

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

2. Respondent, Neil Robert Gelb, was born on July 10, 1962, and was admitted to practice law in the Commonwealth on December 13, 1990. His registered mailing address is Suite 200, 1518 Walnut Street, Philadelphia, PA 19102.

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

SPECIFIC FACTUAL ADMISSIONS AND RULES VIOLATED

4. Respondent stipulates that the following factual allegations contained within the Joint Petition are true and correct, and stipulates that he has violated the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement set forth in ¶¶ 17 and 42, *infra*.

Charge I

5. By Order dated August 2, 2006, effective September 1, 2006, the Supreme Court of Pennsylvania:

- a. suspended Ronald I. Kaplan from the practice of law in the Commonwealth for a period of one year and one day in a case captioned *Office of Disciplinary Counsel v. Ronald I. Kaplan*, No. 39 DB 2005; and

b. directed Mr. Kaplan to comply with all of the provisions of Pa.R.D.E 217.

6. By Order dated June 5, 2012, effective July 5, 2012, the Supreme Court of Pennsylvania:

a. suspended Mr. Kaplan from the practice of law in the Commonwealth for a period of five years in a case captioned **Office of Disciplinary Counsel v. Ronald I. Kaplan**, No. 217 DB 2010; and

b. directed Mr. Kaplan to comply with all of the provisions of Pa.R.D.E 217.

7. Mr. Kaplan continues to be prohibited from practicing law in the Commonwealth of Pennsylvania.

8. By letter dated January 4, 2013, to Elaine M. Bixler, then Secretary of the Disciplinary Board, Respondent:

a. informed Ms. Bixler that he had engaged Mr. Kaplan as a paralegal/assistant in Respondent's office under Respondent's supervision; and

b. Mr. Kaplan's activities would be monitored for compliance with Pa.R.D.E. 217(j).

9. In February 2016, Respondent filed a civil action in the Court of Common Pleas of Philadelphia County on behalf of

his client, James Jones, in a case captioned *Jones v. City of Philadelphia, et al.*, No. 160201971.

- a. The Pennsylvania Department of Transportation (PennDOT) is also a defendant in this matter.
- b. Kristen D. Lawfer, Esquire, represented PennDOT and Lauren Curry, Esquire, represented the City of Philadelphia.

10. Throughout Respondent's representation of Mr. Jones, both Ms. Lawfer and Ms. Curry sent Respondent emails in regard to the *Jones* matter.

- a. Respondent did not respond to the emails.
- b. Respondent instructed Mr. Kaplan to respond to all emails from Ms. Lawfer and Ms. Curry.

11. Respondent did not properly supervise Mr. Kaplan's email activity and monitor Mr. Kaplan's emails to ensure that Mr. Kaplan complied with subdivision (j) of Pa.R.D.E. 217, in that Mr. Kaplan's emails to Ms. Lawfer and Ms. Curry did not comply with Pa.R.D.E. 217(j)(3).

- a. Mr. Kaplan did not clearly indicate that he was a legal assistant.
- b. Mr. Kaplan did not identify a supervising attorney.

12. On October 6, 2016, depositions of Mr. Jones and Peter Berg of PennDOT were taken at the Law Offices of Neil R. Gelb.

a. Ms. Lawfer and Ms. Curry attended the depositions on behalf of their individual clients.

13. With Respondent's knowledge and permission and at Respondent's direction, Mr. Kaplan appeared at the depositions as a representative on behalf of Mr. Jones.

14. Neither Respondent nor any other attorney in good standing of the Bar in the Commonwealth appeared at the depositions on behalf of Mr. Jones.

a. Respondent was present in his office suite during the depositions.

15. With Respondent's permission and knowledge, Mr. Kaplan actively participated in the depositions by questioning both Mr. Jones and Mr. Berg.

16. Again Respondent failed to properly supervise Mr. Kaplan and to monitor Mr. Kaplan to ensure that he complied with subdivision (j) of Rule 217, in that Mr. Kaplan's attendance and participation at the depositions were illegal and improper because:

a. Mr. Kaplan was not permitted to have direct contact or communications with a client or third parties except on ministerial matters (Pa.R.D.E. 217(j)(4)(v) and Pa.R.D.E. 217(j)(2)(ii));

- b. Mr. Kaplan was not permitted to appear at a deposition other than to accompany a member in good standing of the Bar of the Commonwealth for the limited purpose of providing clerical assistance (Pa.R.D.E. 217(j)(2)(iii));
- c. Mr. Kaplan was specifically prohibited from appearing as a representative of a client at a deposition (Pa.R.D.E. 217(j)(4)(viii));
- d. Mr. Kaplan held himself out as a lawyer (Pa.R.D.E. 217(j)(4)(iv); and
- e. Mr. Kaplan violated the Supreme Court Orders identified in ¶¶ 5 and 6 *supra*, and committed indirect criminal contempt.

