

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2837 Disciplinary Docket No. 3
 :
 Petitioner : No. 148 DB 2021
 :
 v. : Attorney Registration No. 76848
 :
 JOHN E. TOCZYDLOWSKI, : (Philadelphia)
 :
 Respondent :
 :
 :

ORDER

PER CURIAM

AND NOW, this 23rd day of June, 2022, 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 John E. Toczydlowski is suspended on consent from the Bar of this Commonwealth for a period of three years, retroactive to March 13, 2022. 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 Nicole Traini
As Of 06/23/2022

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

[REDACTED]

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 148 DB 2021
Petitioner :
: ODC File No. C1-21-425
v. :
: Atty. Reg. No. 76848
JOHN E. TOCZYDLOWSKI, :
Respondent : (Philadelphia County)

**JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT
PURSUANT TO Pa.R.D.E. 215(d)**

Petitioner, the Office of Disciplinary Counsel ("ODC"), by Thomas J. Farrell, Chief Disciplinary Counsel and Michael D. Gottsch, Disciplinary Counsel, and Respondent, John E. Toczydowski ("Respondent"), by and through his attorney, Samuel C. Stretton, Esquire, respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

PARTIES TO DISCIPLINE ON CONSENT

1. Pursuant to Pa.R.D.E. 207, ODC, whose principal office is situated at Office of Chief Disciplinary Counsel, Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, 17106, is invested with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of

FILED
05/23/2022
The Disciplinary Board of the
Supreme Court of Pennsylvania

Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the provisions of the Enforcement Rules.

2. Respondent was born on October 16, 1970, is currently 51 years old, and was admitted to the Bar of the Commonwealth of Pennsylvania on January 22, 1996. By Per Curiam Order dated February 11, 2022, Respondent was placed on temporary suspension based on the conduct set forth below. Respondent's last registered address is 1616 Mt. Vernon St., Apt. 3, Philadelphia, PA 19130.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

4. Respondent has no prior record of discipline.

5. Respondent's affidavit stating, *inter alia*, his consent to the recommended discipline is attached as Exhibit A.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

6. On or about September 25, 2017, Respondent registered an account on the website wifelovers.com with the username treeman0703 and email address Tozlockski@gmail.com

7. From September 29, 2017 to June 25, 2019 Respondent posted approximately 44 items to that website under that username, including approximately 24 posts containing photos of his then-wife.

8. Respondent's posts included multiple photographs of his then-wife either totally naked or partially unclothed.

9. These photographs were taken without the knowledge or consent of Respondent's then-wife.

10. Respondent's posts were made without the knowledge or consent his then-wife.

11. Respondent included written comments accompanying the photographs that were sexually graphic and included his fantasies and an invitation for others to engage in sexual acts with his then-wife. Respondent asserts that he did not intend for his comments to be acted upon.

12. Respondent's posts included personal information that could conceivably lead to discovery of his then-wife's whereabouts, including identifying the state in which they resided, the county as "Delco," and their telephone area codes.

13. On January 9, 2018, Respondent posted a non-nude photograph of Respondent's then-wife, showing her full face and stating "215/610 Discretion if you would...email or Kik same name."

14. On June 20, 2019, Respondent posted two photographs of Respondent's then wife, both showing her full face, one nude and the other non-nude, and Respondent stated, "You can stroke either of these."

15. The posted photographs of Respondent's then-wife were taken by Respondent at homes Respondent shared with his then-wife, in a hotel room, and at a birthday dinner in a restaurant.

16. In addition to Respondent's account under the username Treeman0703, Respondent created a second account on the wifelovers.com website, under the username Treeman070317 and email address Treeman0703@mail.com.

17. On April 8, 2020 at 3:59pm, Respondent posted a nude photograph of Respondent's then-wife from the back stepping into the shower and a nude photograph of her in her bedroom standing in front of her dresser. Her face was visible in the photograph. With these photographs, Respondent posted the comment: "Soon to be ex. Travels extensively to FL and CA. Hope you get a crack at her".

18. Respondent's posting on April 8, 2020 elicited several responses from other users on the site, including one from username "letmeatu" who stated, "treeman070317 I live in Fl How do I find her funfwb53@gmail.com"

19. On or about April 8, 2020, Respondent's then-wife discovered that Respondent had made the above referenced postings to the wifelovers.com website.

20. Respondent acknowledges that his then-wife alleges that she was traumatized by seeing Respondent's postings and realizing that Respondent had been secretly taking nude photographs of her and posting them on the internet.

