

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2449 Disciplinary Docket No. 3
: :
Petitioner : No. 25 DB 2018
: :
v. : Attorney Registration No. 71352
: :
JAMES A. HICKEY, : (Lehigh County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 21st day of October, 2019, 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 James A. Hickey is suspended on consent from the Bar of this Commonwealth for a period of five years, retroactive to March 8, 2018. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 10/21/2019

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

In the Matter of : No. 2449 Disciplinary Docket No. 3
: :
JAMES A. HICKEY : (United States District Court for the Eastern District
: of Pennsylvania, CR-17-0390 and CR-17-0391)
: :
: No. 25 DB 2018
: :
: Attorney Registration No. 71352
: :
: (Lehigh County)

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

Petitioner, the Office of Disciplinary Counsel (“ODC”), by Paul J. Killion, Chief Disciplinary Counsel, and Krista K. Beatty, Disciplinary Counsel, and Respondent, James A. Hickey, by and through his counsel, Robert H. Davis, Jr., Esquire, 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:

1. ODC, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Ave., Suite 2700, P.O. Box 62485, Harrisburg, PA 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 was born on August 18, 1962, and was admitted to practice law in the Commonwealth of Pennsylvania on January 7, 1994. Respondent’s attorney registration number is 71352.

FILED 09/13/2019 The Disciplinary Board of the Supreme Court of Pennsylvania

3. On February 14, 2018, ODC and Respondent filed with the Supreme Court of Pennsylvania a Joint Petition to Temporarily Suspend an Attorney.

4. By Order dated March 8, 2018, the Court granted the Joint Petition to Temporarily Suspend an Attorney, and placed Respondent on temporary suspension.

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

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

6. On December 12, 2017, Respondent entered a guilty plea to the charges of (1) Honest Services Wire Fraud, 18 U.S.C. §1343, 18 U.S.C. §1346, and 18 U.S.C. §2 in the criminal matter docketed as *United States v. Pawlowski et al.*, No. 17-CR-390 (E.D.Pa. 2017); and (2) Mail Fraud: Deprivation of Right to Honest Services of Public Official, 18 U.S.C. §1341, 18 U.S.C. §1346 and 18 U.S.C. §2 (Aiding and abetting) in the criminal matter docketed as *United States v. Spencer et al.*, No. 17-CR-391 in the United States District Court for the Eastern District of Pennsylvania.

7. In accordance with the terms of Respondent's plea agreement, the parties agreed that a sentence of 18 months' imprisonment, 3 years of supervised release, a \$1,000 fine and a \$200 special assessment shall be imposed.

8. On March 27, 2018, Respondent was sentenced by the Honorable Juan R. Sanchez to eighteen months imprisonment, followed by three years of federal supervision.

United States v. Pawlowski et al., No. 17-CR-00390
City of Allentown Street Lights Contract

9. Respondent was a business consultant for The Efficiency Network (“TEN”). In that role, Respondent attempted to obtain for his client an approximately \$3,000,000 Street Lights Contract from the City of Allentown and Mayor Edwin Pawlowski.¹

10. Respondent made, and caused others to make, a stream of campaign contributions to Mayor Pawlowski’s political campaigns for mayor, governor and senator, in return for favorable treatment from Mayor Pawlowski in obtaining the Street Lights Contract.

11. Respondent provided to Allentown’s managing director, a thumb-drive containing contract language favorable to TEN, for the purpose of securing a competitive advantage for TEN over other companies vying for the same Street Lights Contract.

12. On or about February 26, 2014, Respondent and co-conspirators set up a process whereby officials could rewrite the Request For Proposal for the Street Lights Contract, and give it to Respondent, so that he could submit it to Allentown’s managing director for consideration.

13. Between February 2014 and February 2015, Allentown’s managing director gave a copy of the specific RFP language drafted by Respondent to Allentown employees tasked with writing the RFQ 2015-05 for the Street Lights Contract, to ensure that TEN would receive the Street Lights Contract.

14. Respondent arranged for the following contributions to Mayor Pawlowski:

- a) On February 28, 2014, an officer of TEN contributed to “Friends of Ed Pawlowski.”

¹ Mr. Pawlowski was sentenced to 15 years incarceration after a jury found him guilty of 47 charges of corruption.

