**[J-119-2005]**
**IN THE SUPREME COURT OF PENNSYLVANIA**

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| IN THE MATTER OF | : No. 959 Disciplinary Docket No. 2 |
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| WILLIAM JAMES PERRONE | : Disciplinary Board No. 74 DB 1993 |
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| | : Attorney Registration No. 19412 |
| | : (Chester County) |
| | : |
| | : ARGUED: OCTOBER 19, 2005 |

## DISSENTING OPINION

**MR. JUSTICE EAKIN** **DECIDED: JUNE 20, 2006**

I agree that Pa.R.D.E. 217(j) applies to petitioner, and that a lawyer need not do all work at the physical location of the supervising attorney's office to comply with Pa.R.D.E. 217(j)(4)(ii). However, I disagree that petitioner is somehow excused from the requirements of Pa.R.D.E. 217(j)(5).

Neither Perrone nor his proffered supervising attorney notified the Disciplinary Board of his performance for pay of "law-related activities." Perrone seeks to excuse this failure by styling himself an "independent contractor,"[1] not a mere employee. However, to be a truly independent contractor, he would have to violate the Rule's requirement of direct supervision. That is, he cannot have complied with Pa.R.D.E. 217(j)(1)'s requirement of

[1] The majority states the parties concede Perrone was an independent contractor. See Majority Slip Op., at 7 n.6. However, Office of Disciplinary Counsel (ODC) states in its brief that "Perrone was 'employed' by these individuals [referring to alleged supervising attorneys]." ODC Brief, at 15. I cannot conclude that ODC conceded Perrone was not an employee subject to (j)(5), nor do I find any logic in excusing an independent contractor from the reporting requirement.

direct supervision and still be an independent contractor; conversely, if he did perform as an independent contractor, he cannot have complied with subsection (j)(1).

While no hard and fast rule exists to determine whether a relationship is that of employer-employee or owner-independent contractor, the analysis is not different merely because the services are law-related. Our case law is replete with guidelines and factors that must be taken into consideration when making this determination:

> Control of manner work is to be done; responsibility for result only; terms of agreement between the parties; the nature of the work or occupation; skill required for performance; whether one is engaged in a distinct occupation or business; which party supplied the tools; whether payment is by the time or by the job; whether work is part of a regular business of the employer, and … the right to terminate the employment at any time.

Universal Am-Can, Ltd. and AIAC v. Workers' Compensation Appeal Board (Minteer), 762 A.2d 328, 333 (Pa. 2000) (internal citations omitted) (quoting Hammermill Paper Company v. Rust Engineering Company, 243 A.2d 389, 392 (Pa. 1968)).

"Whether some or all of these factors exist in any given situation is not controlling." Id. (quoting J. Miller Co. v. Mixter, 277 A.2d 867, 869 (Pa. Cmwlth. 1971)). While each factor is relevant, control over the work to be completed and the manner in which it is to be performed have become dominant considerations and are the primary factors in determining employee status. Id. (collecting cases). In an employer-employee relationship, the employer controls the result of the work and has the right to direct the way in which it shall be done, whereas in an owner-independent contractor relationship, the independent contractor has exclusive control over the manner of performing it, being responsible only for the result. Moon Area School District v. Garzony, 560 A.2d 1361, 1367 (Pa. 1989) (quoting Feller v. New Amsterdam Casualty Co., 70 A.2d 299, 300 (Pa. 1950)). Broadly stated, if an individual is under the control of an employer, the individual is an

employee; if the individual is not under such control, he is an independent contractor. Id. (quoting Feller, at 300).

"[I]nspection of the progress of work does not require … an inference of exclusive control over the manner of performance of the work, but rather only of interest in the result." Cox v. Caeti, 279 A.2d 756, 758 (Pa. 1971) (citing Murrin v. Rifugiato, 96 A.2d 865 (Pa. 1953)). "Where control is not reserved over the means, the relationship is that of independent contractor, and conversely, where such control is reserved, the relationship is that of … employee." Commonwealth v. Continental Rubber Works, 32 A.2d 878, 880 (Pa. 1943) (quoting Kelley v. Delaware, L. & W. R. Co., 113 A. 419, 420 (Pa. 1921)).[2]

Because an independent contractor works without another having the ability to control the manner or means in which the independent contractor's work is completed, Perrone cannot be both an independent contractor and under the direct supervision of another individual. See e.g. Universal Am-Can, at 333; Garzony, at 1367; Continental

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[2] This Court recently interpreted a section of the Unemployment Compensation Law that presumes when individuals perform services for wages they are employees:

> Services performed by an individual for wages shall be deemed to be employment subject to this act, unless and until it is shown to the satisfaction of the department that--(a) such individual has been and will continue to be free from control or direction over the performance of such services both under his contract of service and in fact; and (b) as to such services such individual is customarily engaged in an independently established trade, occupation, profession or business.

43 P.S. § 753(l)(2)(B). Like the common law standard for determining whether an individual is an employee or independent contractor, this section focuses on whether an individual is subject to control by another. This Court interpreted "independently" according to its common and approved usage, see 1 Pa.C.S. § 1903(a), and concluded "independent" means "not subject to control by others …." Danielle Viktor, Ltd. v. Department of Labor and Industry, 892 A.2d 781, 794-95 (Pa. 2006) (citing Webster's Third New International Dictionary 1148 (1986)). This Court similarly defined "dependent" according to its common and approved usage and concluded it meant "unable to exist, sustain oneself, or act suitably or normally without the assistance or direction of another …." Id., at 795 (citing Webster's Third New International Dictionary 604).

Rubber Works, at 880. Perrone could not have simultaneously been directly supervised, subjected to the supervising attorney's control, and an "independent contractor" who was not directly supervised.

If Perrone was an independent contractor, by definition he was not under the direct supervision of an attorney when he completed the law-related services, and thus would have violated Pa.R.D.E. 217(j)(1)--if one could avoid the requirements of the Rule by calling oneself an independent contractor, the Rule is meaningless. If Perrone was supervised, he was an employee, and his failure (and the failure of his supervising attorney) to notify the Disciplinary Board of his employment violated Pa.R.D.E. 217(j)(5). While some of the strides Perrone has taken since his disbarment are admirable, see Majority Slip Op., at 11, his non-compliance with Rule 217 shows he failed to meet his burden. Accordingly, I would deny Perrone's petition for reinstatement to the Bar.