

IN THE SUPREME COURT OF PENNSYLVANIA

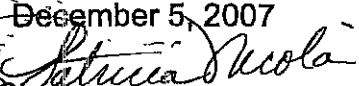
OFFICE OF DISCIPLINARY COUNSEL, : No. 1306 Disciplinary Docket No. 3
Petitioner :
 : No. 20 DB 2007
v. :
 : Attorney Registration No. 47076
ANDREW J. BREKUS, :
Respondent : (Delaware County)

ORDER

PER CURIAM:

AND NOW, this 5th day of December, 2007, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated September 13, 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 Andrew J. Brekus 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.

A True Copy Patricia Nicola
As of December 5, 2007
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

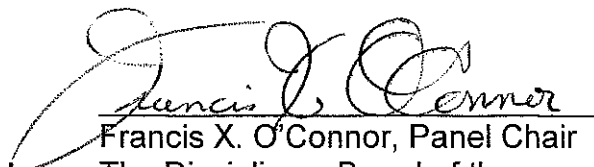
OFFICE OF DISCIPLINARY COUNSEL	:	No. 20 DB 2007
Petitioner	:	
	:	
v.	:	Attorney Registration No. 47076
	:	
ANDREW J. BREKUS	:	
Respondent	:	(Delaware County)

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 Francis X. O'Connor, Smith Barton Gephart and Sal Cognetti, Jr., has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on August 21, 2007.

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.


Francis X. O'Connor, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: September 13, 2007

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 20 DB 2007
Petitioner :
:
v. : Attorney Reg. No. 47076
:
ANDREW J. BREKUS, :
Respondent : (Delaware 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 Raymond S. Wierciszewski, Disciplinary Counsel-in-Charge, and Respondent, Andrew J. Brekus, by his counsel, John Rogers Carroll, Esquire, file this Joint Petition In Support Of Discipline On Consent Under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement and respectfully represent the following:

SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED

1. Petitioner, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

FILED

AUG 21 2007

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

2. Respondent, Andrew J. Brekus, was born in 1960, was admitted to practice law in the Commonwealth on November 18, 1986, and maintains his office at 3605 Chapel Rd., Suite D, Newtown Square, Delaware County, PA 19073.

3. Petitioner filed a Petition for Discipline against Respondent with the Secretary of the Disciplinary Board on February 22, 2007. Respondent filed an Answer to the Petition on April 9, 2007. In the Answer, he admitted all of the rule violations charged in the Petition for Discipline.

CHARGE I: ATTORNEY REGISTRATION MATTERS

4. Respondent was admitted to the bar of the State of New Jersey in 1986, but on several occasions, including September 15, 2003 to December 19, 2003 and September 27, 2004 to September 15, 2006, was ineligible to practice there due to his failure to pay his annual assessments.

5. Respondent failed to timely file Pennsylvania Attorney's Annual Fee Forms for Fiscal Years ("FY") 2003-2004, 2004-2005 and 2006-2007, and he did not file a Form for 2005-2006.

6. In his Annual Fee Form for FY 2003-2004, dated October 22, 2003, Respondent listed 402 Kings Highway South, Cherry Hill, NJ 18034 as his registration address and falsely stated that he was on active status in New Jersey.

7. Commencing no later than 2003, Respondent maintained an office for the practice of law in Wayne, Delaware County, Pennsylvania.

8. Respondent did not advise the Disciplinary Board of his Pennsylvania address.

9. Respondent filed an Application for Resumption of Active Status for Fiscal Year 2004-2005, dated January 10, 2005, in which he again used the Cherry Hill, NJ registration address and stated that he was licensed in New Jersey but did not provide requested status information.

10. Respondent failed to timely comply with his Pennsylvania Continuing Legal Education ("CLE") requirements for the compliance period ending December 31, 2004.

- a. By Annual CLE Report dated February 25, 2005, the Pennsylvania CLE Board ("PACLEB") advised Respondent of his non-compliance, notified him of necessary remedial action and late fees, and stated its intention to refer non-compliant attorneys to the Supreme Court of Pennsylvania for involuntary transfer to inactive status ninety days from the notice date.
- b. By Notice dated May 31, 2005, the PACLEB again advised Respondent of his non-compliance, notified him of necessary remedial action and late fees, and set a June 30, 2005 deadline for referral to the Supreme Court.
- c. By Order of the Supreme Court dated July 26, 2005, Respondent was transferred to inactive status, effective August 25, 2005.
- d. By letter dated July 26, 2005, the Secretary of the Disciplinary Board ("the Secretary") advised Respondent of the entry of the Order and of the requirements of Pa.R.D.E. 217 and Disciplinary Board Rules ("D.Bd.R.") §§91.91-91.99 pursuant thereto and directed him to con-

tact the PACLEB if he had questions.

