

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1242 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 59 DB 2006
v.	:	
	:	Attorney Registration No. 34537
MICHAEL A. ROSELLE,	:	
Respondent	:	(Mifflin County)


ORDER

PER CURIAM:

AND NOW, this 20th day of April, 2007, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated March 1, 2007, 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 A. Roselle is suspended on consent from the Bar of this Commonwealth for a period of one year and one day, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

Mr. Justice Fitzgerald did not participate in this matter.

A True Copy Patricia Nicola
As of: April 20, 2007
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 59 DB 2006
Petitioner :
v. : Attorney Registration No. 34537
MICHAEL A. ROSELLE :
Respondent : (Mifflin 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 Marc S. Raspanti, Laurence H. Brown and Min S. Suh, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on October 26, 2006.

The Panel approves the Joint Petition consenting to a one year and one day 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.


Marc S. Raspanti, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 3/1/2007

BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : NO. 59 D.B. 2006
PETITIONER :
: ATTORNEY REG. NO. 34537
V. :
: (MIFFLIN COUNTY)
MICHAEL A. ROSELLE, :
RESPONDENT :

JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT UNDER RULE 215(D)
OF THE PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

The Petitioner, the Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Patti S. Bednarik, Esquire, Disciplinary Counsel, and the Respondent, Michael A. Roselle, file this Joint Petition in Support of Discipline on Consent under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement and respectfully state and aver the following:

1. Respondent, Michael A. Roselle, was born in 1955; was admitted to practice law in the Commonwealth on October 30, 1981; has his registration office listed as 20 N. Wayne Street, P. O. Box 529, Lewistown, PA 17044; and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court. Respondent's registration address is no longer valid, because he was terminated from the Public Defender's Office, which is located at 20 N. Wayne Street, Lewistown, PA. Respondent's other registration address is 960 Alfarata Road, Suite B, Lewistown, PA 17044, and Respondent requests that all correspondence be sent to his address on Alfarata Road.

FILED

OCT 26 2006

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

2. The Office of Disciplinary Counsel filed a Petition for Discipline against Mr. Roselle with the Secretary of the Disciplinary Board on August 9, 2006. Subsequently, Mr. Roselle filed an Answer on August 29, 2006, but he failed to serve the Office of Disciplinary Counsel with a copy. Petitioner obtained a copy of his Answer from Elaine M. Bixler, Secretary to the Disciplinary Board.

3. Mr. Roselle is unrepresented by counsel in these proceedings.

4. After reviewing all the evidence, Respondent, Michael A. Roselle, has agreed to enter into this Joint Petition.

5. A Hearing Committee has already been assigned to this case and the Hearing Committee consists of David E. Hershey, Esq., Chair, Thomas C. Clark, Esq., and Marc Joseph Farrell, Esq.

6. A prehearing conference on this case was held on October 6, 2006 before Hearing Committee Chair David E. Hershey, Esq.

7. A hearing on the merits is scheduled for Thursday, November 9, 2006 at 9:30 a.m. in the District III Office of the Disciplinary Board of the Supreme Court of Pennsylvania.

CHARGE

8. In accordance with Rules 208(a)(2), (3) and (5), Pa.R.D.E., by Order dated March 31, 2006, the Disciplinary Board determined that Respondent should receive a Private Reprimand with Conditions as a result of misconduct involving Nancy Richard's domestic relations case at File No. C3-05-501:

9. The condition attached to the Private Reprimand was that:

Within 30 days from the date of this Order, Respondent shall submit to the Secretary of the Board and Disciplinary Counsel proof that he has:

- 1) prepared a QDRO for Ms. Richard; and
- 2) informed his clients, Barbara Kidd, Karen Bubb, Ellen and Charles Fitzgerald, Belinda Milligan and Gregg Truitt, of the status of their cases, and advised them that they may wish to consider getting other counsel. If the clients wish to obtain other counsel, Respondent shall promptly transfer their files to successor counsel. If the clients do not want to retain other counsel, Respondent shall provide proof that he drafted a QDRO on the Bubb case, got the Fitzgeralds' case listed for arbitration and filed a Petition for Specific Performance or took whatever other action was necessary so that the Milligans can receive clear title on their property.
- 3) Respondent shall be placed on probation for a period of a year with a sobriety monitor and subject to the usual terms and conditions as set forth in the Disciplinary Board Report dated March 31, 2006.

10. In lieu of complying with the first condition by preparing a QDRO for Nancy Richard, Respondent gave Complainant \$1,250 to retain an attorney to prepare the QDRO, and recommended Nancy Shrum Searer, Esq. to prepare the QDRO.

