

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1733 Disciplinary Docket No. 3
Petitioner :
v. : No. 30 DB 2011
MARC ALAN WEINBERG, : Attorney Registration No. 60643
Respondent : (Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 12th day of July, 2011, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated April 15, 2011, 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 Marc Alan Weinberg be subjected to public censure by the Supreme Court.

A True Copy Patricia Nicola
As Of 7/12/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL	:	No. 30 DB 2011
Petitioner	:	
	:	
v.	:	Attorney Registration No. 60643
	:	
MARC ALAN WEINBERG	:	
Respondent	:	(Montgomery 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 Mark S. Baer, Sal Cognetti, Jr., and Stephan K. Todd, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on February 28, 2011.

The Panel approves the Joint Petition consenting to a Public Censure and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.


Mark S. Baer, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: April 15, 2011

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

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 30 DB 2011
Petitioner	:	File No. C2-10-590
	:	
v.	:	
	:	Attorney Reg. No. 60643
MARC ALAN WEINBERG,	:	
Respondent	:	(Montgomery 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, Marc Alan Weinberg, (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 Disciplinary Board Office of Chief Counsel, Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania, 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, Marc Alan Weinberg, was born on November 25, 1965, and was admitted to practice law in the Commonwealth on December 27, 1990. Respondent is on active

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

status and maintains his office at 815 Greenwood Ave. #22, Jenkintown, PA. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

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

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

4. Respondent represented the Plaintiff, Sebastian Saladino, in a personal injury case filed in the Court of Common Pleas of Fulton County, Pennsylvania, captioned Saladino v. Reber, No. 12-209-C.

5. On May 11, 2009, Joseph R. D'Annunzio, Esquire entered his appearance as attorney for Defendants, Joshua and Tamra Reber.

6. On May 14, 2009, the Defendants, through Counsel, filed an Answer and New Matter to the Complaint.

7. On September 24, 2009, after consultation with Respondent, Defendants sent a Notice of Deposition of the Plaintiff, Sebastian Saladino, and noticed the deposition for October 27, 2009, at 11:00 a.m. in Harrisburg, Pennsylvania.

8. On October 9, 2009, Respondent wrote to Mr. D'Annunzio and advised that the deposition of Mr. Saladino could not take place on October 27, 2009, due to a court commitment.

9. Mr. D'Annunzio rescheduled the deposition for November 3, 2009, at 10:00 a.m. in his office.

10. On October 14, 2009, Mr. D'Annunzio sent Respondent a Notice of Rescheduled Deposition and a transmittal letter advising that Mr. Saladino's deposition would be taken on November 3, 2009, at 11:00 a.m., in Mr. D'Annunzio's office.

11. At 4:00 p.m. on November 2, 2009, the day prior to the rescheduled deposition, Respondent directed his secretary to call Mr. D'Annunzio and advise that the deposition would have to be cancelled due to a court commitment.

12. Respondent agreed to a rescheduled deposition dated November 17, 2009, at 10:00 a.m.

13. On November 3, 2009, Mr. D'Annunzio sent Respondent a Notice of Rescheduled Deposition advising that the plaintiff's deposition would be taken on November 17, 2009, at 10:00 a.m. in his office.

14. In addition, Mr. D'Annunzio advised Respondent that "[s]ince there is more than ample time to make arrangements for this deposition, I ask that you please have someone in your office present for this deposition at the appointed date and time. Since this is now the third scheduling of a deposition, if the deposition is cancelled by your office, even due to a court commitment, I shall file a motion to compel the deposition with the court in Fulton County and I shall obtain a court order requiring that the deposition be taken by a date certain."

15. At 3:56 p.m. on November 16, 2009, one day before the rescheduled deposition, Respondent sent a letter via facsimile to Mr. D'Annunzio cancelling the deposition due to a court commitment.

16. Accordingly, on December 8, 2009, Mr. D'Annunzio filed a motion in the Fulton County Court of Common Pleas seeking to compel Plaintiff's deposition.

17. Respondent did not answer the motion, thereby admitting all factual allegations.

18. On December 17, 2009, the Court issued an order providing, among other things, that:

- a. "Defense counsel shall obtain a date from Plaintiff's counsel to conduct the Plaintiff's deposition not later than thirty (30) days after the date of this Order" and further that "[t]he deposition shall not be cancelled or continued by either party except upon further Order of the Court"; and
- b. "Plaintiff's counsel shall, *not later than Friday, January 8, 2010*, file with the Prothonotary of Fulton County an Affidavit with attached documentation that will confirm Plaintiff's counsel's unavailability to attend the deposition scheduled for November 3, 2009 and November 17, 2009." (emphasis added).

