

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL, : No. 2644 Disciplinary Docket No. 3  
: :  
Petitioner : No. 46 DB 2019  
: :  
v. : Attorney Registration No. 201826  
: :  
MICHAEL E. McHALE, : (Lancaster County)  
: :  
Respondent :

**ORDER**

**PER CURIAM**

**AND NOW**, this 20<sup>th</sup> day of September, 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 Michael E. McHale is suspended on consent from the Bar of this Commonwealth for a period of one year and one day. He shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola  
As Of 09/20/2019

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

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

<b>OFFICE OF DISCIPLINARY COUNSEL,</b>	:	<b>No. 46 DB 2019</b>
<b>Petitioner</b>	:	
	:	
<b>v.</b>	:	<b>Attorney Reg. No. 201826</b>
	:	
<b>MICHAEL E. MCHALE,</b>	:	
<b>Respondent</b>	:	<b>(Lancaster County)</b>

**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 Dana M. Pirone, Disciplinary Counsel and Michael E. McHale, Esquire (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. Petitioner, whose principal office is situated at Office of Chief Disciplinary Counsel, Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, 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 Michael E. McHale, was born in 1979, and was admitted to practice law in the Commonwealth on November 9, 2005. Respondent is on active status and his last registered address is 53 N. Duke Street, Suite 405, Lancaster, Lancaster County, Pennsylvania 17602.

**SPECIFIC FACTUAL ALLEGATIONS ADMITTED**

**CHARGE ONE**

**FILE NO. C2-18-339 THE ANTHONY L. SPENCER, JR., MATTER**

3. On July 13, 2017, Respondent was appointed to represent Anthony L. Spencer, Jr. in the matter captioned *Com. v. Anthony L. Spencer, Jr.*, CR-0000387-2016 (Lebanon County CCP) and directed to file an amended Post Conviction Relief Act Petition (the "PCRA Petition") within 60 days.

4. On December 31, 2017, Mr. Spencer wrote to Respondent about Respondent's failure to communicate and neglect and accused him of lying. Mr. Spencer copied the Clerk of Court on his letter, which the Clerk of Court filed at CR-0000387-2016.

5. On February 1, 2018, Disciplinary Counsel Alan J. Davis, Esquire informed Respondent that Mr. Spencer had complained to Petitioner about Respondent's lack of communication and failure to file an Amended PCRA.

6. On February 2, 2018, Respondent wrote to Mr. Spencer explaining that he would not be filing a Turner-Finley Letter and that he was working on preparing the Amended PCRA Petition "as we speak."

7. On February 2, 2018, Mr. Spencer wrote to Respondent about his ongoing lack of communication and failure to take seriously his representation. Mr. Spencer asked Respondent to inform Mr. Spencer whether Respondent still wanted to represent Mr. Spencer.

8. Mr. Spencer claims Respondent did not communicate with him after February 2, 2018.

9. Respondent does not recall whether he communicated with Mr. Spencer after February 2, 2018 either orally or in writing.

10. Respondent is unable to locate any written communication to Mr. Spencer after February 2, 2018.

11. Respondent did not file an Amended PCRA.

12. Respondent should have filed a Turner-Finley Letter, but he did not.

13. Respondent did not properly handle Mr. Spencer's PCRA matter.

14. On April 12, 2018, Mr. Spencer filed a Motion for Change of Appointed Counsel (the "Motion") in which he alleged Respondent had never:

- a) provided copies of discovery to Mr. Spencer;
- b) met with Mr. Spencer;
- c) responded to Mr. Spencer's inquiries; and
- d) given Mr. Spencer reason to trust that Respondent would communicate.

15. By Order dated April 19, 2018, the Court granted Mr. Spencer's Motion, vacated its prior order appointing Respondent as PCRA counsel and appointed Melissa Montgomery, Esquire to represent Mr. Spencer.

16. Ms. Montgomery and members of her staff contacted Respondent to obtain his file and documents pertaining to Mr. Spencer's PCRA Petition and case.

17. Respondent directed his staff to respond to the inquiries from Ms. Montgomery and her staff.

18. Respondent and his staff did not respond to the inquiries from Ms. Montgomery and her staff about the transfer of Mr. Spencer's file and documents pertaining to the PCRA Petition.

19. Respondent is responsible for the failure of his office to respond to the inquiries from Ms. Montgomery and her staff and for failing to transfer the file to Ms. Montgomery.

## **CHARGE TWO**

### **FILE No. C2-18-426 THE DEBORAH R. GRUEL MATTER**

20. On October 6, 2016, David M. Gruel, Jr. entered a guilty plea in the matter captioned *Com. v. David M. Gruel, Jr.*, at Docket No. CR-0000909-2015 (Lancaster County CCP).

