

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1667 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 99 DB 2010
v.	:	
	:	Attorney Registration No. 2529
JOSEPH A. CANUSO,	:	
Respondent	:	(Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 23rd day of November, 2010, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated October 14, 2010, 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 Joseph A. Canuso is suspended from the practice of law for a period of two years, the suspension is stayed in its entirety and he is placed on probation for a period of two years, subject to the following conditions:

1. Respondent shall, within the first year of being placed on probation, complete three separate CLE courses covering the topics of firm management, time management, and criminal appellate practice and advocacy, which can be included within the twelve hours of annual CLE required by Pa.R.C.L.E. 105;
2. By the end of the first year of probation, Respondent shall provide to the Office of the Secretary and Office of Disciplinary Counsel documented proof of compliance with this condition;

3. Respondent shall select a lawyer to serve as a practice monitor and shall provide the name, address and telephone number of the proposed practice monitor to the Office of the Secretary, whose selection is subject to Office of Disciplinary Counsel's approval;
4. The practice monitor shall meet no less than monthly with Respondent and examine his law office organization and procedures to ensure that he is: keeping court dates; meeting filing deadlines, particularly for notices of appeal and appellate briefs; communicating appropriately with clients and third parties; and abiding by the Rules of Professional Conduct;
5. The practice monitor shall file with the Secretary quarterly reports concerning Respondent's compliance with the terms and conditions of probation; and
6. The practice monitor shall report to the Secretary any violations by Respondent of the terms and conditions of probation.

A True Copy Patricia Nicola

As of: November 23, 2010

Attest:

Chief Clerk

Supreme Court of Pennsylvania



BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

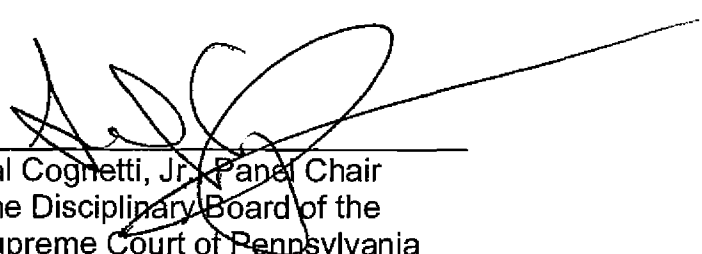
OFFICE OF DISCIPLINARY COUNSEL	:	No. 99 DB 2010
Petitioner	:	
	:	
v.	:	Attorney Registration No. 2529
	:	
JOSEPH A. CANUSO	:	
Respondent	:	(Philadelphia)

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 Sal Cognetti, Jr., R. Burke McLemore, Jr., and Stephan K. Todd, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on September 17, 2010.

The Panel approves the Petition consenting to a two year suspension to be stayed in its entirety and two years probation subject to the conditions set forth in the Joint Petition and recommends to the Supreme Court of Pennsylvania that the attached Joint 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.



Sal Cognetti, Jr., Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: October 14, 2010

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
:
: No. 99 DB 2010
v. :
: Atty. Reg. No. 2529
JOSEPH A. CANUSO, :
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 Richard Hernandez, Disciplinary Counsel, and by Respondent, Joseph A. Canuso, 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:

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 Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged 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 of Disciplinary

FILED

SEP 17 2010

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

Enforcement.

2. Respondent, Joseph A. Canuso, was born on January 4, 1945, was admitted to practice law in the Commonwealth on January 12, 1970, and maintains his office at 100 S. Broad Street, Suite 1523, Philadelphia, PA 19110.

3. 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.

4. Petitioner filed a Petition for Discipline against Respondent with the Secretary of the Disciplinary Board ("the Secretary") on June 15, 2010. Respondent was served with that Petition on June 18, 2010.

5. On or about July 2, 2010, Respondent, through his counsel, John W. Morris, Esquire, filed an Answer to the Petition for Discipline with the Secretary.

**SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED**

6. Respondent hereby stipulates that the following factual allegations drawn from the Petition for Discipline are true and correct and that he violated the charged Rules of Professional Conduct as set forth herein.

7. Respondent was appointed to represent Mr. Leander Williams in a criminal case filed in the Philadelphia Court of Common Pleas captioned *Commonwealth of*

Pennsylvania v. Leander Williams, CP-51-CR-0012621-2007
("the criminal case").

- a. Under the terms of Respondent's appointment, Respondent was to represent Mr. Williams through trial and, if necessary, the direct appeal of Mr. Williams' conviction and sentence.

8. On March 20, 2009, a jury concluded that Mr. Williams was guilty of murder of the first degree, robbery, and other charges.

9. On June 3, 2009, the Honorable Carolyn Engel Temin sentenced Mr. Williams to life without parole on the murder conviction.

