

IN THE SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL, : No. 1293 Disciplinary Docket No. 3
Petitioner :
 : No. 119 DB 2007
v. :
 : Attorney Registration No. 53666
MICHAEL S. BUTLER, :
Respondent : (York County)

ORDER

PER CURIAM:

AND NOW, this 15th day of September, 2008, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated May 19, 2008, 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 Michael S. Butler is suspended on consent from the Bar of this Commonwealth for a period of three years retroactive to December 10, 2007, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy John A. Vaskov
As of: September 15, 2008
Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

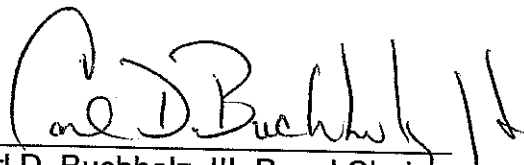
OFFICE OF DISCIPLINARY COUNSEL : No. 1293 Disciplinary Docket No. 3
Petitioner :
v. : No. 119 DB 2007
MICHAEL S. BUTLER : Attorney Registration No. 53666
Respondent : (York County)

RECOMMENDATION OF THREE-MEMBER PANEL
OF THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members Carl D. Buchholz, III, Marc S. Raspanti and Robert L. Storey, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on April 7, 2008.

The Panel approves the Petition consenting to a three year suspension retroactive to December 10, 2007 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.



Carl D. Buchholz, III, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: May 19, 2008

**BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1293 Disciplinary Docket No. 3
Petitioner	:	- Supreme Court
	:	
v.	:	No. 119 DB 2007
	:	- Disciplinary Board
MICHAEL S. BUTLER,	:	
Respondent	:	Attorney Registration No. 53666
	:	
	:	(York County)

**JOINT PETITION IN SUPPORT OF DISCIPLINE
ON CONSENT PURSUANT TO Pa.R.D.E.215(d), et. seq.**

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and John Francis Dougherty, Disciplinary Counsel, and Respondent, Michael S. Butler, Esquire ("Respondent"), pro se, respectfully petition this Honorable Board in support of discipline on consent of a three-year suspension, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), *et. seq.*, and in support thereof state:

1. The Petitioner, whose principal office is located at Suite 1400, 200 North 3rd Street, Harrisburg, PA 17101, is invested, pursuant to

FILED

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

Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), with the power and the duty to investigate all matters involving professional misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Michael S. Butler ("Respondent"), was born on September 25, 1963, admitted to the practice of law in this Commonwealth on November 21, 1988, has Attorney Registration Number 53666, and a Registered Address of 45 South 4th Street, Wrightsville, PA 17368. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent's affidavit stating, *inter alia*, his consent to the recommended discipline of a three-year suspension is attached hereto as Exhibit "A."

SPECIFIC FACTUAL ALLEGATIONS ADMITTED:

4. By Order of December 10, 2007, the Supreme Court of Pennsylvania suspended the Respondent, pursuant to Rule 214(d)(1), Pa.R.D.E, as a result of his conviction on June 19, 2007, in the United States District Court for the Middle District of Pennsylvania, at Criminal No. 1:06-CR-370, on one count of a violation of 18 U.S.C. §666(a)(2), *Bribery Concerning Programs Receiving Federal Funds*, a felony, and the matter was referred to the Disciplinary Board for the initiation of formal proceedings, pursuant to Rule 214(f)(1), Pa.R.D.E.

4. In May 2001, the Respondent left the practice of law and became

involved in a computer software business. The Respondent, along with a former client and family friend, founded TriTech, a Limited Liability Company and a Registered Fictitious Name of STM II, Ltd. TriTech developed and marketed computer software to enable large urban school systems to monitor and integrate their attendance, security and administrative issues. From June 2001 through October 2004, the Respondent was President of STM II, Ltd., in which he held 7.5% of the total ownership interests.