11. Respondent failed to comply with the requirements of the Pa.R.D.E. and D.Bd.R. with respect to notification to clients and others of his transfer to inactive status and certification of notice to the Disciplinary Board.

12. In late August 2005, Respondent forwarded to the Secretary his Annual Fee Form for Fiscal Year 2005-2006 and a check in the amount of \$175.00.

13. On August 25, 2005, Respondent contacted the PACLEB, which advised him of the steps that he needed to take to avoid deactivation, including taking additional credits and paying late fees.

14. By letter dated August 26, 2005, the Secretary advised Respondent that he had not complied with CLE regulations and therefore was still inactive, and she returned the check to him.

15. On August 31, 2005, Respondent took additional CLE credits, which brought him up to date for the period ending December 31, 2004.

16. Respondent failed to complete course requirements for the period ending December 31, 2005 until May 18, 2006, and he failed to pay required late fees, totaling \$300.00, until September 13, 2006.

17. On or about September 12, 2006, Respondent filed with the Disciplinary Board his Annual Fee Form for FY 2005-2006, dated September 12, 2006, in which he provided his current registration address and falsely stated that he was licensed and on active status in New Jersey, and he was reinstated to active status.

CHARGE II: THE PANTANO ESTATE MATTER

18. In or about June 2003, Raif D'Amico met with Respondent at his Wayne, Pennsylvania office concerning representation of Mr. D'Amico in his capacity as Executor of the Estate of Margaret V. Pantano ("decedent"), who died on June 10, 2003.

19. Mr. D'Amico:

- a. advised Respondent that decedent was a domiciliary of New Jersey who resided in Delaware County, Pennsylvania, at the time of her death, and that her assets included a 50% interest in real property in Pennsylvania, valued at \$100,000, and personal and real property in New Jersey, valued at \$203,880.05;
- b. provided decedent's will, which, *inter alia*, devised her interest in the Pennsylvania property to her daughter Lisa Pantano Kane, bequeathed \$10,000.00 to each of two grandchildren, and devised decedent's residuary estate equally to Ms. Kane and decedent's daughter Maria Pantano Bucci; and
- c. advised that Ms. Kane had held decedent's power of attorney and engaged in certain questionable transactions involving decedent's assets.

20. Respondent advised Mr. D'Amico that his fee for handling the matter would be \$10,000.00.

21. Respondent had not previously represented Mr. D'Amico.

22. Respondent failed to advise Mr. D'Amico in writing of the basis or rate of the fee.

23. On June 17, 2003, Respondent filed with the Delaware County Register of Wills a Petition for Grant of Letters Testamentary to Mr. D'Amico, and Letters Issued.

24. By filing the initial probate in Pennsylvania, Respondent demonstrated a lack of competence.

25. Respondent then advised Mr. D'Amico that it was necessary to probate the will in New Jersey.

26. On July 24, 2003, Respondent filed an Application for Probate, Affidavit of New Jersey residence of decedent, and other documents in the Surrogate's Court for Atlantic County, and Letters Testamentary issued in New Jersey.

27. Respondent failed to advise Mr. D'Amico of Respondent's inability to continue to provide representation in New Jersey during the periods when he was on inactive status in that jurisdiction.

28. Mr. D'Amico took necessary action to garner decedent's assets, obtain valuations of the real estate and sell it, and discharge liabilities of the estate.

29. Between June 2003 and late 2005, Mr. D'Amico and Respondent negotiated on the behalf of the estate with counsel for Ms. Kane with respect to her actions involving estate assets and her claims relating to the estate, including disclaimer of her interest in the Philadelphia property.

30. Between September 2003 and January 2005, Mr. D'Amico issued three checks totaling \$10,568.00 on the Pantano Estate account to Respondent for his fees and costs, as directed by Respondent.

31. Respondent negotiated each of those checks for cash.

32. On September 10, 2003, at Respondent's direction, Mr. D'Amico issued a check in the amount of \$4,500.00 to the Pennsylvania Department of Revenue on account of inheritance tax.

33. By letter dated November 4, 2003, Respondent forwarded to James Edelman, CPA, a check in the amount of \$2,000.00 for his fee, advised that inheritance tax had been paid, advised of other matters, and asked that Mr. Edelman prepare the Pennsylvania non-resident inheritance tax return, the New Jersey Estate Tax return, if necessary, and a Federal 706.

