

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2535 Disciplinary Docket No. 3
: :
Petitioner : No. 169 DB 2018
: :
v. : Attorney Registration No. 201184
: :
SHARMIL DONZELLA McKEE, : (Philadelphia)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 7th day of November, 2018, 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 Sharmil Donzella McKee is suspended on consent from the Bar of this Commonwealth for a period of one year and one day, consecutive to the two-year suspension ordered by this Court on October 18, 2017. See *ODC v. McKee*, No. 2395 DD3. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 11/07/2018

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: ODC File Nos. C1-16-361,
: C1-17-244, C1-17-378,
: C1-17-414, and C1-17-865
v. :
: Atty. Reg. No. 201184
SHARMIL DONZELLA McKEE, :
Respondent : (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Esquire, Chief Disciplinary Counsel, and by Robin B. Godfrey, Esquire, Disciplinary Counsel, and Respondent, Sharmil Donzella McKee, who is represented by Glenn A. Brown, Esquire, file this Joint Petition In Support Of Discipline On Consent Under Rule 215(d), Pa.R.D.E. ("the 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 ("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

FILED
9/24/2018
The Disciplinary Board of the
Supreme Court of Pennsylvania

brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Sharmil Donzella McKee, was born in 1975 and was admitted to practice law in the Commonwealth of Pennsylvania on November 28, 2005.

3. By Order dated October 5, 2016, effective November 4, 2016, the Supreme Court administratively suspended Respondent for failing to pay her annual fee.

4. By Order dated October 18, 2017, the Supreme Court suspended Respondent for two years for misconduct in ten matters. *Office of Disciplinary Counsel v. Sharmil Donzella McKee*, No. 2395 Disciplinary Docket No. 3.

5. Attorney registration records state that Respondent maintained an office at 6622 Castor Avenue, Philadelphia, PA 19149.

6. Pursuant to Pa.R.D.E. 201(a)(1) and (a)(3), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

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

7. Respondent hereby stipulates that the following factual allegations are true and correct and that she violated the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement as set forth herein.

CHARGE I: The Beverley G. Jordan Matter; C1-17-244

8. Prior to October 31, 2016, Respondent communicated with Ms. Beverley G. Jordan regarding representing her in various legal matters.

9. On October 31, 2016, Ms. Jordan, on behalf of TriMed Healthcare, LLC ("TriMed"), provided Respondent with check number 1031 in the amount of \$175.00 payable to McKee Law Office.

- a. The memo section of check number 1031 reflected that the payment to Respondent was for "Expert Tax Opinion."

10. On October 31, 2016, Ms. Jordan, on behalf of TriMed, provided Respondent with check number 1032 in the amount of \$500.00 payable to McKee Law Office.

- b. The memo section of check number 1032 reflected that the payment was for "Evergreen Retainer."

11. By letter dated November 4, 2016, the effective date of Respondent's administrative suspension, Respondent provided a "Legal Representation Agreement" to Ms. Jordan for purposes of providing an Attorney Opinion Letter in the matter of "Internal Revenue Service v. Dawn and Colin Larmond."

- a. Respondent's letter began with the following statements: "It is a pleasure having the opportunity to provide expert advice in the

above-referenced case. We agree to provide an Attorney Opinion Letter advocating that your client is exempt from capital gains taxes under 26 U.S.C. § 1031 while your client is holding the real property for investment purposes."

- b. In the "Fees" section of Respondent's letter, Respondent stated: "We are a fixed-fee law firm, so we do not charge by the hour."
- c. In the "Scope of Representation" section of Respondent's letter, Respondent stated that her firm would "draft any letters, agreements, and addendums that are necessary to facilitate and execute the settlement" of the tax dispute.
- d. Respondent concluded the letter with the statement: "On behalf of McKee Law Office, welcome!"
- e. The "Legal Representation Agreement" was on letterhead from "McKee Law Office," 245 W. Allens Lane, Philadelphia, PA 19119.
- f. Respondent identified herself as "Business Attorney" under her signature.

12. By letter dated November 4, 2016, Respondent provided a "Legal Representation Agreement"/"Evergreen Retainer" to Ms. Jordan for purposes of providing "general

business and tax advice for your company, TriMed Healthcare, LLC."

- a. In the "Representation Agreement," Respondent indicated that the "goal of this retainer agreement is to encourage business owners to seek legal advice prior to acting; this can help avoid future legal problems."
- b. In the "Fees" section of the letter, Respondent stated, "Though we usually charge by fixed-fee, we have a small hourly fee for our evergreen retainer clients."
- c. Respondent concluded the letter by stating: "On behalf of McKee Law Office, welcome!"
- d. Respondent identified herself as "Business Attorney" under her signature.

13. By letter dated November 4, 2016, Respondent provided a "Legal Representation Agreement" to Ms. Jordan for purposes of representing her in the matter of Philadelphia v. TriMed Healthcare LLC.

