

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1919 Disciplinary Docket No. 3  
Petitioner :  
 : No. 156 DB 2012  
v. :  
 : Attorney Registration No. 208925  
MICHAEL JOSEPH BOONE, :  
Respondent : (Dauphin County)

ORDER

**PER CURIAM:**

AND NOW, this 24<sup>th</sup> day of April, 2013, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated February 5, 2013, 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 Joseph Boone is suspended on consent from the Bar of this Commonwealth for a period of two years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola  
As Of 4/24/2013

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL : No. 156 DB 2012  
Petitioner :  
v. : Attorney Registration No. 208925  
MICHAEL JOSEPH BOONE :  
Respondent : (Dauphin 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 David A. Nasatir, Douglas W. Leonard, and Gerald Lawrence, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on January 17, 2013.

The Panel approves the Joint Petition consenting to a two year suspension 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.

  
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David A. Nasatir, Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: 2/5/2013

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

Office of Disciplinary Counsel,	:	No. Disciplinary Docket
	:	No.
Petitioner,	:	
	:	No. 156 DB 2012
	:	
Michael Joseph Boone,	:	Attorney Registration No. 208925
Respondent	:	
	:	(Dauphin County)

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 Edwin W. Frese, Jr., Disciplinary Counsel, and Respondent, Michael Joseph Boone and his counsel, David E. Hershey, Esquire, file this Joint Petition in Support of Discipline on Consent Under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."), and respectfully represent that:

1. Petitioner, whose principal office is located at the PA Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, PA 17106, is invested, pursuant to 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 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 Rules.

**FILED**

JAN 17 2013

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

2. Respondent, Michael Joseph Boone, was born in 1982, was admitted to practice law in Pennsylvania on December 9, 2008, has a registered public address of 600 Glenbrook Drive, Harrisburg, Pennsylvania 17112, and is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. However, Respondent has recently moved to 2932 Oakgrove Avenue, St. Augustine, FL 32029, and is employed in a non-lawyer position with a bank in Jacksonville, Florida, to handle customer service calls.

#### SPECIFIC FACTUAL ADMISSIONS AND RULES VIOLATED

3. There is presently pending against the Respondent a Petition for Discipline docketed at No. 156 DB 2012, the allegations of which are described herein.

4. In or about September 2010, Respondent, Michael Joseph Boone, was hired by the law firm of Weber, Gallagher, Simpson, Stapleton, Fires & Newby, L.L.P. (Weber Gallagher), as an Associate to work in the Workers' Compensation practice group in the firm's Harrisburg office. Respondent's immediate supervisor was Shawn C. Gooden, Esquire.

5. During the first week of April 2012, while conducting a routine audit of Respondent's cases, Mr. Gooden became aware of irregularities with Respondent's billing on four cases, to wit: Client A (Matter No. 58118), Client B (Matter Nos. 57788 and 49835), and Client C (Matter No. 39973).<sup>1</sup>

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<sup>1</sup> The clients' identities are disclosed in the pending Petition for Discipline docketed at No. 156 DB 2012. However, Weber Gallagher has requested that the names not be revealed.

6. With regard to Matter No. 58118 of Client A, Mr. Gooden found no evidence in the file to substantiate Respondent's billing for a total of \$1,725 for 15 hours at the rate of \$115 per hour between the dates of March 15, 2012 and March 23, 2012.

7. With regard to Matter No. 57788 of Client B, Mr. Gooden found no evidence in the file to substantiate Respondent's billing for a total of \$1,053 for 11.7 hours at the rate of \$90 per hour between the dates of March 1, 2012 and March 9, 2012.

8. With regard to Matter No. 49835 of Client B, Mr. Gooden found no evidence in the file to substantiate Respondent's billing for a total of \$1,314 for 14.6 hours at the rate of \$90 per hour between the dates of March 9, 2012 and March 12, 2012.

9. With regard to Matter No. 39973 of Client C, Mr. Gooden found no evidence in the file to substantiate Respondent's billing for \$1,807 for 13.9 hours at the rate of \$130 per hour between the dates of February 10, 2012 and February 15, 2012.

10. Mr. Gooden confronted Respondent with his concerns and Respondent's time and billing records, at which time Respondent admitted that he had not done the specific work he had billed for and that he knew it was wrong.