21. On December 22, 2017, Respondent met with Mr. Gruel's wife, Deborah R. Gruel, about representing Mr. Gruel in a Post-Conviction Relief Act proceeding.

22. On December 22, 2017, Respondent and Mrs. Gruel executed a retainer agreement pertaining to Respondent's "investigation and filing of a PCRA petition" and an earned upon receipt flat-fee of \$2,500.00.

23. Respondent agreed that the \$2,500.00 flat-fee could be paid in installments with \$750.00 due when the retainer agreement was signed, \$500.00 due by January 15, 2018, and the balance of \$1,250.00 due upon the completion of the PCRA petition.

24. On December 22, 2017, Respondent debited Mrs. Gruel's checking account with Wells Fargo Bank in the amount of \$750.00.

25. On January 4, 2018, Respondent debited Mrs. Gruel's checking account Wells Fargo Bank in the amount of \$500.00.

26. In February 2018, Mrs. Gruel left messages with Respondent's office staff and sent text messages to Respondent asking when he would be speaking with Mr. Gruel about the PCRA Petition.

27. On February 23, 2018, Respondent spoke with Mr. Gruel by video conference.
28. On March 2, 2018, Respondent informed Mrs. Gruel that he would be filing the PCRA Petition later that day and that he would leave a copy for her at Respondent's office.
29. On March 2, 2018, Mrs. Gruel went to Respondent's office and was given an unsigned copy of the PCRA Petition dated March 2, 2018.
30. On March 2, 2018, Respondent debited Mrs. Gruel's checking account with Wells Fargo Bank in the amount of \$2,500.00, not the remaining \$1,250.00 Mrs. Gruel owed under the retainer agreement.
31. Respondent did not file the PCRA Petition on March 2, 2018.
32. Respondent did not inform Mrs. Gruel that he did not file the PCRA Petition on March 2, 2018, or on any other date in March and April of 2018.
33. In March 2018, and April 2018, Mrs. Gruel spoke with Respondent's legal assistant regarding whether Respondent had received a hearing date in connection with the PCRA Petition.
34. At Respondent's direction, his legal assistant informed Mrs. Gruel that Respondent did not expect to receive a hearing date for approximately one month.
35. In addition to Mrs. Gruel speaking with Respondent's legal assistant, in March 2018 and April 2018, Mrs. Gruel sent text messages to Respondent about the status of the PCRA Petition.
36. Respondent did not communicate with Mrs. Gruel until sending her a text message on April 5, 2018, stating he was expecting a telephone call from the Court regarding the PCRA Petition and a hearing date.
37. Respondent did not communicate with Mrs. Gruel after April 5, 2018.
38. Mrs. Gruel texted Respondent on April 6, 9, 13, 16, and 20, 2018, about the status of the PCRA Petition.

39. Mrs. Gruel learned from the Court that Respondent did not file the PCRA Petition.

40. Thereafter, Mrs. Gruel retained Daniel C. Bardo, Esquire to represent Mr. Gruel.

41. On May 3, 2018, Mr. Bardo filed his Entry of Appearance as counsel to Mr. Gruel.

42. As of May 3, 2018, Respondent had not entered his appearance on behalf of Mr. Gruel and had not ordered the transcripts from Mr. Gruel's guilty plea proceeding and sentencing hearing.

43. On May 8, 2018, Respondent filed his Entry of Appearance even though the docket for Mr. Gruel's criminal case reflected that Mr. Bardo had filed his Entry of Appearance and had ordered the transcripts.

44. On May 9, 2018, Respondent filed a PCRA Petition in which he represented that he was Mr. Gruel's attorney.

45. The PCRA Petition that Respondent filed on May 9, 2018, is substantially different from the PCRA Petition he had provided to Mrs. Gruel on March 2, 2018.

46. On May 9, 2018, Mr. Bardo filed a Motion to Strike the PCRA Petition which explained why Respondent had been terminated as Mr. Gruel's attorney.

47. After receiving the Commonwealth's Response to the Motion to Strike the PCRA Petition, Respondent agreed to withdraw his Entry of Appearance.

48. By Order dated June 7, 2018, Mr. Bardo was given an additional thirty (30) days to file an Amended PCRA Petition.

49. By letter dated June 8, 2018, Mrs. Gruel informed Respondent that he had debited her checking account for a total fee of \$3,750.00, \$1,250.00 more than Respondent's flat-fee of \$2,500.00. Mrs. Gruel asked Respondent to return \$1,250.00 within two weeks or she would file a Fee Dispute with the Lancaster County Bar Association.

50. When Respondent did not return the \$1,250.00, Mrs. Gruel filed a Fee Dispute with the Lancaster County Bar Association (the "Fee Dispute").

