

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2435 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 204 DB 2017
	:	
v.	:	Attorney Registration No. 23820
	:	
MICHAEL J. CASALE, JR.	:	(Lycoming County)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 30th day of August, 2018, 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 J. Casale, Jr., is suspended on consent from the Bar of this Commonwealth for a period of five years, retroactive to January 4, 2018, with one year to be served.

The remaining suspension of four years is stayed, and he is placed on probation for a period of four years, subject to the following conditions:

1. Respondent shall abide by the terms of his criminal probation and promptly report to the Office of Disciplinary Counsel any parole violation or revocation;
2. Revocation of Respondent's criminal probation will result in the immediate imposition of the remainder of the suspension from the practice of law; and
3. Respondent is to promptly report the imposition of discipline to all other federal and state jurisdictions to which he is admitted.

It is further ordered that Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay the costs incurred by the Disciplinary Board in the investigation and prosecution of this matter.

A True Copy Patricia Nicola
As Of 08/30/2018

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2435 Disciplinary Docket 3
Petitioner,	:	
	:	No. 204 DB 2017
v.	:	
	:	Attorney Reg. No. 23820
MICHAEL J. CASALE, JR.,	:	
Respondent	:	(Lycoming County)
	:	

JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT
PURSUANT TO Pa. R.D.E. 215(d)

Petitioner, Office of Disciplinary Counsel (“ODC”), by Paul J. Killion, Chief Disciplinary Counsel, and Anthony A. Czuchnicki, Disciplinary Counsel, and Respondent, Michael J. Casale, Jr., and Respondent’s counsel, James C. Schwartzman, Esquire, 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 7/6/2018 The Disciplinary Board of the Supreme Court of Pennsylvania

2. Respondent, Michael J. Casale, Jr., was born on October 31, 1951, was admitted to practice law in Pennsylvania on November 5, 1976, has a registered public address of 1500 Sycamore Road, Suite 120, Montoursville, Lycoming County, Pennsylvania, 17754, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent is represented by James C. Schwartzman, Esquire, in this matter.

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

4. In or about March 2016, Ms. Cherry Lorson discovered a GPS tracking device and an audio recording device in her vehicle, which she believed Respondent had placed there.

5. Prior to his arrest, Respondent voluntarily agreed to be interviewed at the police station.

6. During the interview, Respondent admitted that he had purchased a GPS tracking device and a voice recorder on an unknown date subsequent to his break-up with Ms. Lorson, in September 2015.

7. Respondent admitted that he entered Ms. Lorson's garage at night, sometime in November or December 2015, and placed the devices in her car; specifically, he placed the GPS tracking device in the back of her vehicle, and he placed the USB audio recording device under her front seat so that he would be able to hear her conversations.

8. Respondent admitted that he used the devices in order to track Ms. Lorson's movements and to discover who she was dating.

9. Respondent also admitted that he tried on three or four occasions to retrieve both devices from Ms. Lorson's car, but the car doors had been locked on these occasions, and he was unable to retrieve the devices.

10. On August 30, 2016, Respondent was charged with:

- a. Burglary, 18 Pa. C.S. § 3502(a)(4), a Second-Degree Felony;
- b. Criminal trespass, 18 Pa. C.S. § 3503(a)(1)(i), a Third-Degree Felony; and
- c. two counts of Interception, Disclosure or Use of Wire, Electronic or Oral Communications, 18 Pa. C.S. § 5703(1), Third-Degree Felonies.

11. These charges were docketed at Commonwealth v. Casale, CP-41-CR-2070-2016 (Lycoming Co.).

12. On September 28, 2017, Respondent entered a written guilty plea to Criminal trespass, and one count of Interception, Disclosure or Use of Wire, Electronic or Oral Communications, in the Lycoming County Court of Common Pleas.

13. By Order dated September 28, 2017, Respondent was sentenced to:

- a. five years' probation;
- b. pay a \$250 DNA Detection Fund fee;
- c. attend any program to which he may be referred by the Court, including but not limited to performing 100 hours of community service;
- d. have no contact with Ms. Lorson; and
- e. make a \$10,000 donation to the YWCA/Wise Options Program.