11. On April 5, 2012, Respondent and Mr. Gooden attended a video conference with the firm's Management Committee consisting of Joseph Goldberg and Paul Fires in Philadelphia, and Paula Kuczynski in Pittsburgh, during which conference Respondent admitted to having fabricated his billings and repeatedly apologized for his misconduct.

12. At the conclusion of the video conference, Respondent's employment with the firm was terminated.

13. When asked by Mr. Gooden and later by the Management Committee why Respondent fabricated his billings, Respondent offered no explanation.

14. After Respondent was terminated, Mr. Gooden continued his review of Respondent's billings and determined that Respondent had fabricated billings in four additional files, to wit: Client D (Matter Nos. 49761, 48490 and 56419) and Client E (Matter No. 58994).

15. With regard to Matter No. 49761 of Client D, Mr. Gooden found no evidence in the file to justify Respondent's billing for a total of \$1,292 for 13.6 hours at the rate of \$95 per hour between the dates of January 13, 2012 and January 16, 2012.

16. With regard to Matter No. 48490 of Client D, Mr. Gooden found no evidence in the file to substantiate Respondent's billing for a total of \$997.50 for 10.5 hours at the rate of \$95 per hour between the dates of January 17, 2012 and January 19, 2012.

17. With regard to Matter No. 49761 of Client D, Mr. Gooden found no evidence in the file to justify Respondent's billing for a total of \$2,156.50 for 22.7 hours at the rate of \$95 per hour between the dates of January 13, 2012 and January 16, 2012.

18. With regard to Matter No. 58994 of Client E, Mr. Gooden found no evidence in the file to substantiate Respondent's billing for a total of \$1,442 for 11.8 hours at the rate of \$122 per hour between the dates of February 23, 2012 and February 27, 2012.

19. In the eight matters, Respondent falsely billed a total of \$11,787 for 113.8 hours of work Respondent did not do. However, none of the clients actually paid the inflated amounts as the firm either adjusted the billings before they were sent to the clients or requested the clients to return the billing statements in return for amended ones.

20. The Respondent was sent a DB-7 Request for Statement of Respondent's Position on July 31, 2012. The Domestic Return Receipt was signed for on August 8, 2012. The Respondent's answer was due on August 30, 2012, but he did not submit one.

21. By letter dated September 6, 2012, the Respondent was asked to explain why he did not timely respond to the DB-7 and to provide a response within the next ten days.

22. On September 13, 2012, at 2:58 p.m., the Respondent left a voicemail message asking Disciplinary Counsel for an extension of time to respond.

23. On September 17, 2012, at 10:47 a.m., Disciplinary Counsel called Respondent and left a voicemail message asking him to please call. Respondent failed to do so and has not responded to the DB-7 or explained why.

24. As a result of his conduct as set forth in Paragraphs 3 through 23, the Respondent admits he violated the following Rules of Professional Conduct:

- a. RPC 1.5(a) A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee;
- b. RPC 8.4(b) It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects; and

c. RPC 8.4(c) It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

25. The Respondent's failure to respond to the DB-7 Request for Statement of Respondent's Position without good cause is an independent ground for the imposition of discipline pursuant to Rule 203(b)(7), Pa.R.D.E.

#### SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

26. Petitioner and Respondent jointly recommend that the appropriate discipline to be imposed for the Respondent's misconduct is a two year suspension.

27. 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, including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

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

- a. Respondent has no prior record of discipline;
- b. Respondent has admitted engaging in misconduct and violating Rules of Professional Conduct 1.5(b), 8.4(b), and 8.4(c);
- c. Following his discharge from Weber Gallagher, Respondent stopped practicing law and registered Retired on October 17, 2012; and
- d. Respondent is remorseful for his misconduct as is evidenced by his consent to being suspended for two years.