11. The conditions set forth in the second paragraph of the Private Reprimand were the result of Respondent's admission that he had neglected five clients' cases [Kidd, Bubb, Fitzgerald, Milligan and Truitt]; however, none of the above mentioned clients filed disciplinary complaints against Respondent. Respondent had assured Office of Disciplinary Counsel that he would take care of these matters promptly. Therefore, no formal disciplinary charges were filed against Respondent concerning these matters.

12. By letter dated March 31, 2006, which was sent to Respondent by both first class and certified mail, Respondent was informed of the determination of

the Disciplinary Board that he was to receive a Private Reprimand with Conditions, and was forwarded a copy of the Disciplinary Board's Order dated March 31, 2006.

13. The letter dated March 31, 2006, further informed Respondent that pursuant to Rule 208(a)(6), Pa.R.D.E., Respondent had 20 days to demand as of right that a formal proceeding be instituted against him before a hearing committee in the appropriate Disciplinary District and that in the event of such demand, Respondent need not appear for the administration of the Private Reprimand.

14. Respondent failed to provide proof of his compliance with the conditions within thirty days of getting the Disciplinary Board's determination that Respondent would be subjected to a Private Reprimand with Conditions.

15. By letter dated April 3, 2006, Respondent was again provided with a copy of the Board's Order, together with an Agreement to abide by the terms of probation outlined in the Order. Respondent was directed to execute the Agreement and return it to the Office of the Secretary on or before April 30, 2006.

16. Respondent failed to execute the Agreement to abide by the terms of probation and failed to return it to the Office of the Secretary.

17. By letter dated May 12, 2006, Gary G. Gentile, Esq., Chair of the Disciplinary Board, advised Respondent that he had not demanded formal charges, he had not provided proof of compliance with the Conditions as set forth in the Order, and he had not returned the Executed Agreement in a timely manner. Mr. Gentile requested that Respondent advise the Secretary of the

Board on or before May 22, 2006, why his failure to comply with the Conditions and terms of probation should not result in the institution of formal charges.

18. By letter dated May 17, 2006, Mr. Roselle explained to the Disciplinary Board and Office of Disciplinary Counsel that he "had simply been unable to mentally and physically perform the simple compliance tasks outlined by the Board in its March 31, 2006 and April 3, 2006 letters," and he requested an extension until June 11, 2006 to complete the activities necessary to comply with the Board-ordered conditions.

19. By letter dated May 23, 2006, Mr. Roselle provided documentation from his treating physician, Dr. Howard Joseph Aylward, Jr., M.D., who verified that Mr. Roselle was being treated for gout and severe degenerative arthritis of his right knee. Dr. Aylward advised the Disciplinary Board that Mr. Roselle's condition has been and may continue to be on occasion debilitatingly painful.

20. By letter dated May 25, 2006, Petitioner advised the Secretary of the Board that as a result of the letter and medical documentation that Respondent had sent, Petitioner did not oppose an extension of time for Respondent to prove compliance with the conditions attached to the Private Reprimand until June 11, 2006.

21. Respondent failed to provide proof of compliance with the conditions, and failed to return the executed Agreement by June 11, 2006. He also failed to provide any reason for his failure to do so.

22. By letter dated June 16, 2006, Elaine M. Bixler, Secretary of the Disciplinary Board, informed Respondent that since he had not submitted a

request for the initiation of formal proceedings within twenty days of his notification of the disposition of the complaint pursuant to Rule 208(a)(6), he was scheduled for a Private Reprimand on Wednesday, June 28, 2006 at 10:00 a.m. in the District III Office of the Disciplinary Board. This letter was sent to Respondent by certified and first class mail, and included another copy of the Disciplinary Board Order dated March 31, 2006.

23. Respondent failed to appear at the Private Reprimand on June 28, 2006.

24. On June 28, 2006, Disciplinary Counsel Bednarik received two voicemail messages, at 8:03 a.m. and 8:25 a.m., from Respondent. In the first message, Respondent advised Disciplinary Counsel that he had a terrible case of gout, he could barely move, and he could never know how long these things will last, sometimes 3 to 4 days. Respondent apologized and then advised Disciplinary Counsel that he would "try to get together again." An operator then requested an additional five cents. In the second message, Respondent wanted to confirm that Disciplinary Counsel Bednarik had received his first message. He reiterated that he had a horrible case of gout in both legs and he was immobilized. He did not want this office to believe that he had missed the Private Reprimand without cause. He again apologized. After his message, Respondent asked someone how to turn off the cell phone, and he was told to just flip it over.

