

IN THE SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL, : No. 2316 Disciplinary Docket No. 3
: :
Petitioner : No. 108 DB 2016
: :
v. : Attorney Registration No. 208273
: :
MICHAEL JOSEPH VISCUSO, : (Delaware County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 27th day of April, 2017, 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, and Michael Joseph Viscuso is suspended on consent from the Bar of this Commonwealth for a period of one year and one day, retroactive to November 9, 2016. He shall comply with all the provisions of Pa.R.D.E. 217.

A True Copy Patricia Nicola
As Of 4/27/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 108 DB 2016
Petitioner :
: v. :
: Attorney Reg. No. 208273
MICHAEL JOSEPH VISCUSO, :
Respondent : (Delaware County)

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 Harold E. Ciampoli, Jr., Disciplinary Counsel and Respondent, Michael Joseph Viscuso (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 Ave., Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant

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

to Pa.R.D.E. 207, with the power and duty to investigate all matters 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, Michael Joseph Viscuso, was born on March 2, 1982, and was admitted to practice law in the Commonwealth on November 14, 2008. On October 27, 2016, Petitioner and Respondent filed a Joint Petition to Temporarily Suspend an Attorney and by Order dated November 9, 2016, the Supreme Court of Pennsylvania placed Respondent on temporary suspension. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

3. On April 12, 2013, Respondent entered his appearance on behalf of the defendant in the matter captioned: *Nacoreyus Hough v. Carlee Marie Cadden*, Delaware County Court of Common Pleas, No. 2012-052945 (hereinafter, "Cadden Matter").

4. Although Respondent had not previously represented Ms. Cadden, he never provided her a writing that explained the rate or basis of his fee.

5. An arbitration hearing for the Cadden Matter was scheduled for October 8, 2013.

6. On October 8, 2013, Respondent entered into an agreement on behalf of Ms. Cadden to settle the Cadden Matter for \$2,000.00.

7. Respondent represented to Phyllis Haskin, attorney for Mr. Hough, that Respondent would collect the \$2,000.00 from Ms. Cadden and provide it to Ms. Haskin's office.

8. In November 2013, Ms. Cadden provided Respondent \$2,500.00 to settle the Cadden Matter.

9. Respondent converted, misapplied or misappropriated Ms. Cadden's \$2,500.00.

10. By letters dated February 27, 2014, May 5, 2014, and June 27, 2014, Ms. Haskin requested Respondent to contact her immediately to complete the settlement Respondent had entered into in the Cadden Matter.

11. Respondent did not respond in any manner to Ms. Haskin's letters.

12. On July 28, 2014, Ms. Haskin filed a Petition to Enforce Settlement, alleging *inter alia*, that Respondent had not communicated with her or provided her a release and status of the settlement funds in the Cadden Matter.

13. Although Respondent received the Petition to Enforce Settlement, Respondent did not respond in any manner.

14. Respondent did not inform Ms. Cadden of the Petition to Enforce Settlement.

15. By Order dated September 23, 2014, Judge G. Michael Green granted the Petition to Enforce Settlement and ordered Ms. Cadden to pay the settlement amount to Plaintiff within twenty days or suffer sanctions.

16. Although Respondent received the September 23, 2014 Order, Respondent did not respond in any manner.

17. Respondent did not inform Ms. Cadden of the September 23, 2014 Order.

18. On October 2, 2014, Ms. Cadden texted Respondent:

- a) advising she had just received the September 23, 2014 Order from the Court "regarding the car accident we settled in court"; and
- b) inquiring if Respondent knew "why they are sending this after we agreed on the settlement payment I made? Kinda has me worried."

19. Respondent responded to Ms. Cadden's October 2, 2014 text on the same date as follows: "I will deal with it. Don't worry."

20. On November 7, 2014, Ms. Cadden texted Respondent the following: "hey Mike. The court still has the case listed as 'notice of order' and doesn't show the case is satisfied. I have

to prove this is settled for the gaming control board to renew my license at work. lmk. thanks."

21. Respondent responded to Ms. Cadden's November 7, 2014 text on the same date as follows: "It should be resolved by mid-November. Sometimes the court takes awhile. I will call the court and the attorney."

22. By Order dated November 19, 2014, effective December 19, 2014, the Supreme Court of Pennsylvania administratively suspended Respondent pursuant to Rule 111(b) of the Pennsylvania Rules for Continuing Legal Education (Pa.R.C.L.E.) for failing to comply with CLE requirements.

23. Respondent did not timely file a verified Statement of Compliance (Form DB-25(a)) with the Disciplinary Board's Secretary within ten (10) days after the effective date of his administrative suspension.

24. In connection with the Cadden Matter, Respondent failed to notify the court, opposing counsel and Ms. Cadden that he had been administratively suspended and Respondent failed to timely withdraw his appearance after the effective date of his administrative suspension.

