

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1432 Disciplinary Docket No. 3
Petitioner :
 : No. 148 DB 2008
v. :
 : Attorney Registration No. 34537
MICHAEL A. ROSELLE, :
Respondent : (Mifflin County)

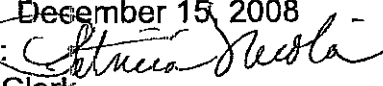
ORDER

PER CURIAM:

AND NOW, this 15th day of December, 2008, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated October 3, 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 A. Roselle is suspended on consent from the Bar of this Commonwealth for a period of six months consecutive to the one year and one day suspension imposed by this Court on April 20, 2007, at No. 1242 Disciplinary Docket No. 3 and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As of: December 15, 2008
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

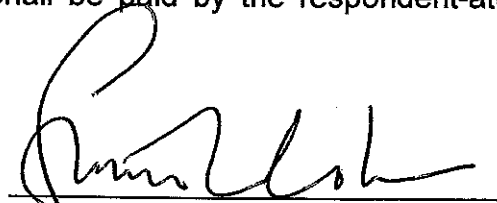
OFFICE OF DISCIPLINARY COUNSEL : No. 148 DB 2008
Petitioner :
v. : Attorney Registration No. 34537
MICHAEL A. ROSELLE :
Respondent : (Mifflin County)

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 Stewart L. Cohen, Jonathan H. Newman and Gerald Lawrence, Jr., has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on September 22, 2008.

The Panel approves the Petition consenting to a six month suspension consecutive to the one year and one day suspension imposed by Order of the Supreme Court dated April 20, 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 after the imposition of discipline.


Stewart L. Cohen, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 10/3/08

BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. <u>148</u> DB <u>2008</u>
Petitioner	:	
	:	
v.	:	Attorney Reg. No. 34537
	:	
MICHAEL A. ROSELLE	:	
Respondent	:	(Mifflin County)

**JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT UNDER RULE
215(d) OF THE PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT**

The Petitioner, the Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Patti S. Bednarik, Esquire, Disciplinary Counsel, and the Respondent, Michael A. Roselle, file this Joint Petition in Support of Discipline on Consent under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement and respectfully state and aver the following:

1. Respondent, Michael A. Roselle, was born in 1955; was admitted to practice law in the Commonwealth on October 30, 1981; his registration address is 36 Sun Flower Lane, Lewistown, PA 17044; and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.
2. By Order of the Pennsylvania Supreme Court dated April 20, 2007, Respondent was suspended from the practice of law for one year and one day. Respondent has not filed a Petition for Reinstatement at this time.

FILED

SEP 22 2008

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

3. Mr. Roselle is unrepresented by counsel.
4. Courtney M. Sprenkel retained Respondent in late September or early October 2006 to represent her in a divorce.
5. Ms. Sprenkel paid Respondent \$200 on October 5, 2006 and an additional \$125 on October 17, 2006, \$50.00 of which was paid to have a constable serve the divorce complaint on her husband.
6. Respondent failed to communicate the basis of his fees in writing within a reasonable time after beginning the representation.
7. After waiting 90 days, Ms. Sprenkel called Respondent repeatedly to find out the status of the case.
8. Respondent failed to return her phone calls.
9. In approximately January 2007, Ms. Sprenkel was able to reach Respondent by telephone at which time he advised her that he was working on her divorce and it would be done shortly, but failed to provide her with any other information.
10. Ms. Sprenkel called Respondent repeatedly over the next several months to find out the status of her divorce and left several voicemail messages.
11. Respondent failed to return her phone calls.
12. By Order of the Pennsylvania Supreme Court dated April 20, 2007, Respondent was suspended from the practice of law for one year and one day.
13. Respondent failed to notify Ms. Sprenkel that he had been suspended pursuant to Pa.R.D.E. 217(b).

14. Respondent failed to file a Certificate of Compliance pursuant to Pa.R.D.E. 217(e).

15. In July 2007, Ms. Sprenkel went to the Prothonotary's Office to find out the status of her divorce. She was told that the only papers that had been filed in this matter were the divorce complaint and notice to defend. She was also advised that Respondent was suspended from the practice of law.

16. On or about November 14, 2007, Ms. Sprenkel terminated Respondent's representation and asked for a refund of the fees that she had paid Respondent. She sent this request to the last known address that Respondent had provided to her, 960 Alfaretta Road, Suite B, Lewistown, PA 17044.

17. Respondent failed to respond to Ms. Sprenkel's request for a refund or return her file.

RULES VIOLATED

18. Respondent has, by his conduct as set forth herein above in paragraphs 1 through 17, inclusive, violated the following Rules of Professional Conduct:

- | | |
|---------------|--|
| RPC 1.3 | A lawyer shall act with reasonable diligence and promptness in representing a client. |
| RPC 1.4(a)(3) | A lawyer shall keep the client reasonably informed about the status of the matter. |
| RPC 1.4(a)(4) | A lawyer shall promptly comply with reasonable requests for information. |
| RPC 1.5(b) | When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within |

a reasonable time after commencing the representation.

RPC 1.15(b)

Upon receiving property of a client or third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

RPC 1.16(d)

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.

Pa.R.D.E. 217(b)

A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, 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 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 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 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.

Pa.R.D.E. 217(e) Within ten days after the effective date of the disbarment, suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing:

- (1) that the provisions of the order and these rules have been fully complied with; and
- (2) all other state, federal and administrative jurisdictions to which such person is admitted to practice. Such statement shall also set forth the residence or other address of the formerly admitted attorney where communications to such person may thereafter be directed.

