

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1204 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 80 DB 2006
v.	:	
	:	Attorney Registration No. 85747
CARY BARTLOW HALL,	:	
Respondent	:	(Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 14th day of December, 2006, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated September 25, 2006, 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 Cary Bartlow Hall is suspended on consent from the Bar of this Commonwealth for a period of eighteen months, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola

As of: December 14, 2006

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL	:	No. 80 DB 2006
Petitioner	:	
	:	
v.	:	Attorney Registration No. 85747
	:	
CARY BARTLOW HALL	:	
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 Robert C. Saidis, Gary G. Gentile and Sal Cognetti, Jr., has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on August 28, 2006.

The Panel approves the Joint Petition consenting to an Eighteen Month Suspension 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.



Robert C. Saidis, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: September 25, 2006

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 80 DB 2006
Petitioner :
 :
v. : Attorney Reg. No. 85747
 :
CARY BARTLOW HALL, :
Respondent : (Montgomery County)

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

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Alan J. Davis, Disciplinary Counsel, and Respondent, Cary Bartlow Hall, by Samuel D. Miller, III, Esquire, file this Joint Petition in Support of Discipline on Consent under Rule 215(d) Pa.R.D.E. and respectfully represent that:

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged

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

misconduct of any 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.

2. Respondent, Cary Bartlow Hall, was born on April 9, 1970, and was admitted to practice law in the Commonwealth of Pennsylvania on October 18, 2000. He maintains an office at 618 Swede Street, Norristown, Montgomery County, Pennsylvania 19401.

3. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

SPECIFIC FACTUAL ADMISSIONS AND RULES
OF PROFESSIONAL CONDUCT VIOLATED

4. On or about May 13, 2005, Colleen Zoto retained Respondent to represent her in an unemployment compensation claim against her former employer, Movers Specialty Service, Inc. ("MSS").

5. A fee of \$1,000 was paid to Respondent by two checks for \$500 each, dated May 15, 2005, and July 7, 2005.

6. Ms. Zoto had initially been granted unemployment compensation benefits and that decision was appealed by MSS.

7. A hearing on that appeal was scheduled before Unemployment Compensation Referee Catherine Senyk for May 18, 2005.

8. Respondent advised Ms. Zoto that he would seek a continuance of the hearing.

9. No continuance of the hearing was granted.

10. On May 18, 2005, the employer and its counsel, Lisanne L. Mikula, Esquire, appeared. Respondent did not appear and he advised Ms. Zoto not to appear.

11. By decision dated May 25, 2005, Referee Senyk reversed the prior determination of the Unemployment Compensation Service Center and denied Ms. Zoto's unemployment compensation claim.

12. The aforesaid decision stated in part, "although duly notified of the date, time and place of the scheduled hearing, the claimant failed to appear to offer testimony."

13. The decision further stated that the last day to file an appeal was June 9, 2005, and advised as follows:

If you file your appeal by fax, it must be received by the Department by 11:59 p.m. on the last day to appeal. The filing date will be determined by the date of receipt imprinted by the receiving fax machine. If there is no receipt date imprinted by the receiving

fax machine, the sender's fax banner will control the date of filing. If neither date appears on the fax, the date of receipt recorded by the Department will serve as the date of filing... A party filing an appeal by fax is responsible for delay, disruption or interruption of electronic signals and readability of the document and accepts the risk that the appeal may not be properly or timely filed.

14. On June 10, 2005, Respondent attempted to appeal referee Senyk's decision of May 25, 2005, by means of a fax cover sheet dated June 9, 2005, addressed to the Scranton UC Service Center, together with a letter dated June 9, 2005, which contained the appeal.

15. In fact, the fax cover sheet dated June 9, 2005, contains the imprinted date of June 10, 2005, from Respondent's own fax machine at the top of the page.

16. In addition, the same imprint of June 10, 2005, from Respondent's fax machine, is set forth at the top of the attached appeal letter which is dated June 9, 2005.

17. Both the fax cover sheet and the appeal letter not only contain the imprinted date of June 10, 2005, from Respondent's own fax machine, but also contained the imprinted date of June 10, 2005, from the receiving fax machine for the UC Service Center.