- a. Respondent began her letter with the following statements: "It is a pleasure having the opportunity to represent you as counsel in your business tax dispute with the [C]ity of Philadelphia. We agree to represent you during

negotiations with the city's tax lawyer and settlement."

- b. In the "Fees" section of her letter, Respondent stated, "We are a fixed-fee law firm, so we do not charge by the hour."
- c. Respondent concluded the letter with the following statement: "On behalf of McKee Law Office, welcome!"
- d. The "Legal Representation Agreement" was on letterhead from "McKee Law Office," 245 W. Allens Lane, Philadelphia, PA 19119.
- e. Respondent identified herself as "Business Attorney" under her signature.

14. Respondent failed to advise Ms. Jordan that, effective November 4, 2016, she was administratively suspended from the practice of law and unable to represent her in any legal matter.

15. On November 4, 2016, Respondent issued an invoice in the amount of \$500.00 to Ms. Jordan for her "Evergreen Retainer."

16. On December 1, 2016, while administratively suspended, Respondent issued an invoice in the amount of \$175.00 from "McKee Law Office" to Ms. Jordan for the "Legal Fees - Expert Opinion."

17. On December 23, 2016, while administratively suspended, Respondent issued an invoice in the amount of \$350.00 from "McKee Law Office" to Ms. Jordan for the "Opinion Letter - Safe Harbor."

18. On December 23, 2016, while administratively suspended, Respondent issued an invoice in the amount of \$350.00 from "McKee Law Office" to Ms. Jordan for the "Opinion Letter - Travel Agency."

19. On December 23, 2016, while administratively suspended, Respondent issued an invoice in the amount of \$350.00 from "McKee Law Office" to Ms. Jordan for the "Opinion Letter" in the "Phila v. TriMed Healthcare" matter.

20. In December 2016, Ms. Jordan gave Respondent three separate payments of \$350.00 (totaling \$1,050.00) for the anticipated legal opinions.

21. In entering retainer agreements with Ms. Jordan in three different matters, Respondent held herself out as an attorney licensed to practice law in Pennsylvania while she was administratively suspended and unable to represent clients.

22. While on administrative suspension, Respondent was prohibited from:

- a. engaging in a retainer agreement with a client (Ms. Jordan);

- b. charging Ms. Jordan a fee for legal services;
- c. taking payment from Ms. Jordan for legal services; and
- d. performing legal services for Ms. Jordan.

23. By email dated March 10, 2017, Ms. Jordan demanded that Respondent immediately refund her \$1,050.00 for the three matters in which she was retained.

- a. Ms. Jordan stated that Respondent had not provided the opinions for which she was retained.
- b. Ms. Jordan stated that Respondent had advised her that she was not practicing law anymore because her "new job" did not allow her to do so.
- c. Ms. Jordan informed Respondent that she would take further action against Respondent if Respondent did not refund the money.

24. By email that same day, Respondent told Ms. Jordan that her "claim is part of [Respondent's] bankruptcy case" and that she "should have received a notice from the court by now."

25. By her conduct as alleged in Paragraphs 8 through 24 above, Respondent violated the following Rules of

Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

- a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- b. 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;
- 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;
- d. RPC 5.5(a), which states that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in

that jurisdiction, or assist another in doing so;

e. RPC 7.1, which states that a lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

f. RPC 7.5(a), which states that a lawyer shall not use a firm name, letterhead or other professional designation that violates Rule 7.1. A trade name may be used by a lawyer in private practice if it does not imply a connection with a government, government agency or with a public or charitable legal services organization and is not otherwise in violation of Rule 7.1. If otherwise lawful a firm may use as, or continue to include in, its name, the name or names of one or more deceased or retired members of the firm or of a predecessor firm in a continuing line of succession;

- 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;
- h. 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;
- i. Pa.R.D.E. 203(b)(3), which states that wilful violation of any other provision of the Enforcement Rules, shall be grounds for discipline, via:
 - (1) Pa.R.D.E. 217(a), which states that a formerly admitted attorney shall promptly notify, or cause to be promptly notified, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension, administrative suspension or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status and shall advise said clients to seek legal advice elsewhere. The notice required by this subdivision (a) may be delivered by the most efficient method possible as long as the chosen method is successful and provides proof of receipt. At the time of the filing of the verified statement of compliance required by subdivision (e)(1) of this Rule, the formerly admitted attorney shall file

copies of the notices required by this subdivision and proofs of receipt with the Secretary of the Board and shall serve a conforming copy on the Office of Disciplinary Counsel. See D.Bd. Rules § 91.91(b) (relating to filing of copies of notices);