34. It was not necessary to file a Federal 706 because the estate did not have sufficient assets, and it was not necessary to file a New Jersey return because decedent's daughters were her beneficiaries and thus no tax was due.

35. By letter dated December 5, 2003, Respondent forwarded to Mr. Edelman an appraisal of the Pennsylvania property and provided other information.

36. Respondent failed to timely file decedent's final income tax return and to pay income tax.

37. On January 18, 2005, settlement on the sale of the Pennsylvania property was held, and net proceeds in the amount of \$85,230.47 were distributed to the estate, thereby completing transactions necessary to filing tax returns and accountings.

38. By letter dated March 5, 2005, copied to Mr. D'Amico, Respondent forwarded to the beneficiaries checks in the amount of \$55,000.00 on account of their bequests, advised of the status of various matters, and requested information.

39. Respondent failed to provide to Mr. Edelman the HUD-1, which was neces-

sary to complete the Pennsylvania inheritance tax return, and information necessary to prepare decedent's final year income tax return.

40. In or about May 2005, Respondent provided to Mr. D'Amico an "Executor's Account of May 5, 2005," captioned in Atlantic County Surrogate's Court.

41. Mr. D'Amico signed and returned the Account.

42. Respondent failed to file the Account.

43. On or about June 17, 2005, Respondent filed Mr. D'Amico's renunciation of his trusteeship under decedent's Will in the Surrogate's Court in New Jersey.

44. Respondent failed to advise Mr. D'Amico of the entry of the Order of the Pennsylvania Supreme Court transferring Respondent to inactive status and his consequent inability to continue to represent Mr. D'Amico in Pennsylvania.

45. In July and August 2005, Mr. D'Amico made additional distributions to beneficiaries and paid Respondent an additional \$1,000.00 in fees for his services in dealing with Ms. Kane, as directed by Respondent.

46. In or about August 2005, Respondent advised Mr. D'Amico he would send documentation to Mr. Edelman necessary to prepare final tax returns.

47. Respondent failed to forward the documentation to Mr. Edelman.

48. Between August 2005 and March 2006, Mr. D'Amico called Respondent on numerous occasions, but Respondent failed to accept his calls and to respond to messages left on his voicemail.

49. In or about January 2006, Mr. D'Amico called Respondent to inquire about the progress of the matter, at which time Respondent promised to get the documents out

promptly.

50. Respondent failed to take any action and to communicate with Mr. D'Amico.

51. By certified letter dated March 7 [sic], 2006, delivered to Respondent's Pennsylvania office on March 7, Mr. D'Amico requested that Respondent advise him of the status of the estate and forward documentation to Mr. Edelman.

52. By certified letter dated March 28, 2006, Mr. D'Amico discharged Respondent as his attorney and requested that Respondent release his file to Mr. D'Amico's new attorney, James M. Pierce, Esquire.

53. On or about June 15, 2006, Mr. Pierce forwarded to Respondent at his home address copies of Mr. D'Amico's letters of March 7 and 28.

54. Respondent failed to respond to those letters and to release the file.

CHARGE III: THE DANYI MATTER

55. For approximately thirty years prior to June 2005, Respondent had a social and professional relationship with Kevin Danyi, who is an attorney with offices in Bethlehem, Pennsylvania, but Respondent had not represented Mr. Danyi.

56. In or about June 2005, Mr. Danyi met with Respondent at his office in Delaware County and retained Respondent to represent him in defending a claim against Mr. Danyi by Home Care Service, Inc. (hereinafter, "HCS"), a New Jersey corporation, and in bringing a claim against Capitol Blue Cross (hereinafter, "Blue Cross"), a Pennsylvania corporation, arising from the following circumstances:

- a. From 2002 to 2005, Mr. Danyi suffered from a serious illness, for which he received medical treatment from various providers, includ-

ing HCS, in the State of New Jersey.

- b. All of Mr. Danyi's medical bills were covered by Blue Cross, except for \$71,305.80 in medicine and services provided by HCS.
- c. From 2003 through 2005, Mr. Danyi filed administrative appeals with Blue Cross and exhausted the administrative process, without success.
- d. In spring 2005, HCS contacted Mr. Danyi and demanded payment in full.

57. Respondent failed to advise Mr. Danyi that he was unable to represent him because Respondent was ineligible to practice law in New Jersey.

58. Respondent failed to advise Mr. Danyi of the basis or rate of his fee either orally or in writing.

59. Between June 2005 and January 2006, Mr. Danyi gave Respondent all of his personal and medical records concerning the claims and told Respondent that he employed paralegals who could assist Respondent if needed.

