knew or should have known they were false when Respondent made them.

25. By his conduct, Respondent violated the following Rules of Professional Conduct:

a. RPC 1.15(a), which states that a lawyer shall hold property of clients or third

persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later;

- b. 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;
- 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; and
- 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.

CHARGE II: LaFayette J. Caison and Patricia J. Caison
File No. C1-08-693

26. On June 8, 2007, Respondent filed a medical malpractice case on behalf of plaintiffs Lafayette J. Caison and Patricia Ann Caison (the Caisons) against Mercy Hospital of Philadelphia, Farrukh Ali Khan, M.D., John Fobia, M.D., and Jyothsna Reddy, M.D., in the Court of Common Pleas of Philadelphia County, in a case docketed at No. 804, June Term, 2007 (Philadelphia County).

27. On August 28, 2007, defendants filed preliminary objections to the complaint.

- a. Respondent received a copy of the Preliminary Objections.

28. Respondent did not file a response to defendants' preliminary objections.

29. By Order dated October 11, 2007, the Honorable William J. Manfredi:

- a. sustained defendants' uncontested preliminary objections; and
- b. struck "any and all improper allegations" regarding unnamed individuals.

30. Respondent received a copy of Judge Manfredi's Order.

31. Respondent failed to inform the Caisons about Judge Manfredi's Order.

32. On November 27, 2007, defendants served Respondent with Interrogatories and a Request for Production of Documents.

33. Respondent failed to answer the Interrogatories or file objections thereto within thirty days of service, as required by Pa.R.C.P. 4006(a)(2).

34. Respondent failed to provide the requested documents or file objections to the Request for Production of Documents within thirty days of service, as required by Pa.R.C.P. 4009.12.

35. On January 16, 2008, defendants Reddy and Fobia filed a Motion to Dismiss.

36. On February 6, 2008, Respondent filed Plaintiffs' Answer to Motion to Dismiss.

37. Respondent failed to serve a copy of Plaintiffs' Answer to Motion to Dismiss upon defendants.

38. Prior to February 20, 2008, Frank Gerolamo, Esquire, counsel for defendants, called Respondent's office and requested that Respondent provide him with a copy of Plaintiffs' Answer to Motion to Dismiss.

39. By letter dated February 20, 2008, from Mr. Gerolamo, to Respondent, with a carbon copy to Judge

Manfredi, Mr. Gerolamo requested that Respondent provide him with a copy of Plaintiffs' Answer to the Motion to Dismiss.

40. Respondent failed to provide Mr. Gerolamo with Plaintiffs' Answer to Motion to Dismiss.

41. From time to time, Judge Manfredi's law clerk would call Respondent's office and request that Respondent serve Plaintiffs' Answer to Motion to Dismiss upon defendants.

42. Respondent failed to provide Mr. Gerolamo with Plaintiffs' Answer to Motion to Dismiss.

43. On March 19, 2008, Judge Manfredi:

- a. found that Respondent failed to serve Plaintiffs' Answer to Motion to Dismiss upon defendants;
- b. found that Respondent ignored written requests from counsel for defendants and telephone call requests from the Court;
- c. struck Plaintiffs' Answer to Motion to Dismiss;
- d. granted defendants' Motion to Dismiss; and
- e. pursuant to 42 Pa.C.S.A. § 2503(6), ordered that within twenty days Respondent pay defendants' counsel fees of \$500 for

Respondent's "dilatory, obdurate and vexatious conduct."

44. Respondent received Judge Manfredi's Order.

45. Respondent failed to comply with Judge Manfredi's March 19, 2008 Order.

46. Respondent failed to inform the Caisons about Judge Manfredi's Order.

47. On May 30, 2008, defendants filed a Motion to Compel Answers to Discovery.

48. On June 10, 2008, Judge Manfredi:

a. granted defendants' Motion to Compel Discovery; and

b. ordered that Respondent fully respond to defendants' Interrogatories and Request for Production of Documents within twenty days or risk court sanctions.

