

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1263 Disciplinary Docket No. 3
Petitioner :
 : No. 78 DB 2007
v. :
 : Attorney Registration No. 33850
STEPHEN J. BANIK, :
Respondent : (Tioga County)

ORDER

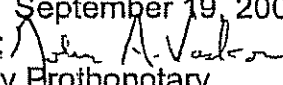
PER CURIAM:

AND NOW, this 19th day of September, 2007, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated July 24, 2007, the Joint Petition for Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that Stephen J. Banik is suspended on consent from the Bar of this Commonwealth for a period of one year, with six months served and six months stayed, and he shall comply with all the conditions governing his criminal probation as set forth below:

1. Respondent shall abstain from illegal drug use;
2. Respondent shall contact his probation officer once each month by telephone;
3. Respondent shall be subject to the Special Rules regarding drugs; and
4. Respondent shall complete thirty hours of community service.

Respondent shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy John A. Vaskov
As of: September 19, 2007
Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

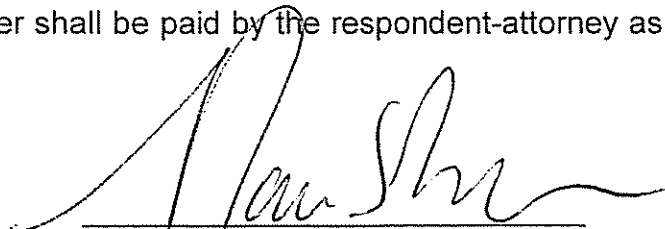
OFFICE OF DISCIPLINARY COUNSEL : No. 1263 Disciplinary Docket No. 3
Petitioner :
 : No. 78 DB 2007
v. :
 : Attorney Registration No. 33850
STEPHEN J. BANIK :
Respondent : (Tioga County)

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, Jonathan H. Newman, and Robert E. J. Curran, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on June 25, 2007.

The Panel approves the Petition consenting to a one year suspension, six months to be stayed, and that Respondent comply with all the conditions governing Respondent's probation or parole as set forth in Exhibit E and recommends to the Supreme Court of Pennsylvania that the attached Joint 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: July 24, 2007

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

| | | |
|---------------------------------|---|---------------------------|
| OFFICE OF DISCIPLINARY COUNSEL, | : | No. Disciplinary Docket |
| | : | No. 3 (Supreme Court) |
| Petitioner | : | |
| | : | No. ¹⁷ DB 2007 |
| v. | : | (Disciplinary Board) |
| | : | |
| STEPHEN J. BANIK, | : | Attorney Reg. No. 33850 |
| | : | |
| Respondent | : | (Tioga County) |

**JOINT PETITION FOR
DISCIPLINE ON CONSENT**

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Patti S. Bednarik, Disciplinary Counsel, and Respondent Stephen J. Banik, by his counsel William A. Hebe, Esq., file the following Joint Petition for Discipline on Consent pursuant to Rule 215(d), Pennsylvania Rules of Disciplinary Enforcement. The parties respectfully represent that:

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

2. Respondent, Stephen J. Banik, was born on June 12, 1955, was admitted to practice law in the Commonwealth on May 14, 1981, has a registered address at 41-42

FILED

JUN 25 2007

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

Water Street, P. O. Box 55, Wellsboro, Pennsylvania 16910, Tioga County, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a record of prior discipline consisting of a Public Censure before the Supreme Court of Pennsylvania on May 15, 2003.

4. On April 11, 2007, having previously appeared with his attorney and pled guilty to three criminal charges, Respondent was sentenced as follows in the case docketed to No. 369 CR 2006 in the Court of Common Pleas of Tioga County:

- a) Count 1, Criminal Use of Communication Facility, a felony of the third degree, Respondent was ordered to pay the costs of prosecution, was placed under the supervision of the Tioga County Probation Department for a period of one (1) year, and was ordered to complete 30 hours of community service work. As a condition of probation, Respondent was ordered to comply with the special drug rules of Tioga County;
- b) Count 2, Distribution of a Small Amount of Marijuana, a misdemeanor, Respondent was ordered to pay the costs of prosecution;
- c) Count 3, Possession of Drug Paraphernalia, a misdemeanor, Respondent was ordered to pay the costs of prosecution. Respondent was placed under the supervision of the Tioga County Probation Department for a period of one (1) year, the sentence to run concurrently with the sentence imposed at Count 1. Respondent was ordered to comply with regular drug testing

through the Tioga County Probation Department; to pay a supervision fee of \$50.00 per month for each month that he is under the supervision of the Tioga County Probation Department to whom he shall report as directed; and to pay a \$50.00 fee to the District Attorney's Drug Fund and a \$25.00 drug testing fee to the Probation Department.

5. The Affidavit of Probable Cause was based on the grand jury testimony of five individuals who testified that between August 2004 and July 2005 Respondent used and distributed marijuana on numerous occasions. Four of the individuals testified that Respondent had given them marijuana and/or they had obtained marijuana for Respondent, and most of them had smoked marijuana with Respondent. Two of the individuals testified that they smoked marijuana with Respondent in his law office. In one case, Ronald Smith provided Respondent with marijuana, and Mr. Smith understood that Respondent was accepting marijuana as payment for his legal services. Mr. Smith and Mr. Banik are friends and Mr. Banik denies that he accepted marijuana in payment for legal fees. Respondent did not accept money or profit from distributing marijuana.

6. The offense of Criminal Use of a Communication Facility carries a maximum sentence of seven (7) years imprisonment. As such, it is therefore a "serious crime" as defined by Pa.R.D.E. Rule 214(i).

7. The offense of Possession of Drug Paraphernalia carries a maximum sentence of one year. As such, it is therefore a "serious crime" as defined by Pa.R.D.E. Rule 214(i).

8. Respondent's conviction of these serious crimes is an independent ground for the imposition of professional discipline under the terms of Pa.R.D.E. 203(b)(1).

9. Upon receipt of the report of Respondent's conviction, the Petitioner, on May 16, 2007, forwarded proof of the conviction to the Supreme Court of Pennsylvania. The Supreme Court has not yet entered an order remanding the matter to the Disciplinary Board pursuant to Rule 214(f)(1), Pa.R.D.E.

10. The parties agree that the cases involving convictions of offenses based on conduct most comparable to Respondent's were *In re Anonymous No. 37 DB 88 (Papas)*, and *In re Anonymous No. 60 DB 83 (Ness)*, 33 Pa. D. & C. 3d 187 (1984), which resulted in suspensions of 10 months and one year respectively. The *Ness* and *Papas* cases are more serious than Respondent's case because they involved the use of cocaine rather than marijuana, and will be discussed more fully below.

11. Based on the totality of the circumstances and the case law dealing with other drug offenses, the parties agree that the appropriate discipline in this matter is a year suspension, with 6 months of the suspension to be stayed, and a condition be imposed that Respondent comply with all the terms and conditions of probation that were ordered as part of his Tioga criminal sentence.

12. In determining that Respondent should receive a one year suspension with six months of the suspension to be stayed, the parties took into account the following facts:

- a) Unlike most disciplinary cases which involved possession or distribution of cocaine or heroin, Respondent's conviction involved possession and distribution of marijuana;
- b) Respondent never sold marijuana although he distributed it; i.e., he shared

it with his friends and associates;

- c) Although Mr. Smith understood that Respondent accepted marijuana in lieu of a payment for his legal services on one occasion, Mr. Banik has never agreed with Mr. Smith's assertion that marijuana was in exchange for legal services. Mr. Smith and Mr. Banik were and are still friends and shared marijuana at a time when Mr. Banik was performing some legal services for Mr. Smith, but Mr. Banik never regarded legal services and marijuana as quid pro quos;
- d) Respondent smoked marijuana with others in his law office;
- e) Respondent has already received a Public Censure for misconduct unrelated to the use of illegal drugs; and
- f) Respondent has submitted 8 letters from practicing attorneys, the former District Attorney of Potter County and Respondent's Probation Officer, attesting to his good character, his legal abilities and his pro bono activities, which are attached as Exhibits 1 through 8.

13. The following documents relating to Respondent's conviction and his prior disciplinary history are attached as exhibits to this Petition:

Affidavit of Probable Cause - Exhibit A

Police Criminal Complaint- Exhibit B

Plea Colloquy - Exhibit C

Sentencing Order - Exhibit D

Respondent's Probation & Parole Conditions - Exhibit E

The Disciplinary Board Report and Recommendation Regarding Respondent's Public Censure – Exhibit F

PERSONAL INFORMATION

14. Stephen J. Banik was born June 12, 1955, in Wellsboro, Tioga County, Pennsylvania. He graduated from Wellsboro High School in June of 1973, and Mansfield University in 1976. While attending college, he worked full time at a local manufacturer of pipefittings, Ward Manufacturing. He graduated from the University of Arkansas Law School in December of 1980. He practiced with the firm of Walrath & Collidge from July 1981 to December 1984; was a sole practitioner from 1985 to 1992; was in a partnership Banik & Smith from 1992 to 1997, and in a partnership Banik & Winterstein from 1997 to the present, all the while located in Wellsboro. Mr. Banik routinely practices in Bradford, Tioga, Potter and Lycoming Counties.

15. Four children were born of Mr. Banik's marriage to Joann Marie Mislinski (Banik). Jacob Banik was born on April 25, 1982, and is currently in his second year of a Ph.D. program in biochemistry at Cornell University. His undergraduate degree is from the University of Massachusetts at Amherst, Massachusetts. Stephen Banik was born on March 20, 1985, and was valedictorian of his high school class in Wellsboro. He graduated in 2007 from Tufts University in Medford, Massachusetts, with a degree in chemical engineering. Amanda Banik was born on July 13, 1987, and is a junior at Penn State University. Cassandra Banik was born on June 22, 1990, and will graduate from Wellsboro High School in 2008.

16. One child was born of Mr. Banik's second marriage to Lisa Ann Val Vliet (Banik). Alexis Jacqueline Banik was born on October 21, 2002.

DISCUSSION OF CASELAW

Although there are numerous cases in which attorneys have been convicted of possession and/or delivery of cocaine or heroin, neither party was able to find any comparable cases in which an attorney was convicted of use of a communication facility to distribute marijuana. Therefore, in determining the propriety of the agreed upon discipline, the parties have analyzed the cases in which attorneys have been convicted of possession or possession with intent to deliver cocaine or heroin. However, both parties are mindful that marijuana, although an illegal substance, is not as harmful or as addictive as cocaine or heroin.

In analyzing the cases involving possession or distribution of cocaine or heroin, the sanctions range from private reprimand to disbarment. In *Office of Disciplinary Counsel v. Simon*, 510 Pa. 312, 507 A.2d 1215 (1986), the attorney was asked by a client if he could find someone to purchase cocaine from a friend of the client's. For the "excitement," the "intrigue" and the "challenge" of criminal activity, the attorney found a buyer and facilitated the purchase of four ounces of cocaine for \$7,800-\$8,000. A half-ounce was retained by the client to sell on the streets and a cutting agent was substituted. The attorney then delivered the cocaine to the purchaser. When confronted by the FBI a year and a half later, the attorney refused to divulge the name of the purchaser. He was indicted and convicted of conspiracy to distribute and possession with intent to distribute cocaine. The Hearing Committee recommended an 18-month suspension. The Disciplinary Board recommended a suspension concurrent with his two-year federal probation. However, the Supreme Court held unequivocally that "Facilitating the sale and purchase of cocaine, alone, warrants disbarment." 507 A.2d at 1220. Two aggravating

factors were found: (1) the attorney knew that one-half ounce was to be sold on the street; and (2) the attorney's refusal to tell the authorities the identity of the ultimate purchaser. The attorney was disbarred. Clearly, Respondent's conduct in the instant case did not involve any of the aggravating factors present in the *Simon* case; Respondent did not facilitate the sale or purchase of marijuana. Rather, he used the marijuana himself and shared it with friends and associates without profit.