- b) On October 3, 2014, Respondent emailed Patrick Regan of TEN, advising him to attend a fundraiser and to contribute money to Mr. Pawlowski;
 - c) On or about October 8, 2014, Respondent's company, Sovereign Enterprises, contributed \$1,000 to "Friends of Ed Pawlowski."
 - d) On or about October 24, 2014, Patrick Regan of TEN contributed \$1,000 to "Friends of Ed Pawlowski;"
 - e) On or about October 24, 2014, an officer of TEN contributed \$500 to Friends of Ed Pawlowski;
 - f) On or about December 16, 2014, Respondent's company contributed \$500 to Friends of Ed Pawlowski;
 - g) On or about December 24, 2014, Respondent's company contributed \$500 to Friends of Ed Pawlowski;
 - h) On or about February 13, 2015, Patrick Regan contributed \$1,500 to "Friends of Ed Pawlowski."
15. On or about February 27, 2015, the City of Allentown issued RFQ 2015-05.
16. Between February 27, 2015 and May 1, 2015, Respondent received an advance copy of the RFP.
17. On or about March 9, 2015, the City of Allentown emailed the RFQ to Johnson Controls, another Street Lights Contract bidder.
18. On or about March 12, 2015, Pawlowski stated that he believed the TEN contract was "fixed" and "on track."

19. On or about March 13, 2015, at Pawlowski's request, TEN contributed \$5,000 to the City of Allentown for the Pennsylvania Municipal League Convention in Allentown.

20. On or about March 27, 2015, TEN was assured by the city manager that its RFQ for the Street Lights contract would be accepted, even though it was not submitted by the RFQ submission deadline.

21. On or about April 13, 2015, the City of Allentown emailed an invitation to interview on RFQ 2015-05 to Johnson Controls; on April 22, 2015, the City of Allentown mailed to Johnson Controls notice that it had been placed on the "short-list."

22. On or about April 30, 2015, after learning that Johnson Controls was on the short list for the Street Lights contract, Respondent told another consultant that as far as the Street Lights Contract was concerned, "the cake is already baked," or in other words, the decision was already made.

23. On or about May 1, 2015, the City of Allentown issued RFP 2015-05 and emailed the RFP to Johnson Controls.

24. On or about May 5, 2015, Pawlowski stated that he would want more money from Respondent once the Street Lights Contract was done.

25. On or about May 6, 2015, Respondent agreed to provide a steady stream of contributions to Pawlowski, but that Pawlowski "has got to perform."

26. On or about June 19, 2015, the City of Allentown awarded the Street Lights Contract to TEN.

27. On or about June 28, 2015 and July 1, 2015, Respondent directed Sovereign and TEN employees/officers to contribute to "Pawlowski 2016."

United States v. Spencer et al., No. 17-CR-00391
(Reading School Board Energy Contract)

28. Respondent's second guilty plea involved another scheme to defraud, in which Respondent sought information about a confidential bid submitted by "Company A" on an energy savings contract with the Reading School District. Respondent obtained the confidential bid information so that his client could submit a lower bid.

29. Respondent agreed to contribute money to the political campaign of Reading School Board President and candidate for magisterial district court justice Rebecca Acosta ("Ms. Acosta"), if she provided him the confidential bid information.

30. Respondent was a consultant to "Company B," a competitor of Company A.

31. On or about February 26, 2015, Respondent met a campaign operative for Reading Mayor Vaughn Spencer ("Mayor Spencer") and coached him how to explain to Ms. Acosta that she needed to share the confidential bid proposal of Company A with Company B, to ensure Company B would ultimately be awarded the energy savings contract.

32. On or about March 26, 2015, Mayor Spencer's campaign operative asked Ms. Acosta's husband, City Council President Francisco Acosta, to ask Ms. Acosta to obtain a copy of Company A's bid proposal. In exchange for the information, Mayor Spencer's campaign operative told Mr. Acosta that he would give Ms. Acosta a campaign contribution of \$1,000 to \$2,000 from the Reading PAC, and promised additional contributions from another set of contributors totaling \$10,000.

33. On or about April 1, 2015, Respondent directed Mayor Spencer's campaign operative to send Company A's bid proposal to Company B.

34. On or about April 2, 2015, Ms. Acosta gave Company A's bid proposal to Mayor Spencer's campaign operative and whispered that she needed it back in order to cover herself. Ms. Acosta also asked, "When am I getting a check?" At Respondent's direction, Mayor Spencer's campaign operative assured Ms. Acosta that she would be receiving donations from several sources, including Company B's representatives.

35. On or about April 2, 2015, Respondent caused a copy of Company A's bid proposal to be sent directly to Company B.

36. On or about April 23, 2015, Respondent attempted to make an online payment of \$250 to "Friends for Rebecca Acosta" from the account of his consulting company, Sovereign Enterprises.

37. Respondent also asked Company B to make a campaign contribution to defendant Rebecca Acosta.

38. Respondent expressed his intentions openly and unabashedly.

39. Respondent's motivation led him to try to gain an unfair advantage over his competition by bribing a member of the School Board, to the detriment of Reading Schools.

