

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2970 Disciplinary Docket No. 3
	:	
	:	
Petitioner	:	No. 91 DB 2022
v.	:	
	:	
	:	Attorney Registration No. 209192
GINA YVONNE TOPPIN,	:	
	:	
Respondent	:	(Philadelphia)

ORDER

PER CURIAM

AND NOW, this 1st day of May, 2023, 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 Gina Yvonne Toppin is suspended on consent from the Bar of this Commonwealth for a period of three months, followed by a period of probation for three years, subject to the following conditions:

1. Respondent shall establish treatment with a qualified mental healthcare professional for a minimum of three years on a weekly or biweekly basis, or as prescribed by the mental healthcare professional;
2. Respondent shall cooperate with the directions of the mental healthcare professional supervising her treatment, take medications as prescribed, and engage in therapy and counseling sessions as directed;
3. Respondent shall file quarterly written reports with the Board Prothonotary and shall attach reports verifying the above counseling and treatment; and
4. Respondent will not commit any willful violation of the Rules of Professional Conduct, Enforcement Rules, or the terms of probation.

Respondent shall also comply with 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 Nicole Traini
As Of 05/01/2023

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 91 DB 2022
v. :
: Atty. Reg. No. 209192
GINA YVONNE TOPPIN, :
Respondent : (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Thomas J. Farrell, Chief Disciplinary Counsel, and Gloria Randall Ammons, Disciplinary Counsel, and Respondent, Gina Yvonne Toppin, and Richard Q. Hark, Counsel for Respondent, file this Joint Petition In Support of Discipline on Consent under Pennsylvania Rule of Disciplinary Enforcement (Pa.R.D.E.) 215(d) ("Joint Petition"), and respectfully represent that:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, 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 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
03/16/2023
The Disciplinary Board of the
Supreme Court of Pennsylvania

2. Respondent, Gina Yvonne Toppin, was born on April 2, 1983, and was admitted to practice law in the Commonwealth on November 24, 2008. Her registered mailing address is 1800 John F. Kennedy Blvd., Suite 300, Philadelphia, PA 19103-7402.

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

CHARGE

4. In May 2020, Leslie Lloyd retained Respondent to represent her in a divorce matter against Ms. Lloyd's estranged husband, Scott Lloyd.

5. By letter to Ms. Lloyd dated May 12, 2020, Respondent:

- a. confirmed that Ms. Lloyd retained Respondent to represent her in the divorce matter;
- b. stated that the scope of Respondent's engagement would be limited to the provision of legal services described in the document attached, which was titled "Flat Fee Divorce Terms";
- c. stated that Respondent's fees would be based upon and billed at her customary flat divorce rates;
- d. stated that the flat rate for Ms. Lloyd's divorce was \$500 and that if it was later determined that a Property Settlement Agreement would be necessary, there would be an additional fee of \$250;
- e. stated that the entire \$500 fee was due before any work would begin;

- f. stated that Respondent's "engagement as counsel" would begin upon receipt of a signed copy of the engagement letter, intake form and retainer; and
 - g. used the name "Gina Y. Mosley Toppin" under her signature "G.Y. Toppin."
- 6. Respondent failed to advise Ms. Lloyd in writing that she did not carry legal malpractice insurance.
- 7. By email sent on May 18, 2020, Respondent forwarded to Ms. Lloyd an invoice in the amount of \$598.75.
- 8. Thereafter, Ms. Lloyd paid the invoice in full.
- 9. On June 22, 2020, Respondent filed a divorce complaint on behalf of Ms. Lloyd in the Court of Common Pleas of Potter County, Family Court Division, Docket No. #2020-93298.
 - a. In November 2019, Respondent filed a request for a name change with Attorney Registration from "Gina Yvonne Mosley" to "Gina Y Toppin."
 - b. Respondent filed the divorce complaint using the name "Gina Y Mosley."
- 10. Sometime thereafter, Respondent had Ms. Lloyd and her estranged husband sign individual Affidavit of Consent forms to the divorce action.
- 11. By email sent from gmosley@themoselylawfirm.com (Respondent's email address) on November 23, 2020, Respondent:
 - a. forwarded to Ms. Lloyd "Scanned Divorce Documents"; and

- b. stated that “attached please find the documents we discussed.”

12. On December 10, 2020, Respondent filed with the court, *inter alia*, a Notice of Intention to Request Entry of Section 3301(d) Divorce Decree, Praeceptum to Transmit Record and Affidavit of Consent forms signed individually by both Ms. Lloyd and her estranged husband.

13. On December 30, 2020, at 4:19 p.m., Ms. Lloyd sent Respondent a text message wherein she stated “Hi Gina. . . I just wanted to check to see if you have any new information. It is the end of December.”