17. By his conduct as alleged in Paragraphs 5 through above 16 Respondent violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

- a. RPC 5.3(b), which states, in pertinent part, a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer;
- b. RPC 8.4(a), which states that it is professional misconduct for a lawyer to

- violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
- c. RPC 8.4(b), which states it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;
 - d. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
 - e. 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;
 - e. Pa.R.D.E. 217(j)(2), which states, in pertinent part, that the only law-related activities that may be conducted by a formerly admitted attorney are the following: (ii) direct communication with the client or third parties to the extent permitted by paragraph (3); and (iii) accompanying a member in good standing of the Bar of this Commonwealth to a

deposition or other discovery matter or to a meeting regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client;

- f. Pa.R.D.E. 217(j)(3), which states that a formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney, organization or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney;
- g. 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";

- h. 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)";
- i. Pa.R.D.E 217(j)(4)(viii), which states that a formerly admitted attorney is specifically prohibited from "appearing as a representative of the client at a deposition or other discovery matter"; and
- j. Pa.R.D.E 217(j)(6), which states that the supervising attorney shall be subject to disciplinary action for any failure by either the formerly admitted attorney or the supervising attorney to comply with the provisions of this subdivision (j).

CHARGE II

18. By Supreme Court Order dated July 29, 2003, effective immediately, Peter P. Barnett was:

- a. transferred to disability inactive status pursuant to Rule 301 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."); and
- b. directed to comply with all of the provisions of Pa.R.D.E. 217.

19. Mr. Barnet continues to be ineligible to practice law in the Commonwealth.

20. At some point, Respondent hired Mr. Barnett to work in Respondent's firm as "Litigation Manager."

21. At all times relevant hereto, on Respondent's firm's website:

- a. Mr. Barnett was identified as "Peter P. Barnett, J.D"; and
- b. Mr. Barnett's Curriculum Vitae description was as follows: "Mr. Barnett, Neil R. Gelb, P.C.'s litigation manager, joined the firm offering over 33 years of experience in settling all types of personal injury claims. Mr. Barnett is the former Claims Manager and past President of the Philadelphia Claims Managers Council. Mr. Barnett is also a certified insurance expert in both state and federal courts. In fact, Mr. Barnett served as a plaintiff's bad faith expert in the largest bad faith verdict in Pennsylvania history, *Hollock v. Erie Ins. Exchange*, 588 Pa. 231, 903 A.2d 1185 (2006). Mr. Barnett is a graduate of Boston College and Temple University School of Law."

22. Rule 217(j)(5) of the Pa.R.D.E. 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 requirement:

- a. 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).

23. Respondent failed to file a notice of engagement with the Disciplinary Board at the time Mr. Barnett began his employment with Respondent's firm.

- a. Mr. Barnett also did not file a notice of engagement at the time of his employment as required by Pa.R.D.E 217(j)(5).

24. On December 1, 2015, David Wyche, Sr., passed away.

25. Davida A. Wyche-Davis, Mr. Wyche's daughter, was appointed administratrix of her father's estate.

26. In December of 2015, Respondent was retained by Ms. Wyche-Davis, to represent her, in her capacity as administratrix of the *Wyche* estate, in pursuing claims against Genesis Health Care t/a Somerton Center ("Genesis Health Care").

27. During Respondent's representation of Ms. Wyche-Davis, Respondent authorized Mr. Barnett to act as a representative on behalf of Ms. Wyche-Davis in which Mr. Barnett sent to and received emails from Maria Lynch, a Genesis Health Care Claims Specialist.

28. Respondent did not properly supervise Mr. Barnett's email activity and monitor Mr. Barnett's emails to ensure that Mr. Barnett complied with subdivision (j) of Pa.R.D.E. 217, in that Mr. Barnett's emails to Ms. Lynch did not comply with Pa.R.D.E. 217(j)(3).

