IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 1696 Disciplinary Docket No. 3
	:	No. 257 DB 2010
v.	:	
	:	Attorney Registration No. 92443
ROBERT NEIL WILKEY, Respondent	:	(Chester County)

ORDER

PER CURIAM:

AND NOW, this 15th day of November, 2013, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated August 16, 2013, 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 Robert Neil Wilkey is suspended on consent from the Bar of this Commonwealth for a period of thirty months retroactive to February 17, 2011, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola
As Of 11/15/2013

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1696 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 257 DB 2010
v.	:	
	:	Attorney Registration No. 92443
ROBERT NEIL WILKEY	:	
Respondent	:	(Chester County)

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 Howell K. Rosenberg, Gerald Lawrence, and Patricia M. Hastie, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on June 10, 2013.

The Panel approves the Joint Petition consenting to an 30 month suspension retroactive to February 17, 2011 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.

Howell K. Rosenberg, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 8/16/2013

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No.1696 Disciplinary Docket No. 3
	:	Board File No. C2-10-584 257 DB 2010
v.	:	
	:	Attorney Reg. No. 92443
ROBERT NEIL WILKEY, Respondent	:	(Chester County)

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

Petitioner, the Office of Disciplinary Counsel (hereinafter, "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Ramona Mariani, Disciplinary Counsel, and Respondent, Robert Neil Wilkey (hereinafter, "Respondent"), respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

1. ODC, whose principal office is situated at 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania, 17106, is invested, pursuant to Pa.R.D.E. 207, with the power and 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 Enforcement Rules.

2. Respondent, Robert Neil Wilkey, was born on January 17, 1975, and was admitted to practice law in the Commonwealth on April 19, 2004. By Order dated February 17, 2011, the Supreme Court of Pennsylvania granted a Joint Petition for Temporary Suspension, and, pursuant to Rule 214, Pa.R.D.E. placed Respondent on temporary suspension.

3. Respondent's affidavit stating, *inter alia*, his consent to the recommended discipline is attached hereto as Exhibit A.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

4. On May 24, 2010, Upper Saucon Township Police Officer Joseph Prochron filed an Affidavit of Probable Cause alleging that Respondent had committed three violations of 18 P.A. C.S.A. 4120A (Identity Theft). Specifically, the Affidavit of Probable Cause described three attempts made by Respondent to obtain credit cards in the name of Marco Orellana. During a police interview Respondent admitted that he utilized Mr. Orellana's personal information in an effort to obtain three credit cards in Mr. Orellana's name intended for Respondent's personal financial use. Respondent further acknowledged that he obtained Mr. Orellana's personal information through a lawyer-client relationship, although Mr. Orellana was not a retained client of Pogust, Braslow & Millrood or any other law firm that employed Respondent. However, at the time of his arrest, Respondent had not managed to access or use the credit cards.

5. On November 22, 2010, Respondent entered a written guilty plea to all counts in the Lehigh County Court of Common Pleas.

6. On December 9, 2010, Respondent notified the Office of the Secretary of the Disciplinary Board, in writing, about his criminal matter. Further, Respondent stated that since on or around June 23, 2010, he had been on voluntary inactive status. Finally, Respondent explained that in November of 2009 he had been referred by Lawyers Concerned for Lawyers ("LCL") to Sharon M. Richter, Psy.D., ICADC, CAC, and had pursued treatment related to a gambling addiction.

7. On December 20, 2010, the Honorable William H. Platt sentenced Respondent to probation for a period of 30 months with supervision transferred to Chester County, and a fine of

$1,250.00. As a condition, the Court required Respondent to remain in the gambling program and to follow any treatment plan determined by the treatment provider.

8. At the time Respondent committed his crimes, he was associated with the firm Pogust, Braslow and Millrood, LLC, located in Conshohocken, Pennsylvania.

9. The investigation into Respondent's crimes began in 2009.

10. In or around July of 2009, Respondent realized that he was under investigation.

11. Respondent engaged an attorney to represent him, who called the Investigating Officer and requested a meeting.

12. On July 16, 2009, Respondent and his attorney met with the officer, and Respondent acknowledged that he was responsible for the credit card applications.

13. At around that same time, Respondent's employment with Pogust, Braslow and Millrood, LLC ended.

14. Shortly thereafter, Respondent found work with Villari, Brandes & Giannone, P.C. (the "Villari Firm"), as an associate.

15. Although Respondent's crime did not occur during the time he worked at the Villari firm, Respondent was employed by the firm after his arrest and guilty plea.

16. As a result of Respondent's arrest, guilty plea, voluntary inactive status and temporary license suspension, the Villari Firm could no longer employ him as an associate.

17. Nonetheless, by the time of these events, Respondent had become well-liked and well-regarded by the Villari Firm Partners. Despite the negative circumstances surrounding Respondent's arrest, the Villari Firm wished to continue to employ Respondent in some capacity.

18. Accordingly, the firm has employed Respondent as an independent contractor handling clerical and administrative functions on an as-needed basis.[1] Firm partners were in communication with Office of Disciplinary Counsel and the Executive Office of the Disciplinary Board, and have made all reasonable efforts to be in compliance with the applicable provisions of Pa.R.D.E. 217, including filing the required Notice of Employment with the Secretary of the Disciplinary Board pursuant to 217(j)(5).

19. In December of 2010 Respondent and Office of Disciplinary Counsel entered into a Joint Petition for Temporary License Suspension, which the Court granted by Order dated February 17, 2011.