25. On May 28, 2015, Ms. Haskin filed a Motion for Sanctions for Failure to Comply with the September 23, 2014 Order.

26. A hearing on the Motion for Sanctions was scheduled for July 9, 2015.

27. Respondent received notice of the July 9, 2015 hearing.

28. Respondent never notified Ms. Cadden of the July 9, 2015 hearing.

29. Neither Respondent nor Ms. Cadden appeared at the July 9, 2015 hearing.

30. On July 14, 2015 and July 15, 2015, Ms. Cadden texted Respondent and requested an explanation about correspondence she was receiving regarding her debt not being paid.

31. Respondent did not respond to Ms. Cadden's July 2015 texts.

32. By Amended Order dated July 16, 2015, Judge Green granted the Motion for Sanctions and ordered Defendant to remit the settlement amount of \$2,000.00, plus sanctions of \$500.00, to the plaintiff within twenty days or suffer sanctions.

33. Respondent received the July 16, 2015 Order.

34. Respondent did not inform Ms. Cadden of the July 16, 2015 Order.

35. On September 1, 2015, Ms. Haskin filed a Motion for Sanctions for failure to comply with the September 23, 2014 and July 9, 2015 Orders.

36. On November 23, 2015, a hearing on the Motion for Sanctions was conducted before Judge Green.

37. Respondent had notice of the November 23, 2015 hearing.

38. Respondent did not inform Ms. Cadden of the November 23, 2015 hearing.

39. Neither Respondent nor Ms. Cadden attended the November 23, 2015 hearing.

40. By Order dated November 23, 2015, Judge Green granted the Plaintiff's Second Motion for Sanctions and ordered Defendant to pay an additional attorney fee of \$500.00.

41. On December 4, 2015, Ms. Cadden emailed Respondent the following: "hey Mike I have been trying to reach you. I am getting letter after letter about this and I do not have any money to deal with this. I need you to help straighten this out. If (sic) is almost two years since it should have been taken care of. I completely understand you have been through a lot, as I have been through the same. I am not angry with you about that, but I need your help fixing this. Your (sic) family so we should be there for each other no matter what. Please call me."

42. Respondent did not respond to Ms. Cadden's December 4, 2015 email.

43. Respondent has not communicated with Ms. Cadden since November 2014.

44. By Order dated October 18, 2016, Judge Green granted the Plaintiff's Motion to Reduce the Court Order of November 23, 2015 to Judgment and entered Judgment against Ms. Cadden in the amount of \$3,000.00.

45. On March 18, 2016, Petitioner mailed a DB-7 Request for Statement of Respondent's Position by regular and certified mail to Respondent's last registered address of 119 Knollwood Court, Aston, PA 19014.

46. Both mailings of the DB-7 were returned to Petitioner on March 28, 2016 marked *Moved; Left no forwarding address; Unable to forward; Return to Sender.*

47. In April 2016, Petitioner learned that Respondent was temporarily residing at the Raven Motel in Media, Pa.

48. On April 7, 2016, Petitioner personally served Respondent at the Raven Motel with the DB-7 Letter Request for Statement of Respondent's Position in connection with the Cadden Matter.

49. Respondent did not submit a Statement of Position.

50. On July 14, 2016, Petitioner filed a Petition for Discipline against Respondent.

51. When Petitioner attempted to serve Respondent at the Raven Motel, Petitioner was informed by the manager that Respondent had moved and left no forwarding address.

52. Petitioner performed a diligent search but was unable to locate Respondent and personally serve him with the Petition for Discipline.

53. In August 2016, Petitioner served the Petition for Discipline upon Respondent by certified and regular mail addressed to Respondent's last registered address of Aston, PA.

54. Respondent received the Petition for Discipline.

55. Respondent did not file an Answer within the prescribed time and under the provisions of Rule 208(b)(3), Pa.R.D.E. the factual allegations of the Petition for Discipline were deemed admitted.

56. A Notice of Prehearing Conference and Disciplinary Hearing were mailed to the parties advising that a Prehearing Conference was scheduled for September 21, 2016, and a Disciplinary Hearing was scheduled for October 27, 2016.

57. Respondent received the Notice of Prehearing Conference and Disciplinary Hearing.

58. Respondent did not appear at the Prehearing Conference on September 21, 2016.

59. Shortly before the scheduled Disciplinary Hearing, Petitioner was successful in communicating with Respondent.

60. On October 27, 2016, Respondent appeared at the scheduled Disciplinary Hearing, at which time Respondent explained:

- a) Since April 2016, he had been participating in various forms of inpatient and outpatient drug and alcohol rehabilitation;
- b) Although Respondent had received the Petition for Discipline and the notice of hearings, he did not attend the Prehearing Conference because he wished to focus on his recovery and was willing to accept any consequences which would result from these disciplinary proceedings;
- c) He now wished to cooperate with the Board fully, given his lack of participation previously;
- d) He was requesting a continuance of the disciplinary hearing to allow him to negotiate with Petitioner a possible consent discipline petition; and
- e) He was agreeable to entering into a joint petition for temporary suspension.