60. In June 2005, HCS filed suit against Mr. Danyi in the Superior Court of New Jersey, Law Division, Middlesex County, and in July served him with a Summons & Complaint.

61. Mr. Danyi immediately notified Respondent of his receipt of the Summons and Complaint and faxed them to Respondent as directed.

62. Respondent assured Mr. Danyi that he would take care of the matter.

63. Respondent failed to file an Answer to the Complaint.

64. Respondent failed to advise Mr. Danyi that he was transferred to inactive

status in Pennsylvania.

65. On two occasions in August 2005, Mr. Danyi met with Respondent, who again promised to file an action in New Jersey against Blue Cross as well as to defend the HCS suit and requested checks in the amount of \$500.00, which Mr. Danyi issued.

66. Respondent negotiated the checks for cash and failed to hold the funds in escrow pending delivery of the services and payment of the costs for which the checks were issued.

67. At no time did Respondent send a bill or invoice to Mr. Danyi.

68. In late August or early September 2005, Respondent contacted Jeffrey P. Blumstein, Esquire, counsel for HCS, to discuss the case and to request an extension of time to file an Answer.

69. Mr. Blumstein agreed but directed Respondent to forward a written stipulation for an extension.

70. Respondent failed to submit to Mr. Blumstein a written stipulation for an extension.

71. On several occasions during September 2005, Mr. Blumstein called and wrote to advise Respondent and Mr. Danyi of the necessity to provide a written stipulation.

72. Mr. Danyi called Respondent, who promised to supply the Stipulation.

73. By letter dated October 3, 2005, on letterhead identifying himself as "member of Pennsylvania and New Jersey Bars," Respondent forwarded to Mr. Blumstein a Stipulation Extending Time to Answer until October 16, 2005.

74. That letterhead was misleading, in that Respondent was not at that time per-

mitted to practice law in either jurisdiction.

75. Mr. Blumstein executed the Stipulation and returned it to Respondent.

76. Respondent failed to file an Answer.

77. Respondent advised Mr. Blumstein he intended to file a Declaratory Judgment action against Blue Cross.

78. By letters and e-mails sent in October and November 2005, Mr. Blumstein demanded that Respondent file an Answer by December 1, 2005, or provide a copy of the Declaratory Judgment Complaint.

79. Respondent failed to respond to Mr. Blumstein's communications or to file an Answer.

80. From August through December 2005, Mr. Danyi frequently telephoned and sent e-mails to Respondent to inquire about the status of the case and to advise of his availability to assist Respondent in preparing the case.

81. On most occasions, Respondent did not return the calls or, if he did, he assured Mr. Danyi that he was "working on it," had matters "under control," and was researching various issues.

82. On December 5, 2005, HCS entered a default judgment against Mr. Danyi, and Mr. Blumstein so notified him by letter dated December 15, 2005.

83. On December 21, 2005, HCS entered a Final Judgment against Mr. Danyi, in the amount of \$71,305.80, and Mr. Blumstein forwarded a copy to him by letter dated January 3, 2006.

84. Upon receipt of the communications from Mr. Blumstein, Mr. Danyi immedi-

ately contacted Respondent by telephone to demand explanations, at which time Respondent:

- a. replied that he would "take care of everything," that "default judgments in New Jersey are easy to open," that "we'll file against Blue Cross immediately," and that he would contact Mr. Blumstein immediately;
- b. called Mr. Danyi back and falsely advised him that he had spoken to Mr. Blumstein and obtained permission to "open the judgment"; and
- c. said that he would be in Bethlehem for Christmas and would stop by Mr. Danyi's office or house to talk to him about how they were going to proceed.

85. Respondent did not appear at Mr. Danyi's home or office and failed to file a petition to open the default judgment.

86. In January 2006, having heard nothing from Respondent, Mr. Danyi repeatedly called him, and Respondent ultimately promised to meet at Mr. Danyi's office on January 27, 2006.

87. On January 27, 2006, Respondent met with Mr. Danyi, at which time:

- a. Respondent brought pleadings to open the judgment, to be filed with the court in New Jersey, which contained numerous misspellings and grammatical errors and which Respondent stated were prepared with voice-recognition software as a rough draft;
- b. Mr. Danyi reviewed the documents with Respondent, made correc-

tions and modifications and signed several verifications;

- c. Respondent assured Mr. Danyi that he would make the corrections and file the final version immediately; and
- d. at Respondent's request, Mr. Danyi gave him a check for \$400.00 for additional fees.