40. Respondent faced a guideline imprisonment range of 18 to 24 months. The government recommended an 18 month sentence, and the Court accepted that recommendation and plea agreement between Respondent and the government.

41. Respondent has paid all monetary penalties as part of the judgment of conviction.

42. Respondent's conviction for honest services mail fraud and honest services wire fraud constitute an independent basis for discipline, pursuant to Rule 203 (b)(1), Pa.R.D.E.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED**

Respondent violated the following Rule of Disciplinary Enforcement and Rules of Professional Conduct:

A. Pa.R.D.E. 203(b)(1), which provides that conviction of a crime shall be grounds for discipline;

B. 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; and

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.

SPECIFIC RECOMMENDATION FOR DISCIPLINE

43. ODC and Respondent jointly recommend that the appropriate discipline for Respondent's misconduct is a suspension for five years.

44. ODC does not oppose imposing this period of suspension be made retroactive to March 8, 2018, which is the date of Respondent's temporary suspension.

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

46. In support of Petitioner and Respondent's joint recommendation, the significant factors in mitigation are:

a) Respondent cooperated with the Government and entered a guilty plea:

- b) Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct and Rule of Disciplinary Enforcement;
- c) Respondent agreed to be placed on temporary suspension as evidenced by his participation in the filing of a Joint Petition to Temporarily Suspend an Attorney;
- d) Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his cooperation with Petitioner and his consent to receiving a five-year suspension; and
- e) Respondent has no record of discipline.

47. A suspension of five years in this criminal conviction case involving political corruption is consistent with prior decisions by the Supreme Court. Recently, the Supreme Court granted a Joint Petition in Support of Discipline on Consent, suspending attorney Dale Wiles for a period of five years. *ODC v. Dale Wiles*, 2237 DD No. 3, 3 DB 2016 (Pa.S.Ct. May 2, 2019). Mr. Wiles was Allentown, Pennsylvania Assistant City Solicitor during the period of the bribery/pay-to-play conspiracy, and pled guilty to one count of conspiracy to commit mail and wire fraud. Mr. Wiles was sentenced to serve one day in federal custody, followed by three years' supervised release. Mr. Wiles' lengthy suspension was justified because he held a public office or position of public trust at the time of his criminal conduct, and his conduct occurred in the context of an attorney-client relationship. Although Respondent Hickey was not a public official, and his actions did not occur in the context of an attorney-client relationship, a five-year suspension is similarly warranted in this case because of his multiple felony convictions, and significantly longer (18-month) sentence.

In *Office of Disciplinary Counsel v. Rhonda McCullough Anderson*, 156 DB 2007 (2007), the Court suspended Ms. Anderson for a five years, rejecting the Board's recommendation for a three-year suspension, for her conviction on one count of mail fraud involving public corruption of Philadelphia Assistant Treasurer, Corey Kemp. At Mr. Kemp's suggestion, Ms. Anderson started an asset locator business for unclaimed property, including unclaimed Philadelphia Municipal Bonds, for which Mr. Kemp requested and received 35% of Ms. Anderson's earnings.

48. A five-year suspension is supported by precedent addressing similar misconduct in criminal conviction cases involving conspiracy and fraud. In *Office of Disciplinary Counsel v. Arthur J. Smith*, 73 DB 2015 (October 3, 2018) the Court granted a Joint Petition in Support of Discipline on Consent for a five-year suspension, retroactive to the date of temporary suspension. Mr. Smith pled guilty to one count each of bank fraud, conspiracy to commit money laundering and willful failure to file income tax returns. Mr. Smith was sentenced to one day incarceration on each count, and three years' supervised release.

In *Office of Disciplinary Counsel v. Herbert P. Henderson, II*, 7 DB 2012 (2015), the Court granted a Joint Petition in Support of Discipline on Consent for a five-year suspension. Mr. Henderson pled guilty to conspiring with his employer to conceal property in bankruptcy, and to commit bankruptcy fraud, among other charges having to do with fraud in a bankruptcy estate. Mr. Henderson was sentenced to six months incarceration.

In *Office of Disciplinary Counsel v. Marc D. Manoff*, 10 DB 2011 (2013), the Court granted a Joint Petition in Support of Discipline on Consent for a five-year suspension. Mr. Manoff pled guilty to one count of conspiracy to commit securities fraud and two counts of securities fraud involving a scheme to manipulate share prices of thinly traded "pink sheet" stocks in exchange for

stock, which would be sold to targeted brokers, and cash. After artificially inflating the stock price, Mr. Manoff and his co-defendants sold their shares in order to reap a substantial profit.

In *Office of Disciplinary Counsel v. Glori Alisha Kasner*, 51 DB 2011 (2013), Ms. Kasner was suspended for five years for her criminal conviction on two counts of mail fraud. Ms. Kasner had aided and abetted personal injury clients in filing false insurance claims so that they could fraudulently recover personal injury settlements and she would receive fees.