14. Respondent notified ODC of his criminal conviction.

15. On December 21, 2017, ODC and Respondent jointly filed a Petition for Temporary Suspension, notifying the Court of Respondent's conviction, and requesting that the Court enter an Order temporarily suspending Respondent pursuant to Pa. R.D.E 214(d)(5).

16. On January 4, 2018, the Pennsylvania Supreme Court entered an Order placing Respondent on temporary suspension.

17. The Court also ordered Respondent to comply with the provisions of Pa. R.D.E 217.

18. On February 5, 2018, Respondent complied with Pa. R.D.E. 217.

DISCIPLINARY RULE VIOLATIONS

19. 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;
- b. Rule 8.4(c): It is professional misconduct for a lawyer to ... engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- c. 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 five-year suspension, retroactive to the effective date of his temporary suspension, with four years stayed pending the successful completion of his criminal probationary period. Respondent will serve one year of his suspension, and the

remaining four years will be stayed, subject to the following conditions, coinciding with his criminal probationary period:

1. Respondent is to abide by the terms of his criminal probation and promptly report to ODC any parole violation, or parole revocation;
2. it is expressly understood and agreed to that revocation of Respondent's criminal probation will result in the immediate imposition of the remainder of Respondent's suspension from the practice of law; and
3. Respondent is to promptly report the imposition of discipline to all other federal and state jurisdictions to which he is admitted.

The aforesaid provisions reflect the intent of ODC and Respondent to limit Respondent's suspension to one year, short of "a year and a day" in order that ODC can maintain jurisdiction over Respondent during the full five year term of the probation under the criminal charges, any violations of which triggering immediate suspension of practice privileges. In the event that Respondent fails to complete the probation imposed in the underlying criminal matter, it is understood that Respondent will be required to file a Reinstatement Petition to prove his fitness prior to being reinstated in Pennsylvania. See Pa. R.D.E. 218(c)(1). Should Respondent successfully complete his criminal probation, Respondent will not be required to file a Reinstatement Petition prior to his reinstatement. See Pa. R.D.E. 218(g)(1).

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 he consents to the recommended discipline and including the mandatory acknowledgements contained in Pa. R.D.E.

215(d)(1) through (4).

There is no formulistic approach or *per se* discipline for attorney misconduct. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983). The Court has also explained that discipline is not intended as punishment, but rather to protect the public from unfit attorneys. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). The discipline to be imposed must be determined on a totality of the facts of each individual matter. Lucarini, at 190.

On prior occasions, respondent-attorneys have received a range of discipline, from a six-month suspension to disbarment for comparable misconduct. See Office of Disciplinary Counsel v. Zdrok, 131 DB 88 (Pa. 1994) (six-month suspension); Office of Disciplinary Counsel v. Fogerty, 59 DB 2004 (D.Bd. Rpt. 2004) (three-year suspension retroactive to temporary suspension); Office of Disciplinary Counsel v. Halfpenny, 55 DB 2009 and 166 DB 2010 (disbarment on consent). The circumstances in Fogerty and Halfpenny were significantly more egregious than the facts of the present matter. In Fogerty, Respondent-Fogerty broke into his victim's apartment and installed a listening device. Using the intercepted communications, Respondent-Fogerty harassed the victim by email and phone for approximately five months before his arrest; he also remained outside the victim's apartment to monitor her activities on various occasions. Respondent-Fogerty received five years' probation for his three felony convictions. Respondent-Fogerty was credited Braun mitigation; however, the Board found the prolonged duration of the misconduct was a significant aggravating circumstance in determining Respondent-Fogerty's discipline.

Respondent-Halfpenny resigned from the Bar after receiving a Petition for

Discipline which recounted the charges to which he had pled guilty, including Attempted Burglary, Criminal Trespass, Harassment, and Contempt of a PFA. At the time of his arrest, Respondent-Halfpenny was in possession of duct tape and a knife, and was attempting to enter his ex-wife's home. He pled guilty to ten separate charges at three dockets. Respondent-Halfpenny received 25-50 months imprisonment, along with seventeen years' probation to be served consecutively.