51. Respondent did not respond or participate in the Fee Dispute.

52. Respondent did not return the \$1,250.00 to Mrs. Gruel.

**CHARGE THREE**  
**FILE NO. C2-18-644 A COMPLAINT FROM THE HONORABLE MERRILL M.**  
**SPAHN, JR.,**

53. In 2017 and 2018, Respondent filed appeals in the Superior Court of Pennsylvania and the Commonwealth Court of Pennsylvania of matters which originated in the Lancaster County Court of Common Pleas.

54. The Superior Court of Pennsylvania and the Commonwealth Court of Pennsylvania dismissed appeals when Respondent failed to file a Docketing Statement and when he failed to file a brief in support of the appeal as stated herein in Paragraphs 55 through 142.

**A. THE ZACHARY C. BEAN MATTER**

55. Respondent represented Zachary C. Bean in a protection from abuse ("PFA") case at Docket Number CI-17-06078 (Lancaster County CCP).

56. On August 14, 2017, an Order was entered against Mr. Bean in the PFA Action.

57. On September 13, 2017, Respondent filed a Notice of Appeal of the Order dated August 14, 2017, in the Superior Court in the matter captioned *Zachary C. Bean v. Douglas Mowday and Jaclyn M. Bean*, Docket Number 1434 MDA 2017 ("Mr. Bean's Appeal").

58. On October 23, 2017, the Superior Court issued an Order directing Respondent to comply with Pa.R.A.P. 3517 by filing a Docketing Statement no later than November 2, 2017.

59. By Order dated November 9, 2017, the Superior Court dismissed Mr. Bean's Appeal due to Respondent's failure to comply with Pa.R.A.P. 3517 and directed Respondent to file within



ten (10) days of that order a certification that Mr. Bean had been notified of the fact that his appeal had been dismissed.

60. Respondent received the Order dated November 9, 2017, but did not file a certification within the 10-day period as set forth in the Order.

61. Instead, Respondent filed a certification on November 29, 2017, 10 days after the expiration of the 10-day period as directed in the Order dated November 9, 2017.

### **B. THE J.A.B. MATTER**

62. Respondent represented J.A.B. in a child support matter at Docket Number 2005-02364 (Lancaster County CCP).

63. On April 24, 2018, an Order was entered against J.A.B.

64. On May 29, 2018, Respondent filed a Notice of Appeal from the Order dated April 24, 2018, in the Superior Court in the matter captioned *J.A.B. v. S.E.J.*, Docket Number 867 MDA 2018.

65. On July 3, 2018, the Superior Court issued an Order directing Respondent to comply with Pa.R.A.P. 3517 by filing a Docketing Statement no later than July 13, 2018.

66. Respondent received the Order dated July 3, 2018, but did not file a Docketing Statement.

67. By Order dated July 20, 2018, the Superior Court dismissed J.A.B.'s Appeal due to Respondent's failure to comply with Pa.R.A.P. 3517 and directed Respondent to file within ten (10) days of that Order a certification that J.A.B. had been notified of the fact that the appeal had been dismissed.

68. Respondent received the Order dated July 20, 2018, but did not file a certification.

### **C. THE G.F., JR. MATTERS**

69. Respondent represented G.F., Jr. in a child support matter at Docket Number 2017-01593 (Lancaster County CCP).

70. On March 23, 2018, an Order was entered against G.F., Jr. in the child support action.

71. On April 23, 2018, Respondent filed a Notice of Appeal from the Order dated March 23, 2018, in the Superior Court in the matter captioned *G.F., Jr. v. T.R.*, Docket Number 704 MDA 2018.

72. On June 5, 2018, the Superior Court issued an Order directing Respondent to comply with Pa.R.A.P. 3517 by filing a Docketing Statement no later than June 15, 2018.

73. Respondent received the Order dated June 5, 2018, but did not file a Docketing Statement.

74. By Order dated June 22, 2018, the Superior Court dismissed the appeal due to Respondent's failure to comply with Pa.R.A.P. 3517 and directed Respondent to file within ten (10) days of that order a certification that G.F., Jr. had been notified of the fact that the appeal had been dismissed.

75. Respondent received the Order dated June 22, 2018, but did not file a certification.

76. Respondent also represented G.F., Jr. in another child support matter in the Lancaster County Court of Common Pleas at Docket Number 2017-01595.

77. On March 23, 2018, an Order was entered against G.F., Jr. at Docket Number 2017-01595.

78. On April 23, 2018, Respondent filed a Notice of Appeal from the Order dated March 23, 2018, in the Superior Court in the matter captioned *G.F., Jr. v. T.R.*, Docket Number 705 MDA 2018.

