

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2226 Disciplinary Docket No. 3  
Petitioner :  
v. : No. 71 DB 2015  
: Attorney Registration No. 59118  
SCOTT DiCLAUDIO, :  
Respondent : (Philadelphia)

ORDER

PER CURIAM

AND NOW, this 10<sup>th</sup> day of December, 2015, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board, the Joint Petition in Support of Discipline on Consent is hereby granted, and Scott DiClaudio is subjected to Public Censure by this Court.

A True Copy Patricia Nicola  
As Of 12/10/2015

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 71 DB 2015  
Petitioner :  
v. : Attorney Registration No. 59118  
SCOTT DICLAUDIO :  
Respondent : (Philadelphia)

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 Tracey McCants Lewis, Jane G. Penny, and David A. Fitzsimons, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on October 19, 2015.

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.

  
Tracey McCants Lewis  
Chair of Three Member Panel

Date: 11/16/2015

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
:  
: No. 71 DB 2015  
:  
v. :  
: Atty. Reg. No. 59118  
SCOTT DiCLAUDIO, :  
Respondent : (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and Harriet R. Brumberg, Disciplinary Counsel, and Respondent, Scott DiClaudio, Esquire, and Stuart L. Haimowitz, 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 that:

**I. BACKGROUND**

1. Petitioner, whose principal office is located at PA Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, PA 17106-2485, 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 said Rules of Disciplinary Enforcement. **FILED**

OCT 19 2015

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

2. Respondent, Scott DiClaudio, was born on July 1, 1964, and was admitted to practice law in the Commonwealth of Pennsylvania on November 30, 1990.

3. Attorney registration records state that Respondent maintains an office for the practice of law at Two Penn Center, 1500 JFK Boulevard, Suite 900, Philadelphia, PA 19102.

4. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

## II. FACTUAL ADMISSIONS AND VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT

5. Respondent specifically admits to the truth of the factual allegations and conclusions of law contained in paragraphs 1 through 48 herein.

6. Mr. Ahmed Khalil a/k/a Khalil Ahmed retained Respondent to represent him on firearms-related charges in the matter of *Commonwealth v. Ahmed Khalil*, No. CP-51-CR-0001219-2007, Court of Common Pleas, Philadelphia County.

7. On October 31, 2007, Mr. Khalil entered a plea of guilty to the charge of possessing a firearm without a license, 18 Pa.C.S.A. § 6106(a)(1), before the Honorable George W. Overton.

8. On April 11, 2008, Judge Overton sentenced Mr. Khalil to four years of probation.

9. On March 9, 2010, the Honorable Pamela Pryor Dembe lodged a detainer against Mr. Khalil based on Mr. Khalil's alleged violation of probation (VOP).

10. On June 3, 2010, Mr. Khalil's probation violation hearing was continued pending resolution of open charges.

11. On October 25, 2010, the Honorable Paula A. Patrick revoked Mr. Khalil's probation and sentenced Mr. Khalil to two years of reporting probation.

12. By *Per Curiam* Order dated April 28, 2011, the Supreme Court suspended Respondent from the practice of law for three months, stayed the suspension in its entirety, and placed Respondent on probation for one year with a practice monitor. ***Office of Disciplinary Counsel v. Scott DiClaudio***, No. 156 DB 2009, D.Bd. Rpt. 12/21/2010 (S.Ct. Order 4/28/2011).

13. On May 5, 2011, a Hearing Notice was generated by the court clerk regarding Mr. Khalil's alleged probation violation.

14. On May 13, 2011, Judge Patrick denied a motion Mr. Khalil had filed seeking permission to leave the jurisdiction.

15. On July 5, 2011, another detainer was lodged against Mr. Khalil based upon another alleged probation violation.

16. On July 5, 2011, Judge Dembe issued a bench warrant for Mr. Khalil's arrest for Mr. Khalil's second probation violation.

17. On August 4, 2011, Judge Patrick revoked Mr. Khalil's probation and sentenced him to not less than 1 ½ nor more than 3 years of state imprisonment, with credit for time served.

18. On August 5, 2011, Respondent filed a Motion for Reconsideration of VOP Sentence.

19. On August 8, 2011, Judge Patrick denied the motion.

20. Pursuant to Mr. Khalil's request, on August 19, 2011, Respondent filed a Notice of Appeal to the Superior Court of Pennsylvania through the First Judicial District, Criminal Appeals Unit.

21. By Order dated August 1, and filed on August 26, 2011, Judge Patrick directed Respondent to prepare a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b).

22. Respondent received the Order.

23. Respondent failed to comply with Judge Patrick's Order and file a 1925(b) Statement within 21 days from the date of entry of the Order on the docket or at any time thereafter, as required by Pa.R.A.P. 1925(b)(2).

