

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2689 Disciplinary Docket No. 3
: :
Petitioner : No. 216 DB 2019
: :
v. : Attorney Registration No. 90686
: :
MARKO DAVID MAYLACK, : (Out of State)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 27th day of May, 2020, 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 Marko David Maylack is suspended on consent from the Bar of this Commonwealth for a period of two years, retroactive to February 5, 2020. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 05/27/2020

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2689 Disc. Dkt. No. 3
Petitioner :
: No. 216 DB 2019
v. :
: Atty. Reg. No. 90686
MARKO DAVID MAYLACK, :
Respondent : (Out of State)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Thomas J. Farrell, Esquire, Chief Disciplinary Counsel, and by Richard Hernandez, Esquire, Disciplinary Counsel, and Respondent, Marko David Maylack, file this Joint Petition In Support of Discipline On Consent Under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement ("the Joint Petition") and respectfully represent that:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("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

FILED
05/04/2020
The Disciplinary Board of the
Supreme Court of Pennsylvania

brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Marko David Maylack, was born in 1962, was admitted to practice law in the Commonwealth on May 19, 2003, and resides in Boise, Idaho.

3. Pursuant to Pa.R.D.E. 201(a)(1) and (3), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

4. By Order of the Supreme Court of Pennsylvania dated February 5, 2020, effective March 6, 2020, Respondent was placed on temporary suspension pursuant to Pa.R.D.E. 214(d)(2) ("the temporary suspension Order").

5. Respondent is aware that there is an open complaint file under investigation by ODC that relates to Respondent's convictions in two separate criminal matters.

6. Respondent has agreed to enter into a joint recommendation for consent discipline that encompasses the allegations of misconduct raised in the open complaint file.

SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED

7. Respondent stipulates that the factual allegations set forth below are true and correct and that he violated the Rule of Professional Conduct and Pennsylvania Rules of

Disciplinary Enforcement as set forth herein.

CHARGE

A. THE BUTLER COUNTY CASE

8. In 2014, a criminal case was commenced against Respondent in the Court of Common Pleas of Butler County, said case captioned ***Commonwealth of Pennsylvania v. Marko David Maylack***, docket number CP-10-CR-0002392-2014 ("the Butler County case").

9. On April 15, 2015, Respondent appeared before the Honorable William R. Shaffer and pled guilty to the offense of Harassment, graded as a misdemeanor of the third degree, in violation of 18 Pa.C.S.A. § 2709(a)(4).

10. The factual basis for the guilty plea was that on September 16, 2014, Respondent challenged Mr. Stanley Heffner, a school bus driver for Haine Elementary School, to a physical confrontation while Mr. Heffner was performing his job.

11. The crime of Harassment is punishable by a term of imprisonment not exceeding one year. 18 Pa.C.S.A. § 1104(3).

12. The offense of Harassment is a "crime" as defined by Pa.R.D.E. 214(h).

13. On May 28, 2015, Judge Shaffer sentenced Respondent to probation for a period of 12 months, with the condition

that he attend and complete anger management counseling during the probationary period, and to payment of court costs and the probation supervision fee.

14. Respondent did not report his conviction to the Office of Disciplinary Counsel as required by Pa.R.D.E. 214(a).

B. THE STATE OF IDAHO CASE

15. In April 2019, a criminal case was commenced against Respondent in the District Court of the Fourth Judicial District of the State of Idaho, in and for the County of Ada, said case captioned State of Idaho v. Marko Maylack, Case No. CR01-19-16272 ("the State of Idaho case").

16. On May 23, 2019, Respondent appeared before the Honorable Lynn Norton and pled guilty to the offenses of: Injury to Children (one victim), graded as a misdemeanor, in violation of I.C. § 18-1501(2); and Intimidating, Impeding, Influencing, or Preventing the Attendance of a Witness, graded as a felony, in violation of I.C. § 18-2604.

17. The factual basis for the guilty plea to the offense of Injury to Child was that on April 10, 2019, Respondent struck Respondent's thirteen-year-old son in the head or the ear, causing an injury to his minor son that required stitches.