- (2) Pa.R.D.E. 217(d)(1), which states that Orders imposing suspension, disbarment, administrative suspension or transfer to inactive status shall be effective 30 days after entry. The formerly admitted attorney, after entry of the disbarment, suspension, administrative suspension or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date the formerly admitted attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date;
- (3) Pa.R.D.E. 217(j)(4)(ii), which states that a formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from performing any law-related services from an office that is not staffed by a supervising attorney on a full time basis;
- (4) Pa.R.D.E. 217(j)(4)(iii), which states that a formerly admitted attorney is specifically prohibited from performing any law-related services for any client who in the past was represented by the formerly admitted attorney;

- (5) Pa.R.D.E. 217(j)(4)(iv), which states that a formerly admitted attorney is specifically prohibited from representing himself or herself as a lawyer or person of similar status;
- (6) Pa.R.D.E. 217(j)(4)(v), which states that a formerly admitted attorney is specifically prohibited from having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3); and
- (7) Pa.R.D.E. 217(j)(4)(x), which states that a formerly admitted attorney is specifically prohibited from receiving, disbursing or otherwise handling client funds.

CHARGE II: The John R. Farmer Matter; C1-17-378

26. On January 13, 2017, over two months after the order administratively suspending Respondent became effective, John Farmer, Jr., was arrested for retail theft in Philadelphia County.

27. Shortly thereafter, Respondent had an initial consultation at the home of John R. Farmer, Sr. ("Mr. Farmer") to discuss her representation of his son ("John Farmer, Jr.") in his criminal matter captioned *Commonwealth v. John Farmer*, pending in the Municipal Court of Philadelphia (MC-51-CR-0001103-2017).

28. Mr. Farmer paid Respondent \$100.00 in cash for the initial consultation.

29. Respondent failed to advise Mr. Farmer that her license to practice law had been suspended two months earlier (in November 2016), and that she was precluded from accepting any new legal fees on behalf of a client.

30. On January 17, 2017, Mr. Farmer paid Respondent \$1,500 in cash, at which time Respondent gave Mr. Farmer a handwritten receipt stating that she had "received \$1,500 today in cash from John Farmer, Sr. for Commonwealth versus John Farmer, Jr. (MC-Phila)."

a. On the receipt, Respondent signed her name, wrote "attorney" underneath her signature, and provided her email address and phone number.

31. As an administratively suspended attorney, Respondent was prohibited from charging Mr. Farmer a legal fee and accepting funds from him for legal services.

32. Respondent provided business cards to Mr. Farmer.

a. One business card reflected "McKee Law Office," Respondent's name, "Sharmil McKee," identifying Respondent as an "Attorney," and Respondent's contact information.

b. Another business card reflected "McKee Law Office," "Fixed Fees," "Flat Fees," and "Never Hourly Fees," and provided Respondent's website address of www.MckeeOffice.com.

33. Although an administratively suspended attorney, Respondent held herself out as an attorney currently licensed to practice law in Pennsylvania.

34. On January 20, 2017, while Respondent was administratively suspended from practicing law:

- a. Respondent appeared as counsel on behalf of John Farmer, Jr. at his Municipal Court listing located at Broad and Champlost police station in Philadelphia;
- b. John Farmer, Jr. was placed into the Accelerated Misdemeanor Program ("AMP"), and ordered by the court to complete twelve hours of community service and pay fees in the amount of \$216.00 by February 24, 2017; and
- c. a court date was next scheduled for February 24, 2017.

35. Respondent failed to appear at the court date on February 24, 2017, at which the court noted John Farmer, Jr.'s completion of AMP.

36. On April 17, 2017, five months after the effective date of her administrative suspension, Respondent filed a "Praecipe to Withdraw Appearance" as counsel on behalf of John Farmer, Jr.

37. By her conduct as alleged in Paragraphs 26 through 36 above, Respondent violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

- a. RPC 5.5(a), *supra*;
- b. RPC 7.1, *supra*;
- c. RPC 7.5(a), *supra*;
- d. RPC 8.4(c), *supra*;
- e. RPC 8.4(d), *supra*; and
- f. Pa.R.D.E. 203(b)(3), *supra*, via:

(1) Pa.R.D.E. 217(b), which states that a formerly admitted attorney shall promptly notify, or cause to be promptly notified, all clients who are involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment, suspension, administrative suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney. In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension, administrative suspension or transfer to status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is pending

for leave to withdraw. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the formerly admitted attorney. The notice required by this subdivision (b) may be delivered by the most efficient method possible as long as the chosen method is successful and provides proof of receipt. See Note after subdivision (a)[of Rule 217]. At the time of the filing of the verified statement of compliance required by subdivision (e)(1) of this Rule, the formerly admitted attorney shall file copies of the notices required by this subdivision and proofs of receipt with the Secretary of the Board and shall serve a conforming copy on the Office of Disciplinary Counsel. See D.Bd. Rules § 91.92(b) (relating to filing of copies of notices);

- (2) Pa.R.D.E. 217(d)(1), *supra*;
- (3) Pa.R.D.E. 217(j)(4)(ii), *supra*;
- (4) Pa.R.D.E. 217(j)(4)(iv), *supra*;
- (5) Pa.R.D.E. 217(j)(4)(v), *supra*;
- (6) Pa.R.D.E. 217(j)(4)(vi), which states that a formerly admitted attorney is specifically prohibited from rendering legal consultation or advice to a client;
- (7) Pa.R.D.E. 217(j)(4)(vii), which states that a formerly admitted attorney is specifically prohibited from appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body;
- (8) Pa.R.D.E. 217(j)(4)(ix), which states that a formerly admitted attorney is

specifically prohibited from negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction; and

(9) Pa.R.D.E. 217(j)(4)(x), *supra*.