24. On September 2, 2011, the Superior Court received Ahmed Khalil's Notice of Appeal and docketed the matter at 2300 EDA 2011.

25. Thereafter, the Prothonotary sent Respondent a Docketing Statement to complete and return within ten days, as required by Pa.R.A.P. 3517.

26. Respondent received the Docketing Statement.

27. By Order dated October 3, 2011, the Superior Court ordered that Respondent comply with Pa.R.A.P. 3517 and file the Docketing Statement by October 13, 2011.

a. Respondent received the Order.

28. Respondent failed to complete and return the Docketing Statement within ten days as ordered by the Superior Court.

29. Respondent did not forward the Docketing Statement to Mr. Khalil and advise him that unless Mr. Khalil completed the Docketing Statement within ten days of the Superior Court's Order, Mr. Khalil's appeal would be dismissed.

30. By Order dated October 17, 2011, the Superior Court dismissed Mr. Khalil's appeal due to Respondent's failure to comply with Pa.R.A.P. 3517, and ordered Respondent to file a certification with the Court within ten days stating that Respondent notified Mr. Khalil of the dismissal of his appeal.

31. Respondent failed to advise Mr. Khalil that the Superior Court had dismissed his appeal due to Respondent's failure to comply with Pa.R.A.P. 3517.

32. Respondent failed to comply with the Superior Court's Order and file a certification with the Superior Court within ten days.

- a. By letter dated October 19, 2011, received by the Superior Court on October 25, 2011, Respondent informed the Court that he had notified Mr. Khalil of the dismissal of his appeal.

33. Respondent failed to comply with Pa.R.Crim.P. 120(b) and request formal leave of court to withdraw from the representation.

34. On or about April 26, 2012, Mr. Khalil himself submitted to the trial court an undocketed Motion to Modify and Reduce Sentence *Nunc Pro Tunc* alleging that Respondent:

- a. failed to file another motion to modify his sentence to a straight probationary sentence as Respondent was paid to do;
- b. filed an appeal to Superior Court, but "abandoned" him soon after Respondent filed the appeal;
- c. failed to file the 1925(b) Statement because Mr. Khalil's family could not afford to pay Respondent any additional money;



- d. agreed to file the appeal at no cost because Respondent did not do a good job at the violation of probation hearing; and
- e. failed to obtain a court-appointed lawyer for Mr. Khalil as Mr. Khalil had requested so that Mr. Khalil could continue his appeal.

35. On May 8, 2012, Judge Patrick appointed Gary Server, Esquire, to represent Mr. Khalil in his post-conviction matter.

36. On May 15, 2012, Mr. Khalil filed a Motion for Post Conviction Collateral Relief raising complaints against Respondent similar to those set forth in Mr. Khalil's Motion to Modify and Reduce Sentence.

37. On May 17, 2012, Mr. Server filed a Petition Under the Post Conviction Relief Act alleging Respondent's ineffective assistance of counsel for:

- a. failing to comply with the Court's order and file a 1925(b) Statement;
  - b. failing to comply with the Order of the Superior Court and file a Docketing Statement;
  - c. waiving Mr. Khalil's sole issue on appeal;
  - d. failing to protect Mr. Khalil's appellate rights;
- and

- e. being the direct and proximate cause of the Superior Court's dismissal of Mr. Khalil's direct appellate rights.

38. Respondent's failure to comply with the Rules of Criminal and Appellate Procedure needlessly expended the limited time and resources of the Court of Common Pleas and Superior Court of Pennsylvania and was prejudicial to the administration of justice.

39. On September 12, 2014, ODC served Respondent with a DB-7 Request for Statement of Respondent's Position.

40. On October 24, 2014, Respondent filed his DB-7 Answer.

41. By letter dated November 19, 2014, Respondent submitted a correction to his DB-7 Answer, correcting an erroneous statement in his DB-7 Answer.

42. By his conduct as alleged in paragraphs 6 through 41 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- c. 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; and

- d. 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.

### **III. JOINT RECOMMENDATION FOR DISCIPLINE**

43. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a Public Censure.