18. The factual basis for the guilty plea to the offense of Intimidating, Impeding, Influencing, or Preventing the Attendance of a Witness was that on April 16, 2019, at approximately 4:30 p.m., Respondent had a telephone conversation with Respondent's minor son, during which conversation Respondent instructed his minor son to delete text messages and prior conversations they had, informed his minor son that law enforcement would search his cell phone for evidence to use against Respondent, inquired of his minor son if all text messages had been erased, described to his minor son how Respondent would commit suicide, and verified that his minor son understood that Respondent's suicide would be related to the minor son's disclosing the abuse identified in paragraph 17, *supra*.

19. The crime of Injury to Children is punishable by a term of imprisonment not exceeding six months. I.C. § 18-113. The crime of Intimidating, Impeding, Influencing, or Preventing the Attendance of a Witness is punishable by a term of imprisonment not exceeding five years. I.C. § 18-112.

20. The offenses of Injury to Children and Intimidating, Impeding, Influencing, or Preventing the Attendance of a Witness are each a "crime" as defined by Pa.R.D.E. 214(h).

21. On August 15, 2019, Judge Norton sentenced Respondent.

22. For the offense of Injury to Children, Judge Norton imposed a term of imprisonment of 180 days, suspended 150 days, and credited Respondent for 30 days served, and also imposed a term of unsupervised probation of two years, to run concurrent with the supervised probation imposed on the other offense to which Respondent had pled guilty.

23. For the offense of Intimidating, Impeding, Influencing, or Preventing the Attendance of a Witness, Judge Norton withheld judgment pursuant to I.C. § 19-2601(3) and placed Respondent on supervised probation with the Department of Corrections for a period of five years. By withholding judgment, Judge Norton afforded Respondent the opportunity to file an application at some future date to request, *inter alia*, that the guilty plea be set aside and that the case be dismissed, or that the conviction be reduced to a misdemeanor. See I.C. § 19-2604. Notwithstanding Judge Norton's decision to withhold judgment, Respondent's guilty plea to the offense of Intimidating, Impeding, Influencing, or Preventing the Attendance of a Witness constitutes a "conviction" as defined by Pa.R.D.E. 214(i). Judge Norton also imposed certain special probationary conditions in addition to the standard

general conditions. The special conditions were as follows: Respondent had to submit a DNA sample; the probation officer has the discretion to immediately deliver Respondent to the Sheriff for incarceration for a period of 90 days; Respondent must perform 200 hours of community service by June 30, 2021; Respondent must participate in and complete all programs of rehabilitation treatment recommended by his probation officer; Respondent must successfully complete a Cognitive Self Change, MRT, or other thinking error class, a psychiatric medication evaluation and follow the recommendations in that evaluation, an anger management class, a parenting class, and any rehabilitative programs recommended by the Health and Welfare case management plan for Respondent's minor son; and Respondent must not associate with his minor son except under the terms permitted in the No Contact Order in the court file. Respondent was also ordered to pay court costs and restitution in the amount of \$212.92.

24. Respondent did not report his conviction to the Office of Disciplinary Counsel as required by Pa.R.D.E. 214(a).

25. By his conduct as alleged in paragraphs 8 through 24 above, Respondent twice violated the following Rule of Professional Conduct and Pennsylvania Rules of Disciplinary

Enforcement:

- a. RPC 8.4(b), which states that 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;
- b. Pa.R.D.E. 203(b)(1), which states that a conviction of a crime shall be grounds for discipline; and
- c. Pa.R.D.E. 203(b)(3), which states that a wilful violation of any other provision of the Enforcement Rules shall be grounds for discipline, via Pa.R.D.E. 214(a), which states that an attorney convicted of a crime shall report the fact of such conviction within 20 days to the Office of Disciplinary Counsel. The responsibility of the attorney to make such report shall not be abated because the conviction is under appeal or the clerk of the court has transmitted a certificate to Disciplinary Counsel pursuant to subdivision (b) [of Rule 214].

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

26. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension of two years, to be made retroactive to February 5, 2020, the date of the temporary suspension Order.