19. After consulting with Respondent, Mr. D'Annunzio rescheduled the deposition of Plaintiff for January 7, 2010, at 10:00 a.m. at his office in Harrisburg.

20. Mr. D'Annunzio sent Respondent a Notice of Rescheduled Deposition on December 22, 2009 and filed the Notice of Rescheduled Deposition with the Prothonotary on December 23, 2009.

21. At approximately 3:45 p.m. on January 6, 2010, Respondent's secretary called Mr. D'Annunzio and advised him that Respondent was on trial in the Court of Common Pleas of Montgomery County, Pennsylvania, before the Honorable Bernard A. Moore and that Respondent would be unable to attend the deposition scheduled for the next day.

22. Respondent failed to seek leave of the Court prior to cancelling the scheduled deposition.

23. Respondent failed to timely comply with the Court's Order and file an affidavit confirming his unavailability on November 3 and November 17, 2009.

24. Indeed, Respondent did not file the Court ordered affidavit until August 16, 2010, after receiving correspondence from Disciplinary Counsel.

25. When Respondent did finally file the affidavit, he took the position that he was in "full compliance" with the Court Order, despite the fact that he filed it nearly nine months past the Court ordered deadline.

26. On January 7, 2010, neither Respondent nor his client appeared for the scheduled deposition.

27. Accordingly, on January 29, 2010, Mr. D'Annunzio filed a Motion for Sanctions seeking, among other things, sanctions against the Plaintiff including reasonable expenses incurred in obtaining the Order for Compliance and the Order for Sanctions, and seeking a judgment of non pros against Respondent's client.

28. On February 17, 2010, the Court entered an Order scheduling a full evidentiary hearing on Mr. D'Annunzio's Motion for Sanctions on June 1, 2010, at 1:30 p.m.; and further ordering that both Respondent and his client be personally and physically present for that hearing.

29. Respondent received that Order.

30. The docket in a case pending in Philadelphia, Carroll v. Yellow Bird Bus Company, No. 090203533 reflects that as of December of 2009, the case had been set for trial on June 1, 2010.

31. Additionally, Respondent had a criminal matter scheduled for 8:00 a.m. in Chatsworth Municipal Court, New Jersey, on June 1, 2010.

32. Respondent failed to promptly alert the Court in Fulton County to the scheduling conflicts or seek leave of the Court in Philadelphia to reschedule the trial date.

33. Instead, by letter dated June 1, 2010, the date he was scheduled to appear in Court in Fulton County, Respondent sent a facsimile to the Court and to Mr. D'Annunzio stating that he was "currently on trial" and asking for the matter to be rescheduled.

34. The Court rescheduled the hearing for June 15, 2010, at which time Respondent appeared and testified, among other things, that the reason for his non-compliance with the Court's December 8, 2009 Order that he file an affidavit was that Respondent never read the Order.

35. The Saladino case settled on or around June 24, 2010.

36. By Order dated July 2, 2010, the Court required Respondent to pay \$1,000.00 in counsel fees and sanctions.

37. On July 22, 2010, Respondent paid the sanction and notified the Court.

SPECIFIC RULES OF PROFESSIONAL CONDUCT
VIOLATED

38. Respondent violated the following RPCs:

- A. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client.
- B. RPC 3.2, which states that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.
- C. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

SPECIFIC RECOMMENDATION FOR DISCIPLINE OF A PUBLIC CENSURE

Precedent establishes that a public censure is the appropriate level of discipline for Respondent's clear violation of the Court's Orders. In *Office of Disciplinary Counsel v. Scott*

Leonard Feldman, 101 DB 2006 (2006) the respondent-attorney received a public censure where he filed grossly inappropriate pleadings in bankruptcy court and accepted payment from his client in violation of a court order. In *In re Anonymous*, No. 85 DB 97 (Alan S. Fellheimer) the respondent-attorney received a public censure for conduct that included a conflict of interest, filing frivolous and false pleadings to gain advantage for the principal of a corporate debtor over his client's interests and failing to correct a material misrepresentation to the bankruptcy court.