In re Anonymous No. 62 DB 85 (Berryman), 49 Pa. D. & C. 3d 504 (1987), concerned an attorney who was convicted of five counts of possession of cocaine and was sentenced to 15 months to five years in prison. The attorney argued that his conduct was private in nature and that the appropriate sanction was private reprimand or public censure. The Disciplinary Board rejected those arguments, stating that private discipline for "repeated illegal use of a drug as dangerous and addictive as cocaine ... would ... truly have the effect of impairing the trust, respect, and esteem which the public accords our profession." 49 Pa. D. & C. 3d at 509. The Disciplinary Board recommended suspension of eighteen months. One member dissented and recommended a five-year suspension. The Supreme Court suspended the Respondent for five years. Although this Respondent was similar to *Berryman* in that he engaged in "repeated illegal use," the fact that he used marijuana in lieu of cocaine is a mitigating factor since marijuana is not nearly as dangerous or addictive as cocaine.

In *In Re Anonymous No. 3 DB 89 (Perrino)*, 18 Pa.D.&C.4th 490 (1993), the attorney was addicted to cocaine and alcohol to such an extent that it had a serious disruptive impact on his life. At one point he delivered cocaine to his wife's cousin, a police informant, for personal reasons and without a profit motive. He was arrested and

charged as part of a large scale drug prosecution, and was convicted of one count of possession with intent to deliver. His sentence was reduced to a six-year period of incarceration with special parole for five years. He underwent extensive rehabilitation and participated in drug prevention programs to the extent he could while in prison. The Disciplinary Board considered his addiction a significant mitigating factor, along with other factors including three suicides in Respondent's immediate family. The Board recommended five-year suspension retroactive to his original suspension. Three members dissented and recommended disbarment. Although no information to this effect appears in the majority report, the dissent stated that Respondent was "about to be a public prosecutor," noting that Respondent was one month away from starting a job as an Assistant District Attorney when he was arrested. The dissent stressed this reason in support of its argument for disbarment. The Supreme Court accepted the majority report and suspended the attorney for five years by order without opinion, but Justice Papadakos wrote a strong dissent arguing that conviction of distribution and sale almost always demands disbarment.

In the case of *In re Anonymous No. 22 DB 88 (Smith)*, 14 Pa. D. & C. 4th 74 (1991), the attorney developed an alcohol and cocaine dependency, and exchanged drugs and money with a client whom he knew to be a drug dealer. The attorney testified that he engaged in these transactions not for profit, but to cultivate a relationship with a client who was a potential supplier. Thus, although he received money on occasion, these transactions were "accommodation deliveries" in nature rather than commercial sales. The attorney was convicted of possession of a controlled substance and paraphernalia, and also of delivery. He reported his conviction to the Disciplinary Board and was placed

on interim suspension. Subsequently his conviction was reversed on appeal, and a new trial ordered. On retrial, he pleaded guilty and was placed on probation without verdict, which he completed successfully. Noting that the attorney's addiction and the absence of a motive for personal gain were mitigating factors, the Disciplinary Board recommended a suspension for three years retroactive to the date of interim suspension. A dissent noted similarities to *In Re Anonymous No. 60 DB 83*, below, and *Office of Disciplinary Counsel v. Simon*, supra, and recommended that the attorney be suspended for five years. The Supreme Court suspended the attorney for three years, with two Justices dissenting and recommending disbarment. The *Smith* case is somewhat analogous to Respondent's misconduct in that Respondent engaged in transactions not for profit; however, the *Smith* case again involved cocaine, which is a much more dangerous drug.

A three-year suspension was also imposed in the case of *In re Anonymous No. 52 DB 1997 (Logue)*¹, where the attorney pleaded guilty to one count of possession with intent to distribute cocaine on three occasions and was sentenced to three to 23 months incarceration. The attorney obtained and sold cocaine in the total amount of less than two grams on three different occasions to a detective for a Drug Task Force. At the time of the sales, he was addicted to cocaine and suffered from a depressive disorder which the Hearing Committee and the Disciplinary Board found was a factor in causing the misconduct. In recommending a three-year suspension, the Disciplinary Board cited the cases of *In re Anonymous No. 5 DB 95 (Glass)* (1997), where the substance-addicted

¹ All cases cited without a Pennsylvania District and County Reports citation may be reviewed by opening the Disciplinary Reporter under Attorney Information at www.padb.us and entering the attorney's name or the DB number in the appropriate search field. If there is a published Disciplinary Board report on the case, the Disciplinary Reporter summary will include a link to the text of the report.

attorney was suspended for two and a half years as a result of his conviction of possession with intent to distribute cocaine, and *In re Anonymous No. 76 DB 92 (Barr)*, 24 Pa.D.&C.4th 169 (1994), where the attorney was suspended for three years as a result of his conviction of conspiracy to possess and possession of cocaine, as well as making false statements to a law enforcement agency. In the latter case, the attorney did not present a *Braun* type defense. Rather, he presented impressive testimony from his colleagues as to his years of distinctive service to the public. Clearly, Respondent's conduct was not as serious as Logue or the cases cited therein, because Respondent did not engage in drug sales for profit and because of the nature of marijuana compared to cocaine.

In *Office of Disciplinary Counsel v. Ashly Mae Wisher*, 118 DB 2005, the attorney pled guilty to one count of possession of a controlled substance, heroin, and was sentenced to 3 months probation without verdict. Less than a year later, she pled guilty to another charge of possession of a controlled substance, heroin, and was sentenced to probation for six months and drug treatment as necessary. Ms. Wisher also accepted payment for her legal services in the form of heroin from one client, and had entered her appearance in two cases while on inactive status. Ms. Wisher acknowledged that she had been using heroin for years, and after the second conviction, she received drug treatment and was sober at the time of the disciplinary proceedings. She had a prior history consisting of an Informal Admonition for failure to communicate her fee in writing to her client, false statements to her client, and failure to refund an unearned fee. The Disciplinary Board unanimously recommended, and the Supreme Court accepted, a two year suspension, retroactive to the date of her temporary suspension.

In re Anonymous No. 60 DB 83 (Ness), 33 Pa. D. & C. 3d 187 (1984), concerned an attorney who was convicted of simple possession of one-quarter ounce of cocaine which he received as a wedding present. The report noted that the attorney was a "social user" on several occasions and associated with known drug dealers. He served as an Assistant District Attorney and Public Defender during the period of cocaine use. The Board found that he condoned illegal drug activity by not reporting it. He was sentenced to a thirty-day incarceration and a two-year probation with community service. The Disciplinary Board considered the attorney's argument that the discipline should be limited to public censure but recommended a one-year suspension which the Supreme Court imposed. At that time, any suspension of more than three months required a formal reinstatement proceeding. The case at bar is more aggravating than the *Ness* case in that Respondent not only was a social user of marijuana, he distributed it to his friends and associates and/or obtained it from his friends, associates and clients. On the other hand, Respondent's conduct is less serious since he was using marijuana rather than cocaine.

In the case of *In re Anonymous No. 37 DB 88 (Papas)*, 50 Pa. D. & C. 3d 526 (1989), the attorney was convicted for possession of marijuana, cocaine, and paraphernalia, and sentenced to one-year probation. Testimony established that the attorney was addicted to cocaine. He had accepted cocaine supplied by clients in lieu of fees. He joined Narcotics Anonymous to overcome his addiction. He was suspended from the date of his interim suspension until expiration of his probation, a period of approximately 10 months. In the instant case, Respondent denied that he accepted marijuana in lieu of legal fees, but there is some evidence that one of Respondent's friends assumed that the marijuana that he gave Mr. Banik was in lieu of legal fees. Like *Papas*,

Respondent also was sentenced to one-year probation. The *Papas* case is more serious since the attorney was convicted of possession of cocaine as well as marijuana, and there was no dispute as to whether Papas accepted cocaine from clients in lieu of fees.

In *Office of Disciplinary Counsel v. John Harold McKeon, Jr.*, No 23 DB 2005 & 122 DB 2005, the attorney was convicted of driving under the influence of a controlled substance. After the incident, but before sentencing, he was arrested again and charged with possession a controlled substance, namely cocaine. The attorney was sentenced to 6 months of reporting probation, concurrent with a term of imprisonment of 30 days flat, with credit for time served in an executive addictive disease program for driving under the influence of a controlled substance. The attorney was sentenced to one-year probation for the possession of cocaine, and the two criminal convictions were consolidated for disciplinary proceedings. The parties entered a Joint Recommendation for Discipline of a three-month suspension to be followed by two-year probation with a sobriety monitor. That recommendation was accepted by the Pennsylvania Supreme Court.

In the case of *In re Anonymous No. 27 DB 90 (McGeorge)*, 17 Pa.D.&C.4th 12 (1991), the attorney was shot by an irate client, was taken to the hospital, where hospital workers found two vials of cocaine in his clothing. He was charged with possession, pleaded nolo contendere, and was admitted to probation without verdict, which he successfully completed. The Disciplinary Board specifically held that *Office of Disciplinary Counsel v. Simon*, supra, required the imposition of public discipline, and therefore recommended a public censure. The Supreme Court imposed public censure, with two Justices voting to suspend the attorney for one year.

A public censure was also imposed in the case of *In re Anonymous No. 124 DB 89*

(*McCamey*), 12 Pa.D.&C.4th 417 (1991), where the attorney served as an intermediary in the sale of one-eighth ounce of cocaine to a police informant who had initiated contact with the attorney in an effort to obtain cocaine and persisted in attempting to get the attorney to sell her cocaine. No charges were brought against the attorney and he testified that he may have asserted the defense of entrapment. He was an intermediary and made no money from the deal. He also occasionally used cocaine during a brief period in his life when he was drinking heavily and consorting with individuals with serious substance abuse problems. The police with whom the informant was working realized that the attorney was not a dealer and solicited his cooperation, which the attorney provided at great personal danger to himself. This led to several arrests and convictions. The facts regarding the attorney's conduct came to light only because of newspaper accounts of his testimony in one such trial. In recommending a public censure instead of a suspension, the Disciplinary Board considered the attorney's unblemished record, the personal problems he was having at the time, the misconduct was not committed in his capacity as an attorney, was not related to his practice of law, his efforts to rehabilitate his life and his present good standing in the community in general and in the legal community in particular.

Finally, *In re Anonymous No. 42 DB 87*, 5 Pa. D. & C. 4th 613 (1987), involved an attorney who was given a private reprimand for his occasional cocaine use. In this case, the attorney was not charged with any crime, but testified as a government witness in a trial of accused drug dealers. The only evidence of Respondent's occasional cocaine use was his testimony at the trial. The Respondent became extensively involved in programs directed against abuse of drugs and alcohol. Because of extensive mitigating factors,

including the fact that none of the attorney's clients were in any way harmed by his misconduct, Disciplinary Counsel did not seek a suspension. The Hearing Committee recommended the imposition of a private reprimand, which was imposed by the Board.