79. On June 6, 2018, the Superior Court issued an Order directing Respondent to comply with Pa.R.A.P. 3517 by filing a Docketing Statement no later than June 18, 2018.

80. Respondent received the Order dated June 6, 2108, but did not file a Docketing Statement.

81. By Order dated June 22, 2018, the Superior Court dismissed the appeal due to Respondent's failure to comply with Pa.R.A.P. 3517 and directed Respondent to file within ten (10) days of that Order a certification that G.F., Jr. had been notified of the fact that the appeal had been dismissed.

82. Respondent received the Order dated June 22, 2018, but did not file a certification.

#### **D. THE KUANG ZHANG MATTER**

83. Respondent represented Kuang Zhang for the summary appeal from a magisterial district court matter involving the suspension of Mr. Zhang's driving privileges at Docket Number CI-17-06709 (Lancaster County CCP).

84. By Order dated April 19, 2018, the Lancaster County Court of Common Pleas dismissed Mr. Zhang's appeal.

85. On May 18, 2018, Respondent filed a Notice of Appeal of the Order dated April 19, 2018, in the Superior Court in the matter captioned *Kuang Zhang v. Com. of PA. Dept. of Transportation, Bureau of Driver Licensing*, Docket Number 829 MDA 2018.

86. On May 25, 2018, counsel for PennDOT filed an Application to Transfer Mr. Zhang's appeal to the correct appellate court, the Commonwealth Court, which the Superior Court granted.

87. By Order dated June 7, 2018, Respondent was directed to file a Concise Statement of Matters Complained of on Appeal under Pa.R.A.P. 1925(b) (the "Statement under Pa.R.A.P. 1925(b)") within twenty-one days of that Order being entered on the docket.

88. Respondent received the Order dated June 7, 2018, but failed to file a Statement under Pa.R.A.P. 1925(b).

89. On July 13, 2018, and pursuant to Pa.R.A.P. 1925(a), the trial court issued its Opinion.

90. On July 25, 2018, the Commonwealth Court docketed Mr. Zhang's appeal and assigned it Docket Number 1017 CD 2018.

91. On August 2, 2018, the Commonwealth Court issued a briefing schedule.

92. Respondent received the briefing schedule, but did not file a brief in support of Mr. Zhang's appeal.

93. On September 11, 2018, Mr. Zhang was directed to pay the \$50.00 transfer fee within 14 days in order to avoid the Commonwealth Court dismissing his appeal.

94. By Order dated September 18, 2018, Respondent was informed that Mr. Zhang's brief and reproduced record were not filed by September 11, 2018 and that Mr. Zhang had an additional 14 days to do so before Mr. Zhang's appeal would be dismissed.

95. Respondent received the Orders dated September 11, 2018 and September 18, 2018, but did not file a brief or the reproduced record.

96. By Order dated October 16, 2018, the Commonwealth Court dismissed Mr. Zhang's appeal.

#### **E. THE H.R.R. v. J.M.R. MATTER**

97. Respondent represented H.R.R. in a protection from abuse case filed at Docket Number CI-17-04997 (Lancaster County CCP).

98. On December 7, 2017, an Order was entered against H.R.R.

99. On January 5, 2018, Respondent filed a Notice of Appeal from the Order dated December 7, 2017, in the Superior Court in the matter captioned *H.R.R. v. J.M.R.*, Docket Number 90 MDA 2018.

100. On February 20, 2018, the Superior Court issued an Order directing Respondent to comply with Pa.R.A. P. 3517 by filing a Docketing Statement no later than March 2, 2018.

101. Respondent received the Order dated February 20, 2018, but did not file a Docketing Statement until March 6, 2018.

102. On April 19, 2018, the Superior Court issued a briefing schedule.

103. Respondent received the briefing schedule, but did not file a brief in support of H.R.R.'s appeal.

104. By Order dated June 28, 2018, the Superior Court dismissed H.R.R.'s appeal due to Respondent's failure to file a brief and directed Respondent to file within ten (10) days of that Order a certification that H.R.R. had been notified of the fact that the appeal had been dismissed when Respondent did not file a brief.

105. Respondent received the Order dated June 28, 2018, but did not file a certification.

#### **F. THE J.M.R. v. H.R.R. MATTER**

106. Respondent represented H.R.R. in another matter filed at Docket Number CI-17-05561 (Lancaster County CCP).

107. On December 7, 2017, an Order was entered against H.R.R.

108. On January 5, 2018, Respondent filed a Notice of Appeal from the Order dated December 7, 2017, in the Superior Court in the matter captioned *J.M.R. v. H.R.R.*, Docket Number 91 MDA 2018.

109. On February 20, 2018, the Superior Court issued an Order directing Respondent to comply with Pa.R.A.P. 3517 by filing a Docketing Statement no later than March 2, 2018.