CHARGE III: The Martha Watkins Matter; C1-17-865

38. By letter dated May 5, 2014, Respondent provided Martha Watkins with a "Legal Representation Agreement" regarding Respondent's representation of Ms. Watkins in her dispute concerning the real property "known as 235 N. Maple Avenue, 19050" ("the Maple Avenue property").

a. The Maple Avenue property was located in Delaware County.

39. On May 5, 2014, Respondent commenced on behalf of Ms. Watkins a civil action captioned *Watkins v. Kimble, et al.* in the Philadelphia Court of Common Pleas, Case ID. No. 140500243 ("the Philadelphia civil action").

40. Respondent failed to properly learn, through client interview or investigation, the county in which the Maple Avenue property was located.

41. By letter dated May 13, 2014, Respondent demanded that Annette Kimble provide Ms. Watkins with a check in the amount of \$35,600.00, which Respondent identified as Ms. Watkins' share of the sale of the Maple Avenue property.

42. Martha Watkins paid Respondent \$1,650.00 for her representation.

43. The court subsequently alerted Respondent to the fact that she had initiated the civil action in the wrong jurisdiction, as the property was located in Delaware County.

44. On December 16, 2015, Respondent filed in the Philadelphia civil action a Petition for Change of Venue on behalf of Ms. Watkins, in which she stated that:

- a. the case was an Action in Ejectment in which the subject property was located in Delaware County, PA; and
- b. the court requested that Respondent file the petition, which was not contested by the parties.

45. By Order dated January 7, 2016, the Philadelphia court granted the petition for change of venue and transferred the matter to the Court of Common Pleas of Delaware County.

46. Respondent failed to pursue the matter in Delaware County.

47. By letter dated March 17, 2016, Ms. Watkins terminated Respondent's services.

48. By letter dated March 30, 2016, on "McKeeOffice.com" letterhead, Respondent informed Ms. Watkins that:

- a. Respondent had received Ms. Watkins' termination letter dated March 17, 2016; and
- b. Ms. Watkins had an outstanding balance of \$5,990.74 due immediately.

49. After November 4, 2016, the effective date of Respondent's administrative suspension, Respondent failed to advise Ms. Watkins that she had been administratively suspended from the practice of law.

50. By letter dated December 2, 2016, sent by certified mail, Ms. Watkins:

- a. stated that the paperwork Respondent prepared in her case was "completely inadequate," that Respondent jeopardized her from receiving her refund, and that she hired Respondent to get her money back and that did not occur;
- b. asked that Respondent refund her \$1,650.00 by December 21, 2016; and
- c. indicated that she had spoken to several lawyers regarding "this breach of contract" and they suggested that she try to contact Respondent first before taking action against her.

51. Respondent received Ms. Watkins' letter of December 2, 2016.

52. Respondent failed to respond to Ms. Watkins' letter of December 2, 2016.

53. By her conduct as alleged in Paragraphs 38 through 52 above, Respondent violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

- 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, *supra*; and
- c. Pa.R.D.E. 203(b)(3), *supra*, via:
 - (1) Pa.R.D.E. 217(a), *supra*.

**CHARGE IV: The Honorable James M. McMaster Matter;
C1-17-414**

54. By Order dated November 18, 1996, the Supreme Court of Pennsylvania disbarred J.S. from the practice of law in this Commonwealth.

55. As a result of his disbarment, J.S. is a "formerly admitted attorney," as defined by Pa.R.D.E. 102.

56. Prior to November 2015, Respondent employed J.S. in her law office.

57. When Respondent hired J.S., she failed to file a Notice of Engagement with the Disciplinary Board pursuant to Pa.R.D.E. 217(j)(5), certifying that she, as his supervisor, would be monitoring J.S.'s activities for compliance with Pa.R.D.E. 217(j).

58. J.S., who was the subject of a child support order, identified Respondent as his employer to the Bucks County Court of Common Pleas, Domestic Relations Section.

59. By a Garnishment Notice dated November 30, 2015, the Bucks County Court of Common Pleas directed Respondent to forward \$2,232.00 of J.S.'s monthly salary to Pennsylvania State Collection and Disbursement Unit ("PASCDU"), the office that collects and disburses court-ordered child support payments.