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 that there are several mitigating circumstances:

- a. Respondent has admitted engaging in misconduct and violating the charged Rule of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement;
- b. Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and his consent to receiving a two-year

suspension;

c. Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his consent to receiving a two-year suspension; and

d. Respondent has no record of discipline in Pennsylvania.

29. There are two disciplinary cases involving attorneys with no record of discipline that support Petitioner and Respondent's joint recommendation for a two-year suspension. The cases are ***Office of Disciplinary Counsel v. Jeffrey Thomas Spangler***, Nos. 81 DB 2001 & 89 DB 2002 (D.Bd. Rpt. 2/9/04) (S.Ct. Order 5/24/04) (eighteen-month suspension; Respondent Spangler was convicted of simple assault by physical menace and recklessly endangering another person for one incident, disorderly conduct for a second incident, and simple assault by physical menace for a third incident) and ***Office of Disciplinary Counsel v. Mark Eugene Rowe***, No. 159 DB 2009 (D.Bd. Rpt. 6/9/11) (S.Ct. Order 10/25/11) (eighteen-month suspension; Respondent Rowe twice convicted of simple assault for two separate incidents that involved Respondent Rowe assaulting his girlfriend). Although the respondents in ***Spangler*** and ***Rowe*** received an

eighteen-month suspension, an enhancement of that term of suspension by six months is warranted here because Respondent Maylack did not report either of his convictions to ODC.

Moreover, a suspension of two years is sufficiently lengthy to advance the goals of attorney discipline. Those goals are protecting the public, maintaining the integrity of the courts and the legal profession, and specific and general deterrence. See *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872, 875 (Pa. 1986); *In re Iulo*, 766 A.2d 335, 338-339 (Pa. 2001).

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 Joint Petition In Support Of Discipline On Consent and file its recommendation with the Supreme Court of Pennsylvania in which it is recommended that the Supreme Court enter an Order that Respondent receive a suspension of two years, to be made retroactive to February 5, 2020, the date of the temporary suspension Order,

and that Respondent comply with all of the provisions of Rule 217, Pa.R.D.E.; and

- b. Pursuant to Pa.R.D.E. 215(i), the Three-Member Panel of the Disciplinary Board enter an order for Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter, and that under Pa.R.D.E. 208(g) (1) all expenses be paid by Respondent within 30 days after the notice of the taxed expenses is sent to Respondent.

Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

THOMAS J. FARRELL
CHIEF DISCIPLINARY COUNSEL

May 31, 2020
Date

By 
Richard Hernandez
Disciplinary Counsel

4-24-20
Date

By 
Marko David Maylack
Respondent


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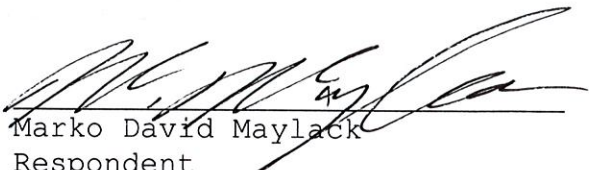
VERIFICATION

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 or
information and belief and are made subject to the penalties
of 18 Pa.C.S. § 4904, relating to unsworn falsification to
authorities.

May 3, 2020
Date


Richard Hernandez
Disciplinary Counsel

4-24-20
Date


Marko David Maylack
Respondent

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

Respondent, Marko David Maylack, hereby states that he consents to the imposition of a suspension of two years retroactive to February 5, 2020, 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 not consulted with counsel in connection with the decision to consent to discipline;

2. He is aware that there is presently pending an investigation into 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 charges predicated upon the matter under investigation were filed, he could not successfully defend against them.

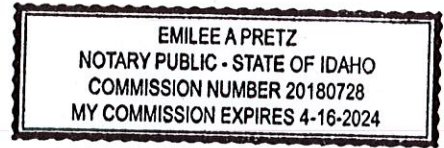


Marko David Maylack
Respondent

Sworn to and subscribed
before me this 24th
day of April, 2020.



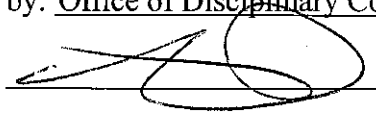
Notary Public



CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature:  _____

Name: Richard Hernandez, Disciplinary Counsel

Attorney No. (if applicable): 57254