WHEREFORE, Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e), 215(g) and 215(i), a three member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file a recommendation with the Supreme Court of Pennsylvania that Respondent receive a five-year suspension, retroactive to the date of his temporary suspension, on March 8, 2018.

Respectfully submitted,

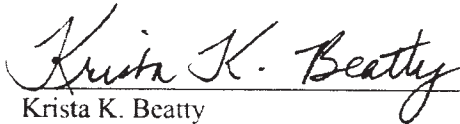
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION

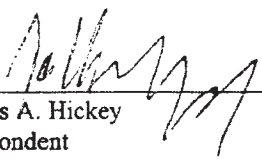
Attorney Reg. No. 20955

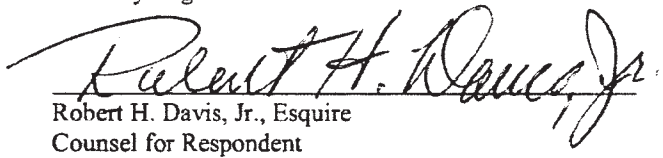
Chief Disciplinary Counsel

By:



Krista K. Beatty
Disciplinary Counsel
Attorney Reg. No. 75211
District II Office
820 Adams Avenue
Suite 170
Trooper, PA 19403
(610) 650-8210

By: 
James A. Hickey
Respondent
Attorney Reg. No. 71352

By: 
Robert H. Davis, Jr., Esquire
Counsel for Respondent
Attorney Reg. No. 5272

VERIFICATION

The statements contained 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 or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

9/12/19
Date

Krista K. Beatty
Krista K. Beatty
Disciplinary Counsel
District II Office
Attorney Reg. No. 75211

5 Sept 2019
Date

James A. Hickey
James A. Hickey
Respondent
Attorney Reg. No. 71352

11 September, 2019
Date

Robert H. Davis, Jr.
Robert H. Davis, Jr.
Counsel for Respondent
Attorney Reg. No.

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

In the Matter of	:	No. 2449 Disciplinary Docket No. 3
	:	
JAMES A. HICKEY	:	(United States District Court for the Eastern District of Pennsylvania, CR-17-00390 and CR-17-391)
	:	
	:	No. 25 DB 2018
	:	
	:	Attorney Registration No. 71352
	:	
	:	(Lehigh County)

**AFFIDAVIT
UNDER RULE 215(d), Pa.R.D.E.**

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF LEHIGH:

James A. Hickey, being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of a five-year suspension in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. He was admitted as an attorney in the Commonwealth of Pennsylvania on or about January 7, 1994.
2. He desires to submit a Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d).
3. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress, and he is fully aware of the implications of submitting this affidavit.
4. He is aware that there is presently pending a proceeding into allegations that he has been guilty of misconduct as set forth in the Joint Petition in Support of Discipline on Consent

Pursuant to Pa.R.D.E. 215(d) to which this affidavit is attached.

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

6. He submits the within affidavit because he knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained, consulted and acted upon the advice of counsel, in connection with his decision to execute the within Joint Petition.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this ^{10th} ~~5th~~ day of September, 2019.

James R. Hickey

Sworn to and subscribed
before me this ^{10th} day
of SEPT, 2019.


Notary Public

Commonwealth of Pennsylvania - Notary Seal
James H Schantz, Notary Public
Northampton County
My commission expires June 16, 2023
Commission number 1145743

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

In the Matter of : No. 2449 Disciplinary Docket No. 3
: :
JAMES A. HICKEY : (United States District Court for the Eastern District
: of Pennsylvania, CR-17-00390 and CR-17-391)
: :
: No. 25 DB 2018
: :
: Attorney Registration No. 71352
: :
: (Lehigh 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 204 Pa. Code §89.22 (relating to service by a participant).

First Class mail and Electronic Mail, as follows:

Robert H. Davis, Jr., Esquire
Law Offices of Robert H. Davis, Esquire
121 Pine Street, 1st Floor
Harrisburg, PA 17101
Ethicl45@gmail.com

Counsel for Respondent

Dated: 9/12/19

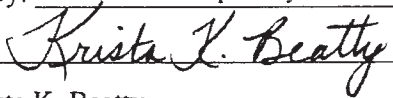


KRISTA K. BEATTY
Attorney Reg. No. 75211
Disciplinary Counsel
Office of Disciplinary Counsel
District II Office
820 Adams Avenue Suite 170
Trooper, PA 19403

CERTIFICATE OF COMPLIANCE

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

Submitted by: Office of Disciplinary Counsel

Signature: 

Name: Krista K. Beatty

Attorney No. (if applicable): 75211