

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2315 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 132 DB 2016
	:	
	:	Attorney Registration No. 312765
v.	:	
	:	(Out of State)
MEGAN McCARTHY CLARK	:	
	:	
Respondent	:	
	:	

ORDER

PER CURIAM

AND NOW, this 17<sup>th</sup> day of November, 2016, 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. Respondent Megan McCarthy Clark is suspended on consent from the Bar of this Commonwealth for a period of six months and she shall comply with all the provisions of Pa.R.D.E. 217.

A True Copy Patricia Nicola  
As Of 11/17/2016

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 137 DB 2016  
Petitioner :  
 : Board File No. C2-16-552  
v. :  
 : Attorney Reg. No. 312765  
MEGAN MCCARTHY CLARK, :  
Respondent : (Out of State)

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

Petitioner, the Office of Disciplinary Counsel (hereinafter, "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Barbara Brigham Denys, Disciplinary Counsel, and Respondent, Megan McCarthy Clark (hereinafter "Respondent") respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

1. ODC, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters

**FILED**

AUG 17 2016

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

involving alleged 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 Enforcement Rules.

2. Respondent, Megan McCarthy Clark, was born on March 29, 1985, and was admitted to practice law in the Commonwealth of Pennsylvania on February 7, 2012.

3. Respondent has never been admitted to practice law in the Commonwealth of Massachusetts or in any other jurisdiction, including the United States Patent and Trademark Office.

4. On July 1, 2012, Respondent was placed on voluntary inactive status, and has continued from that date to the present to register annually with Attorney Registration for voluntary inactive status and pay the annual inactive fee.

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

**SPECIFIC FACTUAL AND LEGAL ADMISSIONS**

6. From in or about July 2011, to November 2013, Respondent was employed by JumpTap, Inc. ("Jumptap") as Assistant IP Counsel. In that position, Respondent worked from a JumpTap office located in Boston, Massachusetts.

7. In November 2013, Millennial Media, Inc. ("Millennial Media") acquired JumpTap.

8. From November 2013, to October 2015, Respondent was

employed by Millennial Media as Assistant Counsel, and continued to work out of the Boston location where she had worked as Assistant IP Counsel for JumpTap.

9. In October 2015, AOL Inc. ("AOL") acquired Millennial Media.

10. From October 2015, to January 2016, Respondent was employed by AOL as Corporate Counsel on a contract basis. In that position, Respondent worked remotely from her home in Charlestown, Massachusetts to assist AOL with the transition of all Millennial Media patent work.

11. While a formerly admitted attorney, Respondent engaged in the unauthorized practice of law in connection with her in-house counsel roles at JumpTap, Millennial Media, and AOL, respectively.

12. Respondent's unauthorized practice of law included her work in preparing and/or reviewing and revising nondisclosure agreements and drafting patent documents for submission to the United States Patent and Trademark Office ("USPTO").

13. As part of the legal team at JumpTap and Millennial Media, Respondent worked most immediately with and under the supervision of Alexander Detschelt, Esquire, an intellectual property attorney who was actively admitted to practice law in the Commonwealth of Massachusetts and before the USPTO at all times relevant to this matter.

14. Respondent never disclosed to her respective employers while working in positions as in-house counsel that she was not actively licensed to practice law in any jurisdiction.

15. As an in-house counsel engaged in the practice of law in the Commonwealth of Massachusetts, Respondent was required to register with its Board of Bar Overseers as dictated by Massachusetts Supreme Judicial Court Rule 4:02(9)(a), which states:

Any attorney who is admitted in another United States jurisdiction, and not disbarred or suspended from practice in any jurisdiction, and who wishes to engage in the practice of law as in-house counsel in the Commonwealth of Massachusetts shall advise the Board by (i) filing an appropriate annual registration statement that he or she will limit legal practice in Massachusetts to engaging in the practice of law as in-house counsel, and (ii) identifying the organization on whose behalf the legal services are provided. The initial annual registration statement shall be accompanied by a certificate of good standing from each jurisdiction in which the attorney is licensed to practice law. The initial annual registration statement and all later annual registration statements shall disclose whether the attorney is in good standing in each jurisdiction to which he or she is admitted, and, if not in good standing in any jurisdiction, it shall contain an explanation of the circumstances. The initial annual registration statement and all later annual registration statements shall be signed by an authorized representative of the organization on whose behalf the attorney seeks to engage in the practice of law as in-house counsel. Unless the Board of Bar Overseers objects, after filing such initial statement the attorney may engage in the practice of law as in-house counsel in the Commonwealth of Massachusetts as described in the filing under this rule.