5. The Respondent and Thomas G. McGraw were lifelong friends. The Respondent knew that McGraw was employed by the Governor's Action Team and that his job was to make businesses aware of financial assistance programs that were offered by Pennsylvania to entice companies to open or expand their businesses in Pennsylvania. McGraw told the Respondent that TriTech might be eligible for an Opportunity Grant. McGraw made repeated demands of the Respondent for money and the Respondent eventually agreed to pay McGraw for his assistance with a grant.

6. TriTech applied for and received an Opportunity Grant of \$200,000.

7. McGraw demanded of the Respondent that McGraw be paid \$20,000 of the grant proceeds.

8. In October 2002, the Respondent acquiesced in McGraw's demand by depositing \$20,000 into an escrow account at a law firm at which the Respondent had previously been employed with the understanding that McGraw would apply the funds toward the purchase of a new family residence, in which real estate transaction the law firm was representing McGraw.

9. On October 27, 2006, a Felony Information was filed in the United States District Court for the Middle District of Pennsylvania, at Criminal No. 1:06-CR-370, charging the Respondent with a violation of 18 U.S.C. §666(a)(2), *Bribery Concerning Programs Receiving Federal Funds*.

10. The Information set forth the following:

1. At all times material to this Information:

A. The Pennsylvania Department of Community and Economic Development (DCED) was a state agency that received federal assistance in excess of \$10,000 during a one-year period under a federal program involving a grant, contract, subsidy, loan, guarantee, insurance, or other form of federal assistance.

B. Thomas G. McGraw was employed by DCED between May 2000 and August 2004. For most of this time period, McGraw held the title of Manager of Technology Initiatives within the Governor's Action Team (GAT), which was part of DCED.

C. As Manager of Technology Initiatives, McGraw was responsible for identifying information technology (IT) companies inside and outside Pennsylvania that might be encouraged to relocate to Pennsylvania or expand ongoing activities within Pennsylvania through offers of financial assistance. One type of financial assistance offered by DCED was the Opportunity Grant Program (OGP) which made funds available to businesses and did not have to be repaid if certain conditions were met.

D. Part of McGraw's duties and responsibilities as Manager of Technology Initiatives including meeting with business officials and analyzing whether a financial assistance package would be appropriate based on the company's particular needs and circumstances. If McGraw felt a financial assistance package was appropriate, he would put together a financial package and recommend to his superiors in the GAT and DCED to offer assistance to the company. Based in large part on McGraw's recommendations, the DCED awarded financial assistance, including opportunity grants, to the companies identified by McGraw.

E. The defendant, Michael S. Butler, was the President

of STM II, Ltd., d/b/a TriTech Consultants, an IT company located in York, PA.

2. Between on or about May 2001 and November 2002, in the Middle District of Pennsylvania, the Defendant, Michael S. Butler, did knowingly and corruptly give, offer, and agree to give something of value to Thomas G. McGraw with the intent to influence and reward Thomas G. McGraw in connection with a business, transaction, or series of transactions of the DCED involving something of value or \$5,000 or more, that is, Michael S. Butler did agree to give money to Thomas G. McGraw with the intent to influence Thomas G. McGraw's official actions with respect to a DCED opportunity grant for STM II, Ltd., d/b/a TriTech Consultants, and did subsequently pay Thomas G. McGraw approximately \$20,000 in connection with a \$200,000 DCED opportunity grant award to STM II, Ltd, d/b/a TriTech Consulting, which Thomas G. McGraw recommended for approval.

All in violation of Title 18, United States Code, §666(a)(2).

11. The Respondent cooperated with the prosecution and on October 27, 2006, entered into a Plea Agreement.

12. Prior to the filing of the Judgment in Criminal Case, the government recommended, and the Court accepted, that the Respondent be sentenced under the lesser charge of "illegal gratuity." The Court also accepted the government's recommendation that no restitution be imposed on the Respondent as the government had determined that TriTech, independent of any criminal conduct, was entitled to the grant and had honored the terms and conditions of the grant.

13. On June 19, 2007, a Judgment in Criminal Case was filed by which the Respondent was sentenced on the Bribery Concerning Programs Receiving Federal Funds charge to a term of probation for twelve months, with

electronically monitored home detention for six months, and directed to pay a fine of \$30,000 and an assessment of \$100.