44. Respondent hereby consents to the discipline being imposed by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Pa.R.D.E. 215(d), which states that he consents to the recommended discipline and the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

45. Petitioner and Respondent respectfully submit that

there is the following aggravating factor:

- a. Respondent has a record of discipline for similar misconduct. On April 28, 2011, the Supreme Court imposed a three-month suspension, stayed in its entirety, and placed Respondent on probation for one year with a practice monitor for Respondent's failure to file an appellate brief and communicate with his client in one criminal matter. (*Office of Disciplinary Counsel v. Scott DiClaudio*, No. 156 DB 2009, D.Bd. Rpt. 12/21/2010 (S.Ct. Order 4/28/2011)). In September 2008, Respondent received an Informal Admonition with Condition for his neglect in two criminal matters. (ODC File Nos. C1-08-19, C1-07-1009) On April 30, 2003, Respondent received an Informal Admonition for his neglect in one criminal matter. (ODC File No. C1-02-1024)

46. Respondent and ODC respectfully submit that there is the following mitigating factor:

- a. By virtue of Respondent's signing this Discipline on Consent, Respondent has expressed recognition of his violations of the Rules of Professional Conduct

47. Standing alone, an attorney's failure handle a

single client matter with reasonable diligence would ordinarily result in private discipline. But where an attorney has a record of discipline for neglect, greater discipline may be warranted. See, e.g., *Office of Disciplinary Counsel v. Neil Jokelson*, Nos. 58 and 102 DB 1998, D.Bd. Rpt. 12/22/2000 (S.Ct. Order 2/26/2001) (Supreme Court imposed a Public Censure and three years of probation on Jokelson, who neglected two clients matters and had a record of discipline for similar misconduct); *Office of Disciplinary Counsel v. Edward C. Meehan*, No. 26 DB 2006, D.Bd. Rpt. 6/27/06 (S.Ct. Order 9/18/06) (attorney who had received an Informal Admonition and Private Reprimand for neglecting appellate matters received a Public Censure on consent for failing to diligently pursue two appellate cases); and *Office of Disciplinary Counsel v. Wentworth D. Vedder*, No. 161 DB 2007, D.Bd. Rpt. 12/13/2007 (S.Ct. Order 3/26/2008) (attorney who had received two Informal Admonitions and one Private Reprimand for failing to diligently handle client matters received a Public Censure on consent for neglecting one appellate matter).

48. In 2011, Respondent received a three-month stayed suspension and one year of probation with a practice monitor for his most recent bout of neglect. Ordinarily, progressive discipline, which would include a longer period of a stayed suspension, would be appropriate. Yet following Respondent's

completion of probation in 2012, Respondent has not committed any further acts of neglect and appears to have benefitted from the guidance of his practice monitor. Under these circumstances, the imposition of a Public Censure would be fitting, as no greater discipline is warranted to protect the public and the courts from Respondent.

WHEREFORE, Petitioner and Respondent respectfully request that:

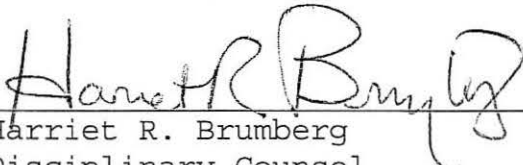
- a. Pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania recommending that the Supreme Court enter an Order that Respondent receive a Public Censure; and
- b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board enter an Order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition, and that all expenses be paid by Respondent before the imposition of discipline

under Pa.R.D.E. 215(g).


Respectfully and jointly submitted,  
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION  
CHIEF DISCIPLINARY COUNSEL

10/7/15  
Date

By   
Harriet R. Brumberg  
Disciplinary Counsel

10/9/15  
Date

By   
Scott DiClaudio, Esquire  
Respondent

10/9/15  
Date

By   
Stuart L. Haimowitz, Esquire  
Attorney for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
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AFFIDAVIT UNDER RULE 215(d), Pa.R.D.E.

Respondent, Scott DiClaudio, hereby states that he consents to the imposition of a Public Censure and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has 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 Joint Petition;

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

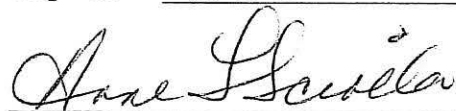


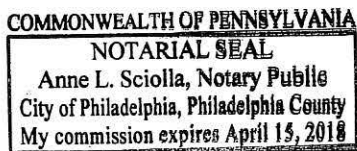
4. He knows that if the charges continued to be prosecuted in the pending proceeding, he could not successfully defend against them.



\_\_\_\_\_  
Scott DiClaudio, Esquire  
Respondent

Sworn to and subscribed  
before me this 15<sup>th</sup>  
day of October, 2015.

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



BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

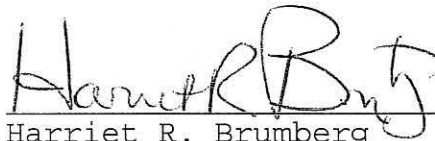
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VERIFICATION

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

10/7/2015

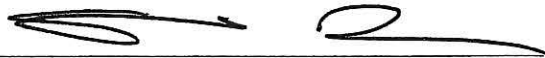
Date



Harriet R. Brumberg  
Disciplinary Counsel

10/9/2015

Date



Scott DiClaudio, Esquire  
Respondent

10/9/2015

Date



Stuart L. Haimowitz, Esquire  
Counsel for Respondent