None of the cases described herein are substantially similar to the case at hand. In the instant case, it is apparent that Respondent was a regular, recreational user of marijuana who occasionally shared the marijuana with associates and friends. The biggest mitigating factor which distinguishes Respondent's drug use from the other disciplinary cases was the fact that Respondent used marijuana rather than cocaine or heroin. Further, Respondent has submitted numerous letters of support which indicate that he is viewed as a competent attorney, a caring and involved father, and respected member of the community.

Having reviewed most of the drug cases in the disciplinary system, and having taken in account Respondent's guilty plea to a felony of the third degree and his disciplinary history consisting of a public censure, Petitioner and Respondent agree that a year suspension with six months stayed is the appropriate level of discipline, with the condition that Respondent comply with all the conditions set forth in Exhibit E, i.e., which are all the conditions of probation and parole that the Tioga County Department of Probation and Parole imposed for the period of Respondent's criminal conviction. A violation of Respondent's conditions of probation or parole would be grounds for the Office of Disciplinary Counsel to seek the lifting of the stay of Respondent's suspension.

This Petition is accompanied by the requisite Affidavit stating that Respondent consents to the recommended discipline and that:

- The consent is freely and voluntarily rendered; Respondent is not being subject to coercion or duress; Respondent is fully aware of the implications of submitting the consent; and that Respondent has consulted counsel in connection with his decision to consent to discipline;
- Respondent is aware that there is presently pending a proceeding involving allegations that Respondent is guilty of misconduct as set forth in this Petition for Discipline on Consent;
- Respondent acknowledges that the material facts set forth in this Petition for Discipline on Consent are true; and,
- Respondent consents because Respondent cannot successfully defend against the charges prosecuted in the pending proceeding.

WHEREFORE, Petitioner and Respondent respectfully request that:

1. Pursuant to Rule 215(e) and 215(g), Pa.R.D.E., a three-member panel of the Disciplinary Board review and approve the above Joint Petition in Support of Discipline on Consent Pursuant to Rule 215(d), and file its recommendation with the Supreme Court of Pennsylvania and recommend that the Supreme Court enter an order suspending Respondent from the practice of law for a period of one year, six months to be stayed, and that Respondent comply with all the conditions governing Respondent's probation or parole as set forth in Exhibit E.
2. 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 of the granting of the Petition and that all

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

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL
Paul J. Killion, Chief Disciplinary Counsel

By *Patti S. Bednarik*
Patti S. Bednarik
Disciplinary Counsel
Date: *June 13, 2007*

By *Stephen J. Bank*
Stephen J. Bank, Respondent

By *William A. Hebe*
William A. Hebe, Esq.
Counsel for Respondent
Date: *6-20-07*

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

| | | |
|---------------------------------|---|-------------------------|
| OFFICE OF DISCIPLINARY COUNSEL, | : | No. Disciplinary Docket |
| | : | No. 3 (Supreme Court) |
| Petitioner | : | |
| | : | No. DB |
| v. | : | (Disciplinary Board) |
| | : | |
| STEPHEN J. BANIK, | : | Attorney Reg. No. 33850 |
| | : | |
| Respondent | : | (Tioga County) |

VERIFICATION

The statements contained in the foregoing Joint Petition in Support of Discipline on Consent Pursuant to Rule 215(d), Pa.R.D.E. are true and correct to the best of our knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

6/22/07
Date

6-20-07
Date

Patti S. Bednarik
Patti S. Bednarik
Disciplinary Counsel

William E. Hebe
William E. Hebe, Esq.
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

| | | |
|---------------------------------|---|-------------------------|
| OFFICE OF DISCIPLINARY COUNSEL, | : | No. Disciplinary Docket |
| | : | No. 3 (Supreme Court) |
| Petitioner | : | |
| | : | No. DB |
| v. | : | (Disciplinary Board) |
| | : | |
| STEPHEN J. BANIK, | : | Attorney Reg. No. 33850 |
| | : | |
| Respondent | : | (Tioga County) |

Respondent's Affidavit

Stephen J. Banik, Respondent in the above matter, states the following:

1. I consent to the recommended discipline;
2. My consent is freely and voluntarily rendered; I am not being subject to coercion or duress; I am fully aware of the implications of submitting the consent; and I have consulted counsel in connection with my decision to consent to discipline;
3. I am aware that there is presently pending a proceeding involving allegations that I am guilty of misconduct as set forth in this Petition for Discipline on Consent;
4. I acknowledge that the material facts set forth in this Petition for Discipline on Consent are true; and,
5. I consent because I cannot successfully defend against the charges prosecuted in the pending proceeding.

This statement is made subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsification to authorities.

Date: 6-14-07

Stephen J. Banik
Stephen J. Banik, Respondent

LEBER & WATSON, LLP
ATTORNEYS AT LAW
COURTHOUSE SQUARE
PO Box 310
ONE EAST THIRD STREET
COUDERSPORT, PENNSYLVANIA 16915

JEFF LEBER
ANDY J. WATSON

(814) 274-8612
FAX (814) 274-0430

June 6, 2007

Disciplinary Board of the
Supreme Court of Pennsylvania
2 Lemoyne Drive
Lemoyne, PA 17043

JUN - 7 2007

RE: Stephen J. Banik

Dear Committee Members:

Mr. Banik has been an acquaintance of mine for perhaps 20 years. My association with him was by virtue of the fact that he frequently served as defense counsel in criminal cases that I prosecuted. I was the District Attorney of Potter County for 23 years and until December 31, 2005 and Mr. Banik practiced in the neighboring county of Tioga. Because of the small numbers in our bar in Potter County, he would frequently appear here on behalf of litigants.

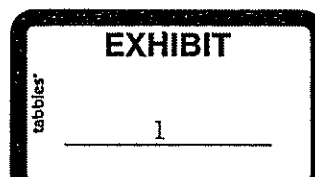
Frequently he would appear in this county pro bono at the request of the Judge. He appeared always willing to help in situations where there was a conflict with the public defender that required another counsel for a co-defendant in adult or juvenile matters. I know based on my experience that his willingness to assist as appointed counsel in criminal or juvenile matters was deeply appreciated by the Court Administrator and Judge Leete.

Mr. Banik was very much of a free spirit but was always polite, dignified and friendly while working in the Potter County court.

I would evaluate his legal ability as certainly above average. We participated in many jury trials together and he was always an effective advocate on behalf of his clients. His demeanor with jurors was friendly and professional.

Personally, I believe Mr. Banik to be a man without malice toward anyone. Even in a situation where I observed him to be seriously wronged by a colleague, he was prepared to be forgiving and move on. By reputation, Mr. Banik is a good father and friend and well liked by his colleagues.

Mr. Banik's views concerning the benign nature of marijuana were well known. In my capacity as District Attorney and being familiar with law enforcement intelligence in Tioga as well as Potter County, I was never aware of any suggestion that Mr. Banik was involved in the sale or delivery of illegal substances, however.



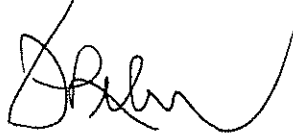
Disciplinary Board of the Supreme Court of Pennsylvania

6/6/07

Page 2

Based upon my knowledge of other attorney's transgressions regarding the Code of Professional Conduct, I believe that a brief suspension of his license is adequate to address Mr. Banik's ethical violations.

Respectfully,

A handwritten signature in black ink, appearing to read "J. Leber", with a stylized flourish at the end.

JEFF LEBER

JL:dmm

cc: William Hebe, Esq.

Tioga County Probation Department
PROBATION AND PAROLE DIVISION

Robert E. Dalton, Jr.
President Judge



David L. Stager
Chief Probation Officer

Court House Annex, 118 Main Street
Wellsboro Pennsylvania 16901-1493
Office Phone: 570-724-9340
FAX: 570-724-2150

June 6, 2007

To Whom It May Concern:

Re: Stephen Banik

Dear Sirs:

I am writing this letter in support of Mr. Stephen Banik as he faces consequences for his recent prosecution in the Tioga County Courts. I am a Probation Supervisor with the Tioga County Probation Department where I have been employed for the past 23 years. In that time, I have had the occasion to work with Mr. Banik in his capacity as defense counsel for hundreds of individuals. I have always found Mr. Banik to be a professional and competent defense attorney. He has represented individuals that no other attorney wished to take on and has fought vigorously for them.

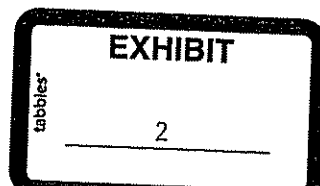
Even though I am his probation officer and I testified against him at the Grand Jury, I write in support of him as he is one of the top three attorneys that I would rather work with in our county. I have always found Steve to be up front with me in all aspects of our working relationship. He has contributed greatly to this community in his capacity as a defense attorney.

During his hearing in the Tioga County Court, Mr. Banik eluded to the fact that he has not taken any illegal substances for over a year. A few days following his court hearing and being placed on probation in Tioga County, I took a urinalysis from Mr. Banik which proved to be negative for the presence of any prescription or illegal drugs.

Any consideration that you could give to Mr. Banik would benefit not only him but the community as well as the Tioga County Court of Common Pleas. If you have any questions regarding this matter, please do not hesitate to contact me at your convenience.

Sincerely,

Robert L. Repard
Adult Supervisor



Patrick J. Barrett, III

Attorney and Counselor At Law
21 TROY STREET
P.O. BOX 157
CANTON, PA 17724

TELEFAX: 570-673-5780
E-mail: patbar.law@frontiernet.net

AREA CODE 570
673-5180
364-5799

June 1, 2007

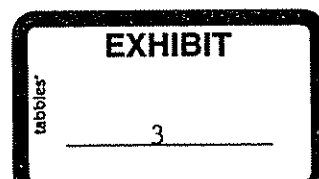
Disciplinary Counsel
Disciplinary Board of the Supreme Court of Pennsylvania

RE: Stephen J. Banik

Dear Sir:

Please allow me to express my support for Stephen J. Banik in the matter before the Disciplinary Board. Although I am aware of Mr. Banik's current legal problems, I wish to express my support for him as a member of his and my profession, as a practice of law as a general practitioner in the rural counties of Pennsylvania.

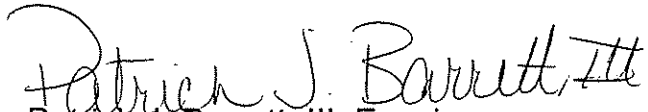
I'm a member of the Pennsylvania Bar from Bradford County. I practice law in the Southwestern corner of Bradford County which is adjacent to Tioga County where Mr. Banik is a member of the Bar and has a majority of his practice. During the past 24 years that I have practiced law in Pennsylvania my office and his have had numerous interactions on behalf of various clients. Mr. Banik and myself have represented multiple defendants in cases involving the Commonwealth, we have been adversaries in family matters and matters of general litigation. We have engaged in Will contests and various estate matters and have had numerous real estate closings between his firm and mine. We are both sole practitioners working in a sparsely populated area of Pennsylvania. With this experience that I have with the interaction of Mr. Banik's professional career and mine, I can truthfully say that at all times that I have interacted with Mr. Banik, he has done so with professionalism, tact and has been a credit profession in representing his clients who many times are less fortunate members of society in terms of economic social class and sophistication with the legal process. In addition, I have observed Mr. Banik in various social circles through the Bar Association functions and at various events where he has shown a sincere interest in the community and in his family obligations especially to his children.