60. The Garnishment Notice was sent to Respondent at McKee Law Office, 2545 W. Allens Lane, Philadelphia, PA 19119-4103 via first-class mail.

61. Respondent received the Garnishment Notice.

62. By a Garnishment Notice dated December 30, 2015, the Bucks County Court of Common Pleas modified its original garnishment order and directed Respondent to forward \$2,252.05 of J.S.'s monthly salary to PASCDU.

63. Respondent received the modified Garnishment Notice dated December 30, 2015.

64. From Respondent's Police and Fire Federal Credit Union ("PFFCU") account, Respondent issued check number 201 in the amount of \$2,060.00, dated January 8, 2016, payable to PASCDU.

65. Check number 201 was returned for insufficient funds.

66. By Order of Court dated January 12, 2016, the Honorable James M. McMaster advised Respondent that legal proceedings were brought against her, alleging that she willfully disobeyed an Order of Court.

67. Respondent was ordered to appear in court on February 5, 2016, at the Domestic Relations Desk at the Courthouse in Doylestown, PA.

68. Respondent received notice of the contempt hearing.

69. From her PFFCU account, Respondent issued check number 202 in the amount of \$1,030.00, dated January 22, 2016, payable to PASCDU.

70. Check number 202 was returned with "Stop Payment" instructions attached.

71. Respondent issued the stop payment instructions.

72. From her PFFCU account, Respondent issued check number 203 in the amount of \$2,060.00, dated January 29, 2016, payable to PASCDU.

73. Check number 203 was returned for insufficient funds.

74. Pursuant to PASCDU's policy, the three checks Respondent had submitted were processed and payments were issued immediately to the recipient.

75. As a result, PASCDU had a \$5,150.00 deficit for the checks that Respondent had issued that did not clear.

76. On February 5, 2016, Respondent failed to appear at the contempt hearing.

77. The court ordered that the wage attachment issued to Respondent's law office was vacated and J.S. was to remit full monthly payments directly to PASCDU.

78. On February 9, 2017, Respondent filed for Chapter 7 Bankruptcy.

79. By letter dated March 29, 2017, the Finance Department at PASCDU advised Respondent that:

- a. they had received a bankruptcy notification, but that child and/or spousal support payments are not exempt from repayment through bankruptcy in the event of a returned check from any financial institution; and
- b. they were requesting repayment of the \$1,030.00 that was owed, as payment had already been submitted to the plaintiff on J.S.'s behalf.

80. Respondent received the Finance Department's letter regarding repayment of the \$1,030.00.

81. By a second letter dated March 29, 2017, the Finance Department at PASCDU advised Respondent that:

- a. they received a bankruptcy notification, but that child and/or spousal support payments are not exempt from repayment through bankruptcy in the event of a returned check from any financial institution; and
- b. they were requesting repayment of the \$2,060.00 that was owed, as payment had already been submitted to the plaintiff on J.S.'s behalf.

82. Respondent received the Finance Department's letter regarding repayment of the \$2,060.00.

83. By a third letter dated March 29, 2017, the Finance Department at PASCDU advised Respondent that:

- a. they received a bankruptcy notification but that child and/or spousal support payments are not exempt from repayment through bankruptcy in the event of a returned check from any financial institution; and
- b. they were requesting repayment of the \$2,060.00 that was owed, as payment had already been submitted to the plaintiff on J.S.'s behalf.

84. Respondent received the Finance Department's letter regarding repayment of the \$2,060.00.

85. Respondent failed to submit repayment to the Finance Department for any of the three bad checks she had provided to them.

86. Respondent failed to advise the Finance Department that, due to her administrative suspension, effective November 4, 2016, she was precluded from practicing law and no longer would be J.S.'s employer.

87. By letter dated April 17, 2017, Respondent advised the Finance Department at PASCDU that:

- a. her understanding was that the department did not issue funds to the plaintiff;
- b. "the defendant" had borrowed funds from someone else to make a \$5,100 payment to the plaintiff;
- c. "this debt is not a child support payment";
- d. they were violating a federal court order by asking Respondent for repayment; and
- e. if she received any further communication from their department regarding the debt, she would file a motion for contempt.

88. Respondent's representation that the debt was not a child support payment was false and Respondent knew it to be false when she made it.

89. By her conduct as alleged in Paragraphs 54 through 88 above, Respondent violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

- a. RPC 8.4(c), *supra*;
- b. RPC 8.4(d), *supra*; and
- c. Pa.R.D.E. 203(b)(3), *supra*, via:

(1) Pa.R.D.E. 217(j)(5), which states that a formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements: The supervising attorney and the formerly admitted attorney shall file with the Disciplinary Board a notice of engagement, identifying the supervising attorney and certifying that the formerly admitted attorney's activities will be monitored for compliance with this subdivision (j). The supervising attorney and the formerly admitted attorney shall file a notice with the Disciplinary Board immediately upon the termination of the engagement between the formerly admitted attorney and the supervising attorney.