49. Respondent received Judge Manfredi's Order.

50. Respondent failed to inform the Caisons of Judge Manfredi's Order.

51. From time to time, the Caisons would call Respondent's office and request:

a. information about the status of their case;

- b. an opportunity to consult with Respondent about how their objectives could be accomplished; and
- c. an explanation of how their case was being handled.

52. Respondent failed to respond to the Caisons' requests.

53. By e-mail dated June 25, 2008, from Ms. Caison to Respondent, Ms. Caison wrote:

- a. complaining that she has "repeatedly requested Respondent's advice and counsel" regarding her legal matter and "Respondent have consistently ignored all request[s]";
- b. expressed concern that Judge Manfredi's June 10, 2008 Order may harm her case;
- c. repeated her request for Respondent's help in her legal matter;
- d. explained that she called Respondent's office on June 25, 2008, and was unable to personally speak with Respondent; and
- e. requested an appointment to discuss her case.

54. Respondent received Ms. Caison's e-mail message.

55. Respondent failed to contact the Caisons to discuss their legal matter.

56. Respondent failed to obey Judge Manfredi's Order of June 10, 2008 and produce the requested discovery.

57. On July 2, 2008, defendants filed a Motion for Sanctions.

58. By Order dated July 29, 2008, Judge Manfredi:

- a. granted defendants' Motion for Sanctions;
- b. ordered that Respondent respond to defendants' Interrogatories and Request for Production of Documents within ten days or risk harsher sanctions.

59. Respondent failed to inform the Caisons about Judge Manfredi's Order.

60. By his conduct, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.1, which states that 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, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;

- c. 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;
- d. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- e. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;
- f. 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;
- g. RPC 3.2, which states that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client; and
- h. 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.

Charge III: David Lutz, Esquire
File No. C1-08-628

61. On November 19, 2007, Kenneth L. Lutz, Esquire, attorney for plaintiffs Ronald Hair, Florence Stephenson, and Amanda Johnson Hair, filed a civil action against Kenneth Donahue and Capital City Cab in the Court of Common Pleas of Dauphin County, in a case captioned *Hair et al. v. Donahue*, No. 2007-CV-12431-CV, Civil Action-Law.

62. On January 9, 2008, Respondent filed an Answer and New Matter on behalf of defendants Donahue and Capital City Cab.

63. On January 11, 2008, plaintiffs served Respondent with Interrogatories and Request for Production of Documents.

a. Respondent received the discovery requests.

64. Respondent failed to file answers to the Interrogatories.

65. Respondent failed to provide all documents requested in the Request for Production of Documents.

66. By letter dated February 13, 2008, from Mr. Lutz to Respondent, Mr. Lutz:

a. reminded Respondent that Plaintiffs' discovery requests were overdue;

- b. advised Respondent that he planned to file a motion to compel discovery; and
- c. requested that Respondent provide outstanding discovery before February 29, 2008.

67. On February 28, 2008, Mr. Lutz filed Plaintiffs' Motion for Discovery Conference.

- a. Respondent received the Motion.

68. On March 4, 2008, the Honorable Joseph H. Kleinfelter scheduled a discovery conference for March 20, 2008.

- a. Respondent received notice of the scheduled conference.
- b. Respondent failed to appear for the March 20, 2008 discovery conference or otherwise notify Judge Kleinfelter to explain Respondent's absence.

69. By Order dated March 25, 2008, Judge Kleinfelter ordered that:

- a. Respondent file an answer to Plaintiffs' Interrogatories and provide all documents requested in the Request for Production of Documents within twenty days;
- b. defendant is deemed to have waived all objections to the requested discovery; and

c. Respondent's failure to comply with the Court's Order would result in sanctions as provided by Pa.R.C.P. 4019.

70. Respondent received a copy of Judge Kleinfelter's March 25, 2008 Order.

71. Respondent failed to comply with Judge Kleinfelter's March 25, 2008 Order and file an answer to the Interrogatories and produce the requested documents.

72. On April 16, 2008, Mr. Lutz filed Plaintiffs' Motion for Contempt of Judge Kleinfelter's March 25, 2008 Order.

a. Respondent received a copy of the Motion.

