

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1297 Disciplinary Docket No. 3  
Petitioner :  
 : No. 41 DB 2007  
v. :  
 : Attorney Registration No. 38871  
JAMES P. FERRY, :  
Respondent : (Luzerne County)

ORDER

PER CURIAM:

AND NOW, this 3<sup>rd</sup> day of December, 2007, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated August 17, 2007, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that James P. Ferry is suspended on consent from the Bar of this Commonwealth for a period of twenty-one months and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola

As of: December 3, 2007

Attest:   
Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 41 DB 2007  
Petitioner :  
v. : Attorney Registration No. 38871  
JAMES P. FERRY :  
Respondent : (Luzerne 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 Carl D. Buchholz, III, Stewart L. Cohen and Laurence H. Brown, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on July 19, 2007.

The Panel approves the Joint Petition consenting to a Twenty-One Month Suspension and recommends to the Supreme Court of Pennsylvania that the attached Petition be Granted.

The Panel further recommends that any necessary expenses incurred in the investigation and prosecution of this matter shall be paid by the respondent-attorney as a condition to the grant of the Petition.



Carl D. Buchholz, III, Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: August 17, 2007



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

2. Respondent was born in 1957, admitted to practice law in this Commonwealth on October 25, 1983, and has Attorney Registration Number 38871. His registered address is 16 West Acacia Street, Hazleton, PA 18201. His current mailing address is 8 Laurel Hill, P.O. Box 321, Hazleton, PA 18201. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

2(a). Respondent's affidavit stating, *inter alia*, his consent to the recommended discipline is attached hereto as Exhibit "A."

**SPECIFIC FACTUAL ALLEGATIONS ADMITTED:**

The following paragraphs Nos. 3 through 160 are verbatim as set forth in the Petition for Discipline filed in this matter. The Respondent, through Frank Nocito, Esquire, filed an Answer which asked to be heard in mitigation but made no response to the factual averments in the Petition for Discipline. At a Pre-

hearing Conference held on June 25, 2007, at which the Respondent was in attendance and *pro se*, Mr. Nocito having withdrawn, it was ordered that the factual averments in the Petition for Discipline were deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E. The Dixon Bankruptcy Matter as set forth in paragraph Nos. 161 through 176 relate to a pending complaint that was received after the filing of the Petition for Discipline.

### **PAUL ESTATE MATTER**

3. On February 8, 2004, Angelo Paul died testate in Carbon County, PA, and his Will named Juanita Indrisek, his daughter, as his Executrix.

4. Ms. Indrisek retained the Respondent to represent her in administering the Angelo Paul Estate.

5. On February 24, 2004, the Respondent caused Letters Testamentary to issue to Juanita Indrisek in Carbon County at No. 04-9072.

6. The primary assets of the Angelo Paul Estate were real estate in Lansford, PA, in Mr. Paul's name individually, which subsequently sold with a net to the estate of \$35,270.85, and a car that subsequently sold for a net to the estate of \$5,500. He had an insurance policy for which his wife, Helen Paul, was the beneficiary.

7. Mr. Paul was survived by his wife, Helen H. Paul, who at the time of his death was a resident of a nursing home in Schuylkill County, PA. Ms. Indrisek was one of four surviving children.

8. The Respondent initiated proceedings in Schuylkill County to have Ms. Indrisek appointed as the guardian for Helen Paul.

9. In April 2004, Helen Paul died. The Respondent told Ms. Indrisek that for the balance of the \$600 in fees he had been paid for the guardianship he would file a petition to settle a small estate in Schuylkill County for Helen Paul, and prepare and file any PA Transfer Inheritance Tax Return required for her estate.

10. On October 8, 2004, the Respondent filed an Inheritance Tax Return in Carbon County for the Angelo Paul Estate and the tax due of \$1,284.04 was paid.

11. On October 14, 2004, the Respondent filed an Inheritance Tax Return in Schuylkill County for the Helen Paul Estate and the tax due of \$78.86 was paid.