110. Respondent received the Order dated February 20, 2018, but did not file a Docketing Statement until March 6, 2018.

111. On April 19, 2018, the Superior Court issued a briefing schedule.

112. Respondent received the briefing schedule, but did not file a brief.

113. By Order dated June 28, 2018, the Superior Court dismissed H.R.R.'s Appeal due to Respondent's failure to file a brief and directed Respondent to file within ten (10) days of that Order a certification that H.R.R. had been notified of the fact that H.R.R.'s appeal had been dismissed when Respondent did not file a brief.

114. Respondent received the Order dated June 28, 2018, but did not file a certification.

#### **G. THE DAJZON LUIS GARCIA MATTER**

115. Respondent represented Dajzon Luis Garcia in a DUI case filed at Docket Number CR-0006068-2016 (Lancaster County CCP).

116. On May 30, 2017, the Court issued a sentencing order.

117. On July 14, 2017, Respondent filed a Notice of Appeal from the Order dated May 30, 2017, in the Superior Court in the matter captioned *Com. v. Dajzon Luis Garcia*. Docket Number 1112 MDA 2017.

118. On August 23, 2017, the Superior Court issued an Order directing Respondent to comply with Pa.R.A. P. 3517 by filing a Docketing Statement no later than September 5, 2017.

119. Respondent received the Order dated August 23, 2017, but did not file a Docketing Statement until September 7, 2017.

120. On September 18, 2017, the Superior Court issued a briefing schedule.

121. Respondent received the briefing schedule, but did not file a brief.

122. On November 30, 2017, the Superior Court dismissed Mr. Garcia's appeal for failure to file a brief and directed Respondent to file a certification within ten (10) days of that Order that Mr. Garcia had been notified of the fact that his appeal had been dismissed.

123. Respondent received the Order dated November 30, 2017, but did not file a certification.

#### **H. THE CLARKSON ADDIS, III MATTER**

124. On June 3, 2015, the Orphans' Court Division of the Lancaster County Court of Common Pleas issued Letters Testamentary to Anna Louise Detweiler, the Executrix of the Estate of Margaret V. Addis (the "Estate").

125. One of the beneficiaries of the Estate was Clarkson Addis, III.

126. Mr. Addis contested the Court's Adjudication of the Estate dated December 30, 2016, and filed two Petitions to Re-Open the Estate, which were denied.

127. Mr. Addis retained Respondent to appeal the Order dated August 22, 2017, denying his second Petition to Re-Open the Estate.

128. Respondent filed a Notice of Appeal from the Order dated August 22, 2017, in the Superior Court in the matter captioned *In Re: Estate of Margaret V. Addis, Appeal of Clarkson Addis, III*. Docket Number 1459 MDA 2017.

129. Respondent filed a Statement under Pa.R.A.P. 1925(b).

130. On November 13, 2017, the Superior Court issued a briefing schedule.

131. Respondent received the briefing schedule, but did not file a brief.

132. By Order dated January 26, 2018, the Superior Court dismissed Mr. Addis's appeal due to Respondent's failure to file a brief and directed Respondent to file a certification within ten

(10) days of that Order that Mr. Addis had been notified of the fact that his appeal had been dismissed.

133. Respondent received the Order dated January 26, 2018, but did not file a certification.

#### **I. THE RAYMOND W. BENSIN MATTER**

134. Respondent represented Raymond W. Bensin for a divorce in the matter captioned *Raymond W. Bensin v. Diane M. Bensin*, Docket Number CI-14-06580 (Lancaster County CCP).

135. On October 6, 2017, the trial court issued an Order against Mr. Bensin.

136. On November 3, 2017, Respondent filed a Notice of Appeal from the Order dated October 6, 2017, in the Superior Court in the matter captioned *Raymond W. Bensin v. Diane M. Bensin*, Docket Number 1700 MDA 2017.

137. On January 3, 2018, the Superior Court issued a briefing schedule which established a filing deadline of February 12, 2018.

138. Respondent received the briefing schedule, but did not file a brief.

139. On February 15, 2018, Respondent filed an Application for Remand, which the Superior Court denied on March 19, 2018.

140. On March 29, 2018, the Superior Court dismissed Mr. Bensin's appeal for failure to file a brief and directed Respondent to file a certification within ten (10) days that Respondent had notified Mr. Bensin of the fact that his appeal had been dismissed.

141. Respondent received the Order dated March 29, 2018, but did not file a certification.

142. In addition to the Lancaster County Court of Common Pleas client matters which were dismissed on appeal, Respondent had other clients whose appeals were dismissed when he did not file Docketing Statements and briefs in support of appeals on behalf, including Leroy Griffin, Beth Ann Winters and Zaki Jamar Holmes.