73. By Order dated April 23, 2008, Judge Kleinfelter:

a. ordered that a Rule be issued upon defendants to show cause why they should not be subject to sanctions pursuant to Pa.R.C.P. 4019; and

b. ordered that the Rule be returnable at a hearing scheduled for May 9, 2008.

74. Respondent received Judge Kleinfelter's April 23, 2008 Order.

75. Respondent failed to appear for the May 9, 2008 Rule to Show Cause hearing.

76. Upon consideration of Respondent's failure to comply with Judge Kleinfelter's Orders of March 25 and April 23, 2008, by Order dated May 12, 2008, Judge Kleinfelter:

- a. entered judgment in favor of plaintiffs and against defendants on the issue of liability;
- b. precluded defendants from seeking an independent medical examination of plaintiffs;
- c. imposed a \$1,000 fine upon Respondent for Respondent's failure to abide by the Court's previous orders, payment to be made to the Dauphin County Law Library on or before May 30, 2008, and proof of payment to be provided to the Court on or before May 30, 2008;
- d. ordered that defendants provide plaintiffs with full and complete answers to discovery by May 30, 2008, and if answers are not provided, then Respondent would be fined \$100 a day for each day answers were not provided; and
- e. ordered that Respondent pay plaintiffs' counsel's attorneys fees, totaling \$1,120.

77. Respondent received a copy of Judge Kleinfelter's May 12, 2008 Order.

78. Respondent failed to comply with Judge Kleinfelter's Order by proving plaintiffs with the ordered discovery and paying the fine and attorney's fees.

79. On June 6, 2008, Mr. Lutz filed Plaintiffs' Second Motion for Contempt of Judge Kleinfelter's May 12, 2005 Order.

a. Respondent received a copy of the motion.

80. By Order dated June 10, 2008, Judge Kleinfelter:

a. scheduled a contempt of court hearing for June 27, 2008;

b. issued a Bench Warrant to have the Sheriff of Philadelphia County escort Respondent to the hearing before Judge Kleinfelter;

c. imposed Sheriff's costs upon Respondent; and

d. ordered plaintiffs' counsel to file a formal complaint about Respondent's conduct to Office of Disciplinary Counsel.

81. Respondent received a copy of the June 10, 2008 Order.

82. On June 16, 2008, the Honorable Richard A. Lewis, President Judge of the Court of Common Pleas of Dauphin County, issued a bench warrant against Respondent.

83. On or before June 26, 2008, a Sheriff took Respondent into custody to assure Respondent's attendance at the June 27, 2008 hearing before Judge Kleinfelter.

84. By Bail Order dated June 26, 2008, Judge Kleinfelter ordered Respondent to:

- a. post the previously forfeited sum of \$2,100 in cash with the Prothonotary of Dauphin County; and
- b. post an appearance bond of \$10,000 to assure Respondent's appearance at the June 27, 2008 hearing.

85. On June 27, 2008, Judge Kleinfelter held a hearing regarding Respondent's misconduct and plaintiffs' second contempt motion.

86. On June 27, 2008, in consideration of Plaintiffs' second motion for contempt and hearing held on June 27, 2008, Judge Kleinfelter ordered that:

- a. Respondent provide full and complete answers to discovery requests, without objection, within twenty days of the order;
- b. the \$1,120 Respondent deposited with the prothonotary be paid to plaintiffs' counsel's law firm;

- c. the \$1,000 Respondent deposited with the prothonotary be released to the Dauphin County Treasurer and earmarked as income in the court's budget;
- d. the previously ordered \$100 per day fine be vacated; and
- e. Respondent deposit \$910.91 with the prothonotary to be released to the Dauphin County Treasurer as receipts of sheriff's costs incurred in the enforcement of the court's orders.

87. Respondent paid to the prothonotary the sums set forth in Judge Kleinfelter's June 27, 2008 Order.

88. Respondent failed to provide the ordered discovery.

89. By his conduct, 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; and
- b. 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.

Charge IV: Ank Truong
File No. C1-08-735

90. Mr. Frank Sileo was a paralegal employed at Respondent's law firm, Michael J. Burke, Esquire, P.C.

a. Mr. Sileo was not a member of the bar licensed to practice law in Pennsylvania.