CHARGE V: Respondent's Failure to Respond to DB-7 Letter; C1-16-361

90. On June 8, 2016, ODC sent Respondent, by certified mail, a DB-7 Request for Statement of Respondent's Position ("DB-7 letter") pertaining to an overdraft in her TD Bank IOLTA account.

91. The DB-7 letter informed Respondent that:

- a. she had thirty days in which to state her position in response to the DB-7 averments; and
- b. failure to respond without good cause is an independent ground for discipline pursuant to Pa.R.D.E. 203(b)(7).

92. Respondent received the DB-7 letter, but failed to respond to it.

93. By certified letter dated September 29, 2016, then Disciplinary Counsel Bruce H. Bikin, Esquire, advised Respondent's attorney, Mr. Brown, that:

- a. Respondent had failed to respond to the DB-7 letter; and
- b. if Respondent did not provide a response within fifteen days of the date of the letter, ODC would have no alternative but to proceed with a recommendation without the benefit of her response.

94. Respondent never filed a response to the DB-7 letter.

95. Respondent's failure to respond to ODC's request for a statement of position was without good cause.

96. By her conduct as alleged in Paragraphs 90 through 95 above, Respondent violated the following Rule of Disciplinary Enforcement:

- a. 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

97. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension from the practice of law for one year and one day consecutive to the two-year suspension ordered by the Supreme Court on October 18, 2017 at No. 2395 Disciplinary Docket No. 3.

98. Respondent hereby consents to that discipline being imposed upon her 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 she consents to the recommended discipline, including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

99. Petitioner and Respondent respectfully submit that Respondent's prior suspension is an aggravating factor:

- a. By Petition for Discipline dated February 16, 2016, ODC charged Respondent with professional misconduct in ten separate matters.
 - i. Respondent's conduct in those ten matters stemmed from her neglect, failure to communicate, failure to refund fees, failure to competently represent her client, failure to properly manage client funds, misrepresentation of facts to opposing counsel, and actions prejudicial to the administration of justice, which resulted in a contempt citation in her own support matter.
 - ii. Respondent's misconduct in those ten matters occurred from September 2008 through January 2015.
- b. On April 1, 2016, Respondent filed an Answer to the Petition for Discipline, in which she did not contest the factual allegations of the petition, but requested to be heard in mitigation.
- c. A hearing was held on June 30, 2016 before a District I Hearing Committee.

- i. Respondent offered the testimony of a behavioral health expert in mitigation of her misconduct. The expert testified that she diagnosed Respondent with an adjustment disorder, with mixed emotions of anxiety and depression. The expert was unable to specifically relate respondent's mental health issues to her misconduct. The Disciplinary Board concluded that Respondent failed to demonstrate by clear and convincing evidence that she was entitled to mitigation of discipline based on this testimony. **Office of Disciplinary Counsel v. Sharmil Donzella McKee**, No. 29 DB 2016 (D.Bd. Rpt. 7/7/2017) (S.Ct. Order 10/18/2017).
- ii. The Board considered other mitigating factors. Respondent admitted the factual allegations in the ten matters at issue there, expressed sincere remorse and regret for her actions, and had no prior record of discipline. **Id.**

d. By Order dated October 18, 2017, the Supreme Court of Pennsylvania, upon consideration of the Report and Recommendation of the Disciplinary Board, suspended Respondent for two years from the Bar of this Commonwealth.

100. Petitioner and Respondent respectfully submit that there are the following mitigating factors:

- a. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct and Rules of Disciplinary Enforcement;
- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and her consent to receiving a suspension of one year and one day to run consecutively to the two-year suspension she is currently serving; and
- c. Respondent is remorseful for her misconduct and understands she should be disciplined, as is evidenced by her consent to receiving a consecutive term of suspension.

101. Precedent suggests that Respondent's misconduct here—unauthorized practice of law in two cases while administratively suspended, neglect, passing bad checks, and failing to respond to a DB-7 letter—warrants a suspension of

one year and one day to run consecutively to the two-year suspension Respondent is currently serving.

In terms of professional discipline for an attorney who engages in the unauthorized practice of law, there is a line of Pennsylvania cases that imposes discipline of suspension for not less than one year and one day with the term of suspension increasing depending upon the presence of aggravating factors or additional charges of professional misconduct. In 2004, the Disciplinary Board explained: "The Supreme Court of Pennsylvania has considered several instances of lawyers practicing while on inactive status, and recently has established a line of cases indicating that the appropriate sanction for such conduct is suspension of one year and one day." **Office of Disciplinary Counsel v. Sharon Goldin-Didinsky, aka Sharon Goldin Ciborowski**, No. 87 DB 2003 (D.Bd. Rpt. 8/27/04 at p. 13) (S.Ct. Order 12/13/04) (one-year-and-one-day suspension). Accord **Office of Disciplinary Counsel v. Joel H. Cavadel**, Nos. 176 DB 2006 and 5 DB 2007, D.Bd. Rpt. 8/30/07 at p. 15 ("In numerous cases of the unauthorized practice of law, a suspension of one year and one day has been handed down, reflecting the Court's position that practicing law without a license is a serious act of professional misconduct." (citing cases)) (S.Ct. Order 3/12/08) (two-year suspension).