I do realize that the Disciplinary Board is charged with maintaining the high standards of our profession however, I am requesting that based on Mr. Banik's service to the profession over the years that the Disciplinary Adjudication process utilizes as much leniency as possible and allow him to continue to serve in Tioga County in the practice of law.

If any member of the committee wishes to question me specifically I would be happy to oblige. I appreciate this opportunity to be heard in support of Mr. Banik.

Respectfully submitted,


Patrick J. Barrett, III, Esquire

PJB/hsc

LYNN R. MADER
ATTORNEY AT LAW
126 MAIN STREET
WELLSBORO, PENNSYLVANIA 16901

570-724-4137
FAX 570-724-4118

June 1, 2007

Office of Disciplinary Counsel
Pennsylvania Supreme Court
Harrisburg, PA

RE: Steven J. Banik, 41-42 Water Street, Wellsboro, Tioga County, PA 16901

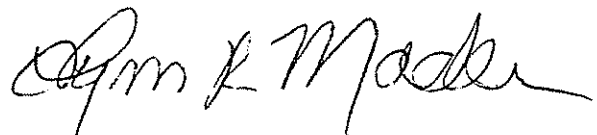
Gentlemen:

I am writing on behalf of Mr. Banik. My identification number is #19243. I have been in practice since October of 1974. I have acted as The Tioga County Master in Divorce proceedings and as Support Hearing Officer since November 1, 1980. I have known Mr. Banik since he was admitted to practice in the early 1980's.

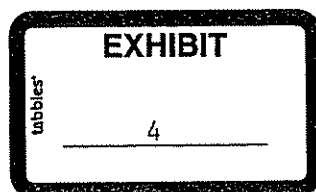
During that period of time Mr. Banik has developed a large Family Law Practice with a unique clientele. Whenever the system gets jammed up with a problem person, Mr. Banik has never refused a referral, and usually proceeds with good results. It is for this reason that the Court has come to rely on Steven Banik. Personally, I know of no ethical problems that Mr. Banik has ever encountered.

For this reason, I am hoping that your office will be lenient in the current matter. If you need me to Testify or If I can be of any further assistance, please advise.

Very truly yours,



Lynn R. Mader, Esquire





Ginn & Vickery
PC
ATTORNEYS AT LAW

P.O. Box 34
23 East Avenue
Wellsboro, PA 16901

June 7, 2007

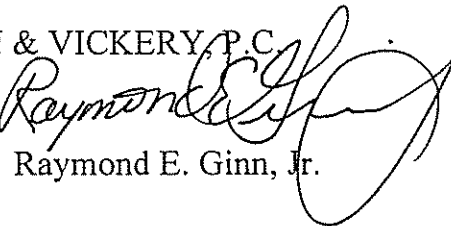
To whom it may concern:

I have practiced law in Wellsboro, Tioga County, Pennsylvania, since 1981. I have known Stephen J. Banik, Esquire, as a member of the Tioga County Bar Association for well in excess of 20 years. While Mr. Banik and I practice in different areas of the law, I have had occasion to work with Mr. Banik on a number of matters over the years, both as counsel and as adversaries. Without exception, in my dealings with Mr. Banik, I have found him to be cooperative, honest, and honorable, and attentive to the interests of his clients. If you have any questions, or there is any additional information that I can provide, please do not hesitate to contact me.

Very truly yours,

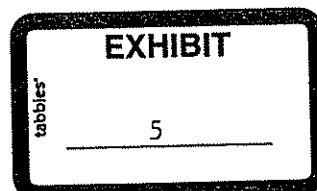
GINN & VICKERY, P.C.

BY:



Raymond E. Ginn, Jr.

REG/alk



**Law Offices of
van der Hiel, Chappell & Loomis**

Fourteen South Main Street
P.O. Box 57
Mansfield, PA 16933-0057
(570) 662-2157
FAX (570) 662-3267
E-MAIL - lovca@epix.net

Robert W. Chappell
Jeffrey S. Loomis

Rudolph J. van der Hiel
(Of Counsel)
Robert E. Farr
(1905-1970)

June 7, 2007

Disciplinary Board of the
Supreme Court of Pennsylvania
Two Lemoyne Drive, 1st Floor
Lemoyne, PA 17043

JUN - 8 2007

RE: Stephen J. Banik

Dear Board Members:

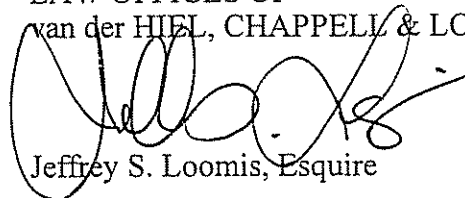
Kindly accept this as a letter of reference on behalf of Stephen J. Banik. I have known Stephen, and have practiced law with him in Tioga County, for approximately the past fifteen (15) years. During this time, we have had numerous cases against each other, and have also served as co-counsel in some matters. I have always found Stephen to be both competent and forthright in his practice of law.

In addition, I have attended a variety of events and social functions through the years at which Attorney Banik has been present. These have included Bar Meetings, Bar Parties, weddings and special events within our area. During these occasions, I have always been impressed by Stephen's commitment to his family and the quality time he spends with his children.

I understand that Stephen recently entered a guilty plea in resolution of the case pending against him and that the Disciplinary Board must review this matter to determine a suitable sanction. I trust that whatever sanction is issued will be appropriate and take into consideration all information. I truly consider Stephen to be an asset to our local Bar and hope the best for him in this matter.

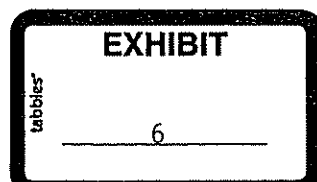
Sincerely,

LAW OFFICES OF
van der HIEL, CHAPPELL & LOOMIS



Jeffrey S. Loomis, Esquire

JSL/jlw





Ginn & Vickery
— PC —
ATTORNEYS AT LAW

P.O. Box 34
23 East Avenue
Wellsboro, PA 16901

June 7, 2007

To whom it may concern:

I am sending this letter in support of my friend and colleague, Stephen A. Banik, pursuant to pending disciplinary proceedings. It is my privilege to do so.

I have been a practicing attorney in the Tioga County Bar Association for 15 years. During that timeframe, I have found Attorney Banik to be a competent and zealous advocate for his clients.

My practice is primarily limited to civil litigation. If and when I have required assistance with criminal related cases, Mr. Banik has provided me with excellent advice and assistance.

Mr. Banik has been an active and spirited member of the Tioga County Bar Association during my involvement with the organization.

If you have any questions concerning this letter, please feel free to contact me. Thank you. I hope that he will be able to continue his representation.

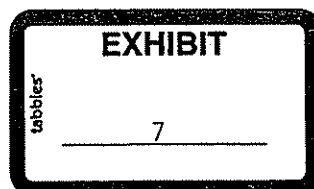
Very truly yours,

GINN & VICKERY, P.C.

BY:


Bruce L. Vickery, Esquire

BLV/alk



GLASSMIRE & SHAFFER LAW OFFICES, P.C.

5 East Third Street, P.O. Box 509
Coudersport, Pennsylvania 16915

Daniel F. Glassmire
Thomas R. Shaffer

Telephone (814) 274-7292
FAX (814) 274-0855

June 5, 2007

To Whom It May Concern:

We are both lawyers who practice primarily in Potter County, Pennsylvania. During the course of our practices we have each had some involvement with Steve Banik in his role as a licensed Pennsylvania attorney. We each share with you that Steve Banik has always been courteous, responsible and honest in his dealings with us. Whenever Steve has made representations to us or given his word regarding some action which he would take Steve would always follow through and you could rely upon his representation.

It is our sincere belief that Steve has done his very best to zealously represent his clients. He has always shown a high level of integrity when dealing with other attorneys and with the Court and we believe he has served his clients well.

We hope that these comments will be of some value to you in your evaluation of possible disciplinary action against Steve Banik.

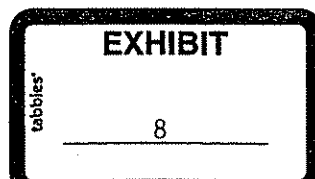
Respectfully submitted,


Daniel F. Glassmire


Thomas R. Shaffer

GLASSMIRE & SHAFFER LAW OFFICES, P.C.
5 East Third Street, P. O. Box 509
Coudersport, PA 16915
814-274-7292

TRS/imd

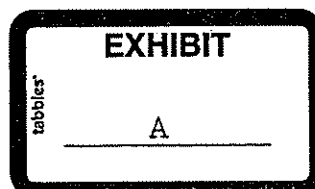


Affidavit of Probable Cause

Your Affiants, Troopers Nicholas Madigan and Robert Clegg of the Pennsylvania State Police Vice and Narcotics Unit, Troop F, began an investigation in **July, 2005** after interviewing numerous individuals who stated that Stephen Banik, an attorney in the Tioga County area, has been a long-time user of marijuana who also distributes it to others. These individuals were subpoenaed to testify before the Twenty-Fourth Statewide Investigating Grand Jury. Your Affiants have reviewed the testimony and are aware of the following:

Jeffrey Spaulding testified that he lived in Tioga County all his life. Spaulding attended school with Stephen Banik and has known him for approximately 35 years. Spaulding testified that he obtained Banik's legal representation for a driving under the influence of alcohol offense around November of 2000. Spaulding did not pay Banik for that representation, but rather performed odd jobs around Banik's house and property. Spaulding testified that the first day he showed up to perform work on Banik's property, Banik produced a marijuana joint and smoked it with Spaulding. Throughout the rest of that day Banik shared marijuana joints with Spaulding. From November 2000 until late summer 2005, Spaulding regularly obtained marijuana from Banik. Spaulding would obtain approximately an eighth of an ounce or a quarter of an ounce of marijuana at a time. Spaulding smoked marijuana with Banik at various places on Banik's property, at Banik's law office, and in the basement of Banik's house. On a few occasions, Banik supplied Spaulding with marijuana to take home. Spaulding testified that Banik typically retrieved his marijuana from the basement of his house.

Joshua Spaulding testified that he would accompany his father to Banik's property to help do work. Joshua Spaulding witnessed Banik give marijuana to his father. Joshua Spaulding stated that each time he would see his father with Banik, the two men would be smoking



marijuana. Joshua Spaulding described the marijuana he observed as being packaged in a small sandwich baggie. Spaulding last observed Banik supply his father with marijuana in August or September 2005.

Ronald Smith, a/k/a Rocky, testified that he lived in the Tioga County area, off and on, all of his life and that he has known Banik for approximately 30 years. On numerous occasions, Smith retained Banik for legal services. Smith stated that Banik asked him to set him up with a quarter ounce of weed, and that after Smith did so, Banik stated "that would take care of things." Smith understood this to mean that Banik was accepting the marijuana as payment for legal services he provided to Smith. Smith first provided marijuana to Banik in the mid to late nineties and Smith stated that he continued to provide marijuana to Banik up until the fall of 2005. Smith stated that he provided Banik with quantities ranging from a couple of grams to an ounce of marijuana. Smith testified that Banik typically requested quantities ranging from an eighth of an ounce to a quarter of an ounce, but because it was difficult for Smith to afford a quarter of an ounce, he would usually provide Banik with eighths. Banik would not pay Smith for this marijuana but repeated that it would take care of things for awhile.