90. On August 3, 2007, Mr. Ank Truong met with Mr. Sileo regarding his driver's license suspension matter, during which time:

a. Mr. Sileo informed Mr. Truong that he worked for Michael J. Burke, P.C.;

b. Mr. Sileo handed Mr. Truong two business cards.

i. In the center of one card was typed:

MICHAEL J. BURKE, ESQUIRE, P.C.

ATTORNEY AT LAW

ii. In the center of the second card was typed:

FRANK SILEO

PARALEGAL

iii. In the upper left hand corner of the second card was typed:

MICHAEL J. BURKE, ESQUIRE, P.C.

ATTORNEY AT LAW

- c. Mr. Sileo informed Mr. Truong that he would take care of Mr. Truong's driver's license suspension case;
- d. Mr. Sileo advised Mr. Truong that he would represent him in court; and
- e. Mr. Truong gave Mr. Sileo an \$800 check, made payable to "Frank Sileo," for his legal fee.

91. Mr. Sileo failed to give Mr. Truong a written fee agreement setting forth the basis and rate of the fee.

92. Mr. Truong's driver's license suspension matter was scheduled for a hearing in Traffic Court on September 26, 2007.

93. Neither Respondent nor Mr. Sileo appeared in Traffic Court on September 26, 2007, to represent Mr. Truong.

- a. Mr. Truong represented himself at his driver's license suspension hearing.

94. Mr. Truong requested that Mr. Sileo refund the \$800 he received from Mr. Truong.

95. Mr. Sileo failed to refund the \$800 he received.

96. As the managing partner of Michael J. Burke, Esquire, P.C., Respondent failed to make reasonable efforts to ensure that his law firm had in effect measures giving

reasonable assurance that Mr. Sileo's conduct would be compatible with the professional obligations of a lawyer.

97. As the lawyer having direct supervisory authority over Mr. Sileo, Respondent failed to make reasonable efforts to ensure that Mr. Sileo's conduct was compatible with the professional obligations of a lawyer.

98. By his conduct, Respondent violated the following Rules of Professional Conduct:

- a. RPC 5.3(a), which states that with respect to a nonlawyer employed or retained by or associated with a lawyer, a partner and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is compatible with the professional obligations of the lawyer; and
- b. RPC 5.3(b), which states that with respect to a nonlawyer employed or retained by or associated with a lawyer, a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is

compatible with the professional obligations of the lawyer.

III. JOINT RECOMMENDATION FOR DISCIPLINE

99. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of one year and one day, with a condition that Respondent reimburse \$800 to Ank Truong within 30 days of the date of the Supreme Court's Order.

100. ODC and Respondent jointly recommend that Respondent's suspension be made retroactive to the effective date of the Order transferring Respondent to voluntary inactive status.

101. 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).

102. Petitioner and Respondent respectfully submit that there are the following aggravating circumstances:

- a. Respondent has a record of private discipline.

1. On February 22, 2007, Respondent received an Informal Admonition (IA) for failing to appear at two Traffic Court hearings, not communicating with his client, and failing to refund his unearned fee. As a condition of Respondent's IA, he was ordered to attend four hours of law office management training within six months of his receipt of the IA. (ODC File No. C1-06-633)

2. On May 13, 2008, Respondent received an IA in two matters. In one matter, Respondent failed to: provide competent representation; diligently handle his client's legal matter; communicate with his client; and withdraw from the representation when he was materially impaired. (ODC File No. C1-07-1030). In the second matter, Respondent failed to safeguard funds in his IOLTA account, which resulted in two overdrafts. (ODC File No. C1-07-602) As a condition of Respondent's second IA, he was ordered to continue treating with a mental health professional and to provide quarterly mental health reports.

- b. Respondent has not refunded \$800 to Mr. Ank Truong, as he had promised to do in his DB-7 Answer.

103. Respondent and ODC respectfully submit that there are the following mitigating factors:

- a. Respondent has been diagnosed with Major Depression and has submitted the attached doctor's report detailing his treatment. (Attachment A)
- b. Respondent has established that there is a causal connection between his misconduct in the four client matters and his mental disorder so as to constitute mitigation under *Office of Disciplinary Counsel v. Braun*, 520 Pa. 157, 553 A.2d 894 (1989).
- c. Respondent has tendered Notice of Voluntary Assumption of Inactive Status concurrent with his signing of the Discipline on Consent.
- d. Respondent, through counsel, has cooperated with Office of Disciplinary Counsel's investigation.