## **J. THE LEROY GRIFFIN MATTERS**

143. On May 19, 2017, Respondent was appointed to represent Leroy Griffin in Mr. Griffin's Post-Conviction Relief Act proceeding in the matter captioned *Com. v. Leroy Griffin*, CR-0000312-2002 (Lebanon County CCP).

144. By Order dated December 19, 2017, Mr. Griffin's PCRA Petition was denied.

145. On January 18, 2018, Respondent filed a Notice of Appeal of the Order dated December 19, 2017, in the Superior Court at Docket Number 192 MDA 2018.

146. On March 5, 2018, the Superior Court issued an Order directing Respondent to comply with Pa.R.A.P. 3517 by filing a Docketing Statement no later than March 15, 2018.

147. Respondent received the Order dated March 5, 2018, but did not file a Docketing Statement.

148. By Order dated March 26, 2018, the Superior Court dismissed the appeal due to Respondent's failure to comply with Pa.R.A.P. 3517 and directed Respondent to file within ten (10) days of that Order a certification that Mr. Griffin had been notified of the fact that the appeal had been dismissed.

149. Respondent received the Order dated March 26, 2018, but did not file a certification.

150. Respondent also represented Mr. Griffin in another criminal matter in the Lebanon County Court of Common Pleas, that matter is at Docket No. CR-0000312-2002.

151. In Docket No. CR-0000312-2002, Respondent filed a Motion for Nominal Bail, which the Court denied on April 26, 2018.

152. On May 21, 2018, Respondent filed a Notice of Appeal of the Order dated April 26, 2018, in the Superior Court at Docket Number 857 MDA 2018.

153. Mr. Griffin did not have an appeal pending on May 21, 2018.

154. Since there was no pending appeal, Respondent should have filed a Petition for Review under Pa.R.A.P. 1762(b)(2), not a Notice of Appeal.

155. By Order dated July 3, 2018, Respondent was directed to comply with Pa.R.A.P. 3517 by filing a Docketing Statement no later than July 13, 2018.

156. Respondent received the Order dated July 3, 2018, but did not file a Docketing Statement.

157. On July 25, 2018, the Superior Court issued a briefing schedule.

158. On July 27, 2018, Mr. Griffin filed an Application for Relief requesting, among other things, that he be permitted to represent himself *pro se*.

159. On August 9, 2018, the Superior Court stayed the briefing schedule and remanded the case to the trial court to determine whether Mr. Griffin desired to proceed *pro se* or with Respondent as his counsel.

160. On September 4, 2018, the trial court determined Mr. Griffin made a knowing, intelligent and voluntary decision to waive representation by counsel such that Mr. Griffin would be allowed to represent himself in furtherance of his appeal.

#### **K. THE BETH ANN WINTERS MATTER**

161. On August 1, 2017, Respondent was appointed to represent Beth Ann Winters in connection with Ms. Winters' Post-Conviction Relief Act Petition (the "PCRA Petition") in the matter captioned *Com. v. Beth Ann Winters*, CR-0001515-2016 (Lebanon County CCP).

162. By Order dated December 19, 2017, the Court denied Ms. Winters' PCRA Petition.

163. On January 19, 2018, Respondent filed a Notice of Appeal of the Order dated December 19, 2017 in the Superior Court at Docket Number 191 MDA 2018.

164. On March 5, 2018, the Superior Court issued an Order directing Respondent to comply with Pa.R.A.P. 3517 by filing a Docketing Statement no later than March 15, 2018.

165. Respondent received the Order dated March 5, 2018, but did not file a Docketing Statement.

166. By Order dated March 26, 2018, the Superior Court dismissed the Appeal due to Respondent's failure to comply with Pa.R.A.P. 3517 and directed Respondent to file within ten (10) days of that Order a certification that Ms. Winters had been notified of the fact that the appeal had been dismissed.

167. Respondent received the Order dated March 26, 2018, but did not file a certification.

#### **L. THE ZAKI JAMAR HOLMES MATTER**

168. Respondent was retained to represent Zaki Jamar Holmes in the matter captioned *Com. v. Zaki Jamar Holmes*, CR-0000131-2017 (York County CCP).

169. Mr. Holmes was sentenced on March 1, 2018.

170. After post-trial motions were denied, on April 13, 2018 Respondent filed an appeal of the Judgment of Sentence in the Superior Court at Docket Number 634 MDA 2018.

171. On May 22, 2018, the Superior Court issued an Order directing Respondent to comply with Pa.R.A.P. 3517 by filing a Docketing Statement no later than June 1, 2018.