18. Furthermore, the aforesaid fax cover sheet and appeal letter have a received date of June 10, 2005 stamped on each page.

19. Accordingly, Respondent's listing of the date of June 9, 2005, on the fax cover sheet and on the appeal letter are misrepresentations inasmuch as those documents were not faxed until June 10, 2005, one day after the last day of the allowable appeal period.

20. Respondent's representation of the filing date of the appeal as June 9, 2005, was false and was made by Respondent with knowledge of its falsity, or was made with reckless ignorance of the truth or falsity thereof.

21. On June 10, 2005, Respondent faxed a fax cover sheet to Ms. Mikula, which contained a letter to her dated June 10, 2005, as well as a copy of the aforesaid appeal letter to the UC Service Center which had been dated June 9, 2005, but which was not faxed until June 10, 2005.

22. In Respondent's letter to Ms. Mikula of June 10, 2005, Respondent stated, "Attached please find my letter appeal of the Referee's Decision/Order in this case which I submitted by facsimile yesterday." (Emphasis added).

23. In fact, Respondent's appeal letter and statement to Ms. Mikula that he had submitted his letter

appeal by facsimile "yesterday" (June 9, 2005) were false and were made by Respondent with knowledge of their falsity, or made with reckless ignorance of the truth or falsity thereof.

24. On July 19, 2005, an additional hearing was held before Referee Senyk for the limited purpose of providing testimony regarding Respondent's contention that the appeal had been timely filed on June 9, 2005.

25. On July 19, 2005, Respondent was sworn and testified under oath,

Based on those documents, it's my testimony and my belief that the appeal was filed and sent by facsimile on June 9 and that was...timely....All I know, and trying to put together dates from the information and documents that I have in my file, is that the letter was sent on the 9th of June by facsimile because that's the date of the letter.

26. Respondent's sworn testimony before Referee Senyk was false and perjurious and was either knowingly made by Respondent with knowledge of its falsity or made by Respondent with reckless ignorance of the truth or falsity thereof.

27. By decision dated August 15, 2005, the Unemployment Compensation Board of Review dismissed Ms.

Zoto's appeal, concluding that the "claimant's appeal was filed by fax on June 10, 2005, as evidenced by the date of receipt imprinted by the Department's fax machine."

28. Respondent has, by his conduct as set forth hereinabove, in Paragraphs 4 through 27, inclusive, violated the following Rules of Professional Conduct:

a) RPC 1.3, which provides that a lawyer shall act with reasonable diligence and promptness in representing a client;

b) RPC 3.1, which provides that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous;

c) RPC 3.3(a)(1), which provides that a lawyer shall not knowingly make a false statement of material fact to a tribunal or fail to correct a false statement of material fact or law previously made to a tribunal by the lawyer;

d) RPC 3.3(a)(3), which provides that a lawyer shall not knowingly offer evidence that the lawyer knows to be false;

e) RPC 3.4(b), which provides that a lawyer shall not falsify evidence;

f) RPC 4.1(a), which provides that a lawyer shall not knowingly make a false statement of material fact to a third person in the course of representing a client;

g) RPC 8.4(b), which provides that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on a lawyer's honesty, trustworthiness, or fitness as a lawyer in other respects;

h) RPC 8.4(c), which provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

i) RPC 8.4(d), which provides that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

29. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension from the practice of law for a period of eighteen months.

30. 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 Rule 215, Pa.R.D.E., stating that he consents to the recommended discipline and which includes the mandatory acknowledgments required by Rule 215 (d)(1) through (4), Pa.R.D.E.

