

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1330 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 87 DB 2007
v.	:	
	:	Attorney Registration No. 85306
DONALD CHISHOLM, II,	:	
Respondent	:	(Philadelphia)

ORDER

PER CURIAM:

AND NOW, this 20th day of March, 2008, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated November 16, 2007, 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 Donald Chisholm, II, be subjected to public censure by the Supreme Court.

A True Copy Patricia Nicola

As of: March 20, 2008

Attest: 
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

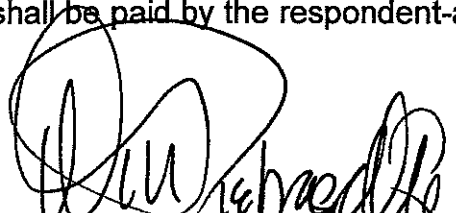
OFFICE OF DISCIPLINARY COUNSEL : No. 87 DB 2007
Petitioner :
v. : Attorney Registration No. 85306
DONALD CHISHOLM, II :
Respondent : (Philadelphia)

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

The Three-Member Panel of the Disciplinary Board of the Supreme Court of Pennsylvania, consisting of Board Members William A. Pietragallo, Robert C. Saidis and Sal Cognetti, Jr., has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on October 17, 2007.

The Panel approves the Joint Petition consenting to a Public Censure and recommends to the Supreme Court of Pennsylvania that the attached 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.



William A. Pietragallo, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: November 16, 2007

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 87 DB 2007

Petitioner :

: (Complaint Files C1-06-1099 and
: C1-07-169)

v. :

: Attorney Registration No. 85306

DONALD CHISHOLM, II, :

Respondent : (Philadelphia)

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

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

Donna M. Snyder
Disciplinary Counsel
Seven Penn Center
1635 Market Street
16th Floor
Philadelphia, PA 19103
(215) 560-6296

and

Samuel C. Stretton, Esquire
Counsel for Respondent
301 South High Street
P.O. Box 3231
West Chester, PA 19381
(610) 696-4243

FILED

OCT 17 2007

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

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 87 DB 2007

Petitioner :

: (Complaint Files C1-06-1099
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DONALD CHISHOLM, II, :

Respondent : (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Donna M. Snyder, Disciplinary Counsel, and Respondent, Donald Chisholm, II, represented by counsel, file this Joint Petition In Support Of Discipline On Consent Under Rule 215(d), Pennsylvania Rules of Disciplinary Enforcement and respectfully represent that:

1. Respondent, Donald Chisholm, II, Esquire, was born on June 6, 1971 and was admitted to practice law in the Commonwealth of Pennsylvania on May 15, 2000.

2. Respondent's present attorney registration address is 21 S. 12th Street, Suite 1050, Philadelphia, PA 19107.

3. Petitioner filed a Petition for Discipline against Respondent with the Secretary of the Disciplinary

Board on June 14, 2007. By letter dated June 15, 2007, the Petition for Discipline with Notice to Plead was served by certified mail, return receipt requested upon Respondent's Counsel, Samuel S. Stretton, Esquire at 301 S. High Street, P.O. Box 3231, West Chester, PA 19381.

4. Respondent filed an Answer to the Petition for Discipline on August 7, 2007.

5. On September 12, 2007, Respondent and Petitioner executed Joint Stipulations of Fact and Law, and Joint Stipulations of Fact Pursuant to D.Bd. Rules §89.151(b).

SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED

6. Respondent stipulates that the following factual allegations contained in the Petition for Discipline are true and correct and that he violated the charged Rules of Professional Conduct.

CHARGE I: The Pearsall Matter

7. By letter, to Respondent, dated July 14, 2004, from the Court of Common Pleas, Office of Court Administration, Respondent was court-appointed to represent Timothy Pearsall in his Post-Conviction Relief Act Petition.

8. The appointment was not transferable and was effective from the time of appointment through and

including appeals to the highest appellate state court, including new trials, if any.