88. Respondent negotiated the \$400.00 check for cash.

89. Respondent failed to hold the fees inviolate pending delivery of services for which they were paid.

90. After January 27, 2006, Respondent failed to communicate with Mr. Danyi or to respond to his repeated telephone calls, e-mails, and letters.

91. In late January and in February 2006, Respondent and Mr. Blumstein communicated concerning records of Blue Cross's payments to HCS, and Mr. Blumstein asked that Respondent contact him with a settlement proposal regarding the judgment.

92. Respondent failed to advise Mr. Danyi of these communications and to respond to Mr. Blumstein.

93. In February and March 2006, Mr. Danyi sent Respondent numerous e-mails and left repeated voice mail messages on his cell phone and at his office, to which Respondent did not respond.

94. By letter dated March 30, 2006, Richard E. Santee, Jr., Esquire, advised Respondent of his representation of Mr. Danyi in legal malpractice claims against Respondent.

95. In May 2006, Mr. Santee filed suit on behalf of Mr. Danyi against Respondent

in the Court of Common Pleas of Northampton County.

- a. In June 2006, Respondent was served with a Writ of Summons.
- b. In July 2006, Respondent was served with a subpoena to attend a deposition on August 9, 2006 and Interrogatories and a Request for Production.
- c. Respondent failed to appear for the deposition and to respond to discovery requests.
- d. In November 2006, Mr. Santee filed a Motion for Contempt for Respondent's failure to appear for the deposition, and the court ordered that Respondent respond to discovery within ten days and show cause why he should not be held in contempt.
- e. Respondent failed to respond to discovery or to the Rule to Show Cause.
- f. In January 2007, Respondent was held in contempt and ordered to pay sanctions in the amount of \$1,200.00.

96. Respondent admits that by his conduct as alleged in paragraphs 4 through 95 above, he violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

- a. RPC 1.1, which states: 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 1.3, which states: A lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(1), which states: A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
- d. RPC 1.4(a)(2), which states: 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: A lawyer shall keep the client reasonably informed about the status of the matter;
- f. RPC 1.4(a)(4), which states: A lawyer shall promptly comply with reasonable requests for information;
- g. RPC 1.4(b), which states: 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: 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(a), which states: A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property.

Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later;

- j. RPC 1.16(a)(1), which states: Except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law;
- k. RPC 1.16(d), which states: Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law;
- l. RPC 5.5(a), which provides: A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction;
- m. RPC 7.1, which states: A lawyer shall not make a false or misleading

communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

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

o. RPC 8.4(d), which states: It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice;

and

p. Pa.R.D.E. 203(b)(3), which states: Wilful violation of any other provision of the Enforcement Rules shall also be grounds for discipline; *via*:

q. Pa.R.D.E 217(a), which provides: A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the transfer to inactive status and shall advise said clients to seek legal advice elsewhere;

r. Pa.R.D.E 217(b), which provides: A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified

mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the transfer to inactive status, and which details the notice to be provided;

s. Pa.R.D.E 217(c), which provides: A formerly admitted attorney shall promptly notify, or cause to be notified, of the transfer to inactive status, by registered or certified mail, return receipt requested: (1) all persons or their agents or guardians to whom a fiduciary duty is or may be owed at any time after the transfer to inactive status, and (2) 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 or she continues as an attorney in good standing. The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is on inactive status;

t. Pa.R.D.E 217(e), which provides: Within ten days after the effective date of the transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing his compliance with the rules and related matters;

- u. Pa.R.D.E 217(j), which provides: A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the requirements detailed in the Rule;
- v. Pa.R.D.E 219(d)(1)(i), which provides: On or before July 1 of each year all persons required to pay an annual fee shall file with the Administrative Office a signed statement on the form prescribed by the Administrative Office in accordance with procedures detailed in the Rule; and
- w. Pa.R.D.E 219(d)(3), which provides: Every person who has filed such a statement shall notify the Administrative Office in writing of any change in the information previously submitted within 30 days after such change.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

1. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a suspension from the practice of law for a period of one year and one day.

2. 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.

3. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that:

- (a) There are several mitigating circumstances:
 - (i) Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
 - (ii) Respondent has cooperated with Petitioner, as is evident by Respondent's admissions herein and his consent to receiving a suspension for one year and one day;
 - (iii) Respondent is remorseful for and embarrassed by his misconduct and understands he should be disciplined, as is evident by his consent to the suspension;
 - (iv) Respondent's answer to the petition for discipline stated that he had been suffering from severe depression before and during the time of the misconduct alleged. Respondent sought help for his depression as early as January, 2004. From March, 2004 until August, 2006 he was under the care of Dr. Thomas S. Wind, D.O., whose psychiatric evaluation is attached as Exhibit A. From August 31, 2006 respondent was under the care of Steven Levy, M.D., a psychiatrist, whose report related to the petition for discipline is also attached as Exhibit B.