172. Respondent received the Order dated May 22, 2018, but did not file a Docketing Statement.

173. By Order dated June 8, 2018, the Superior Court dismissed the appeal due to Respondent's failure to comply with Pa.R.A.P. 3517 and directed Respondent to file within ten (10) days of that Order a certification that Mr. Holmes had been notified of the fact that the appeal had been dismissed.

174. Respondent received the Order dated June 8, 2018, but did not file a certification.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED**

175. 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)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter.

D. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information.

E. 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.

F. RPC 1.15(e), which states, in pertinent part, that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property.

G. RPC 1.15(i), which states that a lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees

are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

H. RPC 1.16(d), which states that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

I. RPC 3.2, which states that a lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

J. 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.

K. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

L. 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.

#### **JOINT RECOMMENDATION FOR DISCIPLINE**

176. ODC and Respondent jointly recommend that the appropriate discipline for Respondent is a suspension of one year and one day.

177. Respondent asserts that he is being treated for depression, anxiety and suicidal thoughts.

178. Respondent's ability to practice law was affected by his depression, anxiety and suicidal thoughts.

179. McHale has attended appointments with a provider to deal with his mental health issues.

180. Respondent's depression and fitness to practice can be fully explored by another hearing committee in the event Respondent files a petition for reinstatement from a suspension of one year and one day.

181. Respondent hereby consents to the discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition as Exhibit A is Respondent's executed Affidavit required by Pa.R.D.E. 215(d)(1) through (4).

182. ODC and Respondent respectfully submit that the following is an aggravating circumstance:

- a) On October 4, 2017, Respondent received a private reprimand in two consolidated matters. In File No. C2-16-676, Respondent violated RPC 1.4(a)(2), RPC 8.4(a) and RPC 8.4(d) by failing to communicate with a client about resolving a custody dispute and interfering with the client's ability to receive a response from Respondent's employer regarding Respondent's handling of his matter. In File No. C2-16-1069, Respondent violated RPC 1.3, RPC 1.4(a)(3), RPC 1.4(a)(4), RPC 1.7(a)(2), RPC 1.10(b), and RPC 8.4(c), by neglecting a support action while failing to communicate with the client about hearings, attempting to secure employment with another law firm when a conflict existed, and providing a letter to his former employer which did not accurately state what had occurred during his representation.

183. In mitigation, ODC and Respondent respectfully submit:

- a) Respondent admitted the factual allegations in the Petition for Discipline, as he did in his responses to the DB-7 Requests for Statement of Respondent's Position;
- b) Respondent cooperated with ODC as evidenced by: i) Respondent's written waiver on March 11, 2019, as to the filing of a Form DB-3 Referral of Complaint to Reviewing Member of Hearing Committee under the provisions of Pa.R.D.E. 208(a)(3) and § 87.32 of the Disciplinary Board Rules, thus saving time and resources for ODC and the Reviewing Member; and ii) this Joint Petition;
- c) Respondent accepts responsibility for his wrongdoing;
- d) Respondent apologized to Mrs. Gruel and to his clients whose appeals were dismissed; and
- e) Respondent is remorseful.

184. The parties believe, and therefore aver, that their recommendation for a suspension of one year and one day is consistent with caselaw involving serial neglect, failing to communicate, retaining unearned fees, and failing to take steps to remedy the neglect. *Office of Disciplinary Counsel v. Kevin Mark Wray*, 19 DB 2017 (S.Ct. Order 7/6/17) (consent petition granted for a suspension of one year and one day for serial neglect, failing to file appellate briefs in six matters, failing to communicate, and retaining unearned fees. Aggravating factors included an informal admonition with a condition that Wray refund unearned and advanced fees to two clients and accepting fees after an appeal had been dismissed); *Office of Disciplinary Counsel v. Mark David Johns*, No. 95 DB 2013 (S.Ct. Order 12/30/14) (neglect in two client matters, failure to communicate

and delaying refund of unearned fees to the clients. Aggravating factors included an informal admonition involving Johns' failure to cooperate with successor counsel and a private reprimand for neglect and failure to communicate.); *Office of Disciplinary Counsel v. Richard Patrick Reynolds*, 179 DB 2011 (S.Ct. 3/31/14) (neglect of client's appeal in a criminal matter, failure to communicate and client abandonment. Aggravating factors included two informal admonitions for similar conduct); *Office of Disciplinary Counsel v. Ann-Marie MacDonald Pahides*, No. 171 DB 2009 (S.Ct. 12/27/10) (lack of competence, neglect, lack of communication, and failure to refund unearned fees and documents in five client matters; aggravating factor was an informal admonition); *Office of Disciplinary Counsel v. Marc D. Collazzo*, No. 165 DB 2010 (S.Ct. 11/30/10) (lack of competence, lack of communication and misrepresentations to a client; aggravating factor was engaging in identical misconduct involving another representation).