61. The Hearing Committee granted Respondent's request to continue the hearing and by Order dated November 7, 2016, the Disciplinary Board continued the hearing to January 9, 2017.

62. On October 27, 2016, Petitioner and Respondent filed a Joint Petition to Temporarily Suspend an Attorney.

63. By Order dated November 9, 2016, the Supreme Court of Pennsylvania placed Respondent on temporary suspension.

SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED

64. By his conduct as alleged in Paragraphs 3 through 62 above, Respondent violated the following Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

A. RPC 1.1, which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

B. RPC 1.2(a), which provides that a lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. A lawyer shall abide by a client's decision whether to settle a matter.

C. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client.

D. RPC 1.4(a)(2), which states that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

E. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter.

F. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information.

G. 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.

H. RPC 1.5(b), which states that 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.

I. RPC 1.15(b), which states that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

J. RPC 1.15(e), which provides that 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 the property.

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

L. Pa.R.D.E. 203(b)(7), which states that failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request for a statement of the respondent-attorney's position shall be grounds for discipline;

M. Pa.R.D.E. 217(b), which provides that a formerly admitted attorney shall promptly notify clients involved in pending litigation and the attorney for the adverse party of the administrative suspension and consequent inability of the formerly admitted attorney after the effective date of the administrative suspension;

N. Pa.R.D.E. 217(c)(2), which provides that a formerly admitted attorney shall promptly notify all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he continues as an attorney in good standing:

O. Pa.R.D.E. 217(e), which states that within ten days

after the effective date of the administrative suspension, the formerly admitted attorney shall file with the Secretary of the Board a verified statement, averring *inter alia*, that the provisions of these rules have been fully complied with.

SPECIFIC RECOMMENDATION FOR DISCIPLINE

65. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a one year and one day suspension.

66. 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.

67. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are mitigating circumstances:

- a) Respondent has demonstrated remorse and acceptance of responsibility by acknowledging he engaged in misconduct; admitting to violating the charged Rules of Professional Conduct; filing a joint petition for his temporary suspension; and

by consenting to receive a one year and one day suspension; and

b) Respondent has no record of prior discipline.

68. Respondent misappropriated \$2,500.00 that his client entrusted to him to settle her civil action. He exacerbated his misconduct by failing to communicate with his client and neglecting to defend her in connection with opposing counsel's efforts to enforce the settlement. Precedent in similar matters supports the recommendation that Respondent be suspended for one year and one day.

In *Office of Disciplinary Counsel v. Perry Lynn Flaugh*, No. 112 DB 2015 (D.Bd. Rpt. 6/15/16) (S.Ct. Order 8/12/16), Respondent Flaugh's lack of diligence and communication in his representation of his client and her parents over a period of eight years culminated with Flaugh's abandonment of his client and her claims, and the mishandling of approximately \$1,000.00 of funds entrusted to him. The Disciplinary Board weighed Respondent Flaugh's lack of discipline with the aggravating factor of his misrepresentation to Petitioner that he had made the \$1,000.00 check to his client's father, when he had in fact made it out to himself and negotiated it. Additional aggravating factors were that Flaugh had not reimbursed his client nor shown remorse for his actions. The Supreme Court accepted the

Disciplinary Board's recommendation and suspended Flaugh for a period of one year and one day.

In *Office of Disciplinary Counsel v. Dean Orloff*, No. 124 DB 2012, (D.Bd. Rpt.3/31/14)(S.Ct. Order 8/14/14), Orloff without authority endorsed his client's signature on a \$6,500.00 check and deposited it into his IOLTA account. Thereafter, Orloff knowingly misappropriated \$3,000.00 of his client's funds to his own personal use and later attempted to conceal his misconduct. In making its recommendation of a one year and one day suspension, the Disciplinary Board noted Orloff's failure to show remorse and accept responsibility. It also cited the following cases that resulted in a one year and one day suspension for the proposition "that a single instance of knowing or intentional misappropriation of funds, in an amount not considered extensive, and where respondent has no record of discipline, has resulted in suspension of one year and one day": *Office of Disciplinary Counsel v. John Richard Banke, II*, 58 DB 2012 (Recommendation of the Three-Member Panel of the Disciplinary Board 6/13/2012)(S.Ct. Order 8/16/12)(respondent misappropriated \$5,000.00 in one client matter); *Office of Disciplinary Counsel v. James Lawrence Paz*, 97 DB 2010(Recommendation of Three-Member Panel 7/8/10)(S.Ct. Order 8/20/10) (respondent, who was remorseful and accepted

responsibility, misappropriated \$3,953.06 from his client, which he repaid); *In re Anonymous No. 123 DB 90* (Antoinette M. Lowery) 17 Pa. D. & C.4th 464 (1992) (respondent mishandled and misappropriated estate funds of \$2,368 by "borrowing" those funds to keep her other businesses afloat).