25. On June 28, 2006, Paul J. Killion, Chief Disciplinary Counsel, telephoned Respondent and advised him that the Private Reprimand was to be rescheduled for July 7, 2006 at 9:30 a.m. at the District IV Office of Disciplinary Counsel, 437

Grant Street, Pittsburgh, PA. Mr. Killion advised Respondent that he would receive a letter confirming the new date in writing.

26. By letter dated June 29, 2006 to Respondent, Ms. Bixler advised Respondent of the new date, time and location for the Private Reprimand, and further advised Respondent that failure to provide proof of his compliance with the conditions attached to the Private Reprimand on or before July 7, 2006 and/or failure to appear for the rescheduled Private Reprimand would result in the institution of formal proceedings against Respondent.

27. Respondent failed to provide proof of his compliance with the conditions attached to the Private Reprimand. He failed to execute and return the Agreement to abide with the terms of the probation, and he failed to appear at the time and date scheduled for the Private Reprimand.

28. Respondent failed to provide any reason for his nonappearance on July 7, 2006.

29. As a result of Respondent's failure to demand the institution of formal proceedings against him, Respondent is conclusively deemed to have violated the Rules of Professional Conduct set forth in the March 31, 2006 letter and Order.

30. Respondent did not advise the Office of Disciplinary Counsel or the Secretary of Disciplinary Board of any basis for establishing "good cause" for not appearing for the Private Reprimand scheduled for July 7, 2006, and not complying with the Conditions attached thereto.

PROPOSED CONCLUSIONS OF LAW

31. Pursuant to Pa.R.D.E. 203(b)(2), Respondent's willful failure to appear before the Board for Private Reprimand is grounds for discipline.

32. Pursuant to Pa.R.D.E. 204(b), Respondent's failure to comply with the condition of the Private Reprimand is grounds for discipline.

33. Respondent has, by his conduct as set forth herein above in paragraphs 9 through 30, inclusive, violated Rule of Professional Conduct 8.4(d).

34. In addition to the foregoing grounds for discipline resulting from Respondent's failure to appear for the Private Reprimand and failure to comply with the Condition attached thereto, Respondent is conclusively deemed to have violated the following Rules of Professional Conduct:

RPC 1.3 - In that Respondent failed to act diligently in order to get his client's equitable distribution completed. Even though Respondent was directed to draft and file a QDRO in December 2004, he failed to do so. Respondent also failed to communicate with his client to have certain documents signed in order to effectuate the equitable distribution of the marital property, which caused additional delays, a petition for contempt and a needless hearing.

Former RPC 1.4(a) and (b) and current RPC 1.4(a)(3) and 1.4(a)(4) - In that Respondent failed to keep his client informed about the status of the matters and failed to comply with reasonable requests for information. Respondent failed to return his client's telephone calls, and kept rescheduling meetings. Respondent did not call or write to his client and advise her that he had received certain documents from opposing counsel that she needed to sign. As a result of his failure to do so, opposing counsel filed a Petition for Contempt for his client's failure to sign off on the documents, which resulted in an unnecessary hearing. Respondent never advised his client that she could no longer get an order for spousal support, because the divorce was finalized.

RPC 1.4(a)(2) - In that Respondent never spoke to Complainant about the means by which he intended to accomplish the client's goal. Complainant was never aware that Respondent could not pursue a claim for alimony after the divorce was finalized. Throughout the entire representation, Complainant never understood the significance of court orders and correspondence. She just assumed that Respondent was eventually going to pursue her claim for alimony.

RPC 1.5(b) Respondent failed to communicate the basis of his fees in writing within a reasonable time after beginning the representation.

MITIGATING CIRCUMSTANCES

35. Respondent has cooperated with the Office of Disciplinary Counsel.

36. Upon receiving the DB-7 Letter from the Office of Disciplinary Counsel in September 2005, Respondent immediately took steps to rectify his substance abuse problems by admitting himself into an alcohol rehabilitation facility for a period of two weeks, and successfully completed that program.

37. Respondent has degenerative arthritis and gout, which has caused him to be debilitated for long periods of time, and therefore, unable to maintain his law practice. In October 2005, he was hospitalized for gout, and it was discovered that he also had diverticulosis. As a result of the diverticulosis and postsurgery complications, he had two surgeries and was hospitalized for a two-week period.

38. The day after Mr. Roselle was released from the hospital, the Commissioners of Mifflin County notified Mr. Roselle that he was terminated as a Public Defender for conduct unrelated to the disciplinary charges.

39. If called upon to testify, Steven Snook, Mifflin County's District Attorney, would testify to Mr. Roselle's reputation for honesty and competence as an attorney.