Andy Catherman testified that he lived near Banik on Banik's property and performed work around the house for Banik. Catherman stated that Banik would provide him with buds of marijuana which would be equivalent to about two marijuana cigarettes. Catherman observed a Styrofoam cooler in Banik's basement which contained marijuana. Catherman testified that he last smoked marijuana with Banik shortly before November 2004. Catherman stated that Banik shared marijuana with him in his basement, at Banik's law office, at a nearby hunting camp, and while driving around in vehicles.

Michael Smith testified that from September 2004 to November 2004 he rented a trailer from Banik's mother that was located on Banik's property. During those two months, Smith was invited down to the basement of Banik's home where he observed Banik smoke marijuana. Smith would also accompany Banik to get food at a local bar and stated that Banik would smoke marijuana in the car. Smith testified that he observed Banik provide marijuana to Andy Catherman. On one occasion, Smith observed a Styrofoam cooler in Banik's basement that contained a gallon size bag full of marijuana.

Anthony Graham testified that he met Banik through a mutual friend in 2000. Around the end of 2002 Graham moved into a trailer located on Banik's property. Graham stated that Banik would come to his trailer and provide him with marijuana and that the marijuana would be packaged in a sandwich bag.

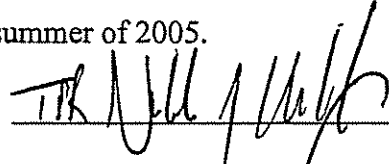
Quinn Warren testified that he was friends with Banik's son Jacob and met Banik around 2000. Warren stated that he eventually developed a friendship with Banik. Warren testified that he first used marijuana with Banik at a party in the summer of 2001. On that occasion, Banik produced a marijuana pipe from his person and passed the pipe to Warren. Warren stated that he only saw Banik occasionally while he was in college. Upon returning to Tioga County after college, around 2004, Warren's usage of marijuana grew as he began to spend time with Banik. Warren estimated that after returning to the area and through the fall of 2005 he used marijuana with Banik on approximately 100 occasions. Warren stated that Banik never charged him for the marijuana that was given to him. Warren stated that Banik would provide the marijuana most of the time, however, Warren would also provide marijuana for the two of them to smoke. Warren stated that the marijuana he provided to Banik originally was given to him by Banik, so that he was ultimately providing Banik with his own marijuana.

Warren testified that he smoked marijuana with Banik in the basement of Banik's home, in vehicles, at a camp, and at Banik's law office. Warren described seeing additional quantities of marijuana in Banik's basement, packaged in small plastic baggies. On one occasion, Warren observed a small white Styrofoam cooler in the basement that contained a stem of marijuana with buds on it.

Warren stated that during the summer of 2005, he and Banik would each provide \$130 toward the purchase of an ounce of marijuana. Warren witnessed Banik make two phone calls after pooling their money together to order the marijuana. They would then place the money in a car on Banik's property. They would leave and then return to the car after a few hours or even a day, and the marijuana would be inside the car. They would divide the marijuana into equal parts. On one occasion Banik and Warren pooled money together and on two or three other occasions Jeff Spaulding also provided money for the marijuana.

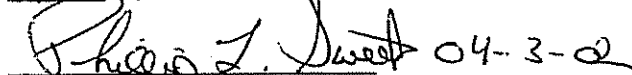
Warren testified that Banik continued to share marijuana with him until September 2005, when Banik gained knowledge that he may be under investigation. Warren stated that there was one instance in December 2005 where Banik approached him about smoking and Warren provided a joint of marijuana to him outside the Bear Ass Bar in Blossburg. A few weeks after that, Banik again asked Warren for marijuana in the basement of his home and Warren provided him with some which Banik smoked in front of him.

Steven Whittle testified that he met Banik in 1992 when he hired Banik for legal representation. Whittle testified that he obtained a bud of marijuana for someone else from Banik during 2005. Whittle also observed Quinn Warren and Banik dividing an ounce of marijuana at the Banik property during the summer of 2005.


Trooper Nicholas Madigan


Trooper Robert Clegg

Signed and Sworn to me this
12th day of October, 2006.


Magisterial District Justice



**POLICE
CRIMINAL COMPLAINT**

COMMONWEALTH OF PENNSYLVANIA

VS.

DEFENDANT:

NAME and ADDRESS

Stephen John BANIK
743 Steam Mill Road
Wellsboro, Pa.
16901

| |
|--|
| Magisterial District Number: 04-3-02 |
| District Justice Name: Hon. Philip L. SWEET |
| Address: 118 Main Street Wellsboro, Pa. 16901 |
| Telephone: (570) 724-9220 |

Docket No.: CR-114-06
Date Filed: 10-12-06
OTN: K280132-6

| | | | | |
|--|--|-------------------------------|---|--|
| Defendant's Race/Ethnicity <input checked="" type="checkbox"/> White <input type="checkbox"/> Asian <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Unknown | Defendant's Sex <input type="checkbox"/> Female <input checked="" type="checkbox"/> Male | Defendant's D.O.B. 6/12/55 | Defendant's Social Security Number 056 48 0988 | Defendant's SID |
| Defendant's A.K.A. Steve | Defendant's Vehicle Information: PLATE NUMBER STATE REGISTRATION STICKER (MM/YY) | | | Defendant's Driver's License Number PA 16804754 |
| Complaint/Incident Number F05-0908018 | Complaint/Incident Number if other Participants | | | UCR/NIBRS Code 182 |

District Attorney's Office Approved Disapproved because:
(The district attorney may require that the complaint, arrest warrant affidavit, or both be approved by the attorney for the Commonwealth prior to filing.
Pa.R.Cr.P. 107)

(Name of Attorney for Commonwealth - Please Print or Type) _____
(Signature of Attorney for Commonwealth) _____
(Date)

I, Tpr. Nicholas J. MADIGAN / Tpr. Robert D. CLEGG / 5518 / 6143
(Name of Affiant - Please Print or Type) _____
(Officer Badge Number/I.D.)

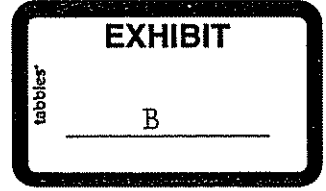
of, PENNSYLVANIA STATE POLICE, MANSFIELD PAPSP5300
(Identify Department or Agency Represented and Political Subdivision) _____
(Police Agency URI Number) _____
(Originating Agency Case Number (OCA))

do hereby state: (check the appropriate box)

- I accuse the above named defendant who lives at the address set forth above
 I accuse the defendant whose name is unknown to me but who is described as
 I accuse the defendant whose name and popular designation or nickname is unknown to me and whom I have therefore designated as John Doe
with violating the penal laws of the Commonwealth of Pennsylvania at
his residence/property, Charleston Township
in TIOGA County on or about diverse dates/times

Participants were: (if there were participants, place their names here, repeating the name of the above defendant)
Stephen John BANIK

- The acts committed by the accused were:
(Set forth a summary of the facts sufficient to advise the defendant of the nature of the offense charged. A citation to the statute allegedly violated, without more, is not sufficient, in a summary case, you must cite the specific section and subsection of the statute or ordinance allegedly violated.)
 - CC75-12a- Criminal Use of a Communication Facility- Defendant did use a communication facility to facilitate the commission of a felony crime, to wit: did use a phone to arrange marijuana purchases from Anthony DAVIS. Felony 3
 - CS780113a31- Distribution of a Small Amount of Marijuana But Not For Sale- Defendant did knowingly and intentionally distribute a small amount of marijuana, a Schedule I Controlled Substance, on multiple occasions between August 2004 and September 2005 to Jeff SPAULDING, Quinn WARREN, Steve WHITTLE and others, not being licensed registered to do so, marijuana was provided by the defendant but not sold, in violation of paragraph 31, section 13 of the Controlled Substance, Drug, Device and Cosmetic Act. Misdemeanor



| |
|--------------------------------------|
| Defendant's Name: Stephen John BANIK |
| Docket Number: |



POLICE CRIMINAL COMPLAINT

C. CS 780113a32- Possession of Drug Paraphernalia- The defendant, on multiple occasions between September, 2004 and December, 2005, did knowingly, intentionally and unlawfully possess drug paraphernalia for the purpose of ingesting, inhaling, containing and packaging a controlled substance, to wit; pipes/bowls, sandwich baggies and coolers for smoking and storing marijuana, a Schedule I Controlled Substance, in violation of Paragraph 32, section 13a of the Controlled Substance, Drug, Device and Cosmetic Act. Misdemeanor

all of which were against the peace and dignity of the Commonwealth of Pennsylvania and contrary to the Act of Assembly, or in violation of

- | | | | |
|---------------------------------|-------------------------------|--|----------------------|
| 1. <u>cc7512</u> (Section) | <u>a</u> (subsection) | of the <u>Title 18</u> (PA Statute) | <u>1</u> (Counts) |
| 2. <u>cs780113</u> (Section) | <u>a31iii</u> (Subsection) | of the <u>Title 35</u> (PA Statute) | <u>1</u> (Counts) |
| 3. <u>cs780113</u> (Section) | <u>a32</u> (Subsection) | of the <u>Title 35</u> (PA Statute) | <u>1</u> (Counts) |
| 4. _____ (Section) | _____ (Subsection) | of the _____ (PA Statute) | _____ (Counts) |

I ask that a warrant of arrest or a summons be issued and that the defendant be required to answer the charges I have made. (In order for a warrant of arrest to issue, the attached affidavit of probable cause must be completed and sworn to before the issuing authority.)

3. I verify that the facts set forth in this complaint are true and correct to the best of my knowledge or information and belief. This verification is made subject to the penalties of Section 4904 of the Crimes Code (18 PA. C.S. § 4904) relating to unsworn falsification to authorities.

October 12, 2006

TR Null

(Signature of Affiant)

AND NOW, on this date Oct. 12, 2006, I certify that the complaint has been properly completed and verified. An affidavit of probable cause must be completed in order for a warrant to issue.