- a. Mr. Barnett did not indicate that he was ineligible to practice law in the Commonwealth.
- b. Mr. Barnett did not identify a supervising attorney.

29. With Respondent's permission and knowledge, in November 2016, Mr. Barnett settled Ms. Wyche-Davis' claim for \$75,000.

30. Again Respondent failed to properly supervise Mr. Barnett and to monitor Mr. Barnett to ensure that he complied with subdivision (j) of Rule 217, in that Mr. Barnett's negotiation of the settlement was illegal and improper because:

- a. Mr. Barnett was not permitted to have direct contact or communications with third parties

except on ministerial matters (Pa.R.D.E. 217(j)(4)(ix) and Pa.R.D.E. 217(j)(2)(ii));

- b. Mr. Barnett held himself out as a lawyer (Pa.R.D.E. 217(j)(4)(iv)); and
- c. Mr. Barnett violated the Supreme Court Order identified in ¶ 18 *supra*, and committed indirect criminal contempt.

31. Neither Respondent nor Mr. Barnett obtained Ms. Wyche-Davis' consent to settle the claim for \$75,000.

32. By email to Ms. Wyche-Davis dated November 16, 2016, Mr. Barnett:

- a. attached the settlement release for \$75,000 and a statement of distribution; and
- b. requested that Ms. Wyche-Davis sign both documents and fax them back to "our office."

33. By email to Respondent and Mr. Barnett on December 5, 2016, Ms. Wyche-Davis:

- a. declined to sign the release; and
- b. requested that Respondent proceed with the case.

34. Thereafter, Respondent advised Ms. Wyche-Davis that he would not proceed with her case.

35. By letter to Ms. Wyche-Davis dated January 5, 2017, Mr. Barnett:

- a. advised her that Respondent and Mr. Barnett had spoken with Norman Perlberger, Esquire;
- b. stated that Mr. Perlberger had agreed to take her case; and
- c. enclosed a Verification that Mr. Perlberger needed her to sign

36. After an inquiry by Ms. Wyche-Davis, Respondent advised Ms. Wyche-Davis that she was required to sign the Verification in order for Mr. Perlberger to represent her in her matter.

37. Respondent failed to explain to Ms. Wyche-Davis that the Verification would be used by Mr. Perlberger to file a civil action on her behalf.

38. In January 2017, Mr. Perlberger filed a civil action on behalf of Ms. Wyche-Davis in the Court of Common Pleas of Philadelphia County, case caption **Wyche-Davis v. Genesis Health Care**, No. 170103232.

39. On February 17, 2017, Genesis Health filed a Motion to Enforce Settlement.

40. By Order dated March 27, 2017, the Court granted Genesis Health's motion.

41. To date, Ms. Wyche-Davis has not signed the Release.

42. By his conduct as alleged in Paragraphs 18 through 41 above, Respondent violated the following Rules of

Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

- a. 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;
- b. RPC 5.3(b);
- c. RPC 8.4(a);
- d. RPC 8.4(b);
- e. RPC 8.4(c);
- f. RPC 8.4(d);
- g. Pa.R.D.E. 217(j)(2)(i), which states, in pertinent part, that the only law-related activities that may be conducted by a formerly admitted attorney are legal work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents; and (ii);
- h. Pa.R.D.E. 217(j)(3);
- i. Pa.R.D.E. 217(j)(4)(iv);
- j. Pa.R.D.E. 217(j)(4)(v);

- k. 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";
- l. 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";
- m. 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 when the supervising attorney and the formerly admitted attorney 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); and
- n. Pa.R.D.E 217(j)(6), which states that the supervising attorney shall be subject to disciplinary action for any failure by either

the formerly admitted attorney or the supervising attorney to comply with the provisions of this subdivision (j).

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

43. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of eighteen months.

44. Respondent hereby consents to that discipline being imposed upon him. 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.

45. 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 and Pennsylvania Rules of Disciplinary Enforcement;
- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and Respondent's consent to receiving a suspension of eighteen months; and
- c. Respondent is remorseful for his misconduct

and understands he should be disciplined, as is evidenced by his consent to receiving a suspension of eighteen months.