In a 2009 case, the Board stated that the range of discipline for practicing law while inactive is a suspension of three months to two years. **Office of Disciplinary Counsel v. Michael Joseph Panichelli**, No. 198 DB 2009 (D.Bd. Rpt. 7/29/2009) (S.Ct. Order 8/31/2009), citing **In re Ferleger**, 78 Pa. D.&C.4th 437, 446 (2005). Attorneys who handle many client matters often receive greater discipline than attorneys who handle fewer matters while on inactive status. *Id.* Compare **Office of Disciplinary Counsel v. John V. Buffington**, No. 45 DB 2004 (D.Bd. Rpt. 6/22/05) (S.Ct. Order 9/20/05) (respondent received a six-month suspension for engaging in the unauthorized practice of law in three legal matters and appearing as an arbitrator while on inactive status), with **Office of Disciplinary Counsel v. John F. Egan**, No. 175 DB 2007 (D.Bd. Rpt. 1/11/08) (S.Ct. Order 5/8/08) (attorney who engaged in the unauthorized practice of law over a period of seven years received an eighteen-month suspension on consent); **Office of Disciplinary Counsel v. Gustee Brown**, 71 Pa. D.&C.4th 99 (2004) (public defender who represented 120 defendants while on inactive status was suspended for one year and one day); **Office of Disciplinary Counsel v. Kenneth Charles Jones**, 62 Pa. D.&C.4th 547 (2001) (where attorney engaged in twenty counts of unauthorized practice of law over a two-year period,

the wide scope of misconduct warranted the imposition of a two-year suspension).

Attorneys who engage in misconduct in addition to the unauthorized practice of law may receive greater discipline. See, e.g., **Office of Disciplinary Counsel v. Stephen W. Simpson**, No. 6 DB 2004 (D.Bd. Rpt. 5/12/05) (S.Ct. Order 7/22/05) (Supreme Court imposed a two-year suspension on an attorney who handled over 100 legal matters while on inactive status and mishandled funds in his IOLTA account); **Office of Disciplinary Counsel v. Lawrence E. Andrews**, 189 DB 2006 (D.Bd. Rpt. 3/27/07) (S.Ct. Order 5/30/07) (government attorney who practiced law for seventeen years while on inactive status and made misleading statements to ODC concerning his practice of law received a two-year suspension on consent).

Here, Respondent engaged in two instances of unauthorized practice of law over a period of four months while administratively suspended. If that were the extent of the misconduct, this case would be similar to **Buffington**, and a suspension of less than one year and one day would be the base discipline. However, in addition to the unauthorized practice of law in two cases (the Jordan matter and the Farmer matter), Respondent neglected Ms. Jordan's matter and Ms. Watkins' matter; Respondent passed three bad checks in the Judge

McMaster matter; and Respondent failed to respond to a DB-7 letter in another matter. In addition, Respondent is currently on suspension for a period of two years for misconduct in ten unrelated matters, as described in ¶ 99(a) *supra*.

A suspension greater than one year and one day is not warranted here because the misconduct occurred before the Supreme Court entered its Order suspending Respondent for two years and Respondent agrees that the additional term of suspension run consecutively.

The instant matter is similar to ***Office of Disciplinary Counsel v. Reginald H. Holder***, No. 131 DB 1999 (D.Bd. Rpt. 2/7/01) (S.Ct. Order 3/23/01), and ***Office of Disciplinary Counsel v. Wayne Anthony Rodney***, 118 DB 2000 (S.Ct. Order 6/13/02). In ***Holder***, after being transferred to inactive status for failing to comply with CLE requirements, the attorney appeared in five criminal court cases over a period of three months. The attorney had a history of private discipline (three informal admonitions and three private reprimands). The Supreme Court suspended attorney Holder for one year and one day. In ***Rodney***, the attorney was transferred to inactive status for failing to comply with CLE requirements and failure to pay the annual assessment. During the term of his inactive status, Attorney Rodney continued to represent

clients and entered his appearance in three matters in state court. In another matter, Attorney Rodney failed to represent his client with diligence, failed to communicate with the client, failed to provide an accounting, failed to promptly return the retainer and failed to return the client's property. The Supreme Court suspended Rodney for one year and one day.

The suspension of one year and one day to be imposed in this proceeding should run consecutively to the two-year suspension previously imposed. See, e.g., **Office of Disciplinary Counsel v. James Edward Elam**, No. 140 DB 2015 (D.Bd. Rpt. 10/9/15) (S.Ct. Order 11/10/15) (where attorney practiced law in two matters while on administrative suspension and, later, in a third case while on suspension, attorney suspended for eighteen months consecutive to the prior three-year suspension).