16. Respondent never registered as an in-house counsel in Massachusetts and would not have been eligible to do so without activating her Pennsylvania license to obtain a certificate of good standing from the Supreme Court of Pennsylvania Prothonotary's Office as required by Massachusetts Supreme Judicial Court Rule 4:02(9)(a).

17. On May 3, 2016, Respondent filed a Petition for Reinstatement and Special Reinstatement Questionnaire.

- a. In the Petition for Reinstatement, Respondent stated: "From May 2010 until September 2015 Petitioner practiced primarily in Massachusetts. At all times material to this Petition, Petitioner had been employed as an intellectual property manager in Massachusetts as well as unemployed while being a stay-at-home parent. Petitioner has not practiced in the Commonwealth of Pennsylvania."
- b. In the Special Reinstatement Questionnaire, in which Respondent was asked to provide information regarding her employment during the period of her inactive status, Respondent identified her positions held at Jumtap and Millennial Media as "IP manager."
- c. Respondent failed to identify her Corporate Counsel contract position with AOL and her job titles of

Assistant IP Counsel and Assistant Counsel at Jumptap and Millennial Media.

- d. Respondent responded "No" to the question: "Have any legal services been performed for clients with or without fee during the period of inactive status, retired states or administrative suspension?"

18. Respondent acknowledges that she was not forthright in the Petition for Reinstatement and Special Reinstatement Questionnaire in identifying and describing her positions held during her period of inactive status.

19. Respondent claims to have operated under the mistaken belief that her work for JumpTap, Millennial Media, and AOL did not constitute engagement in the practice of law and subject her to any requirement that she maintain any active license to practice law in any jurisdiction and register annually with the Massachusetts Board of Bar Overseers as an in-house counsel.

20. The Petition for Reinstatement has been withdrawn, and Respondent anticipates filing a new petition for reinstatement from inactive status after this disciplinary matter concludes.

21. According to Respondent, she has not engaged in the practice of law and/or law-related activities since her position with AOL concluded. She is, however, seeking employment in the Commonwealth of Pennsylvania and is aware of all the provisions of

Rule 217, Pa.R.D.E.

22. By Respondent's conduct as alleged in paragraphs 1 through 21 above, Respondent violated the following Rules of Professional Conduct:

- a. 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; and
- b. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

**SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE**

23. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a six (6) month suspension from the practice of law.

24. Respondent consents to that discipline being imposed upon her by the Supreme Court of Pennsylvania. Respondent's affidavit required by Rule 215, Pa.R.D.E., stating, *inter alia*, her consent to the recommended discipline, is attached hereto as Exhibit A.

25. In support of the Joint Petition, the parties respectfully submit that the following mitigating circumstances are present:



- a. Respondent has admitted engaging in and expressed remorse for her misconduct;
- b. Respondent has cooperated with Petitioner by withdrawing her Petition for Reinstatement and entering into this Joint Petition to receive a six (6) month suspension; and
- c. Respondent has no prior history of discipline.

26. In Pennsylvania, there is no *per se* discipline for a particular type of misconduct; instead, each case is reviewed individually. *Office of Disciplinary Counsel v. Lucarini*, 417 A.2d 186 (Pa. 1983).

27. The imposition of a six (6) month suspension is consistent with the range of sanctions imposed in similar cases involving the unauthorized practice of law:

- a. For example, in *Office of Disciplinary Counsel v. D'Oyley*, No. 2107 DD No. 3, No. 137 DB 2014 (2014), the Pennsylvania Supreme Court imposed a six (6) month suspension on consent to address Ms. D'Oyley's unauthorized practice of law and law-related activity working in Pennsylvania in her roles as Assistant General Counsel and Associate General Counsel for a pharmaceutical company from May 2009 through April 2014;