14. The June 19, 2007, conviction of the Respondent constitutes an independent basis for the imposition of discipline, pursuant to Rule 203(b)(1), Pa.R.D.E., and a violation of Rule of Professional Conduct 8.4(b), which makes it professional misconduct for an attorney to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

15. It is an aggravating factor to the appropriate degree of discipline that to launder the \$20,000 payment to McGraw the Respondent caused his prior law firm to treat the \$20,000, produced by the Respondent, as part of the down payment on McGraw's purchase of a residence, in which transaction McGraw was represented by the law firm.

16. Mitigating factors appropriate to the degree of discipline are that: while the conviction was for bribery, the Respondent was at the request of the government sentenced under the lesser charge of "illegal gratuity;" the Respondent has no record of discipline from when he actively practiced law in the period 1988 to May, 2001; the Respondent was not engaged in the practice of law when he committed the criminal act at issue; the Respondent has a long history of involvement in charitable acts; and, the Respondent's cooperation in resolving both the criminal matter and these disciplinary proceedings.

RECOMMENDATION FOR A THREE-YEAR SUSPENSION

The parties hereto agree that the preceding agreed to facts and Rule

violations warrant the imposition of a three-year suspension, retroactive to December 10, 2007, the date of the Order of the Supreme Court that temporarily suspended the Respondent as a result of his conviction.

In determining the appropriate measure of discipline, precedent must be examined to measure the Respondent's misconduct against other similar matters. *In re Anonymous No. 56 DB 1994*, 28 Pa.D.&C.4th398(1995). Any aggravating and mitigating factors are also to be considered. *In re Anonymous No. 35 DB 1988*, 8 Pa. D.&C.4th 344(1990). The primary purpose of our disciplinary system is to protect the public from unfit attorneys and to maintain the integrity of the legal system. *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872 (Pa. 1986).

No disciplinary cases were found that involve the federal statute under which the Respondent was convicted, Bribery Concerning Programs Receiving Federal Funds, 18 U.S.C. §666(a)(2). There are cases that include one or more charges of bribery in conjunction with other charges, or have an element of bribery in a charge for another offense; these cases generally result in substantial suspensions to disbarment, but are distinguishable as they involve multiple instances of misconduct resulting in numerous charges. For example, in *Office of Disciplinary Counsel v. Tumini*, 453 A.2d 310 (Pa.1982), the attorney was disbarred for having engaged in money laundering, bribing a public official, false swearing and perjury. Respondent Butler's conduct was clearly much less egregious as he was only convicted of one count involving bribery.

In *Office of Disciplinary Counsel v. Mirarchi*, No. 10 DB 2006 (available at

<http://www.courts.state.pa.us/OpPosting/disciplinaryboard/dboardopinions/10DB2006-Mirarchi.pdf>), by Order of September 7, 2007, the Respondent was suspended for five years for a conviction on a plea to a violation of two mail fraud statutes for his involvement in two schemes. Mirarchi had conspired with others for about two months to effectuate a scheme wherein parking tickets owed were reduced or eliminated. Mr. Mirarchi became an intermediary for bribes paid by the owner of a taxi company to a public official who then reduced \$47,000 in unpaid parking tickets owed by the owner's cab company. In three months, Mirarchi was the conduit for bribes of \$2,000, \$3,000 and \$2,000 which he delivered to the public official, who then gave Mirarchi 40%, or \$2,800, of the bribes paid to him. After dismissals and reductions the cab company owed only \$3,500.

In a second scheme, in a year and one-half period Mirarchi signed, or permitted copies be made reflecting his signature, of about 1,500 Entry of Appearance Slips by which it was falsely certified that he was authorized to represent ticket holders before a hearing examiner, as a result of which 2000 Parking Authority tickets were fraudulently reduced or eliminated to a total of about \$122,000. The Respondent knew that a public official was using the false Entry of Appearance Slips to conceal the fact that the official was reducing or eliminating parking tickets for individuals.