Here, Respondent placed a GPS tracking device and audio recording device in Ms. Lorson's vehicle to discover who she was dating. The devices were placed sometime in November or December 2015, and discovered in March 2016. Respondent was unable to retrieve the devices on three or four occasions, and ultimately admitted his wrongdoing to both Ms. Lorson and the police.

In support of Petitioner and Respondent's Joint Recommendation, it is respectfully submitted that additional mitigating circumstances are that:

1. Respondent has no record of prior discipline in over four decades of practice;
2. Respondent has admitted to engaging in misconduct and violating the charged Rules of Professional Conduct;
3. Respondent has fully cooperated with ODC's investigation; and
4. Respondent is remorseful for and embarrassed by his conduct and understands he should be disciplined, as evidenced by his consent to receiving a five-year suspension.

The parties respectfully submit that a five-year suspension, with four years stayed pending the successful completion of Respondent's criminal probation period, given the

facts of the instant matter, is consistent with the above cited disciplinary authority.

WHEREFORE, Petitioner and Respondent respectfully request that 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 Supreme Court of Pennsylvania enter an Order suspending Respondent for five years, retroactive to the effective date of his temporary suspension, with four years stayed pending the successful completion of the criminal probation period, for the conduct set forth herein.

Respectfully submitted,

Date: 6/29/18

By: Anthony Czuchnicki

Anthony A. Czuchnicki
Disciplinary Counsel
Attorney Registration No. 312620
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

Date: 6/30/16

By: Michael J. Casale, Jr.

Michael J. Casale, Jr.
Respondent
Attorney Registration No. 23820
1500 Sycamore Road, Suite 120
Montoursville, PA 17754
Telephone (570) 601-1298

7/5/18

James C. Schwartzman
James C. Schwartzman, Esq.
1818 Market Street, Floor 29
Philadelphia, PA 19103

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,	:	No. 204 DB 2017
v.	:	Attorney Reg. No. 23820
MICHAEL J. CASALE, JR., Respondent	:	(Lycoming County)

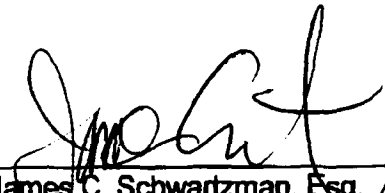
VERIFICATION

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: 6/29/18 By: Anthony Czuchnicki
Anthony A. Czuchnicki
Disciplinary Counsel
Attorney Registration No. 312620
601 Commonwealth Avenue, Suite 5800
P.O. Box 62675
Harrisburg, PA 17106-2675
Telephone (717) 772-8572

Date: 6/30/18 By: [Signature]
Michael J. Casale, Jr.
Respondent
Attorney Registration No. 23820
1500 Sycamore Road, Suite 120
Montoursville, PA 17754
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7/5/18



James C. Schwartzman, Esq.
1818 Market Street, Floor 29
Philadelphia, PA 19103

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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v.	:	Attorney Reg. No. 23820
MICHAEL J. CASALE, JR., Respondent	:	(Lycoming County)

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

I, Michael J. Casale, Jr., Respondent in the above-captioned matter, hereby consent to the imposition of a five-year suspension, with four years stayed pending the successful completion of the criminal probation period, 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, and have done so.

By: 

Michael J. Casale, Jr.

Respondent

Attorney Registration No. 23820

1500 Sycamore Road, Suite 120

Montoursville, PA 17754

Telephone (570) 601-1298

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner,	:	No. 204 DB 2017
	:	
v.	:	Attorney Reg. No. 23820
	:	
MICHAEL J. CASALE, JR., Respondent	:	(Lycoming 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.

Electronic Mail, return receipt requested, as follows:

Michael J. Casale, Jr.
c/o James C. Schwartzman, Esq.
1818 Market Street, Floor 29
Philadelphia, PA 19103
JCSC@stevenslee.com

Date: 6/29/18

By: Anthony Czuchnicki
Anthony A. Czuchnicki
Disciplinary Counsel
Attorney Registration No. 312620
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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: Anthony Czuchnicki

Name: Anthony A. Czuchnicki

Attorney No. (if applicable): 312620