04-3-02

(Magisterial District)

Philip Z. Sweet

(Issuing Authority)

SEAL

RECEIVED

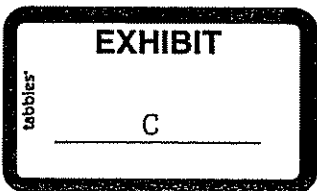
COMMONWEALTH OF PENNSYLVANIA : IN THE COURT OF COMMON PLEAS
2007 APR 12 A 10: 35
VS. OF TIOGA COUNTY, PENNSYLVANIA

Stephen J. Banik PROTHONOTARY NO. 369-2006
TIOGA COUNTY, PA

GUILTY PLEA STATEMENT

I, Stephen J. Banik, the defendant in the above
entitled Criminal Action, charged with the crime of <sup>1) Criminal Use of a
Communication Facility</sup>
hereby express a desire to enter a plea of guilty. <sup>2) Distribution of a
Small amount of
marijuana not for
sale</sup>

1. Do you understand English? Yes
2. How far did you go in school? Graduate degree <sup>3) Possession of Drug
Paraphernalia</sup>
3. Have you discussed your case thoroughly with your Attorney,
Mr. Hebe?
4. Has your attorney explained to you any possible defenses you
might have? Yes
5. Do you understand the nature of the charge and the elements of
the offense to which you are pleading guilty? Yes
6. What acts did you do to which you are pleading guilty? The acts
described in the criminal information filed to the above docket.
7. Have you been threatened or beaten in order to induce you to
admit your guilt? No
8. Has any promise been made to you to induce this plea, by either
the District Attorney, your attorney, the Sheriff, State Police,
or any other officer of the law, or anyone connected with this
Court? No
9. Do you understand that you have a right to a trial by jury or
that you may waive that right and be tried by the court without
a jury? Yes
10. Do you understand that if you elected to be tried by a jury that
you would be able to participate in the selection of your jury
which would consist of twelve people who would be residents of
Tioga County? Yes Further, that the jury's verdict would have
to be unanimous to find you guilty? Yes



GUILTY PLEA STATEMENT - PAGE 2

11. Do you understand that you are presumed innocent until you are found guilty? *Yes*

12. Do you understand that you have the right to be faced by your accuser? *Yes*

13. Do you understand that the maximum penalty for the crime to which you are charged is *1) Up to \$15,000.00 and/or 7 years*

2) up to \$500.00 and/or 30 days 3) up to \$2500.00 and/or 1 year
14. Are you aware of any plea bargain or other arrangement? *Commonwealth will recommend standard range sentence but will not ask for incarceration*

15. Are you aware that the Judge is not bound by any plea bargain, or any arrangement between your counsel and the District Attorney?

16. Are you pleading guilty voluntarily, knowingly, and of your own free will? *Yes*

17. Do you know that your plea of guilty is an admission that you committed the crime to which you are now pleading guilty?

Yes

STATE OF PENNSYLVANIA)

SS:

COUNTY OF TIOGA)

the defendant in the above entitled criminal action, being duly sworn according to law, deposes and says the answers to the foregoing questions are true and correct to the best of (his) (her) knowledge, information and belief.

Sworn to and subscribed before me this _____ day of _____

Stephen J. Bawit
Defendant

Having entered a plea of guilty, I hereby acknowledge that I have been informed of the following:

1. That by pleading guilty, I have given up the right to challenge any possible defects that might have occurred in the pre-trial proceedings of this case; either now or in any appeal which may be filed.

**IN THE CRIMINAL COURTS
OF THE COUNTY OF TIOGA**

COMMONWEALTH OF PENNSYLVANIA :
Plaintiff :

v. :

Stephen J. Banik :

Defendant :

No. CP-59-CR-369-2006

PROthonotary
TIOGA COUNTY, PA

2008 NOV 13 P 1:43

RECEIVED

INFORMATION

THE ATTORNEY GENERAL of the Commonwealth of Pennsylvania, by this Information, charges that, on or about August, 2004 through September, 2005, the Defendant named above, in the County of Tioga did commit the crime indicated herein, to wit:

COUNT I CRIMINAL USE OF COMMUNICATION FELONY 3
FACILITY

That the Defendant, Stephen J. Banik, did unlawfully and knowingly use a communication facility to commit, cause or facilitate the commission or the attempt thereof a crime which constitutes a felony under the Controlled Substance, Drug, Device and Cosmetic Act, in violation of 18 Pa. C.S. §7512. To Wit: from August, 2004 through September, 2005, Stephen J. Banik, did engage in telephone conversations to commit, cause or facilitate the commission or the attempt thereof of the distribution of marijuana from Anthony Davis and others (35 P.S. §780-113(a)(30)).

COUNT II DISTRIBUTION OF A SMALL AMOUNT MISDEMEANOR
OF MARIJUANA BUT NOT FOR SALE

That the Defendant, Stephen J. Banik, did knowingly and intentionally distribute a small amount of marijuana, a Schedule I controlled substance, but not for sale, in Tioga County, between August, 2004 through September, 2005, to Jeff Spaulding, Quinn Warren, Steve Whittle, and others, not being licensed or registered to do so, in violation of Section 13(a)(30) of the Controlled Substance, Drug, Device and Cosmetic Act, an Act of April 14, 1972, P.L. 233, No. 64, as amended, 35 P.S. §780-113(a)(31).

COUNT III

POSSESSION OF DRUG
PARAPHERNALIA

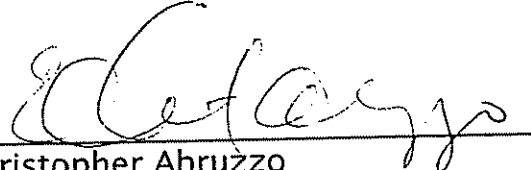
MISDEMEANOR

That the Defendant, Stephen J. Banik, a person not being authorized by law, did possess drug paraphernalia for the purpose of ingesting, inhaling, containing and packaging a controlled substance, To Wit: pipes, bowls, sandwich baggies and coolers for smoking and storing marijuana, a Schedule I controlled substance, in violation of Section 13(a)(32) of the Controlled Substance, Drug, Device and Cosmetic Act, an Act of April 14, 1972, P.L. 233, No. 64, as amended 35 P.S. §780-113(a)(32).

ALL OF WHICH is against the Act of Assembly and the peace and dignity of the Commonwealth of Pennsylvania.


THOMAS W. CORBETT, JR.
Attorney General of the
Commonwealth of Pennsylvania

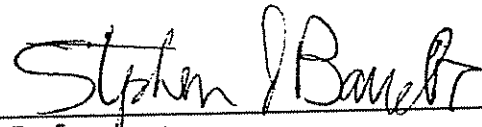
DATED: 11-3-06

BY: 
E. Christopher Abruzzo
Chief Deputy Attorney General
Drug Strike Force

PLEA OF GUILTY

I, the above-named defendant, do hereby enter a plea of guilty to the above charges.


Attorney for Defendant


Defendant

Dated this 11th day of April, 2007.

RECEIVED

COMMONWEALTH OF PENNSYLVANIA

2007 APR 11 P 3: 28

IN THE COURT OF COMMON PLEAS

VS.

OF TIOGA COUNTY, PENNSYLVANIA

STEPHEN J. BANIK

PROTHONOTARY
TIOGA COUNTY, PA

NO. 369 CR 2006

ORDER

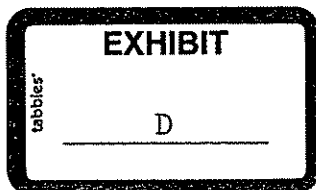
AND NOW, this 11th day of April, 2007, the defendant, Stephen J. Banik, having appeared with his attorney, William A. Hebe, Esquire, and the Court having previously accepted the guilty plea(s) of the defendant, the defendant is sentenced as follows:

Count 1, Criminal Use of Communication Facility, a felony of the third degree, the defendant shall pay the costs of prosecution. The defendant is placed under the supervision of the Tioga County Probation Department for a period of one (1) year. The defendant shall complete 30 hours of community service work. As a condition of probation, the defendant shall be subject to the special drug rules of Tioga County;

Count 2, Distribution of a Small Amount of Marijuana, a misdemeanor, the defendant shall pay the costs of prosecution;

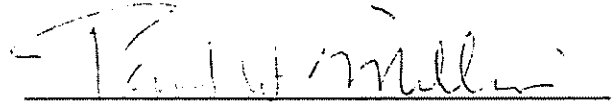
Count 3, Possession of Drug Paraphernalia, a misdemeanor, the defendant shall pay the costs of prosecution. The defendant is placed under the supervision of the Tioga County Probation Department for a period of one (1) year. This sentence to run concurrently with the sentence imposed at Count 1. The defendant shall be subject to regular drug testing through the Tioga County Probation Department. The defendant shall pay a supervision fee of \$50.00 per month for each month he is under the supervision of the Tioga County Probation Department to whom he shall report as directed.

The defendant to pay a \$50.00 fee to the District Attorney's Drug Fund and a \$25.00 drug testing fee to the Probation Department.



Commonwealth of Pennsylvania
County of Tioga
Certified from the original record
this 8th day of May 20 07
Mary Kay Clark
Prothonotary and Clerk of Courts

By The Court,

A handwritten signature in cursive script, appearing to read "Paul H. Millin", is written over a horizontal line.

Paul H. Millin, Senior Judge
Specially Presiding

Cc: ~~William A. Hebe, Esquire~~
~~Attorney General Heather Adams~~
~~Probation~~
~~Warden~~
~~Court Administrator~~

las

TIoga COUNTY DEPARTMENT OF PROBATION AND PAROLE

(Criminal Division)

CONDITIONS GOVERNING PROBATION OR PAROLE

369 CR 2006

To: Stephen J. Banik

The Tioga County Court, Wellsboro, Pennsylvania, on April 11 2007, placed you on probation/parole

upon the order of JUDGE Paul Miller, Specially Presiding ROBERT F. DALTON, JR.

You are the legal custody of the Court until the expiration of your probation/parole or the further order of the Court, and the Court has the power at any time during this period, in case of the violation by you or any of the conditions of your probation/parole, to cause your detention in a county prison and make a recommendation to the Court, which may result in the revocation of your probation / parole and your commitment to a penal or correctional institution to serve your sentence. You are subject to the following conditions:

1. You will be under the supervision of the Tioga County Probation Department. Officer Robert L. Repard
2. Report regularly in person or in writing, as instructed by your Probation Officer, and abide by any written instructions of your Probation Officer. DO NOT contact any Probation Officer at his/her residence.
3. Your residence may not be changed without written permission of your Probation Officer.
4. Comply with all Municipal, County, State and Federal criminal laws, as well as the provisions of the Vehicle Code (75 PA. C.S.A. Section 1-101 et. seq.).
5. Notify your Probation Officer within 72 hours of any arrest.
6. Make every effort to obtain and maintain employment and to support your legal dependents; if employment is lost or changed, notify your Probation Officer within 72 hours and cooperate with your Probation Officer in finding other employment.
7. Remain in the district within the Commonwealth to which you have been paroled or placed on probation, unless written permission has otherwise been granted by your Probation Officer prior to such travel.
8. Abstain from the unlawful possession or sale of narcotics and dangerous drugs and abstain from the use of controlled substances within the meaning of the Controlled Substance, Drug, Device and Cosmetic Act, (35 PS Section 78-101,780144).
9. Refrain from owning or possessing any firearm, deadly weapon or offensive weapon.
10. Refrain from overt behavior, which threatens or presents a clear and present danger to yourself or to others.
11. You will permit, at any time, a warrantless search of your person, car and house.
12. You will pay at least _____ cash month on your court costs, fines, supervision fees and restitution for a total of _____
 **12a. All cost, fines & restitution must be paid in full prior to your release date or you will face revocation proceedings, which may result in extension of your supervision period & additional fees charged.
13. You will comply with the following conditions, which have been imposed by the Court or any special probation/parole condition's which may be subsequently imposed by your Probation Officer.