40. In January 2006, Mr. Roselle was hospitalized to reverse the diverticulosis.

AGGRAVATING CIRCUMSTANCES

41. Respondent has prior disciplinary history consisting of an Informal Admonition which he received on February 3, 2005 at File No. C3-04-586. In that case, Respondent was appointed to represent a qualified public defender client, yet he attempted to collect a fee from his client, which was an illegal fee in violation of Rule 1.15(a).

42. In addition to the charge involving neglect of Complainant Nancy Richard's case, Mr. Roselle admitted in his Answer to the DB-7 letter that he had neglected five other clients' cases for substantially long periods of time. In his Answer to the DB-7 Letter, Respondent explained his neglect of Ms. Richard's case and the other five client matters by stating: "Over the past 18 months, I was paralyzed by inactivity and basically nonfunctional." Respondent made an agreement with Office of Disciplinary Counsel that he would take care of these six neglected cases no later than October 27, 2005. Petitioner agreed to recommend a Private Reprimand after Respondent provided proof that he had taken care of these matters,

43. Mr. Roselle claimed that he needed more time to complete these client matters. Therefore, Petitioner agreed to recommend a Private Reprimand with a condition that Respondent take care of these five neglected client matters.

44. After Respondent failed to appear for the Private Reprimands on two occasions and failed to provide proof that he had complied with the condition to

handle five neglected cases, the Office of Disciplinary Counsel requested that Respondent provide a status report on the five neglected cases.

45. Respondent acknowledged that at that time of this joint petition for consent discipline, he has yet to handle these five client matters as a result of “a combination of his substance abuse, physical and medical problems and a paralysis of inaction.”

46. Barbara Kidd was Respondent’s client who was the most severely prejudiced by Respondent’s neglect and lack of communication. Respondent failed to request equitable distribution before Ms. Kidd’s former husband obtained a final order of divorce. Since attorney negligence is not a valid basis for reopening a divorce decree, Ms. Kidd is precluded from obtaining her fair share of the marital property.

47. Respondent and Petitioner have agreed that Respondent should have to go through the reinstatement process to demonstrate that he has overcome his alcohol addiction, and his physical and medical problems, and he is competent and physically capable of resuming the practice of law.

SPECIFIC JOINT RECOMMENDATIONS FOR DISCIPLINE

48. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent is a suspension of one year and one day.

49. The Respondent hereby consents to this discipline of one year and one day. Attached to this Petition is the Respondent’s executed Affidavit required by Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement, stating that he consents to the recommended discipline, including the mandatory

acknowledgements contained in Rule of Disciplinary Enforcement 215(d)(1) through (d)(4).

50. It is respectfully submitted that existing case law supports Petitioner and Respondent's Joint Recommendation as follows:

In *Office of Disciplinary Counsel v. O'Neil*, 212 DB 2003 & 46 DB 2004, an attorney who had no prior discipline was subject to a one year and one day suspension for his failure to appear for private discipline. Mr. O'Neil had no prior record of discipline. Mr. O'Neil had originally agreed to submit to an Informal Admonition with conditions as a result of his misconduct involving two of his clients. As conditions to the Informal Admonition, Mr. O'Neil was required to return documents to his clients and refund \$500 to one client and \$600 to the other client for unearned fees. Mr. O'Neil failed to appear at the Informal Admonition, and failed to provide proof of his compliance with the conditions. Mr. O'Neil was then requested to provide good cause within ten days for his failure to appear. He contacted the Office of Disciplinary and indicated that he had some health problems, and wished to reschedule the Informal Admonition. He complied with the conditions set forth above, and an Informal Admonition was rescheduled. He again failed to appear. In the interim, Mr. O'Neil was charged in another case in which he failed to do the work on behalf of his client, and another Petition for Discipline was filed, based on his neglect. Mr. O'Neil advised Disciplinary Counsel that he would refund the client's money in the third case, but failed to do so. He appeared at the prehearing conference and claimed that he suffered from mental illness, but failed to appear for the hearing. The Disciplinary Board unanimously recommended that Mr. O'Neil be

suspended for a year and a day [with one member not participating], and made the following findings:

The charges against Respondent are relatively minor in nature. However, in light of Respondent's unwillingness or inability to participate in the process to determine the consequences of his admitted misconduct, the Board recommends that Respondent be suspended for one year and one day. That will ensure that the public is protected until such time as Respondent affirmatively demonstrates that whatever the cause of his difficulty, he is fit to practice. *Id* at 11.

The Supreme Court issued a per curiam order suspending Mr. O'Neil from the practice of law for a year and a day.