9. On or about January 3, 2005, Mr. Pearsall was granted leave to file an appeal *nunc pro tunc* to the Superior Court.

10. On or about January 20, 2005, Respondent filed a Notice of Appeal in Superior Court.

11. By letter dated February 17, 2005, from David A. Szewczak, Prothonotary, Superior Court of Pennsylvania, Mr. Szewczak, pursuant to Pennsylvania Rule of Appellate Procedure 3517, enclosed the Superior Court Docketing Statement.

- a. The letter advised Respondent, *inter alia*, that failure to file a timely completed Docketing Statement may result in dismissal of the appeal.

12. By letter dated March 21, 2005, to Respondent, Charles E. O'Connor, Jr., Deputy Prothonotary, Superior Court of Pennsylvania, attached an Order stating that "appellant has failed to file timely the docketing statement required by Pa.R.A.P. 3517."

- a. The Order directed appellant to file the Docketing Statement by March 31, 2005, and directed that failure to do so by that date

would lead to an Order dismissing the appeal.

13. On or about March 31, 2005, the Court received the Docketing Statement.

14. By letter dated June 16, 2005, to Respondent, Cureley Antell Cole, Esquire, Judicial Law Clerk, enclosed a copy of the Order under Rule 1925(b) of the Pennsylvania Rules of Appellate Procedure entered by the Honorable Joan A. Brown.

a. The letter advised Respondent that in the event that Judge Brown did not receive a concise Statement of Matters Complained of on Appeal by the close of business on June 30, 2005, no opinion would be filed and any appeal issues would likely be deemed waived.

15. By Order dated July 20, 2005, Respondent was notified that pursuant to Pa.R.A.P. 2185(a), briefs for the appellant must be filed on or before August 29, 2005.

a. The Order notified Respondent, *inter alia*, that upon failure to timely file briefs for the appellant, the court would, on its own motion and without further notice, dismiss the appeal.

16. Respondent failed to file a brief.

17. By Order dated September 27, 2005, the Superior Court:

-
- a. ~~dismissed the appeal for Respondent's~~ failure to file a brief;
 - b. directed the trial court to withhold counsel fees pertaining to the appeal; and
 - c. directed Respondent to file with the Superior Court, within ten days, a certification that the client had been notified of the dismissal of his appeal.

18. The Superior Court served Respondent with a copy of the September 27, 2005 Order.

19. Respondent failed to advise Mr. Pearsall that his appeal had been dismissed and to file a certification with the Superior Court, as ordered.

20. Respondent failed to take any further action on Mr. Pearsall's behalf after filing the Docketing Statement on March 31, 2005.

CHARGE II: The Bey Matter

21. By letter to Bernard Bey, dated August 10, 2005, Respondent advised Mr. Bey that Sean Thomas, a friend of Mr. Bey's, had retained Respondent as Mr. Bey's attorney.

22. Following a one-day waiver trial, the Honorable Christopher R. Wogan found Mr. Bey guilty.

23. By letter, to Respondent, dated May 4, 2006, Mr. Bey advised Respondent that he wanted Respondent to file an appeal on his behalf.

24. On May 19, 2006, Respondent filed a notice of appeal, which was docketed in Superior Court at 1547 EDA 2006 on June 13, 2006.

25. By letter, to Respondent, dated May 29, 2006, Mr. Bey:

- a. confirmed that he had written to Respondent on May 4, 2006 and informed Respondent that he wanted Respondent to appeal his conviction; and
- b. requested that Respondent respond to his letter by informing him of the status of his appeal and furnish him with "any and all copies that were submitted on this particular matter."

26. By letter dated July 17, 2006, from Karen Reid Bramblett, Prothonotary, Superior Court of Pennsylvania, Respondent was notified that the attached Order had been entered, advising Respondent that appellant failed to file timely the docketing statement required by Pa.R.A.P. 3517.

- a. The Order directed the appellant to file a docketing statement by July 27, 2006, and

advised that failure to do so would lead to an Order dismissing the appeal.

27. On July 27, 2006, Respondent filed a docketing statement.

28. By Order dated November 9, 2006, Respondent was notified that pursuant to Pa.R.A.P. 2185(a), briefs for the appellant must be filed on or before December 19, 2006.

a. The Order notified Respondent, *inter alia*, that upon failure to timely file briefs for the appellant, the court would, on its own motion and without further notice, dismiss the appeal.