69. The parties agree that the particular facts of this case warrant a one year and one day suspension. Respondent has acknowledged a substance abuse problem. A one year and one day suspension will necessitate Respondent to petition for reinstatement. The proposed sanction will thus provide Respondent the opportunity to adequately address and treat his substance abuse issues and will also require him to demonstrate his fitness and competency prior to the resumption of practice.

70. Respondent requests that his suspension be made retroactive to the date that he was placed on temporary suspension. Petitioner does not oppose Respondent's request.

WHEREFORE, Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 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 receive a one year and one day suspension and that Respondent be ordered to pay all necessary

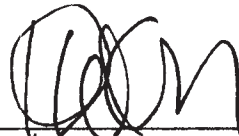
expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION,
Chief Disciplinary Counsel
Attorney Reg. No. 20955

Date: 1/9/17



HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel
Attorney Reg. No. 51159
District II Office
820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650-8210

Date: January 9, 2017




MICHAEL JOSEPH VISCUSO
Respondent

VERIFICATION

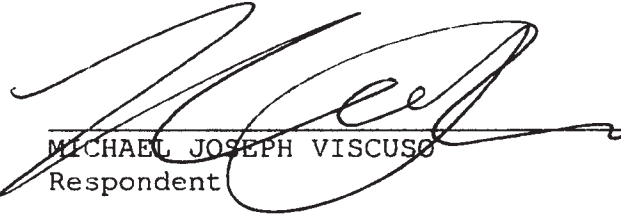
The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Discipline* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

1/9/17
Date



HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel

January 9, 2017
Date



MICHAEL JOSEPH VISCUSO
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 108 DB 2016
Petitioner :
:
v. :
: Attorney Reg. No. 208273
MICHAEL JOSEPH VISCUSO, :
Respondent : (Delaware County)

AFFIDAVIT

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

COMMONWEALTH OF PENNSYLVANIA:
COUNTY OF DELAWARE:

MICHAEL JOSEPH VISCUSO, being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of discipline in the form of a one year and one day suspension in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. He is a formerly admitted attorney in the Commonwealth of Pennsylvania, having been admitted to the bar on or about November 14, 2008. By Supreme Court Order dated November 19, 2014, Respondent was transferred to Administrative Suspension. By Supreme Court Order dated November 9, 2016, Respondent was placed on Temporary Suspension.

2. He desires to submit a Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d).

3. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress, and he is fully aware

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of the implications of submitting this affidavit.

4. He is aware that there is presently pending a proceeding into allegations that he has been guilty of misconduct as set forth in the Joint Petition in Support of Discipline on Consent of which this affidavit is attached hereto.

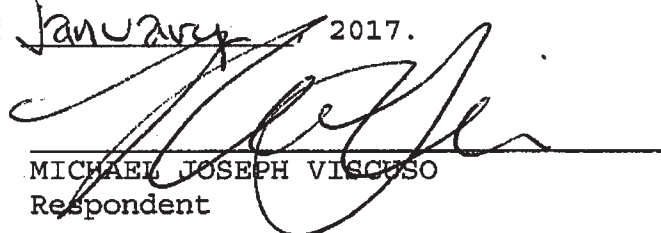
5. He acknowledges that the material facts set forth in the Joint Petition are true.

6. He submits the within affidavit because he knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, he could not successfully defend against them.


7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has not retained, consulted and acted upon the advice of counsel in connection with his decision to execute the within Joint Petition.

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 11 day of January, 2017.


MICHAEL JOSEPH VISCUSO
Respondent

Sworn to and subscribed
before me this 11th day
of January, 2017.


Notary Public

COMMONWEALTH OF PENNSYLVANIA
NOTARIAL SEAL
DENISE R. SMITH, Notary Public
Lower Providence Twp., Montgomery County
My Commission Expires March 18, 2017

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 108 DB 2016
Petitioner :
v. :
: Attorney Reg. No. 208273
MICHAEL JOSEPH VISCUSO, :
Respondent : (Delaware County)

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).

Overnight Mail, as follows:

Michael Joseph Viscuso
1534 Baltimore Pike
Toughkenamon, Pennsylvania 19374

Dated:

11/9/17


HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel
Attorney Reg. No. 51159

Office of Disciplinary Counsel
District II Office
820 Adams Avenue, Suite 170
Trooper, PA 19403
(610) 650-8210