Respondent has received both medication and psychotherapy for his depression and his condition has improved. Respondent's condition is described in the opinion of Dr. Levy.

(v) Respondent has no prior disciplinary history in Pennsylvania, although he has received an admonition and reprimand in New Jersey.

(b) Respondent is aware that if he is suspended from the practice of law in Pennsylvania, he may be subject to the imposition of reciprocal identical or comparable discipline in New Jersey where he is also admitted to practice law.

4. Respondent's admitted misconduct includes neglect of client matters, failure to communicate with clients, misrepresentations on attorney registration statements, and failure to maintain active status in both Pennsylvania and New Jersey.

5. A one year and one day suspension is within the range of public discipline imposed in similar Pennsylvania disciplinary cases. In *Office of Disciplinary Counsel v. Levin*, No. 124 DB 2004 (2006), for example, a respondent with no prior record of discipline in over thirty years as an attorney, received a suspension for one year and one day for neglecting several client matters and making misrepresentations to clients regarding those matters. Levin suffered from a major depressive disorder, but failed to establish that it played a causal role in his misconduct. In *Office of Disciplinary Counsel v. Goldman*, No. 157 DB 2003 (2005), a respondent who neglected four client matters and made misrepresentations to two of the clients was suspended for one year and one day. Goldman had no prior

record, cooperated with the disciplinary investigation and expressed remorse, but was not entitled to *Braun* mitigation. In *Office of Disciplinary Counsel v. Levande*, No. 72 DB 1999 (2001), an attorney who neglected several client matters but did not engage in misrepresentations, was suspended for one year and one day. Levande had a prior record of two informal admonitions. In *Office of Disciplinary Counsel v. Mayro*, No. 144 DB 2001 (2004), an attorney who neglected four client matters and misrepresented the status of those matters to his clients received a two year suspension. Respondent Mayro, however, had a significant prior disciplinary record consisting of two informal admonitions and two private reprimands and failed to express remorse for his misconduct.

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 above Joint Petition In Support Of Discipline On Consent and file its recommendation with the Supreme of Pennsylvania in which it is recommended that the Supreme Court enter an Order:

(i) Suspending Respondent from the practice of law for a period of one year and one day; and

(iii) Directing Respondent to comply with all the provisions of Rule 217, Pa.R.D.E.

(b) Pursuant to Rule 215(i), the three-member panel of the Disciplinary Board order Respondent to pay the necessary expenses incurred in the investigation and prosecution of this matter as a condition to the grant of the Petition and

that all expenses be paid by Respondent before the imposition of discipline under Rule 215(g), Pa.R.D.E.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

By Raymond S. Wierciszewski
Raymond S. Wierciszewski
Disciplinary Counsel-in-Charge

and

By John Rogers Carroll
John Rogers Carroll, Esquire
Counsel for Respondent

Thomas S. Wind, D.O.
1040 North Providence Road
Media, Pennsylvania 19063
Phone: 610-891-7705
Fax: 610-891-7706

PSYCHIATRIC EVALUATION

Re: Andrew Brekas
D.O.B. 11/14/60
Dates of Evaluation: 3/3/04

IDENTIFYING DATA:

Andrew is a 43-year old married white attorney who presents now complaining of dysthymia and depression.

PAST PSYCHIATRIC HISTORY:

He saw someone at Catholic Social Services, but was in denial at that time of his alcohol problem in 1999. Then on August 22, 1999 he turned himself in to Advantage Recovery for outpatient therapy and began seeing Mark Klein, a therapist. He sees Mark Klein every other week. He attends Alcoholics Anonymous once or twice a week.

FAMILY PSYCHIATRIC HISTORY:

There is a maternal maternal great aunt who "was the crazy one who lived out in the woods". There was a paternal paternal great uncle who was an alcoholic and he has a brother who is an active alcoholic and another brother who seems to have some problems with alcohol.

PATIENT'S MEDICAL HISTORY:

Incomplete. He did have a motor vehicle accident 10 years ago, which caused significant back problems and has stenosis. He received an epidural last Thursday with some relief. He's hoping for more.

FAMILY MEDICAL HISTORY:

His father died of throat cancer. He was a smoker. His mother survived Hairy Cell Leukemia 10 years ago and is doing fine. His grandfather died of heart disease. A grandfather died of Alzheimer's. There was a paternal uncle who died of prostate cancer.