29. Respondent failed to file a brief.

30. By Order dated January 22, 2007, the Superior Court:

- a. dismissed Mr. Bey's appeal for failure to file a brief;
- b. directed Respondent to file with the Court within ten days a Certification that the client had been notified of the dismissal; and
- c. advised that failure to comply may result in a referral to the Disciplinary Board.

31. Respondent failed to advise Mr. Bey that his appeal had been dismissed.

32. Respondent admits that by his conduct as described in paragraphs 7 through 31 above, he violated the following Rules of Professional Conduct:

- a. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.4(a)(3), which states that a lawyer shall keep a client reasonably informed about the status of the matter;
- c. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information; and
- d. 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.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

33. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a Public Censure.

34. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of

Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

35. In support of Petitioner and Respondent's joint recommendation; it is respectfully submitted that as an aggravating factor Respondent has prior discipline. In January 2005, Respondent received a Private Reprimand and was placed on probation for a period of one year with a practice monitor for his violation of RPC 8.4(a) and RPC 8.4(c).

Although there are no per se rules for discipline in this jurisdiction, Respondent has received a private reprimand with one year of probation and a practice monitor. Respondent obviously did not take his past disciplinary history seriously. Respondent should receive a public censure in order to reinforce the fact that he cannot take court appointments and not follow through for his clients.

36. A public censure is within the range of discipline imposed on attorneys who engage in neglect and have a record of discipline. *E.g., Office of Disciplinary Counsel v. Neil Jokelson*, Nos. 58 DB 1998 and 102 DB 1998,

neglected two client matters and had a history of private discipline for similar types of neglect received a public censure and probation with a practice monitor). In a recent consent discipline matter, the Court approved and imposed a public censure on a respondent who had neglected two criminal appellate matters and had a record of private discipline in the nature of an informal admonition on two complaint matters and a private reprimand. *Office of Disciplinary Counsel v. Edward C. Meehan, Jr.*, No. 26 DB 2006 (S.Ct. Order 9/18/06).

WHEREFORE, Petitioner and Respondent respectfully request that:

(a) Pursuant to Rule 215(e) and 215(g), 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 the Supreme Court enter an Order whereby Respondent receive a Public Censure for his neglect in two client matters; and

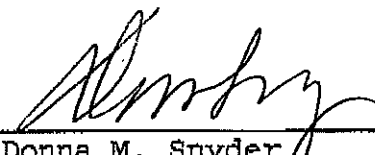
(b) Pursuant to Rule 215(i), the three-member panel of the Disciplinary Board order Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter as a

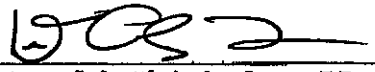
condition to the grant of the Petition and that all expenses be paid by Respondent before the imposition of discipline under Rule 215(g), Pa.R.D.E.

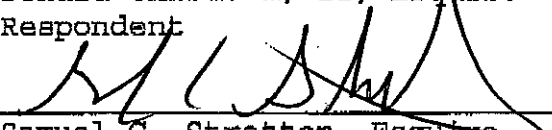
Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By 
Donna M. Snyder
Disciplinary Counsel

By 
Donald Chisholm, II, Esquire
Respondent

By 
Samuel C. Stretton, Esquire
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
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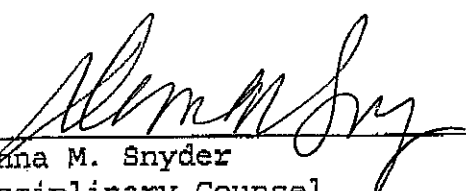
DONALD CHISHOLM, II, :

Respondent : (Philadelphia)


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.

10/15/07
Date


Donna M. Snyder
Disciplinary Counsel

10/5/2007
Date


Donald Chisholm, II, Esquire
Respondent

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

Respondent, Donald Chisholm, II, hereby states that he consents to the imposition of a Public Censure as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition In Support Of Discipline On Consent and further states that:

1. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted with counsel in connection with the decision to consent to discipline;

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


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

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



Donald Chisholm, II, Esquire
Respondent

Sworn to and subscribed
before me this 5th
day of October, 2007.


Notary Public