Similarly, in *Office of Disciplinary Counsel v. McNeill Zell*, 154 DB 2000, an attorney who failed to appear at a Private Reprimand was suspended for a year and a day. Like Respondent, the attorney failed to contact either the Office of Disciplinary Counsel or the Secretary regarding her failure to appear for the Private Reprimand. She had a prior disciplinary history of two Informal Admonitions and one Private Reprimand. Although she did not show up for the Private Reprimand, she appeared at the disciplinary hearing regarding her failure to appear at the Private Reprimand. At the hearing, she explained her personal problems and her interest in seeking personal professional help. Disciplinary Counsel recommended that Ms. McNeill Zell receive a Private Reprimand with conditions. The Hearing Committee left the record open for sixty days so that Ms. McNeill Zell could pursue treatment, to have the physician submit a report or appear to testify, and to allow Disciplinary Counsel to formulate the conditions. At the subsequent hearing, Ms. McNeill Zell reported that she had failed to seek

treatment and failed to file a brief. As a result, she was suspended for one year and one day.

The Disciplinary Board noted in *McNeill Zell, supra*, that "while Respondent's underlying misconduct is not serious and may not have warranted suspension, her actions clearly show that she is in no position at present to handle the responsibilities associated with the practice of law." *Id.* As noted, Ms. McNeill Zell had a prior disciplinary record.

In Respondent's case, he has admitted that he has neglected six client matters. He has acknowledged that he has a substance abuse problem and serious medical problems that affect his ability to practice law. He admitted that he failed to appear at his Private Reprimand and failed to provide any reason even after it was postponed once due to his health condition. He acknowledges that he is not presently able to handle the responsibilities associated with the practice of law. Respondent concedes that he should be required to petition for reinstatement to prove that he has overcome his substance abuse problems and his health problems and is capable of practicing law.

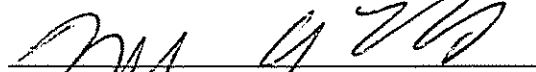
51. Therefore, the Joint Recommendation of a suspension of one year and one day by both the Petitioner and Respondent clearly is consistent with existing case law.

WHEREFORE, Petitioner and Respondent respectfully request that pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e) and 215(g), that the three member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and order a suspension for violations of former Rules of Professional Conduct 1.4(a) and 1.4(b), Rules of Professional Conduct 1.3, 1.4(a)(2),

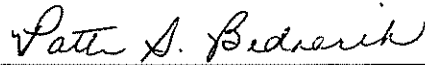
1.4(a)(3), 1.4(a)(4), 1.5(b) and 8.4(d) and Rules of Disciplinary Enforcement 203(b)(2) and 204(b). Further, it is requested that the three member panel order the Respondent to pay the necessary expenses incurred in the investigation in this matter.

Oct 26, 06

Respectfully submitted,



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BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : NO. 59 D.B. 2006

PETITIONER :

: ATTORNEY REG. NO. 34537

V. :

: (MIFFLIN COUNTY)

MICHAEL A. ROSELLE, :


RESPONDENT :

VERIFICATION

The statements contained in the foregoing Petition in Support of Discipline on Consent of the Pennsylvania Rules of Disciplinary Enforcement 215(d), are true and correct to the best of our knowledge, information and belief, and are subject to penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsification to authorities.

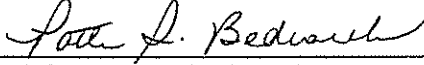
Respectfully submitted,

Oct 26, 06
Date



Michael A. Roselle
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Oct 18, 2006
Date



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BEFORE THE DISCIPLINARY BOARD
OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : NO. 59 D.B. 2006
PETITIONER :
V. :
ATTORNEY REG. NO. 34537
: (MIFFLIN COUNTY)
MICHAEL A. ROSELLE, :
RESPONDENT :

AFFIDAVIT UNDER RULE 215(D) OF THE
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

The Respondent, Michael A. Roselle, hereby states he consents to a suspension of a year and a day, as jointly recommended by the Petitioner, Office of Disciplinary Counsel, and himself, in the Joint Petition in Support of Discipline on Consent and further states the following:

1. This consent is freely and voluntarily rendered; it is not being subject to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted with counsel in connection with the decision to consent to discipline;
2. The Respondent is aware there is presently pending a Petition for Discipline in the captioned matter with a hearing scheduled for November 9, 2006;
3. The Respondent acknowledges the material facts set forth in the Joint Petition are true; and
4. The Respondent consents because he knows that if the charges against him continue to be prosecuted in the pending matter, he could not successfully defend against them.

Oct 26, 2006 
Michael A. Roselle