SOCIAL HISTORY:

He's number four of four to a family that was intact until his father died. He has three older brothers, ten, nine and six years older than himself. He graduated law school in 1986. He married in 1994 and he has three children, sons age eight and five, and a daughter age two. He lives with his family and occasionally with his in-laws. He is a practicing Catholic. He began using alcohol between the ages of 13 and 14. He was using it daily. Ages 29 to 39 he was taking up to 10 drinks a day. He quit completely August 22, 1999. He began using marijuana in college and used it some during law school until approximately 1990. He also tried cocaine during that period, but only sporadically.

HISTORY OF PRESENT ILLNESS:

Patient has lost two good friends; one around April of 2003 and the other December of 2003. He finds himself sitting in his office, doing nothing for hours. He recently moved from a successful practice. He's living in Wayne at the request of his wife, trying to start up a new practice there. When the doors open he can talk to people. When it's closed, he becomes upset. He's had intense back pain from an injury 10 years ago that's been reactivated. He gained a significant amount of weight. He was having significant trouble sleeping. He was crying, holding the covers over his bed, very irritable to his wife and family. His work was not getting done. His money was drying up. He was under severe financial stress. He found that he had no motivation to get work done. He was missing important deadlines.

MENTAL STATUS EXAM AND CURRENT SYMPTOMS:

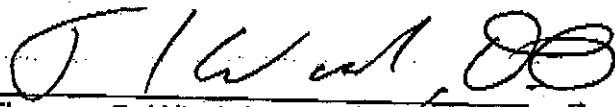
Patient was pleasant and cooperative, made okay eye contact. Speech was normal rate and rhythm, just slightly pressured. Thought processes appear goal directed. He denies auditory, visual and tactile hallucinations. He's had no recent suicidal ideation, though in the past he had some passive thoughts of "They would be better off without me." He has no plan or intention of harming himself and contracts fully for safety. His sleep is disturbed. He was getting about 7 hours out of 24, but going to bed at 9 and up at 12, not getting back to bed again until four and then up at 7:30. His appetite was increased. He had lost some weight, down to 215, and then he went back up to about 225. Then over the last six to nine months he gained another 20 pounds. He's lost some of it from dieting. His energy level is down about 50 percent. He is consumed with worry. His interest level is down at least 50 percent. He has lost interest in many of his former physical activities. His focus and concentration is around 20 percent of normal. He feels guilty, worthless, hopeless, and helpless. His libido was decreased. He was fully oriented. No gross cognitive deficits were noted. He appears to be of above average intelligence. His insight and judgment appear fair. His impulse control is good at this time. He does note some feelings of paranoia.

DIAGNOSTIC IMPRESSION:

Axis I	296.23	Major depression, single episode, severe.
	300.4	Dysthymia
Axis II	799.99	Deferred.
Axis III		Low back pain.
Axis IV		Moderate to severe. Social stressors, emotional stressors, marital stressors, financial stressors.
Axis V	50.	

RECOMMENDATIONS

1. Patient has been on Lexapro for three weeks, prescribed by his primary care physician. We will increase it to 20mgs. a day for the next four weeks. Then if he is not feeling significantly better, we will begin either Effexor or Wellbutrin at that time.



Thomas S. Wind, D.O.

Board Certified Child and Adolescent Psychiatrist

Steven Levy, M.D.
1040 North Providence Road
Media, Pennsylvania 19063
Phone 610-891-7705
Fax 610-891-7706

Dear Mr. Carroll,

5/23/07

I have read the Petition For Discipline against Andrew J. Brekus and respondent's Answer to Petition For Discipline. The following report is based on his medical records in my possession.

Andrew Brekus has been under my care since 8/31/06 for the treatment of Chronic Recurring Depression. Prior to that he had been under the care of Dr. Thomas Wind since 3/3/04, the other Psychiatrist in our office, for the same condition. He was last seen on 1/23/06 by Dr. Wind. He was scheduled to see me on 2/24/06, but he did not keep his appointment. He was not under psychiatric care between 1/23/06 and 8/31/06 and had not taken the medication prescribed for him by Dr. Wind, according to Mr. Brekus. At the time of his last visit with Dr. Wind, he was given a prescription for a three month supply of Welbutrin XL 150 mg. three tablets in the morning and Lexapro 20mg. one tablet in the morning.

In spite of feeling depressed and anxious, he decided to stop taking his medication shortly after his last visit with Dr. Wind because it wasn't helping, according to Mr. Brekus. Consequently, he had been off medication for eight months prior to his initial visit with me. When I asked him why he waited so long to make an appointment to see me, he replied that he felt too depressed to do anything about it. According to Mr. Brekus he had become increasingly depressed for six months prior to his initial visit with me.