12. By Order of April 11, 2005, the Orphan's Court in Schuylkill County approved the Petition for Settlement of Small Estate the Respondent had filed on behalf of the Helen Paul Estate and the distribution of the \$2,812.38 in net assets was approved.

13. In June 2005, the Respondent provided Ms. Indrisek with a billing statement of June 10, 2005, that reflected charges totaling \$3,435 for handling the guardianship, the estates of Helen and Angelo Paul, and deed preparation, with a balance then due of \$580.

14. The June 10, 2005 statement of the Respondent included the total fee of \$2,225.00 due the Respondent for handling all matters relating to the Angelo Paul Estate.

15. On June 23, 2005, Ms. Indrisek paid the Respondent the balance due of \$580.00.

16. In and about mid-2005, Ms. Indrisek was being pressed by her siblings for a settlement of the Angelo Paul Estate.

17. The Respondent misrepresented to Ms. Indrisek that on June 30, 2005, an Accounting of the handling of the assets of the estate had gone out to each of her three siblings, along with a family settlement agreement for their consideration, execution, and return.

18. In July 2005, Ms. Indrisek advised the Respondent that none of her siblings had received anything from him.

19. On July 29, 2005, the Respondent mailed the accounting and family settlement documentation to the siblings.

20. Subsequent to July 2005, Ms. Indrisek was unable to contact the Respondent by phone or at his office, which had been recently vacated. She assumed that the Respondent had done all that was required to settle the estates of her parents and by checks of August 4, 2005, she made distribution of the Angelo Paul Estate to herself and her three siblings, based on the accounting the Respondent had prepared.

**21.** On March 6, 2006, the Carbon County Register of Wills sent the Respondent, as counsel of record for the Angelo Paul Estate, a thirty-day notice of the requirement for the Respondent to file an accounting and releases for the Angelo Paul Estate.

**22.** The Respondent did not respond to the estate notice sent March 6, 2006.

**23.** The Respondent did not make Ms. Indrisek aware of the estate notice sent March 6, 2006.

**24.** By Order of June 14, 2006, Judge Nanovic set the Angelo Paul Estate down for a management conference to be held on July 31, 2006. This Order was sent to the Respondent as the counsel of record for the estate.

**25.** Ms. Indrisek received the order of June 14, 2006, but was unsuccessful in her attempts to contact the Respondent.

**26.** On July 31, 2006, Ms. Indrisek appeared before Judge Nanovic and explained that she thought that the Respondent had done all that was required relative to the administration of the Angelo Paul Estate and that she had been unsuccessful in her attempts to contact the Respondent.

**27.** On or about July 31, 2006, Judge Nanovic was successful in locating the Respondent at the office of Luzerne County Children and Youth and spoke to the Respondent by phone. The Respondent told Judge Nanovic that the Respondent was uncertain if he had gotten any documents back from the



heirs of the Angelo Paul Estate but that the Respondent would attend to the matter immediately and also contact Ms. Indrisek.

28. By Order of August 2, 2006, Judge Nanovic directed that the Respondent file a family settlement agreement and status report within thirty days of that order.

29. The Respondent received but did not respond to the Order of August 2, 2006.

30. The Respondent failed to contact Ms. Indrisek relative to the Order of August 2, 2005 (sic).

31. On October 13, 2006, Judge Nanovic contacted the Office of Disciplinary Counsel and related the Respondent's failure to do as he had promised in the phone conversation of on or about July 31, 2006, and/or as the Respondent was directed by the order of August 2, 2006.

32. On October 19, 2006, Disciplinary Counsel spoke to the Respondent by telephone and made him aware of our receipt of a complaint from Ms. Indrisek and of the communications the Office of Disciplinary Counsel received from Judge Nanovic concerning the administration of the Angelo Paul Estate.

33. On October 19, 2006, the Respondent acknowledged to Disciplinary Counsel that he was aware of his need to do something affirmative in the Angelo Paul Estate.