10. During Mr. Williams' sentencing, Respondent told Mr. Williams that he would file on Mr. Williams' behalf a Notice of Appeal with the Superior Court of Pennsylvania.

11. By letter dated July 1, 2009, sent to Respondent by regular mail, Mr. Williams, *inter alia*:

- a. recounted his unsuccessful efforts to contact Respondent by telephone;
- b. requested the trial transcripts for his criminal case; and
- c. inquired about the status of his appellate case.

12. Respondent received this letter.

13. Respondent failed to respond to this letter.

14. On July 1, 2009, Mr. Williams placed a telephone call to Respondent's office.

- a. Mr. Williams did not reach Respondent.
- b. Mr. Williams was not afforded the opportunity to leave a message for Respondent.

15. Respondent failed to:

- a. file a Notice of Appeal on behalf of Mr. Williams with the Superior Court of Pennsylvania;
- b. notify Mr. Williams that Respondent had failed to file an appeal on Mr. Williams' behalf with the Superior Court of Pennsylvania; and
- c. advise Mr. Williams of his options based on Respondent's failure to pursue an appeal on Mr. Williams' behalf.

16. Ms. Latasha Williams, Mr. Williams' sister, telephoned Respondent on the following dates and left messages requesting that Respondent return her calls: August 18, 21, 25, 27, and 31, 2009; September 4, 9, 14, 18, 23, 24, and 29, 2009; and October 6, 9, 13, 19, and 28, 2009.

17. Respondent failed to return Ms. Williams' messages.

18. In September 2009, Mr. Williams received a written response to an inquiry he made of the Office of the Prothonotary for the Superior Court of Pennsylvania, in which response he was advised that there was no record of an appeal having been filed on his behalf concerning the criminal case.

19. In February 2010, Mr. Williams filed a PCRA Petition with the court in order to have his direct appeal rights reinstated.

20. Respondent admits that by his conduct as set forth in Paragraphs 7 through 19 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 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;

- d. 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; and
- e. RPC 8.4(d), which states that a lawyer shall not engage in conduct that is prejudicial to the administration of justice.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

21. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a two-year suspension, to be stayed in its entirety, to be followed by a two-year term of probation with conditions. The conditions are designed to ensure that Respondent follows through on changes to his law practice and acts diligently on behalf of his clients, particularly with respect to the filing of notices of appeal and appellate briefs.

22. 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(d), Pa.R.D.E., stating that he consents to the recommended discipline,

including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

23. 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;
- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and his consent to receiving a two-year suspension, to be stayed in its entirety, to be followed by a two-year term of probation with conditions;
- c. Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his consent to receiving a two-year suspension, to be stayed in its entirety, to be followed by a two-year term of probation with conditions;
- d. Respondent, who attributes his misconduct, in part, to "disorganization" and "poor office practices," has, at the suggestion of Mr. Morris, adopted a method employed by Mr.

Morris that will alert Respondent to court dates, filing deadlines, and communications owed to clients and third parties; and

- e. Respondent, an experienced criminal practitioner, accepts court-appointments from the Philadelphia Court of Common Pleas to represent indigent defendants in homicide cases, including death penalty cases, and plans to continue to accept such appointments.

24. Respondent has the following record of discipline, which is an aggravating factor in determining the discipline to impose:

- a. On June 15, 1998, Respondent received an informal admonition for violating Rules of Professional Conduct 1.3 and 8.4(d). Respondent failed to timely file an appellate brief on behalf of his client with the Superior Court of Pennsylvania, which required the Superior Court of Pennsylvania to expend its resources to address Respondent's failure to properly represent his client.

- b. On December 4, 2002, Respondent received a private reprimand for violating Rules of Professional Conduct 1.3, 1.4(a), 1.4(b), and 1.16(d). In a civil case, Respondent failed to serve a Writ of Summons on the defendant, to respond to his client's telephonic inquiries, to advise his client of an arbitration hearing, to appear at the arbitration hearing on behalf of his client, and to forward the client's file to new counsel after his client terminated Respondent's representation.
- c. On October 20, 2008, Respondent received a public censure for violating RPC 1.3(two counts), RPC 1.4(a)(2), RPC 1.4(a)(3)(two counts), RPC 1.4(a)(4)(two counts), RPC 1.4(b)(two counts), and RPC 8.4(d)(two counts). Respondent's public censure involved neglect and lack of communication in two appellate cases; in both cases Respondent's neglect included failing to file an appellate brief.