While the misconduct in *Mirarchi* involved bribery of a public official, it was clearly much more serious than this case as it involved numerous instances of bribery, in contrast to the Respondent's one instance. *Mirarchi* also involved

numerous instances of using his capacity as an attorney to subvert a legal function while the Respondent's misconduct was not directly related to the practice of law. While *Mirarchi* was a mail fraud conviction it clearly, as in this matter, involved bribery of a public official. Convictions for mail or wire fraud often result in a three-year suspension. *Office of Disciplinary Counsel v. Joseph DeMesquita*, No. 139 DB 1995; *Office of Disciplinary Counsel v. Glenn D. DeSantis*, No. 22 DB 1996; and, *Office of Disciplinary Counsel v. John G. Takacs*, No. 21 DB 1996.

In the recent Consent case of *Office of Disciplinary Counsel v. Michael Sedor*, No. 1116 Disciplinary Docket No. 3, No. 225 DB 2005 (available at <http://www.courts.state.pa.us/OpPosting/disciplinaryboard/dboardopinions/225DB2005-Sedor.pdf>), the attorney was convicted on a guilty plea to one count of conspiracy to defraud the United States Department of Housing and Urban Development. The attorney as a settlement agent had conspired with others and signed HUD-1 Statements falsely reflecting the source of funds in real estate transactions. Mr. Sedor presented some significant mitigation that was causally related to the misconduct. He was suspended for two years. The Respondent's mitigation is not causally related to the misconduct and would not serve to lessen the otherwise appropriate degree of discipline to the degree as would appear to have occurred in the *Sedor* case.

In consideration of precedent and the aggravating and mitigating factors in this matter, the parties believe that the particular circumstances of the Respondent's misconduct is most analogous to the misconduct in mail and wire

fraud convictions that generally result in a three-year suspension, and that a three-year suspension is appropriate in this matter. Such a suspension will meet the goals of the disciplinary system to protect the public and the integrity of the legal system.

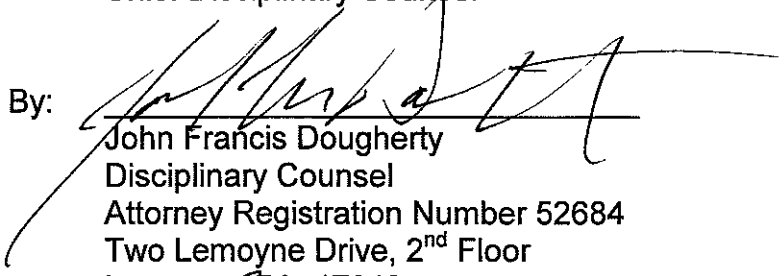
WHEREFORE, Joint Petitioners respectfully ask that your Honorable Board:

- a. Approve this Petition; and
- b. File this Petition and a recommendation for a three-year suspension, retroactive to December 10, 2007, with the Supreme Court of Pennsylvania.

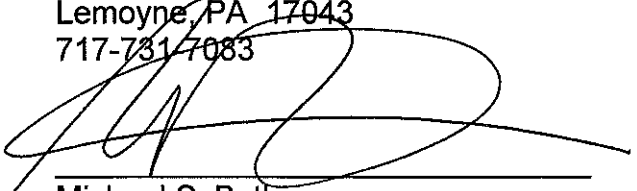
Respectfully Submitted,

OFFICE OF DISCIPLINARY COUNSEL
Paul J. Killion
Chief Disciplinary Counsel

By:



John Francis Dougherty
Disciplinary Counsel
Attorney Registration Number 52684
Two Lemoyne Drive, 2nd Floor
Lemoyne, PA 17043
717-731-7033



Michael S. Butler
Respondent
Attorney Reg. No. 53666
45 South 4th Street
Wrightsville, PA 17368
717-324-0918

Dated: April 7, 2008

**BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1293 Disciplinary Docket No. 3
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Respondent	:	Attorney Registration No. 53666
	:	
	:	(York County)

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

Michael S. Butler, being duly sworn according to law, submits this affidavit consenting to the recommendation of a Three-Year Suspension in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. He is an attorney in the Commonwealth of Pennsylvania, having been admitted to the Bar on November 21, 1988, and having been assigned Attorney Registration No. 53666.