46. In addition, if this matter were to proceed to a hearing, Respondent would present the following evidence in mitigation:

- a. Respondent has been on the planning committee of the "Richie Nelson Celebration of Life" golf outing, a fund raising vehicle for the Ronald McDonald House for the past 18 years;
- b. Respondent volunteers at the Ronald McDonald House approximately 3 to 4 times a year, and has helped raise funds for the expansion of Ronald McDonald House in Philadelphia;
- c. Respondent has been an active contributor and sponsor of "Knock Out Homelessness," a fundraising event for One Step Away for several years;
- d. Respondent has worked and provided food and support to the Kailo Haven Shelter in Philadelphia for five years; and
- e. Respondent has been an active supporter, and contributed financially to the Police Athletic League, the Boys and Girls Club of Philadelphia, and the Juvenile Diabetes Foundation.

47. Respondent does not have a record of discipline.

48. Although there is no per se rule for discipline in this jurisdiction, a suspension of eighteen months is within the range of discipline for an attorney who assists and authorizes a formerly admitted attorney to actively engage in the unauthorized practice of law.

In *Office of Disciplinary Counsel v. Jeffrey Stephen Pearson*, No. 88 DB 2008 (D.Bd. Rpt. 1/26/2011) (S.Ct. Order 6/28/2011), respondent, who at one point was temporary suspended for failure to comply with a subpoena, was suspended for twenty months for actively assisting a suspended and later disbarred attorney in the unauthorized practice of law in numerous client matters wherein respondent entered his appearance in those matters but ceded authority to the formerly admitted attorney. Respondent Gelb, unlike Respondent Pearson who did not demonstrate genuine remorse or acceptance of responsibility, has accepted responsibility and demonstrated remorse by entering into consent discipline. Therefore, a suspension of eighteen months as opposed to a twenty month suspension is appropriate in this matter.

In *Office of Disciplinary Counsel v. Myrna W. Galfand*, No. 5 DB 2010 (D.Bd. Rpt. 3/10/2011) (S.Ct. Order 6/10/2011) respondent, who had no history of discipline, was suspended for one year and one day for assisting her husband, who had been her law partner, in the unauthorized practice of law after he was

suspended from the practice of law. Respondent Galfand also failed to change the name of the law firm after her husband's suspension. Like Respondent Galfand, Respondent does not have a history of discipline; however, Respondent Gelb's misconduct involved two formerly admitted attorneys who actively engaged in the unauthorized practice of law while under the supervision of Respondent. Respondent's misconduct warrants greater discipline than the discipline imposed in the *Galfand* matter.


In *Office of Disciplinary Counsel v. Dora R. Garcia*, No. 108 DB 2008 (S.Ct. Order 10/25/2007), respondent, who had no history of discipline, was suspended for fifteen months on consent for failing to supervise and for assisting her husband, a suspended attorney, in the unauthorized practice of law as well as for filing frivolous lawsuits and making false statements against judges. Although Respondent Gelb does not have a record of discipline and has accepted responsibility for his misconduct and fully appreciates the seriousness of his misconduct as Respondent Garcia did, Respondent Garcia was prepared to proffer evidence at a hearing from an expert witness that her misconduct occurred while she was under stress occasioned by the suspension of her husband. Respondent does not intend on offering any *Braun*-type evidence at a hearing from an expert witness. For all of these reasons, having carefully considered the applicable precedent, an eighteen month suspension is appropriate here.


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 eighteen months.


Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By 
Gloria Randall Ammons
Disciplinary Counsel

By 
Ellen C. Brotman, Esquire
Counsel for Respondent

By 
Neil Robert Gelb
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :
Petitioner :
: No. 174 DB 2018
v. :
: Atty. Reg. No. 60543
NEIL ROBERT GELB, :
Respondent : (Philadelphia County)

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.

2-19-19
Date

Gloria Randall Ammons
Gloria Randall Ammons
Disciplinary Counsel


Date

Ellen C. Brotman
Ellen C. Brotman, Esquire
Counsel for Respondent

2-19-19
Date

NRG
Neil Robert Gelb
Respondent

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

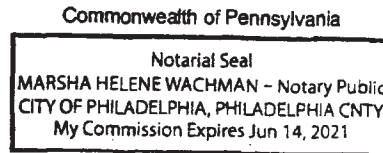


Neil Robert Gelb
Respondent

Sworn to and subscribed
before me this 15
day of February, 2019.



Notary Public



CERTIFICATE OF COMPLIANCE

I certify that this pleading 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