25. The recommended discipline is supported by the following cases: *Office of Disciplinary Counsel v. Neil*

Jokelson, Nos. 58 and 102 DB 1998 (D.Bd. Rpt. 12/22/00) (S.Ct. Order 2/26/01) (public censure and three years of probation with a practice monitor); *Office of Disciplinary Counsel v. Thomas Russell Quinn*, No. 35 DB 2008 (Recommendation of the Three-Member Panel of the Disciplinary Board 7/2/08) (S.Ct. Order 10/16/08) (six-month suspension, stayed in its entirety, followed by a twelve-month term of probation with conditions); *Office of Disciplinary Counsel v. Anonymous*, No. 86 DB 2003 (S.Ct. Order 3/11/05) (one-year suspension, stayed in its entirety, followed by a one-year term of probation with conditions); *Office of Disciplinary Counsel v. Michael S. Geisler*, 614 A.2d 1134 (Pa. 1992) (six-month suspension to be followed by a one-year term of probation with a practice monitor); and *Office of Disciplinary Counsel v. Michael D. Rentschler*, Nos. 33 and 127 DB 2009 (D.Bd. Rpt. 6/30/10) (S.Ct. Order 8/27/10) (suspension of one year and one day, stayed in its entirety, followed by a two-year term of probation with conditions).

Respondent Jokelson received a public censure and three years of probation with a practice monitor for failing to act diligently and communicate with his clients in two matters; Respondent Jokelson had a history of prior discipline consisting of two informal admonitions and two

private reprimands, but presented compelling character testimony and demonstrated significant changes in his office management.

Respondent Quinn received a six-month suspension, stayed in its entirety, followed by a twelve-month term of probation with conditions, for neglect and lack of communication in a civil case filed in the United States District Court for the District of Delaware. Respondent Quinn had a record of discipline consisting of an informal admonition and a private reprimand with an eighteen-month period of probation. Respondent Quinn admitted his misconduct, expressed remorse, and presented evidence that during the period he engaged in misconduct he was depressed because of his father's terminal illness.

Respondent Anonymous received a one-year suspension, stayed in its entirety, followed by a one-year term of probation with conditions, for incompetence, neglect, lack of communication, and misrepresentations in five client matters. Respondent Anonymous did not have a record of discipline. Respondent Anonymous was unsuccessful in establishing **Braun** mitigation; however, the Disciplinary Board found other mitigating circumstances.

Respondent Geisler was suspended for six months to be followed by a one-year term of probation with a practice

monitor for 21 counts of lack of diligence and failure to communicate. Respondent Geisler's youth, inexperience, and lack of prior record were substantial mitigating factors that our Supreme Court weighed in deciding against the imposition of more substantial public discipline.

Respondent Rentschler was suspended for one year and one day, stayed in its entirety, to be followed by a two-year term of substance abuse probation with conditions for, *inter alia*, neglect and lack of communication in three legal matters that involved two separate clients. One of the clients was an indigent criminal defendant; Respondent Rentschler failed to timely file a 1925(b) Statement of Matters Complained of on Appeal, to timely file a brief with the Superior Court of Pennsylvania, and to timely file a second request for extension of time to file an appellate brief on behalf of that client. Respondent Rentschler had a record of discipline consisting of an informal admonition for, *inter alia*, neglect and lack of communication in multiple client matters and a private reprimand for neglect and lack of communication in two client matters. In mitigation, Respondent Rentschler proved that his depression and alcohol abuse caused his misconduct.

On the one hand, Respondent Canuso's misconduct is not sufficiently egregious, even when coupled with his record

of discipline, to warrant his serving an actual term of suspension, as was imposed in **Geisler**. Unlike Respondent Geisler, who neglected multiple client matters, Respondent neglected one client matter.

On the other hand, Respondent Canuso, having already received a public censure, has a more substantial record than Respondent Jokelson, whose record of discipline consisted solely of private discipline. Respondent Canuso is not eligible for another public censure, even if a term of probation with conditions were added to the discipline, because Respondent Canuso was told during the administration of the October 20, 2008 public censure that future violations of the Rules of Professional Conduct would result in a more severe disciplinary sanction.

Respondent Canuso's disciplinary sanction should be similar, but somewhat more substantial, than the disciplinary sanctions received by Respondent Quinn, Respondent Rentschler, and Respondent Anonymous because Respondent Canuso does not have the same quality of mitigation evidence. Unlike Respondent Quinn and Respondent Rentschler, Respondent Canuso cannot attribute his misconduct to a psychiatrically-diagnosed mental condition. Respondent Anonymous had no record of discipline, which is a significant mitigating factor that

Respondent Canuso cannot claim. The recommended two-year stayed suspension as opposed to the one-year-and-one-day stayed suspension imposed in *Rentschler* "provides a stiffer penalty ... in the event of a probation violation and more protection to the public." *Rentschler*, D.Bd. Rpt. at 12.

A period of probation with conditions is an appropriate disciplinary sanction for Respondent's misconduct because the recommended conditions will seek to ensure that Respondent follows through on recent changes to his law practice, obtains information that may lead to additional positive changes to his law practice, and represents his clients in a competent and diligent manner. ODC believes that Respondent's continued practice of law, in conformity with the Rules of Professional Conduct, advances the public interest, in that Respondent represents indigent defendants in homicide cases filed in the Philadelphia Court of Common Pleas.