- You will attend the Pennsylvania Alcohol Highway Safe Driving School as scheduled.
- You will attend one Victim Impact Panel as scheduled and pay the \$35.00 fee.
- You will obtain a drug and alcohol evaluation (at your expense) and follow any recommended treatment.
- You will abstain from ~~alcohol~~ or illegal drug use, consumption, or possession.
- You will contact this officer 1 times per month by telephone 724-9340.
- You will be subject to the Special Rules regarding drugs and ~~alcohol~~.
- You will complete the ACT 122 requirements.
- You will attend and comply with the MOVE program as directed until successfully discharged.
- You will abide by a curfew of _____ weeknights and _____ weekends.
- You will pay restitution in the amount of \$ _____
- Other: you will complete 30 hrs of Community Service

ACKNOWLEDGMENT BY PROBATIONER/PAROLEE

I hereby acknowledge that I have read, or have had read to me, the foregoing conditions of my probation/parole; I fully understand them and agree to follow them; and fully understand the penalties involved should I in any manner violate them.

The Conditions stated herein are applicable to Accelerated Rehabilitative Disposition (ARD) and Probation Without Verdict (PWV) cases with the exception of revocation procedures. If I have a grievance with my officer over enforcement of these rules I should consult the Chief Probation Officer or supervisor of this officer at (570) 724-9340.

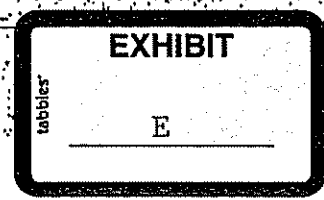
***Upon completion of your ARD, you must contact your attorney if you wish to commence expungement proceedings.

Witness: [Signature]

Signature of Probationer/Parolee: Stephen J. Banik

Witness: [Signature]

Date: 4/11/07



369 CA 2006

TIOGA COUNTY PROBATION DEPARTMENT

(Special Conditions)

I, Stephen J. Banik, defendant, hereby acknowledge that I

have received and agree to comply with, the additional conditions of probation. The conditions of probation are in addition to the regular rules of probation of Tioga County, Pennsylvania. You are subject to the following additional conditions:

- A) That you permit search of your person and seizure of any narcotic implements and/or illegal drugs found. Such search to be conducted by a Probation Officer or a Probation Officer and his agent.
- B) That you permit search of your vehicle and place of residence where such place of residence is legally under your control and seizure of any narcotic implements and/or illegal drugs found. Such search to be conducted by a Probation Officer or a Probation Officer and his agent.
- C) When ordered by the Probation Department, you are to submit to any recognized tests that are available to the Probation Department to determine whether you have been using drugs or alcohol.

FAILURE TO COMPLY completely with these conditions is to be deemed a violation of this Probation.

DATED this 11th day of April, 2007

I have read and understand the above Conditions of Probation and I agree to abide by them.

Stephen J. Banik
PROBATIONER OR PAROLEE

[Signature]
WITNESS

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

| | | |
|--------------------------------|---|--------------------------------------|
| OFFICE OF DISCIPLINARY COUNSEL | : | No. 789, Disciplinary Docket No. 3 |
| Petitioner | : | Supreme Court |
| | : | |
| v. | : | No. 129 DB 2000 – Disciplinary Board |
| | : | |
| STEPHEN J. BANIK | : | Attorney Registration No. 33850 |
| Respondent | : | (Tioga County) |

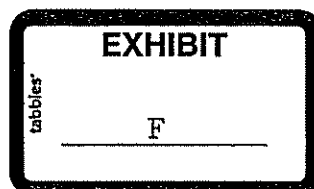
REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

On October 3, 2000, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Stephen J. Banik, Respondent in these proceedings. The Petition charged Respondent with violation of Rules of Professional Conduct 1.15(a), (b), and (c), and 8.4(b) and (c) based on allegations that he mishandled client funds.



Petitioner withdrew the violation of Rule 1.15(c) at the hearing. Respondent filed an Answer to Petition for Discipline on November 21, 2000. .

A disciplinary hearing was held on June 4, 2001 before Hearing Committee 3.05 comprised of Chair Paul W. Brann, Esquire, and Members John W. Frommer, III, Esquire, and Henry A. Goodall, Jr., Esquire. William A. Hebe, Esquire, represented Respondent. Petitioner was represented by Patti S. Bednarik, Esquire.

Following briefing by the parties, the Hearing Committee filed a Report on November 20, 2001 and found that Respondent violated Rules of Professional Conduct 1.15(a) and (b) and 8.4(b) and (c). The Committee recommended that Respondent be publicly censured

This matter was adjudicated by the Disciplinary Board at the meeting of February 13, 2002.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office was located at Suite 3710, One Oxford Centre, Pittsburgh, Pennsylvania 15219, is vested, under Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of that rule.

2. Respondent was born in 1955 and was admitted to practice law in the Commonwealth in 1981. He maintains his office at 107½ Main Street, P.O. Box 55, Wellsboro, Pennsylvania 16901, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Jan A. Terry and Respondent were friends since high school.

4. On March 10, 1999, Respondent submitted a request to the Social Security Administration to be designated Jan Terry's representative payee for the purpose of receiving SSI benefits as a result of Jan Terry's mental impairment.

5. In Respondent's request to be named as Jan Terry's representative payee to receive SSI Benefits, Respondent stated, "Jan A. Terry does not owe me any money and I do not expect him to in the future."

6. Respondent claims that at the time this statement was made, Respondent did not consider the value of an in-kind exchange between Jan Terry and himself as "money" owed by either party.

7. Respondent's request to become a representative payee includes a statement that "anyone who makes or causes to be made a false statement or representation of material fact relating to a payment under the Social Security Act commits a crime punishable under Federal law by fine, imprisonment or both. I affirm that all information I have given in this document is true."

8. Shortly before or after Respondent became Jan Terry's representative payee, he went to Jan Terry's home and asked him to sign an agreement

or disbursement sheet which would allow Respondent to keep 25% of Mr. Terry's retroactive supplemental security income for himself.

9. Jan Terry refused to sign the agreement or disbursement sheet, which included the provision that Respondent would receive 25% of Jan Terry's retroactive supplemental security income payment of \$6,328.80.

10. On or about April 1, 1999, April 2, 1999, and May 1, 1999, Respondent received the following payments on behalf of Jan Terry:

| | Federal Amount | State Amount | |
|---------------|----------------|--------------|------------|
| April 1, 1999 | \$ 500.00 | \$ 27.40 | \$ 527.40 |
| April 2, 1999 | \$5,972.60 | \$ 356.20 | \$6,328.80 |
| May 1, 1999 | \$ 500.00 | \$ 27.40 | \$ 527.40 |
| | | TOTAL | \$7,383.60 |

11. Respondent had a fiduciary duty to promptly turn these funds over to Mr. Terry or use them on Jan Terry's behalf, or keep them in an account separate from his own funds to be used on Jan Terry's behalf as needed.

12. Respondent failed to establish a separate account for monies that he received from the Social Security Administration on behalf of Jan Terry.

13. After receiving the April 2, 1999 payment, Respondent paid \$1,000 of this sum for Jan Terry's electric bill, Respondent paid Jan Terry \$3,000 by check, Respondent gave him an additional \$746 in cash, and kept \$1,582.80. This sum, \$1,582.80, equals 25% of Jan Terry's retroactive benefits, which equals the same amount that Respondent would have kept if Jan Terry had signed the document that Respondent had taken to his house.

14. Respondent failed to pay Jan Terry \$1,582.80 of his SSI benefits, failed to use this money on behalf of Jan Terry and kept this money for his own personal use.

15. For the first three weeks of May 1999, Respondent failed to put any money into Jan Terry's account.

16. While serving in his capacity as representative payee, Respondent occasionally advised Jan Terry that Respondent had to "borrow" some of his money from his SSI benefits, and then, Respondent eventually paid the money back. Respondent claims that his statements to Jan Terry about loans were a "ruse" to keep Jan Terry from requesting all his money at once.

17. On or about May 19, 1999, shortly after Respondent made it clear to Jan Terry that he did not intend to give him \$1,582.80 of his SSI benefits from the April 2, 1999 payment, Jan Terry complained to Paul Hensen, a claims representative for the Social Security Administration, about Respondent's handling of his money, in particular, the fact that Respondent had kept \$1,582.80.

18. Mr. Hensen sent Respondent two letters dated June 9, 1999 and June 23, 1999 requesting that Respondent provide information regarding Jan Terry's complaint that Respondent had taken his money without his authorization.

19. Respondent failed to respond to those letters.

20. On July 26, 1999, Respondent and Mr. Hensen had a telephone conversation regarding Jan Terry's claims that Respondent had taken his money without authorization. During that conversation, Respondent claimed the following:

- a. that Jan Terry owed Respondent money for representing his former girlfriend, Jill Sumner,
- b. that Respondent spent considerable time preparing Jan Terry's case for the administrative law judge, even though Catherine Rusk had actually represented Jan Terry at the hearing, and
- c. that Respondent loaned Jan Terry money to have work done on his house.

21. Jan Terry asked Respondent to represent his former girlfriend, Jill Sumner, on a criminal case involving theft of leased property as a result of Ms. Sumner's failure to return some videotapes to a video store.

22. Jan Terry claims that he never agreed to pay Jill Sumner's legal fees.

23. Respondent orally advised Jill Sumner, now known as Jill Ellison, that he would charge her \$100.00 to represent her in her criminal case, assuming that he would be able to resolve this matter expeditiously with a Rule 314 disposition. The case was scheduled for a 314 disposition three times, but Ms. Sumner only paid \$25.00 partial restitution. Respondent had to request three continuances to give Ms. Ellison more time to pay restitution. Eventually, Ms. Ellison paid Respondent the court costs and fees, which Respondent in turn paid to the court. Her case was dismissed pursuant to Rule 314 on January 5, 1999. Ms. Ellison never had to go to court and never paid Respondent the \$100.00 legal fees that she agreed to pay Respondent. To the best of

Ms. Ellison's knowledge, Jan Terry never agreed to pay Respondent for her legal bills, nor does she have knowledge of any agreement for Jan Terry to pay Respondent \$250.00 for her legal fees.

24. Prior to Respondent becoming Jan Terry's representative payee, Respondent bought and delivered pipe and cement which cost \$109.09 to repair the sewage system at Jan Terry's house. Jan Terry's father, Shirley Clyde Terry, who was a one-half owner of the house, agreed to reimburse Respondent for the parts but failed to do so, because Jan Terry refused to participate in a proposed refinancing of the house. Respondent believed that Jan Terry was morally obligated to reimburse Respondent for these items since he had benefited from their use, and they had enhanced the value of the house in which Jan Terry was a one-half owner.