20. Respondent has cooperated with ODC throughout this process and has expressed his willingness to accept discipline arising from the criminal conviction.

21. Respondent had no history of discipline in Pennsylvania prior to his criminal conviction, and has had no history of discipline after his criminal conviction.

22. Respondent is currently a volunteer for LCL and the East Goshen, Pennsylvania Chapter of Gambler's Anonymous, and maintains the continued support of his family, church associates, close friends and employer.

[1] Based on the Notice of Employment as well as several discussions with firm Partners, despite the desire to assist Respondent, the firm has scrupulously ensured that Respondent has no access to client or firm funds and that he is adequately supervised.

SPECIFIC RULES OF PROFESSIONAL CONDUCT AND RULES OF DISCIPLINARY ENFORCEMENT VIOLATED

22. Respondent violated the following RPC and Pa.R.D.E.:

a. **RPC 8.4(b),** which states that 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. **Pa.R.D.E. 203(b)(1),** which states that the following shall also be grounds for discipline: conviction of a crime.

SPECIFIC RECOMMENDATION FOR DISCIPLINE OF A THIRTY-MONTH LICENSE SUSPENSION RETROACTIVE TO THE DATE THE SUPREME COURT PLACED RESPONDENT ON TEMPORARY LICENSE SUSPENSION

Considering all of the facts and circumstances, a thirty-month license suspension retroactive to the date of the temporary license suspension is the appropriate level of discipline. In ***Office of Disciplinary Counsel v. James A. Hickey***, 182 DB 2004 (2006), respondent received a three-year license suspension for identity theft, tampering with records or identification, deceptive or fraudulent business practices and securing execution of documents by deception. Hickey pled guilty to the charges and received probation for a period of thirty-six months. He did not answer the Petition for Discipline or appear at his disciplinary hearing. Hickey had a prior history of discipline, and was in fact on suspended status at the time of his disciplinary hearing. In ***Office of Disciplinary Counsel v. Maria Del Sol Morrell***, 136 DB 2001 (2003), respondent was convicted of making false statements to a financial institution. The criminal behavior arose in connection with her operation of her title company. The Court sentenced Del Sol Morrell to three years of supervised probation, restitution and fines. She paid the fines, made restitution and cooperated with her probationary term. The Disciplinary Board recommended a two-year license suspension retroactive to respondent's temporary license suspension. A minority of the Board dissented and recommended a thirty-month

license suspension to coincide more closely with the termination of respondent's probationary period. The Pennsylvania Supreme Court agreed with the dissent and imposed a thirty-month suspension.

In the instant case, Respondent's misconduct is aggravated by the fact that he sought to defraud a client. On the other hand, Respondent can present strong mitigating evidence concerning his gambling addiction and efforts at recovery. The evidence Respondent supplied does not directly address the question of causation as required to find ***Braun*** mitigation. ***See Office of Disciplinary Counsel v. Braun***, 520 Pa. 157, 553 A.2d 894 (1989). However, both his mental health care professionals opined that if Respondent continued in treatment the risk of similar recurrence was low. In partial reliance on those opinions, the pre-sentence report prepared in the criminal case concludes that "Mr. Wilkey has and continues to be willing to take any steps to remedy the harm he has caused, including actively addressing his gambling activity, which led him to make such a severe and drastic mistake." In connection with this petition, Respondent has submitted current evidence to ODC demonstrating his continued participation in and commitment to treatment. Furthermore, any concerns raised by Respondent's addiction and his recovery as they relate to his competency to practice law will be addressed fully at any future reinstatement hearing held pursuant to Pa.R.D.E. 218.

The Villari Firm's decision to continue to employ Respondent in some capacity speaks well of his character and continuing rehabilitation. The proposed discipline strikes a reasonable balance between addressing Respondent's serious misconduct and meeting the Disciplinary Board's mission of protecting the public without being overly punitive to Respondent.

WHEREFORE, Joint Petitioners respectfully pray that your Honorable Board:

a. Approve this Petition; and

b. File a recommendation for a thirty-month license suspension retroactive to the date of Respondent's temporary license suspension and this Petition with the Supreme Court of Pennsylvania.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL
PAUL J. KILLION,
Attorney Reg. No. 20955,
Chief Disciplinary Counsel

Date: 6/7/13

By: Ramona Mariani
RAMONA MARIANI,
Disciplinary Counsel
District II Office
Attorney Registration Number 78466
Suite 170, 820 Adams Avenue
Trooper, PA 19403
(610) 650-8210

Date: 5/25/13

ROBERT NEIL WILKEY,
Respondent

VERIFICATION

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

6/7/13
Date

RAMONA MARIANI
Disciplinary Counsel

5/25/13
Date

ROBERT NEIL WILKEY
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No.1696 Disciplinary Docket No. 3
	:	Board File No. C2-10-584
v.	:	
	:	Attorney Reg. No. 92443
ROBERT NEIL WILKEY, Respondent	:	(Chester County)

AFFIDAVIT

Robert Neil Wilkey hereby tenders this affidavit in support of the Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d), and further states as follows:

1. He freely and voluntarily consents to the proposed discipline; 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 proceeding involving allegations that he has been guilty of misconduct as set forth in the Consent Petition.

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

4. He consents because he knows that if charges continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

Signed this 1 day of June, 2013.

Robert Neil Wilkey
Attorney Registration No. 92443

Sworn to and subscribed
Before me this 1 day
of June, 2013.

Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
David J. Kelly, Notary Public
Valley Twp., Chester County
My Commission Expires May 20, 2014
Member, Pennsylvania Association of Notaries