14. Respondent failed to respond to Ms. Lloyd’s text message or provide the requested information.

15. On December 31, 2020, at 2:59 p.m. Ms. Lloyd sent Respondent another text message wherein she stated:

- a. “Gina I need a call from you ASAP. I talk [*sic*] with the court house and I was informed that I needed to fill out another consent form due to you submitting our paperwork 30 days after signed. Now I don’t know what is the issue with returning texts and emails but I need answers.”

16. In response, on January 1, 2021, at 10:58 a.m., Respondent sent a text message to Ms. Lloyd wherein she stated that:

- a. “I am back in the office but on another call”;
 - b. “I went thru my mail and nothing from potter county for you”;
- and

c. "I will call them when I get off this call and update you."

17. Respondent failed to contact Ms. Lloyd with an update as promised.

18. Thereafter, Ms. Lloyd sent Respondent a text message wherein she stated that "Hi Gina... I am still awaiting your call because your email keeps coming undeliverable."

19. By email sent on January 5, 2021, Ms. Lloyd stated "I know this is the beginning of the year. However, I wanted to check for any updates on my case and getting the paper signed by the judge? I hope to hear from you soon."

20. Ms. Lloyd's email was returned with the following messages:

a. "Delivery incomplete"; and

b. "There was a temporary problem delivering your message to Gmosley@themosleyfirm.com."

21. Between January 7, 2021 and January 10, 2021, Ms. Lloyd attempted to contact Respondent on several occasions at Respondent's email address.

22. Each of Ms. Lloyd's emails were returned as "delivery incomplete", "message not delivered", "there was a temporary problem delivering your message", and/or "the recipient server did not accept our requests to connect."

23. On January 8, 2021, Ms. Lloyd telephoned Respondent's office to obtain a status on her matter.

24. Respondent failed to return Ms. Lloyd's call.

25. Respondent failed to take any steps to finalize Ms. Lloyd's divorce.

26. Respondent failed to advise Ms. Lloyd that she did not intend to finalize her divorce matter.

27. Respondent failed to refund to Ms. Lloyd the unearned fee.

28. On January 21, 2021, Mr. James Cairns, III, Esquire, entered his appearance on behalf of Ms. Lloyd in her divorce matter.

29. On February 11, 2021, the Honorable Stephen Minor granted the divorce decree in Ms. Lloyd's case.

30. By letter to Respondent dated May 14, 2021, and sent to Respondent's email address at 1:07 p.m., Anna Marie Ciardi, Intake Disciplinary Counsel, *inter alia*:

- a. informed Respondent of Ms. Lloyd's complaint;
- b. requested that Respondent provide a copy of Ms. Lloyd's client file; and
- c. requested that Respondent contact her.

31. Respondent received Ms. Ciardi's letter.

32. Respondent failed to respond.

33. On May 14, 2021 at 3:16 p.m., Ms. Ciardi telephoned Respondent at the telephone number (215-425-776) listed on her 2020-2021 Annual Attorney's Annual Fee Form.

- a. The telephone number was out of service.

34. Thereafter, Ms. Ciardi telephoned Respondent using a cell telephone number (304-389-3479) that had been on file for Respondent at which time she left a message for Respondent wherein she:

- a. informed Respondent of her previous attempts to contact Respondent; and

- b. advised Respondent that she was required to update her contact information.

35 Respondent failed to respond to Ms. Ciardi's telephone message.

- a. On July 15, 2021, Respondent filed her 2021-2022 Annual Attorney's Annual Fee Form at which time she did not update her telephone contact information.

36. On November 10, 2021, ODC forwarded a DB-7 Letter Request for Statement of Respondent's Position and Request for documents ("DB-7 Letter") to her JFK address via certified mail return receipt requested.

- a. The DB-7 Letter informed Respondent that if she did not respond or provide good cause for failing to respond within 30 days, ODC may seek to impose discipline for her violation of Pa.R.D.E. 203(b)(7).

- b. Respondent received the DB-7 Letter as evidenced by the signed return receipt card ("RC398C19").

37. Thereafter, Respondent failed to respond to the DB-7 Letter.

38. By letter to Respondent dated March 18, 2022, ODC:

- a. reminded Respondent of the November 10, 2021 DB-7 Letter;
- b. requested that Respondent forward her response within ten days; and
- c. again informed Respondent that if she did not respond or provide good cause for failing to respond, ODC may seek to impose discipline for her violation of Pa.R.D.E. 203(b)(7).

39. Thereafter, Respondent, without good cause, failed to respond to the DB-7 Letter, as required by Pa.R.D.E. 203(b)(7).