29. A two year suspension is within the range of public discipline imposed in similar Pennsylvania disciplinary cases involving lawyers who inflated their legal fees. In



the case of *Office of Disciplinary Counsel v. James Francis Pearn, Jr.*, No. 82 DB 1999<sup>2</sup>, the attorney was suspended for three years as a result of billing clients for work he had not performed. In summary, over a five year period of time, the attorney's inaccurate billings involved a total of approximately 340 hours and overcharges to clients in excess of \$30,000, and probably as much as \$40,000, which the firm refunded to the clients. The attorney did not reimburse the firm. The *Pearn* case cites the case of *In re Anonymous (John Anthony Lord)* No. 149 DB 1995, where the attorney was suspended for a year and a day for having overbilled \$18,338 in legal fees and \$9,164 for travel reimbursements. The attorney reimbursed the firm for the travel expenses but had not refunded the overbilled fees. He provided *Braun*<sup>3</sup> mitigation, which is not involved in the instant case.

The attorney in the case of *Office of Disciplinary Counsel v. Michael D. Hollinger*, No. 19 DB 2004, was also suspended for a year and a day for overbilling clients throughout 2001. In all, twenty-four incidents of overbilling were documented. Additionally, the attorney wrote letters and other communications to clients making false statements about activities he had performed on sixteen occasions. The attorney's firm refunded the sum of \$26,730.69 to clients. Shortly after the disciplinary hearing the attorney voluntarily assumed inactive status and the suspension order was made retroactive to that date.

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<sup>2</sup> All cases cited without an official citation may be reviewed by opening the Disciplinary Reporter under Attorney Information at [www.padb.us](http://www.padb.us) and entering the attorney's name or the DB number in the appropriate search field. The Disciplinary Reporter summary will include a link to the text of the report.

<sup>3</sup> *Office of Disciplinary Counsel v. Braun*, 520 Pa. 157, 553 A.2d 894 (1989).

WHEREFORE, Petitioner and Respondent respectfully ask that a Three-Member Panel of your Honorable Board:

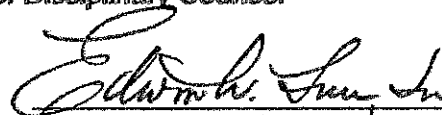
- a. Approve this Petition; and,
- b. File this Petition with a recommendation for the imposition of a two year suspension with the Supreme Court of Pennsylvania.

Respectfully Submitted,

OFFICE OF DISCIPLINARY COUNSEL  
Paul J. Killion  
Chief Disciplinary Counsel

January 14, 2013  
Date

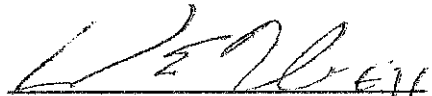
By



Edwin W. Frese, Jr.  
Disciplinary Counsel  
Attorney Registration No. 9828  
PA Judicial Center, Suite 5800  
601 Commonwealth Avenue  
P.O. Box 62675  
Harrisburg, PA 17106-2675  
717-772-8572

January 15, 2013  
Date

By



David E. Hershey, Esquire  
Counsel for Respondent  
Attorney Registration No. 43092  
COLGAN & ASSOCIATES, LLC  
130 W. Church Street, Suite 100  
Dillsburg, PA 17019  
717-502-5000

1/15/13  
Date

By



Michael Joseph Boone  
Respondent  
2932 Oakgrove Avenue  
St. Augustine, FL 32029

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :

v. :

No. 156 DB 2012

Michael Joseph Boone,  
Respondent

Attorney Registration No. 208925

(Dauphin County)

VERIFICATION

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

January 14, 2013  
Date

By

Edwin W. Frese, Jr.  
Edwin W. Frese, Jr.  
Disciplinary Counsel

January 15, 2013  
Date

By

David E. Hershey  
David E. Hershey, Esquire  
Counsel for Respondent

1/15/13  
Date

By

Michael Joseph Boone  
Michael Joseph Boone  
Respondent

EXHIBIT A

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :

v. :

Michael Joseph Boone, :  
Respondent :

No. 156 DB 2012

Attorney Registration No. 208925

(Dauphin County)

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


Respondent, Michael Joseph Boone, hereby states that he consents to the imposition of a two year suspension as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent, in the Joint Petition in Support of Discipline on Consent pursuant to Rule 215(d), Pennsylvania Rules of Disciplinary Enforcement, 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, David E. Hershey, Esquire, in connection with the decision to consent to discipline;
2. He is aware that there is presently pending a proceeding involving allegations that he is 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 continued to be prosecuted in the pending proceeding, he 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 15 day of January 2013.

  
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Michael Joseph Boone  
Respondent