31. In support of Petitioner's and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances:

- a) Respondent has no prior disciplinary history;
- b) Respondent has admitted engaging in misconduct by violating the charged Rules of Professional Conduct;
- c) Respondent has cooperated with Petitioner by his consent to receive a suspension of eighteen months;

- d) In Pennsylvania, there is no *per se* discipline for a particular type of misconduct, but instead each case is reviewed individually as established in the case of *Office of Disciplinary Counsel v. Lucarini*, 417 A.2d 186 (1983);
- e) Respondent has apologized to the Complainants and returned to them the legal fees that have been paid, in addition to returning the filing fees his client had paid to a district court to begin a civil process against him for the return of the legal fees;
- f) In acknowledging his false statements and acknowledging that he is deserving of suspension for his actions, Respondent has presented mitigating circumstances which distinguish his conduct from other cases representing situations of misrepresentations and false statements such as *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441 (Pa.2000); *Office of*

Disciplinary Counsel v. Price, 732 A.2d 599 (Pa. 1999); *Office of Disciplinary Counsel v. Anonymous Attorney A.*, 714 A.2d 402 (Pa.1998); and *Office of Disciplinary Counsel v. Geisler*, 614 A.2d 1134 (Pa. 1992);

- g) Although Respondent has been only admitted to the bar since 2000, he has become well regarded in the Montgomery Bar Association;
- h) With regard to his membership in the Montgomery Bar Association, Respondent has been elected to the Judiciary Committee which screens, evaluates, and gives ratings to candidates for Common Pleas judgeships in Montgomery County and has been appointed to the Bench-Bar Committee which discusses issues that arise between the bench and the bar in Montgomery County;
- i) At the time of the conduct which forms the allegations in the underlying case, Respondent was at the beginning of what has become a separation from his wife.

Respondent recognizes that his domestic problem does not constitute an excuse for his misconduct, but it is a factor that he requests be considered in mitigation; and

- j) Respondent has been active in community activities, including having taught Sunday school with his wife, coaching and assistant coaching a baseball and a soccer team, and having been an instructor for pre-marriage counseling.

WHEREFORE, the Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e) and 215(g), 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 be suspended for a period of eighteen months and that Respondent be ordered to pay all necessary expenses incurred in the investigation and prosecution in the matter as a condition to the grant of the petition.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION,
Chief Disciplinary Counsel

8/23/06
Date

BY:

Alan J. Davis
Alan J. Davis,
Attorney Registration No. 12332
Disciplinary Counsel
Suite 170
820 Adams Road
Trooper, PA 19403

8/23/06
Date

BY:

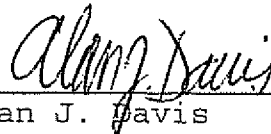
Samuel D. Miller
Samuel D. Miller, III, Esquire
Attorney Registration No. 14753
1349 Valley Drive
P.O. Box 547
Lansdale, PA 19446-0547

VERIFICATION

The statements contained in the foregoing Joint Petition In Support of Discipline on Consent under Rule 215(d) Pa.R.D.E. for Discipline are true and correct to the best of our 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.

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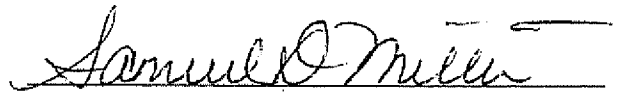
Date



Alan J. Davis
Disciplinary Counsel

8/23/06

Date



Samuel D. Miller, III, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 80 DB 2006
Petitioner :
 :
v. : Attorney Reg. No. 85747
 :
CARY BARTLOW HALL, :
Respondent : (Montgomery County)

AFFIDAVIT UNDER RULE 215 Pa.R.D.E.

Respondent, Cary Bartlow Hall, hereby states that he consents to the imposition of a suspension from the practice of law for a period of eighteen months, and further states that:

1. He is an attorney admitted to the Commonwealth of Pennsylvania, having been admitted to the bar on or about October 18, 2000.

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 subject to coercion or duress; and he is fully aware of the implications of submitting this consent.

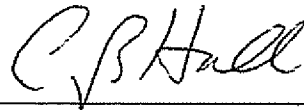
4. He has consulted with counsel, Samuel D.

Miller, III, in connection with his decision to consent to discipline.

5. He is aware there is presently pending a proceeding involving allegations that he has been guilty of misconduct as set forth within the accompanying Petition.

6. He acknowledges that the material facts within the Petition are true.

7. He consents because he knows that if he continues to be prosecuted in the pending proceeding, he cannot successfully defend himself.



Cary Bartlow Hall
Respondent

Sworn to and Subscribed
before me this 23rd day
of August, 2006.


Notary Public