40. By her conduct as set forth in Paragraphs 4 through 39 above, Respondent violated the following Rules of Professional Conduct:

- a. RPC 1.1, which states 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(c), which states that a lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of

these disclosures for six years after the termination of the representation of a client;

- f. RPC 1.16(d) which states, in pertinent part, “upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as ... refunding any advance payment of fee or expense that has not been earned or incurred....”;
- g. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit, or misrepresentation; and
- h. Pa.R.D.E. 203(b)(7), which states that failure by a respondent-attorney without good cause to respond to Disciplinary Counsel’s request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney’s position, shall be grounds for discipline.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

41. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent’s admitted misconduct is a suspension of three months, followed by three years of probation, subject to the following conditions:

- a. Respondent shall establish treatment with a qualified mental healthcare professional for a minimum of three years on a weekly or biweekly basis, or as prescribed by the mental healthcare professional;

- b. Respondent shall cooperate with the directions of the mental healthcare professional supervising her treatment, take medications as prescribed and engage in therapy and counselling sessions as directed;
- c. Respondent shall file quarterly written reports with the Board Prothonotary and shall attach physician's reports verifying the above counselling and treatment; and
- d. Respondent will not commit any willful violation of the Rules of Professional Conduct, Enforcement Rules, or the terms of probation.¹

42. Respondent hereby consents to discipline being imposed upon her. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating that she consents to the recommended discipline, including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

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

- a. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;

¹ In accordance with the provisions of D.Bd. Rule § 89.292, a violation of the terms of probation may result in Office of Disciplinary Counsel filing a petition with the Board seeking modification of the order imposing probation including without limitation immediate suspension. See Pa. R.D.E. 208(h)(1), D.Bd. Rule § 89.292(1)(2)(i). The three-year term of probation is based upon the medical recommendation. The conditions recognize that treatment and counselling recommendations during therapy are not static and may change depending upon the prognosis and the opinion of the health care professional. The length of probation and the terms are designed to ensure that if the course of treatment is unsuccessful, as reflected by a violation of Respondent's professional obligations, Office of Disciplinary Counsel is able to take prompt action.

- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and Respondent's consent to receiving a suspension of three months;
- c. Respondent is remorseful for her misconduct and understands she should be disciplined, as is evidenced by her consent to receiving a suspension of three months with three years of probation with conditions; and
- d. Under cover of a letter dated February 7, 2023, Respondent forwarded to Ms. Lloyd a check in the amount of \$500 as a refund of the unearned fee.

44. In addition, if this matter were to proceed to a hearing, Respondent would present mitigation evidence, under *Office of Disciplinary Counsel v. Braun*, 520 Pa. 157, 553 A.2d 894 (1989), that she was suffering from a mental infirmity, namely – Adjustment disorder with mixed disturbance of emotions and conduct, persistent; and Generalized Anxiety Disorder, which was a causal factor in her misconduct. (See letter from M. Ralph Picciotto, M.D., attached hereto as “Exhibit A,” which contains Dr. Picciotto's conclusions).

45. Respondent has indicated that she plans to begin regular (weekly or biweekly) psychological therapy sessions for her diagnosed disorder with a board-certified psychiatrist as recommended by Dr. Picciotto.

46. Respondent has a record of discipline, which is an aggravating factor in determining the discipline to impose. By Order dated May 16, 2016 Respondent was suspended for a period of one year, which was stayed in its entirety, and was

placed on probation for two years subject to certain conditions, as a result of Respondent's violations of RPC 1.3, RPC 1.4(a)(3), RPC 1.4(a)(4), RPC 1.5(b), RPC 1.16(d); Pa.R.D.E. 203(b)(2)(Willful failure to appear before Chief Disciplinary Counsel for informal admonition); Pa.R.D.E 203(b)(3)(Willful violations of any other provisions of the Enforcement Rules); and Pa.R.D.E. 203(b)(7). By Order dated June 26, 2018, Respondent's probation was terminated.

47. Although there is no per se rule for discipline in this jurisdiction, a three month suspension is appropriate for an attorney who engages in neglect and lack of communication as well as failing to respond to a DB-7 Letter.

In ***Office of Disciplinary Counsel v. William James Helzlsouer***, 81 DB 2016 (D.Bd. Rpt. 6/29/2017)(S.Ct. Order 9/27/2017), respondent was suspended for three months for neglect and lack of communication in one civil matter involving two clients. Respondent Helzlsouer was sent a DB-7 letter alleging his lack of communication and neglect of his clients, which he failed to respond to until after he was served with a petition for discipline. Respondent Helzlsouer, like Respondent in this matter, had a prior history of discipline, which consisted of a private reprimand, and a suspension on consent for a period of three months, stayed in its entirety and placed on probation for three months with a practice monitor. In contrast to Respondent Toppin, at his disciplinary hearing, Respondent Helzlsouer did not present a plan for how he intended to correct the deficiencies in his solo law practice.