102. After examining precedent and giving consideration to Respondent's admissions and cooperation, Petitioner and Respondent submit that a suspension of one year and one day to run consecutively to the two-year suspension that Respondent is currently serving, is appropriate discipline for Respondent's misconduct.

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Rule 215(e) and 215(g)(2), Pa.R.D.E., the three-member panel of the Disciplinary Board review and approve the above Joint Petition In Support Of Discipline On Consent and file its recommendation with the Supreme Court of Pennsylvania in which it is recommended that the Supreme Court enter an Order:
- i. suspending Respondent from the practice of law for a period of one year and one day to run consecutively to the two-year suspension ordered by the Court on October 18, 2017 at No. 2395 Disciplinary Docket No. 3; and
 - ii. directing Respondent to comply with all of the provisions of Rule 217, Pa.R.D.E.
- 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, and that under Pa.R.D.E. 208(g)(1) all expenses be paid by Respondent within 30 days after the notice of the taxed expenses is sent to Respondent.

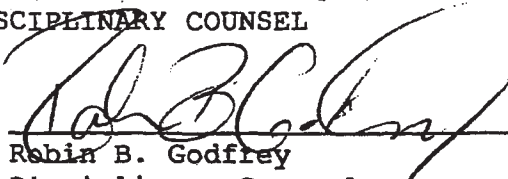
Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

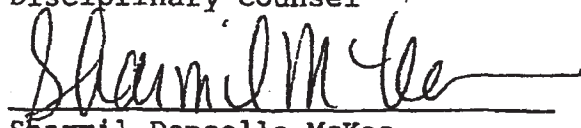
PAUL J. KILLION

CHIEF DISCIPLINARY COUNSEL


9/24/18
Date

By 
Robin B. Godfrey
Disciplinary Counsel

9/17/18
Date

By 
Sharmil Donzella McKee
Respondent

9/21/18
Date

By 
Glenn A. Brown, Esquire
Respondent's Counsel

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: ODC File Nos. C1-16-361,
: C1-17-244, C1-17-378,
: C1-17-414, and C1-17-865
:
v. :
: Atty. Reg. No. 201184
SHARMIL DONZELLA McKEE, :
Respondent : (Philadelphia)

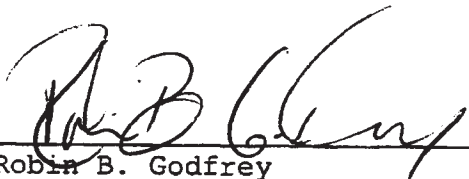
VERIFICATION

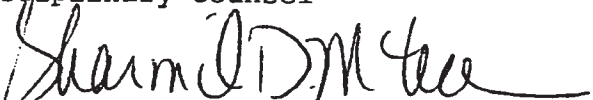
The statements contained in the foregoing Joint
Petition In Support Of Discipline On Consent under
Pa.R.D.E. 215(d) are true and correct to the best of my
knowledge or information and belief and are made subject to
the penalties of 18 Pa.C.S. §4904, relating to unsworn
falsification to authorities.


9/24/18
Date

9/19/18
Date

9/21/18
Date


Robin B. Godfrey
Disciplinary Counsel


Sharmil Donzella McKee
Respondent


Glenn A. Brown, Esquire
Respondent's Counsel

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: ODC File Nos. C1-16-361,
: C1-17-244, C1-17-378,
: C1-17-414, and C1-17-865
:
v. :
: Atty. Reg. No. 201184
SHARMIL DONZELLA McKEE, :
Respondent : (Philadelphia)

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

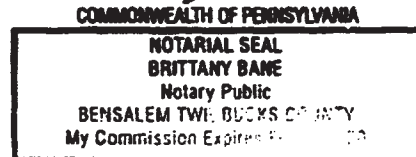
Respondent, Sharmil Donzella McKee, hereby states that she consents to the imposition of a suspension of one year and one day to run consecutively to the two-year suspension imposed by the Supreme Court on October 18, 2017, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition in Support of Discipline on Consent and further states that:

1. 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 Glenn A. Brown, Esquire, in connection with the decision to consent to discipline;

2. She acknowledges that the material facts set forth in the Joint Petition are true; and

3. She consents because she knows that if charges predicated upon the matters under investigation (i.e., ODC File Nos. C1-16-361, C1-17-244, C1-17-378, C1-17-414 and C1-17-865) were filed, she could not successfully defend against them.

Sharmil Donzella McKee
Sharmil Donzella McKee
Respondent



Sworn to and subscribed
before me this 19th
day of September, 2018.

Brittany Bane
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: _____

Name: Robin B. Godfrey, Disciplinary Counsel

Attorney No. (if applicable): 59513