188. A suspension of one year and one day requiring Respondent to prove his fitness at a reinstatement hearing protects the public and meets the goals of the disciplinary system.



WHEREFORE, Respondent and ODC jointly respectfully request that your Honorable Board:

- a) Approve this Petition; and
- b) File a recommendation for a suspension of one year and one day and this Petition with the Supreme Court of Pennsylvania.

Respectfully submitted,

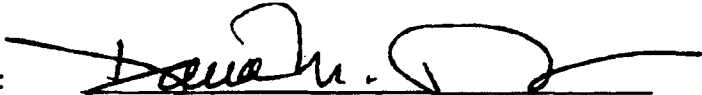
OFFICE OF DISCIPLINARY COUNSEL

Paul J. Killion  
Chief Disciplinary Counsel  
Attorney Reg. No. 20955

7/18/19

Date

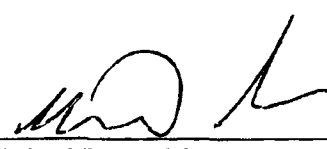
By:

  
Dana M. Pirone, Esquire  
Disciplinary Counsel  
Attorney Reg. No. 57221  
District II Office  
820 Adams Avenue, Suite 170  
Trooper, PA 19403  
(610) 650-8210

7/18/19

Date

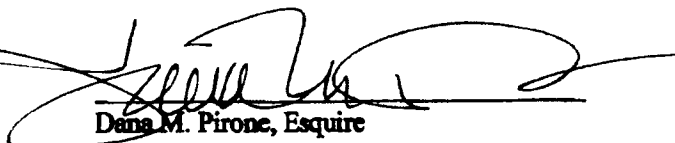
By:

  
Michael E. McHale  
Respondent  
Attorney Reg. No. 201826

**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, information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

7/18/19  
Date



Dana M. Pirone, Esquire  
Disciplinary Counsel  
District II Office  
Attorney Reg. No. 57221

7/18/19  
Date



Michael E. McHale  
Respondent  
Attorney Reg. No. 201826

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 46 DB 2019
Petitioner	:	
	:	
v.	:	Attorney Reg. No. 201826
	:	
MICHAEL E. MCHALE,	:	
Respondent	:	(Lancaster County)

ORDER

PER CURIAM:

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 2019, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated \_\_\_\_\_, 2019, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), and it is

ORDERED that Michael E. McHale is suspended on consent from the Bar of this Commonwealth for a period of one year and one day, and he shall comply with all the provisions of Pa.R.D.E. 217.

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

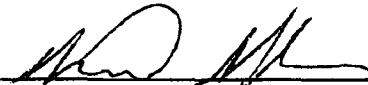
<b>OFFICE OF DISCIPLINARY COUNSEL,</b>	:	<b>No. 46 DB 2019</b>
<b>Petitioner</b>	:	
	:	
<b>v.</b>	:	<b>Attorney Reg. No. 201826</b>
	:	
<b>MICHAEL E. MCHALE,</b>	:	
<b>Respondent</b>	:	<b>(Lancaster County)</b>

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

I, Michael E. McHale, Respondent in the above-captioned matter, hereby consent to the imposition of a suspension of one year and one day, 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:

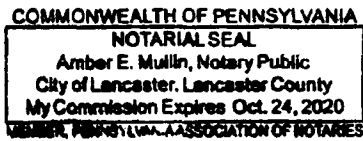
1. My consent is freely and voluntarily rendered; I am not being subjected to coercion or duress; I am fully aware of the implications of submitting the consent;
2. I am aware there is presently an investigation into allegations that I have been guilty of misconduct as set forth in the Joint Petition;
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 against me were prosecuted 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. I have not retained, consulted and acted upon the advice of counsel in connection with this decision to execute the within Joint Petition.

  
\_\_\_\_\_  
Michael E. McHale  
Respondent  
Attorney Reg. No. 201826

Sworn to and Subscribed  
before me this *18<sup>th</sup>* day  
of *July*, 2019.

  
\_\_\_\_\_  
Notary Public



BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 46 DB 2019  
Petitioner :  
 :  
v. : Attorney Reg. No. 201826  
 :  
MICHAEL E. MCHALE, :  
Respondent : (Lancaster County)


CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing documents upon the persons and in the manner indicated below which service satisfied the requirements of Pa.R.A.P. 121 as follows:

Service by First-Class Mail

Michael E. McHale, Esquire  
53 N. Duke Street, Suite 405  
Lancaster, Pennsylvania 17602

7/18/19  
Date

  
Dana M. Pirone, Esquire  
Disciplinary Counsel  
District II Office  
Attorney Reg. No. 57221  
820 Adams Avenue, Suite 170  
Trooper, PA 19403  
(610) 650-8210