- b. In *Office of Disciplinary Counsel v. Moore*, No. 1486 DD No. 3, No. 32 DB 2009 (2009), the Pennsylvania Supreme Court imposed a six (6) month suspension on consent to address Moore's unauthorized practice of law. Moore, who was General Counsel for a Pennsylvania company, remained in that position for a one-year period during which his license was inactive for failure to comply with CLE requirements. During that time, Moore answered legal questions the company had regarding approximately six business contracts while awaiting outside counsel's advice regarding significant legal issues; and
- c. In *Office of Disciplinary Counsel v. Talbot*, No. 1323 DD No. 3, No. 158 DB 2008 (2008), Talbot engaged in the unauthorized practice of law until regaining active status in August 2007. At or about that time, he voluntarily ceased practicing law and agreed to a temporary suspension. He was eventually suspended for six (6) months, retroactive to the date of his temporary suspension;

d. In the case of *Office of Disciplinary Counsel v. Price*, No. 1179 DD No. 3, No. 113 DB 2006 (2006), the Supreme Court approved a joint petition in support of a six (6) month suspension for Price who continued to practice law as a sole practitioner without supervision while on inactive status. Price, on behalf of several clients, appeared at judicial hearings, filed pleadings, provided legal consultation and advice, and negotiated or transacted matters with opposing counsel and/or third parties.

28. In light of the nature of the misconduct and the mitigating factors, Petitioner and Respondent submit that a six (6) month suspension is appropriate discipline.

WHEREFORE, Petitioner and Respondent respectfully request, pursuant to Rules 215(e) and 215(g)(2), that 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 a period of six (6) months, and that Respondent be ordered to pay

all necessary expenses incurred in the investigation and prosecution of this matter as a condition to this Joint Petition being granted.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION,  
Chief Disciplinary Counsel

Date: 8/16/14

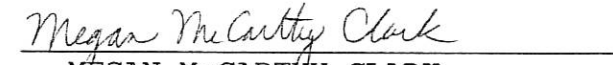
BY:



BARBARA BRIGHAM DENYS  
Disciplinary Counsel  
District II Office  
Attorney ID No. 78562  
Suite 170, 820 Adams Avenue  
Trooper, PA 19403  
(610) 650-8210

Date: 08/09/2016

BY:



MEGAN MCCARTHY CLARK  
Respondent

VERIFICATION

The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent* 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.A. §4904, relating to unsworn falsification to authorities.

Date: 8/14/14

BY:   
BARBARA BRIGHAM DENYS,  
Disciplinary Counsel

Date: 08/09/2016

BY: Megan McCarthy Clark  
MEGAN MCCARTHY CLARK,  
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
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Respondent : (Out of State)

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

COMMONWEALTH OF MASSACHUSETTS  
COUNTY OF MIDDLESEX

MEGAN McCARTHY CLARK, being duly sworn according to law, deposes and hereby submits this affidavit in support of the Joint Petition in Support of Discipline on Consent Pursuant to Rule 215(d), Pa.R.D.E., and further states as follows:

1. She desires to submit a Joint Petition in Support of Discipline on Consent ("Joint Petition") pursuant to Rule 215(d), Pa.R.D.E.

2. Her consent is freely and voluntarily rendered; she is not being subjected to coercion or duress, and she is fully aware of the implications of submitting the consent.

3. She is fully aware of her right to consult and employ counsel to represent her in the instant proceeding. She has not consulted or followed the advice of counsel in connection with her decision to consent to discipline.

4. She is aware that there is presently pending an investigation into allegations that she has been guilty of misconduct as set forth in the Joint Petition.

5. She acknowledges that the material facts set forth in the Joint Petition are true.

6. She consents because she knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, she could not successfully defend against them.

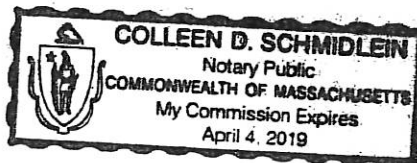
It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 9<sup>th</sup> day of August, 2016.

Megan McCarthy Clark  
MEGAN MCCARTHY CLARK

Sworn to and subscribed  
before me this 9<sup>th</sup> day  
of August, 2016.

[Signature]  
Notary Public



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CERTIFICATE OF SERVICE


I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

First Class Mail, as follows:

Megan McCarthy Clark  
37 Devens Street  
Marlborough, MA 01752

Date: 8/16/16

BY:

  
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Disciplinary Counsel  
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