2. He desires to submit a *Joint Petition in Support of Discipline on Consent pursuant to Pa. R.D.E. 215(d), et. seq.* requesting that the Disciplinary Board recommend to the Supreme Court that he be suspended for three years.

3. 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 this affidavit. He has not conferred with counsel regarding this matter.

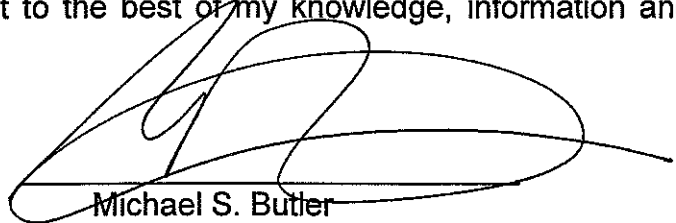
EXHIBIT "A"

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

5. He acknowledges that the material facts in the Petition are true.

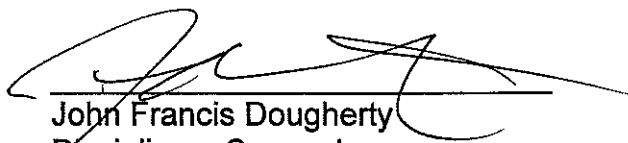
6. He consents to the recommended discipline because he knows if he continues to be prosecuted in the pending proceeding that he could not successfully defend against the misconduct set forth in the Petition.

I, Michael S. Butler, state, under the penalties provided by 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities), that I am the Respondent in the above captioned disciplinary matter, and that the statements in this *Affidavit Under Rule 215(d), Pa.R.D.E.* are true and correct to the best of my knowledge, information and belief.



Michael S. Butler

Signed this 7th day of April, 2008

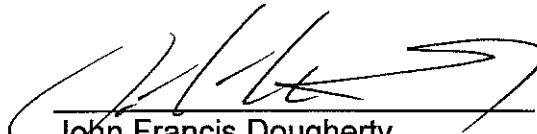


John Francis Dougherty
Disciplinary Counsel
Witness

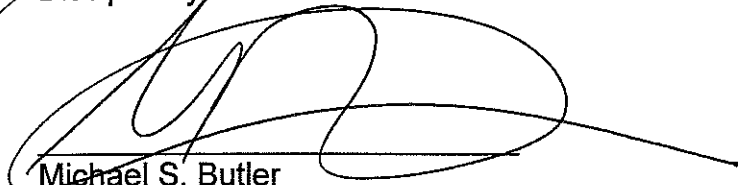
VERIFICATION

The statements contained in the foregoing *Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d), et.seq.* are true and correct to the best of our knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

4-7-08
Date


John Francis Dougherty
Disciplinary Counsel

4-8-08
Date


Michael S. Butler
Respondent

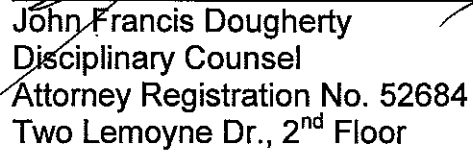
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MICHAEL S. BUTLER,	:	Attorney Registration No. 53666
Respondent	:	
	:	
	:	(York County)

CERTIFICATE OF SERVICE

I hereby certify that on April 7, 2008, I served the *Joint Petition in Support of Discipline on Consent Pursuant to Pa. R.D.E. 215(d), et.seq.* upon all parties of record in this proceeding in accordance with the provisions of 204 Pa. Code §89.22 (relating to service by a participant), as follows:

Personal service on Michael S. Butler at Two Lemoyne Drive, Lemoyne, PA.


John Francis Dougherty
Disciplinary Counsel
Attorney Registration No. 52684
Two Lemoyne Dr., 2nd Floor
Lemoyne, PA 17043
717-731-7083