The recommended conditions will require Respondent to take three separate continuing legal education ("CLE") courses covering the topics of firm management, time management, and criminal appellate practice and advocacy. In addition, Respondent shall meet every month with a practice monitor (whose selection is subject to ODC's approval), to review Respondent's cases for the purpose of:

verifying that Respondent is keeping court dates; meeting filing deadlines, particularly for notices of appeal and appellate briefs; communicating appropriately with clients and third parties; and abiding by the Rules of Professional Conduct. The designated practice monitor will submit to the Secretary quarterly reports on Respondent's compliance with the aforementioned conditions and shall notify the Secretary of any failure on Respondent's part to abide by the terms of his probation.

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 two-year suspension, to be stayed in its entirety, followed by probation for a period of two years, subject to the following conditions:

- (a) Respondent shall, within the first year of being placed on probation,

complete three separate CLE courses covering the topics of firm management, time management, and criminal appellate practice and advocacy, which can be included within the twelve hours of annual CLE required by Pa.R.C.L.E. 105, and by the end of the first year of probation Respondent must provide to the Secretary's Office and ODC documented proof of compliance with this condition;

(b) Respondent shall select a lawyer to serve as a practice monitor and Respondent shall provide the name, address, and telephone number of the proposed practice monitor, whose selection is subject to ODC's approval;

(c) The practice monitor shall meet no less than monthly with Respondent and examine the Respondent's law office organization and procedures to ensure that Respondent is: keeping court dates; meeting filing deadlines, particularly for notices of appeal and appellate briefs; communicating appropriately with clients

and third parties; and abiding by the Rules of Professional Conduct;

(d) The practice monitor shall file with the Secretary quarterly reports concerning Respondent's compliance with the terms and conditions of probation; and

(e) The practice monitor shall report to the Secretary any violations by Respondent of the terms and conditions of probation.

- 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

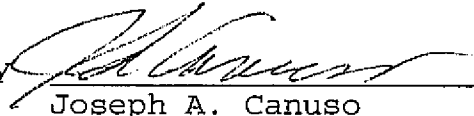
September 15, 2010
Date

By


Richard Hernandez
Disciplinary Counsel

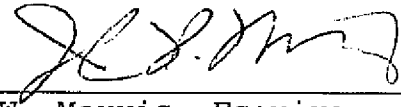
September 15, 2010
Date

By


Joseph A. Canuso
Respondent

September 15, 2010
Date

By


John W. Morris, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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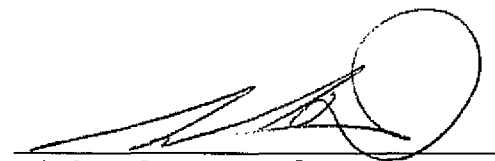
JOSEPH A. CANUSO,

Respondent : (Philadelphia)

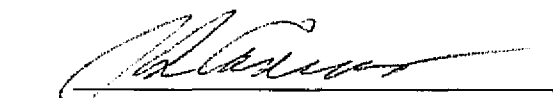
VERIFICATION

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.

September 15, 2010
Date


Richard Hernandez
Disciplinary Counsel

September 15, 2010
Date


Joseph A. Canuso
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
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: No. 99 DB 2010
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JOSEPH A. CANUSO, :
Respondent : (Philadelphia)

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

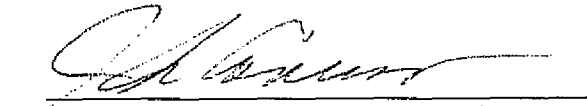
Respondent, Joseph A. Canuso, hereby states that he consents to the imposition of a two-year suspension, to be stayed in its entirety, followed by a two-year term of probation subject to certain conditions, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition In Support Of Discipline On Consent 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 John W. Morris, Esquire, in connection with the decision to consent to discipline;

2. He is aware that there is presently pending a disciplinary proceeding at No. 99 DB 2010 involving allegations that he has been guilty of misconduct as set forth in the Joint Petition;

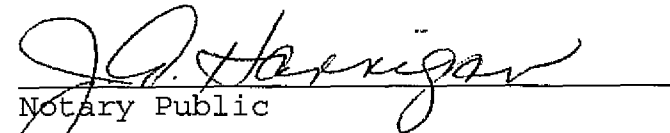
3. He acknowledges that the material facts set forth in the Joint Petition are true; and

4. He consents because he knows that if charges pending at No. 99 DB 2010 continued to be prosecuted, he could not successfully defend against them.


Joseph A. Canuso, Esquire
Respondent

Sworn to and subscribed

before me this 15th
day of September, 2010.


Notary Public