34. On October 19, 2006, Disciplinary Counsel suggested to the Respondent that he finalize matters appropriately and that he immediately write to Judge Nanovic, which the Respondent said that he would do.

35. By letter of October 19, 2006, Disciplinary Counsel wrote to Judge Nanovic and the communication from Judge Nanovic was acknowledged and he was told of the telephone conversation with the Respondent on that date and of the Respondent's representation that he would address the estate issues and immediately contact Judge Nanovic in that regard. The Respondent was copied with this letter.

36. The Respondent has never contacted Judge Nanovic regarding the Angelo Paul Estate.

37. The Respondent has not contacted Ms. Indrisek since the Respondent's letter to her in late July 2005.

38. The Respondent has done nothing to attempt to conclude the administration of the Angelo Paul Estate, including but not limited to filing any accounting and/or family settlement agreement as directed by the court.

#### **SPAULDING MATTER**

39. In May 2005, the Respondent was retained by Mr. and Mrs. Robert Spaulding and paid \$150 to draft a deed, \$150 to draft a mortgage, \$119 to record the deed and the mortgage, \$250 to draft a Will, Living Will, and Power of

Attorney for Robert Spaulding, and \$250 to draft the same documents for Joyce Spaulding. The total of \$919 for these services was paid to the Respondent in May 2005.

40. The Respondent drafted and recorded the deed and the mortgage.

41. In July 2005, the Respondent met with the Spauldings and told them that he was relocating his office to Wilkes-Barre, PA and provided a new phone number.

42. At the July 2005 meeting, the Respondent did not have his notes concerning the Wills, Living Wills, and Powers of Attorney from a prior meeting but said that he would make a new set of notes and get the remaining documents to the Spauldings in the near future.

43. Subsequent to the meeting in July 2005, the Spauldings did not hear from the Respondent and were unsuccessful in their attempts to contact him at the new phone number he had provided, which was not for a law office.

44. After Mr. Spaulding left several messages on the Respondent's cell phone, the Respondent called him back on October 12, 2005, and told him that the Respondent would like to meet with him and his wife to deliver to them the Will, Living Wills, and Powers of Attorney, and to discuss some additional legal work. Mr. Spaulding told the Respondent that he was anxious to review and sign these documents and the Respondent told Mr. Spaulding that when the Respondent returned to his office that the Respondent would print the documents and forward them to the Spauldings.

45. Subsequent to their conversation of October 12, 2005, Mr. Spaulding neither received anything nor heard from the Respondent and called and left a message on the Respondent's cell phone on December 6, 2005. In his message, Mr. Spaulding referred to the Respondent having failed to do as he had promised or to have otherwise communicated with Mr. Spaulding. Mr. Spaulding terminated the Respondent's services and requested the return of the \$500 the Respondent was paid for the Wills, Living Wills and the Powers of Attorney he was to have drafted for the Spauldings.

46. On January 9, 2006, after having received no response to his call and request of December 6, 2005, Mr. Spaulding called the Respondent's cell phone and again requested the return of the \$500 for the work the Respondent had not done.

47. On January 24, 2006, Mr. Spaulding sent the Respondent an email at ferrylaw@verizon.net and requested that the Respondent call him regarding the attorney fees.

48. On February 1, 2006, the Spauldings made a complaint with the Office of Disciplinary Counsel concerning the Respondent's having not responded to any of their communications since October 12, 2005, his having failed to account to them for the retainer they paid in May 2005, and his having failed to return to them the \$500 in fees he received for the work not done.

49. By letter of February 6, 2006, the Office of Disciplinary Counsel notified the Respondent of the concerns of the Spauldings.

**50.** By an undated letter of the Respondent to the Spauldings, in an envelope that appears to have been postmarked on February 9, 2006, he transmitted to them his personal check No. 209 and payable to them for \$250, dated January 30, 2006, and bearing the notation "partial refunded fee" on the memo line.