104. As a general matter, an attorney who engages in a pattern of neglect receives public discipline. The

Disciplinary Board considers several factors in determining the appropriate quantum of discipline in serial neglect cases. These factors include: number of matters neglected; misconduct committed in addition to neglect; whether the attorney has a history of discipline for the same type of misconduct; and the extent of cooperation in the disciplinary process.

In multiple neglect cases that most closely resemble Respondent's misconduct, attorneys have received a one-year-and-one-day suspension. See, e.g., **Office of Disciplinary Counsel v. Allan G. Gallimore**, No. 147 DB 2007, D.Bd. Rpt. 6/4/2008 (S.Ct. Order 10/16/08) (attorney with record of public and private discipline suspended for one year and one day for neglecting two client matters); **Office of Disciplinary Counsel v. Sterling Artist**, No. 153 DB 2005, D.Bd. Rpt. 4/27/2007 (S.Ct. Order 7/18/2007) (Supreme Court suspended for one year and one day an attorney with no record of discipline who neglected three client matters and failed to promptly disburse his clients' settlement funds); and **Office of Disciplinary Counsel v. Howard Goldman**, No. 157 DB 2003, D.Bd. Rpt. 5/20/2005 (S.Ct. Order 8/30/05) (attorney with no record of discipline, who neglected four client matters and made

misrepresentations to conceal the neglect, was suspended for one year and one day).

Application of the above factors establishes that Respondent has failed to diligently handle two client matters. (Lutz and Caison) Furthermore, Respondent has a history of discipline for similar misconduct. In addition to engaging in neglect, Respondent has: mishandled his IOLTA account (Hall/ODC); mismanaged his law office (Truong); and engaged in conduct prejudicial to the administration of justice (Lutz and Caison).

Respondent, however, has provided medical reports thoroughly documenting his history of depression. Respondent has been cooperative and admitted to most of his misconduct.

105. Precedent supports the imposition of substantial public discipline on Respondent, who neglected two client matters, engaged in conduct prejudicial to the administration of justice, mishandled his IOLTA account, and has a history of private discipline for similar misconduct. To protect the public, profession, and the courts, Respondent must receive a suspension of at least one year and one day. It is appropriate to require Respondent to participate in a reinstatement hearing and prove his fitness prior to the resumption of the practice of law.

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:
 1. suspending Respondent from the practice of law for one year and one day;
 2. imposing a condition that Respondent reimburse \$800 to Mr. Ank Truong within 30 days of the date of the Supreme Court's Order; and
 3. directing Respondent to comply with all provisions of Pa.R.D.E. 217.
- 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,

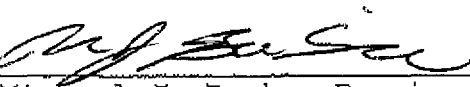
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

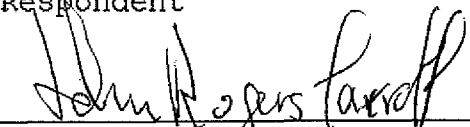
12/8/08
Date

By 
Harriet R. Brumberg
Disciplinary Counsel

12-28-08
Date

By 
Michael J. Burke, Esquire
Respondent

12-30-08
Date

By 
John Rogers Carroll, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

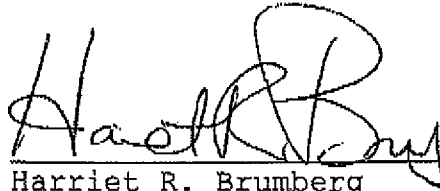
OFFICE OF DISCIPLINARY COUNSEL, : ODC File Nos. C1-08-525,
Petitioner : C1-08-628, C1-08-693,
: C1-08-712, and C1-08-735
:
: Atty. Reg. No. 92235
MICHAEL J. BURKE, :
Respondent : (Philadelphia)

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.