25. Catherine Rusk, a paralegal with Susquehanna Legal Services, obtained SSI benefits for Jan Terry in 1995, retroactive to 1991, and after Jan Terry's benefits were terminated, she began the process again in 1998, and was able to get Jan Terry retroactive benefits.

a. There is nothing in Ms. Rusk's files to indicate that Respondent did any work on behalf of Jan Terry with respect to obtaining SSI benefits. Her file contained one document signed by Respondent's secretary in 1993 which initiated the process for Mr. Terry to get benefits back in 1994;

b. There is nothing in the extract from Jan Terry's Social Security Administrative file that indicates Respondent had done any work on Jan Terry's behalf to help him obtain benefits;

c. Respondent failed to file an entry of appearance on behalf of Jan Terry on the social security matters;

d. Respondent failed to file a fee petition with the Social Security Administration as required by the Social Security Administration regulations if he were in fact owed any money as legal fees for obtaining benefits on Jan Terry's behalf;

e. In response to Petitioner's request for all documentation supporting Respondent's claim that he did substantial legal work on Jan Terry's behalf to obtain his SSI benefits, Respondent provided the following:

i.) a letter from the Social Security Administration dated June 7, 1996, advising Respondent that they intended to terminate Jan Terry's benefits unless he appealed that decision within ten days of the letter;

ii) a cover letter from Respondent dated August 21, 1996 to the Social Security Office including a Disability Report and Statement of Claimant, which was completed by Respondent's office staff.

f. As a result of Respondent's failure to appeal Jan Terry's termination of his SSI benefits, Catherine Rusk had to initiate the whole process of reapplying for SSI benefits. Respondent did not help Catherine Rusk in her legal representation to reinstate Jan Terry's SSI benefits.

26. By letter dated August 20, 1999, Paul Hensen requested that the Respondent complete an accounting form summarizing the disposition of the Supplement Security benefits paid to him as a representative payee for Jan Terry. Mr. Hensen enclosed an envelope to return any funds withheld as a fee and to return the accounting.

27. In the same August 20, 1999 letter, Mr. Hensen advised Respondent:

a. that Jan Terry was accusing Respondent of keeping \$1,582.80 of his retroactive SSI payment as Respondent's attorney fee;

b. that the Social Security Administration had no fee agreement or fee petition in their records from Respondent; that their records indicate that Jan Terry was represented by someone other than Respondent; and

c. that if Respondent had collected an unauthorized fee, it was a violation of 20 CFR 404.1740(b).

28. Respondent failed to respond to the August 20, 1999 letter and Respondent failed to return an accounting.

29. On or about September 13, 1999, Paul Hensen sent another copy of his August 20, 1999 letter to Respondent with the notation, "second request please respond."

30. Respondent again failed to respond to Mr. Hensen's request for an accounting of funds and failed to respond to Mr. Hensen's request for information.

31. Respondent retained \$1,582.80 of Jan Terry's SSI benefits. 20 CFR 404.1740(b) provides:

A representative shall not knowingly charge, collect or retain, or make arrangement to charge, collect or retain, from any source, directly or indirectly, any fee for representation services in violation of applicable law or regulation.

32. When Jan Terry threatened to report Respondent to the Disciplinary Board, Ms. Catherine Rusk, the paralegal at Susquehanna Legal Services, attempted to negotiate a settlement between Respondent and Jan Terry with respect to the \$1,582.80 that was in dispute.

33. By letter dated January 7, 2000, Respondent advised Catherine Rusk of the following:

- a. that Jan Terry owed Respondent \$250.00 for Jill Sumner's representation;
- b. that Respondent had looked through his file, and that he believed that he had spent at least five hours on Jan Terry's file, but would be willing to settle for three hours at \$75. 00 per hour;
- c. that Respondent would not pay Jan Terry a storage fee for having his car stored at Terry's home for months after Jan Terry requested that the Respondent move it elsewhere;
- d. that Respondent spent \$109.09 on materials for Terry's house; and

e. that Respondent offered to pay Jan Terry \$1,000.00 to settle his claim against him.

34. Jan Terry agreed to settle his dispute with Respondent if Respondent paid him \$1,000.00 and removed his car from Jan Terry's premises.

35. Respondent failed to pay Jan Terry \$1,000.00.

36. Respondent failed to remove his car from Jan Terry's premises.

37. As a result of Jan Terry's complaint about Respondent's misappropriation of his money, Paul Hensen stopped sending Jan Terry's SSI benefits to Respondent to prevent any further misuse of Jan Terry's funds. After Jan Terry named another representative payee, his benefits resumed.

38. When Respondent failed to pay Jan Terry \$1,000.00 to settle this matter, Jan Terry complained to the Office of Disciplinary Counsel. Respondent then claimed to the Office of Disciplinary Counsel that Jan Terry owed him money for representing Jill Sumner, for repairs to the Terry home, and for legal work performed for Jan Terry.

39. Respondent has no disciplinary history.

40. Respondent has cooperated with Office of Disciplinary Counsel in this investigation.

41. Respondent repaid Jan Terry \$1,582.80 prior to the disciplinary hearing.

42. Respondent has admitted his wrongdoing and has expressed remorse for his actions.

III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct:

1. RPC 1.15(a) – A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a representation separate from the lawyer's own property.
2. RPC 1.15(b) – Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. A lawyer shall promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive.
3. RPC 8.4(b) – It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
4. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

IV. DISCUSSION

Mishandling client funds is one of the most troubling forms of attorney misconduct, and the discipline imposed has ranged from rare instances of non-public discipline to disbarment. In this case there is uncharacteristic unanimity among Respondent's counsel, the Hearing Committee and the Office of Disciplinary Counsel that public censure is the appropriate discipline for Respondent's conduct.

Respondent stipulated to violations of the following Rules of Professional Conduct:

- 1.15(a) a lawyer shall hold property of clients...separate from the lawyer's own property;
- 1.15(b) a lawyer shall promptly deliver to the client or third persons any funds or other property that the client or third person is entitled to receive, and
- 8.4(c) it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

Originally Respondent stipulated to a violation of Rule 8.4(b), which states that it is professional misconduct for a lawyer to commit a criminal act, but at the hearing Petitioner and Respondent reached an agreement to withdraw that violation from the stipulation and let the Hearing Committee make the determination as to whether Respondent violated that Rule. The Committee decided that Respondent's

conduct did constitute a violation of the crime of theft by failure to make required disposition as set forth in 18 Pa. C.S. §3927, as it was not persuaded that Respondent believed he was legally entitled to keep the Complainant's SSI disability benefits. The evidence of record established that Respondent knew he had an obligation to use the Complainant's benefits on behalf of the Complainant or to conserve the funds for Complainant's future needs. As such, Respondent failed to make the required disposition of these funds.

Respondent stipulated to extensive findings of fact, and some of these more significant factual findings are repeated here to contextualize Respondent's misconduct and the recommended discipline for the conduct.

Respondent's practice is concentrated in Tioga, Potter, McKean, Bedford and Lycoming Counties. He became friendly with Complainant when they attended high school together, and they remained friendly thereafter. Complainant was receiving social security disability benefits, and requested that Respondent become a representative payee for the Supplemental Security Income Benefits he received from the Social Security Administration. The record does not precisely describe the nature, extent or timing of Complainant's disabilities but these include mental impairment, alcohol addiction and a back injury. (NT 39) Complainant's father had a drinking problem and often fought with Complainant and in at least one instance threatened to throw him out of the house. (NT 17) Respondent intervened over a period of years in

various domestic disturbances and convinced Complainant's father not to throw him out of the house. The father later moved to Arkansas and left Complainant on his own, and he was apparently helped by a neighbor who "wouldn't deal with it anymore". Apparently at that time, Complainant requested Respondent to become his protective payee for the Social Security benefits. (NT 17-18)

After Respondent completed the required forms he became Complainant's protective payee and received nearly \$7,000 in these benefits. He used this benefit payment to purchase money orders and paid some long overdue utility bills for Complainant and gave Complainant the balance of funds less \$1,582 which he kept as a fee. (NT 36-37) Complainant voiced his considerable displeasure at Respondent retaining this fee, and it was repaid in total to Complainant. Respondent compounded his retention of this unauthorized fee by his delay in repaying it. During the delay in repaying Complainant, Respondent kept the unauthorized fee for his own use and told Complainant that he had to "borrow" some of the benefit funds, and failed to respond and/or submit an accounting to representatives of the Social Security Administration regarding the retained funds.

The Hearing Committee's thorough discussion of recommended discipline begins with the statement that the testimony and evidence of record demonstrates that Respondent did not volunteer to be Complainant's representative payee in order to defraud him. (Hearing Committee Report at p. 22)

In addition to the domestic dispute resolution discussed earlier, Respondent has acted as friend, occasional provider of food and shelter, and non-fee paid attorney for Complainant's girlfriend in a criminal matter. Respondent also delivered to Complainant a vehicle for a restoration which was undertaken by removing the bumpers and nothing more. Respondent's motivation for the retention of the unauthorized fee was not an attempt to steal money from Complainant but a misguided attempt to secure reimbursement for these efforts he made on Complainant's behalf.

The record contains several mitigating factors which support the recommended discipline of public censure.

- Respondent has no prior discipline in his more than 20 years of practice in his native Tioga County;
- Respondent understood the seriousness of his misconduct, admitted his wrongdoing and was genuinely remorseful;
- Respondent testified that this situation should have never occurred and will not re-occur;
- Respondent cooperated with the Office of Disciplinary Counsel and fully repaid Complainant prior to his disciplinary hearing,
- A variety of significant members of the legal community who knew Respondent personally and professionally submitted letters on his behalf including:

- The District Attorneys of Potter and Tioga Counties;
- The Chief Probation Officer of Tioga County;
- The Bailiff of Tioga County's Court of Common Pleas (a retired Pennsylvania State Trooper);
- The Domestic Relations Officer and Master for Tioga County;
- The Court Administrator of Potter County;
- The Prothonotary and Clerk of Courts of Tioga County's Court of Common Pleas;
- A senior member of the Tioga County Bar

All of these support letters expressed the long time (none for less than 10 years and most for 20 years or more) they have personally known Respondent and the uniformly high professional and personal regard in which the authors hold Respondent.

Respondent is clearly well regarded in this largely rural legal community in which he practices and that further underscores the aberrant nature of this incident, and reinforces the likelihood that it will not be repeated.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Stephen J. Banik, be subjected to a Public Censure by the Supreme Court.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter be paid by Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Thomas J. Elliott, Member

Date: September 27, 2002

PER CURIAM:

AND NOW, this 17th day of December, 2002, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 27, 2002, it is hereby

ORDERED that STEPHEN J. BANIK be subjected to Public Censure by the Supreme Court.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

The Disciplinary Board

of the Supreme Court of Pennsylvania

Disciplinary Reporter Case Digest

| | |
|---------------------------------|--|
| Disciplinary Board Docket No. | 129 DB 2000 |
| Supreme Court Docket No. | 789 D.D. No. 3 |
| Attorney First Name | Stephen |
| Attorney Middle Name | J. |
| Attorney Last Name | Banik |
| Attorney Registration No. | 33850 |
| County | Tioga |
| Disciplinary Counsel | Patti S. Bednarik |
| Counsel for Respondent Attorney | William A. Hebe |
| Date of Decision. | 2002-12-17 |
| Date Effective | 2003-05-15 |
| Case Digest | Respondent retained funds belonging to a third party without authorization. Respondent submitted a request to be a designated payee for purposes of receiving SSI benefits for Complainant who suffered a mental disability. In the request, Respondent affirmed that Complainant did not owe him any money and he did not expect any money from the benefits. |
| Rule Violation(s) | 1.15(a); 8.4(c) |
| Discipline Imposed | Public Censure |
| Points of Law | A lawyer who serves as a Social Security designated payee violates RPC 1.15(a) by failing to render accounting for those funds to the Social Security Administration. A lawyer who asserts that money not delivered to a client was a loan or payment for past legal services will be expected to produce documentation to corroborate those claims. |
| Report/Opinion Text | click here for text |

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