In the present matter, Respondent Toppin's misconduct involved misrepresentation and the failure to promptly refund an unearned fee, which is not found in the *Helzlsouer*. However, unlike Respondent Helzlsouer, Respondent

Toppin has compelling mitigation in the form of **Braun**, she has taken responsibility for her misconduct, she has refunded the unearned fee to Ms. Lloyd and she will seek treatment for her diagnosed disorder, which supports a suspension of three months. A suspension of three months also reflects the seriousness of Respondent's misconduct and will serve as a deterrent to Respondent from engaging in any future misconduct, and also put her on notice that if she does engage in any further misconduct, greater discipline may be imposed that would require her to go through the reinstatement process to prove her fitness.

WHEREFORE, Petitioner and Respondent respectfully request that pursuant to Pa.R.D.E. 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 three months, followed by three years of probation, subject to the following conditions:

- a. Respondent shall establish treatment with a qualified mental healthcare professional for a minimum of three years on a weekly or biweekly basis, or as prescribed by the mental healthcare professional;
- b. Respondent shall cooperate with the directions of the mental healthcare professional supervising her treatment, take medications as prescribed and engage in therapy and counselling sessions as directed;
- c. Respondent shall file quarterly written reports with the Board

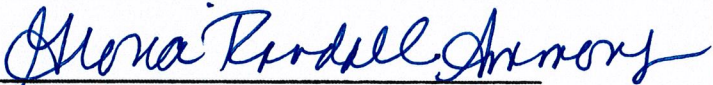
Prothonotary and shall attach physician's reports verifying the above counselling and treatment; and

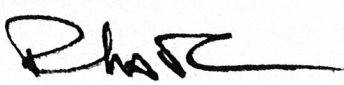
- d. Respondent will not commit any willful violation of the Rules of Professional Conduct, Enforcement Rules, or the terms of probation.

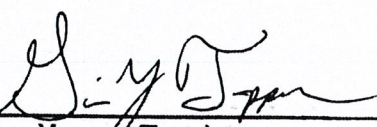
Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

THOMAS J. FARRELL
CHIEF DISCIPLINARY COUNSEL

By 
Gloria Randall Ammons
Disciplinary Counsel

By 
Richard Q. Hark, Esquire
Counsel for Respondent

By 
Gina Yvonne Toppin
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner :

: No. 91 DB 2022

v. :

: Atty. Reg. No. 209192

GINA YVONNE TOPPIN, :

Respondent : (Philadelphia)

VERIFICATION

The statements contained in the foregoing Joint Petition In Support of Discipline on Consent Under Rule 215(d), Pa.R.D.E., 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. § 4904, relating to unsworn falsification to authorities.

Date

3/16/2023

Gloria Randall Ammons
Disciplinary Counsel

Gloria Randall Ammons

Date

3/15/23

Richard Q. Hark
Counsel for Respondent

Rhark

Date

3/15/23

Gina Yvonne Toppin
Respondent

Gina Yvonne Toppin

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

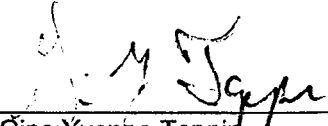
OFFICE OF DISCIPLINARY COUNSEL, :
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 : No. 91 DB 2022
 v. :
 :
 : Atty. Reg. No. 209192
 GINA YVONNE TOPPIN, :
 Respondent : (Philadelphia)

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

Respondent, Gina Yvonne Toppin, hereby states that she consents to the imposition of a suspension of three months as set forth in the Joint Petition, as jointly recommended by the Petitioner and Respondent in the Joint Petition in Support of Discipline on Consent, and further states that:

1. Her consent is freely and voluntarily rendered; she is not being subjected to coercion or duress; she is fully aware of the implications of submitting the consent; and she has consulted with counsel in connection with the decision to consent to discipline;
2. She is aware that there is presently pending a proceeding at No. 91 DB 2022 involving allegations that she has been guilty of misconduct as set forth in the Joint Petition;
3. She acknowledges that the material facts set forth in the Joint Petition are true; and

4. She consents because she knows that if the charges against her continue to be prosecuted in the pending proceedings, she could not successfully defend against them.

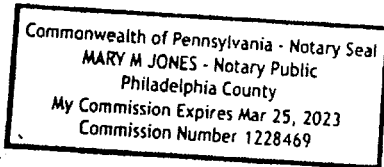


Gina Yvonhe Toppir
Respondent

Sworn to and subscribed
before me this 14th
day of March, 2023.



Notary Public



CERTIFICATE OF COMPLIANCE

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

Submitted by: Office of Disciplinary Counsel

Signature: Gloria Randall Ammons

Name: Gloria Randall Ammons

Attorney No. (if applicable): 57701