12/18/08

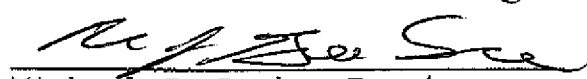
Date



Harriet R. Brumberg
Disciplinary Counsel

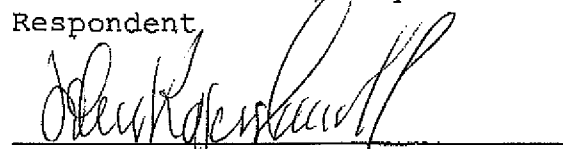
12-28-08

Date


Michael J. Burke, Esquire
Respondent

12-30-08

Date


John Rogers Carroll, Esquire
Counsel for Respondent

ATTACHMENT A

PRECISION CONSULTANTS OF PHILADELPHIA*DR. WINSTON L. COLLINS, DIRECTOR*444 North 3rd St.

Philadelphia, Pa. 19123

**TREATMENT UPDATE
RE: MICHAEL J. BURKE**

September 29, 2008

Michael Burke has been under my care for treatment of Depression (Recurrent Type) since November, 2007. He has been cooperative in keeping scheduled appointments and he has actively participated in individual psychotherapy.

Mr. Burke has been diligent in his effort to overcome his depression which has been aggravated by two major sources of stress. First, his father became seriously ill in December 2007 and died rather suddenly in March 2008. The loss of his father took a heavy toll of him emotionally. We discussed his loss at length and he was helped to process his anger (towards medical staff) and acceptance of the death of his father. Mr. Burke continued his efforts to work and did not take time off from his legal practice to grieve. His depression appeared to consume his life by July 2008 when he experienced panic attacks, insomnia, forgetfulness, missed legal appointments, not returning phone calls and not showing up at Court hearings. He reported being arrested and jailed in Daupin County in July '08 for 22 hours after missing an earlier Court hearing. He said, "I missed the hearing because my dad was dying and I was at the hospital. That jail experience messed me up. I can't eat; I'm feeling panic; I'm afraid; and I just want to stay inside." As a result, his primary care physician placed him back on Atavan to help control his anxiety.

The second stressor which has contributed greatly to Mr. Burke's depression is First Keystone. While I have no direct knowledge of this company, my impression is that First Keystone is lacking in the areas of leadership, organization and good sensible business practice. Mr. Burke was asked to consider cutting ties with First Keystone at our initial meeting in November 2007. Mr. Burke has been reminded of my suggestion on numerous occasions. It is my understanding that Mr. Burke must be available 24 hours/day and 7 days per week; he is never considered to be on vacation; there are routine instances of miscommunication and mistrust; and numerous instances of disagreements on legal matters between Mr. Burke and the company he represents. Mr. Burke has

viewed a departure from First Keystone as a 'failure' on his part. In my opinion, only a few attorneys (with other options) would work for the company and fewer would realize success. Finally, in September 2008, Mr. Burke agreed to seriously discuss severing his relationship with First Keystone. Our discussions resulted in Mr. Burke's decision to resign from First Keystone effective October 31, 2008. He also enrolled in St. Joseph University where he will earn a teaching certificate by July 2009. Thereafter, he plans to teach for the Archdiocese of Philadelphia.

These discussions and plans for his life after First Keystone produced a meaningful reduction in his symptoms of depression. In September 2008, he was happier, optimistic, less anxious, less fearful and expressed a healthier outlook for his life. Unfortunately, on September 17, 2008, he experienced a rebound of his depression after receiving news of impending action against him by the Disciplinary Board.

Recommendations

Mr. Burke is an intelligent and competent individual and attorney. His ability to function personally and professionally has been reduced by his recurrent depression. In my opinion, he should follow through with his plans to leave First Keystone no later than October 31, 2008. He should continue his coursework at St. Joseph University towards his teaching certificate. Mr. Burke should continue his participation in psychotherapy for support and assistance in managing aspects of his uncertain future. I believe Mr. Burke can recover from his depression which will allow him to meet his professional obligations. Mr. Burke is aware that he has my full support.

Dr. Winston Collins

Dr. Winston Collins