21. Respondent further acknowledges that his then-wife alleges that she was placed in great fear for her safety and had to live in a constant state of vigilance and worry, not knowing the extent of Respondent's illegal activity or of the likelihood that anyone who had seen Respondent's postings would attempt to contact her or simply figure out where she was and show up unannounced.

22. Respondent acknowledges that, according to his then-wife, his illegal activity caused her to suspect that someone may be surveilling her, further causing her great fear and anxiety.

23. Based upon the above conduct, on July 23, 2020 Respondent was arrested and charged with unlawful dissemination of intimate images in violation of 18 Pa.C.S. § 3131(a), a second-degree misdemeanor, and harassment, in violation of 18 Pa.C.S. § 2709(a)(4), a third-degree misdemeanor.

24. Respondent did not contest the charges against him.

25. Respondent did not contest the underlying facts, as set forth above, on which those charges were based.

26. On July 1, 2021, Respondent pleaded *nolo contendere* to both of the above charges. Respondent avers that he entered this plea, in part, because he wanted to avoid causing his ex-wife further hurt or embarrassment.

27. Respondent acknowledged in court that such a plea constitutes a conviction of the crimes pleaded to.

28. By letter dated July 6, 2021, Respondent self-reported to ODC his plea of *nolo contendere* to the criminal conduct alleged above.

29. On September 1, 2021, Respondent was sentenced to two years' probation on each of the two charges, to run concurrently.

30. In addition, a stay away order was put in place against Respondent. Respondent avers that he has honored the stay away order.

31. By Respondent's conduct as alleged in Paragraphs 6 through 32 above, Respondent violated the following Rules of Professional Conduct and Rule of Disciplinary Enforcement:

- a. RPC 8.4(a)
- b. RPC 8.4(b)
- c. RPC 8.4(c)
- d. Pa.R.D.E. 203(b)(1)

32. Respondent has been treating with a clinical psychotherapist, Katherine M. Schneider, LCSW, since January 2019. Ms. Schneider has provided an opinion that Respondent meets the diagnostic criteria for three types of mental illness that have had significant impacts on his behaviors and functioning

throughout his life: Reactive Attachment Disorder, Borderline Personality Disorder, and Bipolar II Disorder.

33. Respondent has been addressing each of these disorders in treatment with Ms. Schneider. He has made substantial improvements in being able to mitigate and control his behaviors that have resulted from these disorders. Ms. Schneider states:

[O]ver the past two years, Mr. Toczydlowski has made significant strides in understanding his past inappropriate behaviors and working to prevent these from happening again. He feels significant guilt and shame for his past actions, and is now able to understand how his poor mental health has been leading to episodes of destructive and harmful behaviors. He is now slower to act and able to consider the consequences of his actions, both in regards to himself and how his actions may affect others. ... He is able to recognize when he is having thoughts of acting impulsively and redirect himself. He has also built up more support systems in his life, including strengthening ties with friends and family members, so that he is able to cope with stressors in healthy ways. ... [Most importantly,] [h]e has worked to identify his emotions as they occur, try to understand them, and to practice appropriate coping techniques in order to self soothe. I believe this change is the greatest protective factor in ensuring he does not return to inappropriate, harmful behaviors. He is no longer desperate to numb the feelings, as he is able to cope with them. As such, he does not resort to self-destructive or harmful behaviors as he did in the past.

Mr. Toczydlowski is no longer exhibiting narcissistic patterns of behavior or thoughts; he is able to recognize how he has contributed to problems and when his actions have been

inappropriate and harmful to others. He has significantly increased his coping skills and abilities to respond to stressors appropriately. It is my professional opinion that Mr. Toczydlowski does not pose an immediate threat to the community or legal field.

Ms. Schneider's report, dated March 14, 2022, is attached as Exhibit B and designated confidential.

JOINT RECOMMENDATION FOR DISCIPLINE

34. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's misconduct is a three-year suspension.

35. Respondent hereby consents to the discipline being imposed upon him by the Disciplinary Board of the Supreme Court of Pennsylvania. Attached to this Petition as Exhibit A is Respondent's executed Affidavit as required by Pa.R.D.E. 215(d)(1) through (4).

36. In support of the Joint Petition, the parties respectfully submit that the following mitigating circumstances are present:

- a. Respondent accepts full responsibility for his misconduct and is remorseful;
- b. Respondent has cooperated with Disciplinary Counsel in jointly agreeing to discipline on consent;

- c. Respondent understands discipline is necessary and appropriate, and has expressed a willingness to accept discipline in the form of three-year license suspension; and
- d. Respondent has no history of discipline in 26 years of practice.