At the time of his initial evaluation with me, he reported depressed and anxious mood, insomnia, fatigue, loss of motivation and interest, increased appetite, difficulty concentrating, low self-esteem, and social withdrawal. These are symptoms consistent with a recurring episode of Major Depression. He was started on Welbutrin at that time and followed in medication management once a month. He was eventually started in individual and marital counseling at Delaware County Professional Services. Lexapro was added on 11/4/06. Mr. Brekus has a previous history of Alcoholism. He has been sober for seven years. He also attends AA. meetings. As of 1/9/07, he has been taking Welbutrin XL 150 mg. three tablets in the morning and Lexapro 20 mg. one tablet in the morning.

As of his most recent medication check on 5/8/07, his symptoms of depression and anxiety have resolved and he is in remission. During the time of his treatment with me, he has been compliant with treatment and appointments. At this time, the plan is for him to continue to see me every eight weeks, continue with individual and marital counseling and attending AA.

From the information available in his history and medical records, his failure to take prescribed medication and follow up in keeping his initial appointment with me, contributed to his recurrence of depression and subsequent deterioration in symptoms and functioning. During the time between his last visit with Dr. Wind and his first visit with me, he was involved in the Pantano case and the Danye case. I can state, with a reasonable degree of medical certainty, that the increasing symptoms of Major Depression and his not taking prescribed medication during that time were causal factors

of the behavioral infractions mentioned in the Petition (Charge II, 49-54; Charge III, 86-95; and Rule Violations). His deteriorating performance in his professional duties are consistent with the recurrence of Major Depression and corresponds with his poor judgment in stopping medication, missing his initial appointment with me, and failing to reschedule until 8/31/06. Dr. Wind's records, going back to 3/3/04, indicate that although there had been general improvement while on medication, he was still subject to varying degrees of depression that interfered with motivation and overall performance. It is important to note that his professional performance and symptoms of depression have improved since he has been following the current treatment plan.

Sincerely,

Steven H. Levy

Steven H. Levy, M.D.

Psychiatrist

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 20 DB 2007
Petitioner	:	
	:	
v.	:	Attorney Reg. No. 47076
ANDREW J. BREKUS,	:	(Delaware County)
Respondent	:	

AFFIDAVIT OF ANDREW J. BREKUS

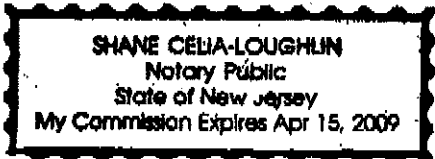
Andrew J. Brekus hereby tenders this affidavit in support of the Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d), and further states as follows:

1. He freely and voluntarily consents to the proposed discipline; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted and followed the advice of counsel in connection with the decision to consent to discipline.
2. He is aware that there is presently pending a proceeding involving allegations that he has been guilty of misconduct as set forth in the Petition;
3. He acknowledges that the material facts set forth in the Petition are true.
4. He consents because he knows that if charges continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

Signed this ^{20th} day of August, 2007.

Andrew J. Brekus
 Andrew J. Brekus, Esquire
 Attorney Reg. No. 47046

Sworn to and subscribed
 Before me this 20 day
 of August 2007
Shane Celia-Loughlin
 Notary Public



BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 20 DB 2007

Petitioner :

v. :

: Attorney Reg. No. 47076

ANDREW J. BREKUS , :

Respondent : (Delaware County)

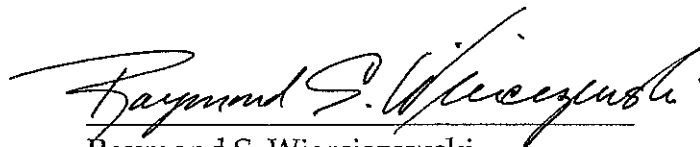
CERTIFICATE OF SERVICE

I hereby certify that I have this day served the foregoing document upon
all parties of record in this proceeding via UPS Overnight Delivery:

John Rogers Carroll, Esquire
The Curtis Center
Suite 1150 West
601 Walnut Street
Philadelphia, PA 19106

Counsel for Respondent

August 20, 2007



Raymond S. Wierciszewski
Disciplinary Counsel in Charge
Atty. Reg. No. 60299
District II Office
Disciplinary Board of the
Supreme Court of Pennsylvania
820 Adams Avenue, Suite 170
Trooper, PA 19403