MITIGATING CIRCUMSTANCES

19. Respondent has cooperated with the Office of Disciplinary Counsel.

20. Respondent has accepted responsibility for his misconduct in this matter.

21. Respondent is currently suspended and has not engaged in the practice of law for over a year.

22. Respondent has had severe physical problems in the past few years including gout, diverticulitis, and total knee replacement surgery. He has suffered from depression and also had a relapse of alcohol abuse for which he was treated as an inpatient.

23. Respondent was in severe pain from late 2006 until his knee replacement surgery in March 2007.

24. Respondent's only income is social security disability, and he has had tremendous financial pressures due to his health problems and suspension.

25. Notwithstanding his health and financial problems, Respondent has agreed to refund to Ms. Sprenkel a total of \$175, paying \$100 in October 2008 and \$75 in November 2008. The rest of the advanced retainer that Ms. Sprenkel paid Respondent was used to pay filing fees for her divorce and to serve Ms. Sprenkel's husband with the divorce complaint.

26. Since Respondent has virtually no financial resources, he respectfully requests that the Disciplinary Board waive or defer any costs or fees that might be assessed relative to the processing and/or consideration of this Petition. The contentions of indigency as set forth in this Petition are those of the Respondent and are made pursuant to the penalties provided by 18 Pa.C.S. Section 4904 (relating to unsworn falsification to authorities.)

AGGRAVATING CIRCUMSTANCES

27. Respondent has prior disciplinary history consisting of an Informal Admonition which he received on February 3, 2005 at File No. C3-04-586. In that case, Respondent was appointed to represent a qualified public defender client, yet he attempted to collect a fee from his client, which was an illegal fee in violation of Rule 1.5(a).

28. By Order of the Supreme Court of Pennsylvania dated April 20, 2007, Respondent was suspended for a period of a year and a day for failing to appear for a Private Reprimand on two prior occasions. Respondent also failed to comply with a condition that he provide proof that he had taken care of six matters that he had neglected. In those cases, Respondent admitted and

explained his neglect of six client matters by stating: "Over the past 18 months, I was paralyzed by inactivity and basically nonfunctional."

SPECIFIC JOINT RECOMMENDATIONS FOR DISCIPLINE

29. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's failure to handle the Sprenkel matter is a six month suspension consecutive to his suspension for a year and a day.

30. The Respondent hereby consents to this six month suspension.

31. Attached to this Petition is the Respondent's executed Affidavit required by Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement, stating that he consents to the recommended discipline, including the mandatory acknowledgements contained in Rule of Disciplinary Enforcement 215(d)(1) through (d)(4).

32. It is respectfully submitted that existing case law supports Petitioner and Respondent's Joint Recommendation as follows.

33. In *Office of Disciplinary Counsel v. Michael Levine*, No. 1129, Disciplinary Docket No. 3, No. 163 DB 2004, respondent was suspended for a year and a day for violating Rules of Professional Conduct 1.3, prior RPCs 1.4(a), 1.4(b), 1.15(b), 1.16(d) and 8.4(d) in connection with three immigration matters. After the suspension was imposed, the Office of Disciplinary Counsel received an additional four complaints alleging neglect, lack of communication and failure to refund unearned fees in connection with four additional client matters. Respondent and the Office of Disciplinary Counsel filed a Joint Petition for Consent Discipline in a case docketed to No. 18 DB 2007, in which the

Disciplinary Board of the Supreme Court of Pennsylvania recommended a year suspension consecutive to the year to the year and a day suspension previously entered. Said Joint Petition was accepted by the Pennsylvania Supreme Court based on respondent's violations of Rules of Professional Conduct 1.1, 1.3, 1.4(a), 1.4(b), 1.15(a), 1.15(b), and 1.16(d). Thus, respondent received a suspension of two years plus one day for the seven client matters that he neglected.

34. Respondent's situation is substantially similar to Mr. Levine's case in that discipline was imposed as a result of a history of discipline involving multiple cases of neglect, lack of communication and failure to refund fees. In Respondent's prior suspension case, Respondent admitted neglecting six cases and in this present Joint Petition, Respondent neglected one case, for a total of seven clients. Disciplinary Counsel took into consideration that this Joint Petition only involves one client matter in determining that Respondent's suspension should be relatively short; however, Respondent's failure to advise his client that he had been suspended from the practice of law, and his failure to file a verified statement of compliance with Rule 217 are aggravated factors. Thus, this office has determined that a suspension of six months consecutive to the year and a day suspension that was previously ordered is an appropriate disposition.

WHEREFORE, Petitioner and Respondent respectfully request that pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e) and 215(g), the three member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and order a suspension of six

months consecutive to his current suspension for violations of Rules of Professional Conduct 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.5(b), 1.15(b) and 1.16(d) and Rules of Disciplinary Enforcement 217(b) and 217(e). Further, it is requested that the three member panel agree to waive or defer the payment of the necessary expenses incurred in the investigation in this matter until such time as Respondent applies for reinstatement.

Respectfully submitted,

Sep 16, 08

Michael A. Roselle

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Patti S. Bednarik

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Attorney I.D. No. 54664

BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. ___ DB ___
Petitioner	:	
	:	
v.	:	Attorney Reg. No. 34537
	:	
MICHAEL A. ROSELLE	:	
Respondent	:	(Mifflin County)

VERIFICATION

The statements contained in the foregoing Petition in Support of Discipline on Consent of the Pennsylvania Rules of Disciplinary Enforcement 215(d), are true and correct to the best of our knowledge, information and belief, and are subject to penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

Sept 14, 08
Date

Michael A. Roselle
Michael A. Roselle
Attorney ID No. 34537
36 Sun Flower Lane
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(717) 543-6436

9/20/08
Date

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