37. In Pennsylvania, there is no *per se* discipline for a particular type of misconduct; instead, each case is reviewed individually while being mindful of precedent and the need for consistency. ***Office of Disciplinary Counsel v. Lucarini***, 472 A.2d 186, 190 (Pa. 1983).

38. As set forth below, similar cases support a three-year suspension in this matter.

39. In ***Office of Disciplinary Counsel v. William H. Lynch, Jr.***, No. 70 DB 2020 (D.Bd. Rpt. 12/10/2021) (S.Ct. Order 1/6/2022), the respondent received a three-year suspension for a campaign of realistic threats of violence, stalking, and extreme sexual harassment of a victim, using his law license to engage in the harassment. Ignoring the victim's direction to him not to contact her, Lynch engaged in an onslaught of sexually explicit text and voice messages and threats. He threatened to show up at her place of employment for sex. He assured his victim that he had access to weapons; his threats of violence were so frightening and

intimidating that the victim lived in fear that Lynch would kill her or her son. He used his law license in proposing an "airtight" contract for sex between himself and the victim. He threatened to have his FBI contacts "vet" her, and he threatened to have her deported. He attempted to file a baseless police report against the victim and attempted to file baseless reports of sexual assault of the victim against Pennsylvania's Governor and Attorney General.

Lynch showed no remorse. Recognizing that Lynch had practiced law for nearly forty years with no prior discipline, the Board concluded that "[a] lengthy suspension of three years will fulfill the goals of Pennsylvania's system of discipline and require Respondent to undergo a rigorous reinstatement proceeding in order to ensure his fitness to practice law." D.Bd. Rpt. at 32. His suspension was not made retroactive to his temporary suspension on July 13, 2020, which would have effectively cut his suspension in half. "A prospective suspension is warranted to afford Respondent time to consider the gravity of his misconduct [which he clearly had not acknowledged when testifying at his disciplinary hearing] and the harm it inflicted upon his victim and the legal profession, and to establish that he is approaching his mental health treatment in a responsible manner and has achieved progress." *Id.*

40. In ***Office of Disciplinary Counsel v. James Martin***

Fogerty, No. 59 DB 2004 (D.Bd. Rpt. 2/25/2005) (S.Ct. Order 5/27/2005), the respondent was suspended for three years retroactive to the date of his temporary suspension. He had been convicted of criminal trespass, possession of an interception device, and interception of oral communications, and was sentenced to five years of criminal probation. Fogerty harassed a former girlfriend with offensive emails and phone calls for five months. He used a listening device to obtain private intimate and sexual information which he then repeated back to the victim. Notwithstanding that the Board accorded him *Braun* mitigation because of a psychiatric disorder and that he lacked prior discipline and had seven character witnesses, a lengthy suspension of three years was imposed due to the egregious intrusion into the victim's private life.

41. In ***Office of Disciplinary Counsel v. Milena Mladenovich***, No. 28 DB 2021 (S.Ct. Order 4/1/2022), the respondent was suspended for three years based upon a Joint Petition in Support of Discipline on Consent. The Respondent had failed to self-report to ODC after having pleaded guilty in February 2019 to DUI (highest rate of alcohol (BAC .16+; Respondent's BAC at the time of arrest was .3627)). She was sentenced to 72 hours to six months of confinement.

Subsequently, Mladenovich pleaded guilty in September 2020 in one criminal matter (the "first episode") to terroristic threats and stalking, misdemeanors that each carry a maximum sentence of five years in prison, and in March 2021 in another criminal matter (the "second episode") to terroristic threats and harassment. Harassment is a third-degree misdemeanor carrying a maximum penalty of one year in prison. For the first episode, Mladenovich was sentenced to five years' probation for terroristic threats (two years' reporting probation; three years' non-reporting), and two years' consecutive non-reporting probation for stalking. Respondent's sentence also entailed mental health treatment and supervision. Mladenovich's second episode took place while she was on probation for the first episode. For the second episode, she was sentenced to 11½ to 23 months in prison, with credit for time served and immediate parole.

Mladenovich's specific conduct that resulted in criminal charges in the first episode was calling her former psychiatrist and leaving at least 17 voice mail messages and numerous text messages containing vulgar language, anti-Semitic remarks, and threats to physically harm and kill the former psychiatrist. The conduct that resulted in criminal charges in the second episode was calling the home office land line of her former psychiatrist and leaving three voice messages in a half-hour using obscene

language and threatening that: Respondent or her kids (Respondent has no children) would kill the psychiatrist if the psychiatrist did not stay away from and stop medicating Respondent's children; Respondent would cause the psychiatrist to lose her medical license; and Respondent would murder the psychiatrist if the psychiatrist did not withdraw the sentence in Respondent's 2020 criminal matter.