This case does not involve any direct misrepresentation or dishonesty. In each instance where Respondent pled a prior commitment he genuinely had one.¹ For example, Respondent cancelled the November 17, 2009 deposition because he learned when he attended a trial call list on Monday, November 16, 2009, in New Jersey that the first case scheduled had settled, indicating that Respondent's case would likely be called for the next day. Similarly, Respondent states he did not expect his case in front of Judge Moore to be called for January 7, 2010. In the case of the June scheduling conflict, Respondent states that the Philadelphia case involved an assessment of damages hearing that he did not expect to take as long as it did. Respondent admits that he should have "erred on the side of caution" and should have handled matters differently. However, time and again Respondent knew or should have known his schedule was such that he could not appear in the Saladino case on the date to which he committed. As Comment 2 to RPC 1.3 makes clear, "[a] lawyer's work load must be controlled so that each matter can be handled competently."

Respondent has a prior history of discipline. In File No. C2-08-47 Respondent received an informal admonition for misconduct relating to his failure to maintain an IOLTA account or seek an exemption from the IOLTA Board from placing qualified funds into an IOLTA account. The facts

¹ Respondent supplied documentation substantially verifying the accuracy of his statements.

and circumstances leading to the informal admonition were completely different from those in this case. Respondent, through the filing of this joint petition, expresses regret and accepts responsibility for his actions. Respondent appears to recognize the need to make changes in his practice. Considering all of the facts and circumstances, it is respectfully suggested that the imposition of a public censure is sufficient discipline.

WHEREFORE, Joint Petitioners respectfully pray that your Honorable Board:


- a. Approve this Petition; and
- b. File a recommendation for a public censure 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: 2/24/11

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

Date: 2-23-11


MARC ALAN WEINBERG,
Respondent

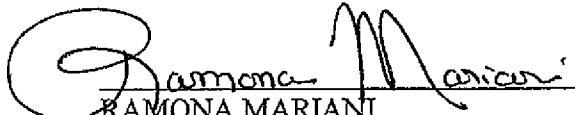
Date: 2-23-11


JAMES C. SCHWARTZMAN,
DANA PIRONE CAROSELLA,
Respondent's Counsel


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.

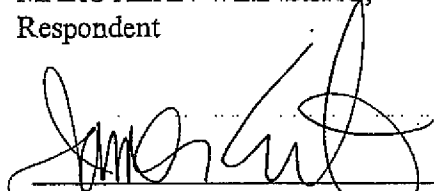
2/24/11
Date


RAMONA MARIANI,
Disciplinary Counsel

2-23-11
Date


MARC ALAN WEINBERG,
Respondent

2-23-11
Date


JAMES C. SCHWARTZMAN,
DANA PIRONE CAROSELLA,
Respondent's Counsel

**BEFORE THE DISCIPLINARY BOARD OF THE
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OFFICE OF DISCIPLINARY COUNSEL,	:	No. DB 2011
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	:	
v.	:	
	:	Attorney Reg. No. 60643
MARC ALAN WEINBERG,	:	
Respondent	:	(Montgomery County)

AFFIDAVIT OF MARC ALAN WEINBERG

Marc Alan Weinberg 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 she has consulted and followed the advice of counsel in connection with the decision to consent to discipline.


2. He is aware that there is presently pending an investigation into or proceeding involving allegations that he has been guilty of misconduct as set forth in the Petition;

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

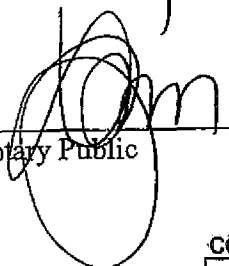
4. He consents because he knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding,

he could not successfully defend against them.

Signed this 20 day of Feb, 2011.


Marc Alan Weinberg, Esquire
Attorney Reg. No. 60643

Sworn to and subscribed
Before me this 20 day
of February 2011



Notary Public

COMMONWEALTH OF PENNSYLVANIA
Notarial Seal
Luisa P. Megali, Notary Public
Jenkintown Boro, Montgomery County
My Commission Expires Aug. 7, 2013
Member, Pennsylvania Association of Notaries

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**BEFORE THE DISCIPLINARY BOARD OF THE
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OFFICE OF DISCIPLINARY COUNSEL,	:	No. DB 2011
Petitioner	:	File No. C2-10-590
	:	
v.	:	
	:	Attorney Reg. No. 60643
MARC ALAN WEINBERG,	:	
Respondent	:	(Montgomery 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 §89.2e (relating to service upon counsel).

First Class Mail Service, as follows:

Counsel for Respondent: James C. Schwartzman, Esquire
Dana Pirone Carosella, Esquire
Stevens & Lee, P.C.
1818 Market Street, 29th Floor
Philadelphia, PA 19103

Dated: 2/24/11


RAMONA MARIANI,
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