42. While factual distinctions could be drawn between Respondent-Toczydlowski's case and the above-discussed cases, on the whole those cases support the appropriateness of a three-year suspension for Respondent. Further, because Respondent's temporary suspension began just two months ago, it is reasonable for the suspension to be made retroactive to March 13, 2022, the effective date of Respondent's temporary suspension.

43. Respondent has no previous criminal convictions. He timely reported his conviction to the Office of Disciplinary Counsel as required by Pa.R.D.E. 214(a) and (i), and through his attorney Mr. Stretton he has cooperated with Disciplinary Counsel. As discussed above, Respondent is treating with a clinical psychotherapist, who has opined that Respondent has mental illness conditions that contributed to his behavior.

44. Respondent is remorseful for his misconduct.

45. Respondent has no prior discipline, and he has admitted to wrongdoing, expressed remorse, and cooperated with Disciplinary Counsel.

46. Based on the totality of the circumstances presented as more fully described and set forth above, the parties submit that discipline in the form of a three-year suspension retroactive to the effective date of Respondent's temporary suspension (March 13, 2022) will adequately address Respondent's misconduct and allow for him to reflect upon his behavior and maintain the integrity of the legal profession, while also taking into consideration Respondent's mitigating factors.

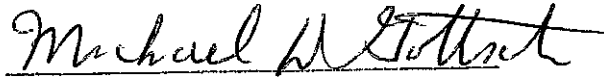
WHEREFORE, Petitioner and Respondent respectfully request, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e) and 215(g), that a three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and Order that Respondent receive a three-year suspension.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL
THOMAS J. FARRELL
Attorney Registration Number 48976
Chief Disciplinary Counsel

5-23-2022

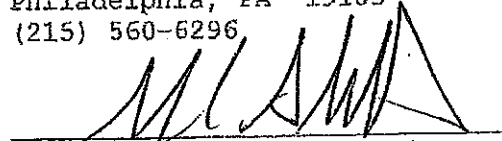
DATE



Michael D. Gottsch
Disciplinary Counsel
Attorney Registration Number 39421
Office of Disciplinary Counsel
District I Office
1601 Market Street
Philadelphia, PA 19103
(215) 560-6296

5/20/22

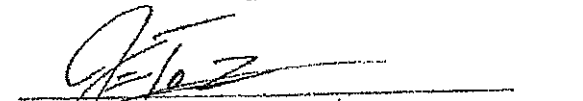
DATE



Samuel C. Stretton, Esquire
Attorney Registration Number 18491
103 South High Street
West Chester, PA 19381
(610) 696-4243
Attorney for Respondent,
John E. Toczydlowski

5.20.2022


DATE


John E. Toczydlowski
Respondent
Attorney Registration Number 76848

VERIFICATION

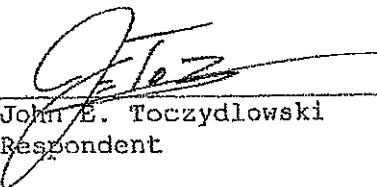
The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent* are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S.A. §4904, relating to unsworn falsification to authorities.

5-23-2022
DATE



Michael D. Gottsch, Esquire
Disciplinary Counsel

5-20-2022
DATE



John E. Toczydlowski
Respondent

EXHIBIT A

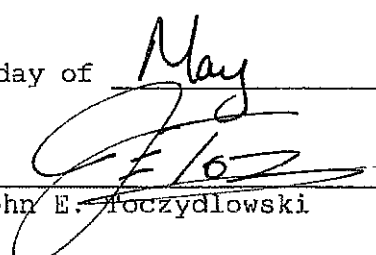
5. He acknowledges that the material facts set forth in the Joint Petition are true.

6. He submits this affidavit because he knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained, consulted, and acted upon the advice of Samuel C. Stretton, Esquire in connection with his decision to execute the Joint Petition.

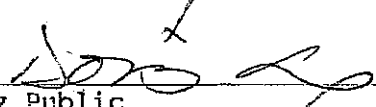
It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 23rd day of May, 2022.



John E. Poczydlowski

Sworn to and subscribed
Before me on this 23rd
day of May, 2022



Notary Public

Commonwealth of Pennsylvania - Notary Seal
DORIS NG, Notary Public
Philadelphia County
My Commission Expires July 10, 2025
Commission Number 1316019

EXHIBIT B
UNAVAILABLE -
CONFIDENTIAL DOCUMENT

CERTIFICATE OF COMPLIANCE

I certify that this pleading 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: *Michael D. Gottsch*

Name: Michael D. Gottsch

Attorney No. 39421