**51.** The Respondent's undated letter enclosing the check dated January 30, 2006, explained to the Spauldings that the Respondent had been reducing his private practice of law for the prior two years, letting his staff go, with the intention of leaving the private practice of law, and all of which caused him to not be able to timely respond to the Spauldings' legal needs for which he had been retained.

**52.** By letter of February 13, 2006 to the Spauldings the Respondent enclosed his personal check No. 213 for \$250 and payable to the Spauldings as the balance of the \$500 they contended they were owed from the retainer paid.

**53.** By notice of February 22, 2006, the Spauldings were notified by their bank that the Respondent's check No. 209 for \$250 had been returned by his bank because of Non-Sufficient Funds.

**54.** By notice of February 27, 2006, the Spauldings were notified by their bank that the Respondent's check No. 213 for \$250 had been returned by his bank because of Non-Sufficient Funds.

**55.** By letter of March 30, 2006, the Respondent advised the Office of Disciplinary Counsel that he intended sending the Spauldings a total of \$560, of

which \$500 was to replace his two NSF checks and \$60 was to reimburse them for any bank charges incurred because of his bad checks.

56. By letter of June 23, 2006, the Office of Disciplinary Counsel noted to the Respondent that he had failed to send the \$560 to the Spauldings as he had stated he would do in his letter of March 30, 2006, and it was suggested that he make them whole within ten days by a Cashier's Check, or similar.

57. By a Postal Money Order for \$560, dated July 10, 2006, the Respondent provided the Spauldings with the promised funds.

58. The \$500 in fees that the Spauldings requested be returned was unearned by the Respondent but had been personally utilized by him for purposes unrelated to the Spauldings.

### **HUNSINGER MATTER**

59. On or about May 9, 2005, Janet M. Hunsinger met with the Respondent, discussed her problems with faulty repairs made by Valley Pool and Spa, and provided the Respondent with documentation concerning the dispute. The Respondent advised Ms. Hunsinger to arbitrate the matter and she agreed.

60. By check of May 9, 2005, Ms. Hunsinger paid the Respondent his requested retainer of \$1,200.

**61.** The Respondent, who had no prior attorney-client relationship with Ms. Hunsinger, never provided her with any fee agreement or other writing setting forth the rate or the basis of his fees.

**62.** The \$1,200 the Respondent received from Ms. Hunsinger represented an advance payment of fees and should have been deposited and maintained in an escrow account.

**63.** Ms. Hunsinger's cancelled check for the \$1,200 indicates that it cashed by the Respondent.

**64.** The proceeds of Ms. Hunsinger's \$1,200 check were personally utilized by the Respondent and for purposes not related to the Hunsinger representation.

**65.** Since May 9, 2005, Ms. Hunsinger has only been successful in speaking to the Respondent on two of the numerous occasions on which she attempted to speak to him. On one occasion she provided him with additional information concerning the dispute with Valley Pool and Spa. On the second she advised him that Valley Pool and Spa was still sending her bills.

**66.** In 2005, the Respondent was winding down his private practice of law and terminating the employment of his staff.

**67.** The Respondent's law office was closed in September 2005 and he did not then or thereafter notify Ms. Hunsinger of that fact or where he could be contacted.

68. Since Ms. Hunsinger's last conversation with the Respondent on November 15, 2005, she called his office at least five times and left messages on his answering machine requesting that he contact her. The Respondent returned none of those calls.

69. In early February 2006, Ms. Hunsinger conferred with John Dibernardino, Esquire, regarding the Respondent's failure to proceed appropriately on her behalf.

70. Attorney Dibernardino spoke to the Respondent regarding Ms. Hunsinger's concerns. The Respondent told him that he would contact her but he did not.

71. The Respondent did nothing to affirmatively try to advance the interests of Ms. Hunsinger relative to her dispute with Valley Pools and Spa.

72. In February 2006, Ms. Hunsinger filed a complaint against the Respondent to the Office of Disciplinary Counsel.

73. On February 22, 2006, the Office of Disciplinary Counsel sent the Respondent a letter setting forth the basis of the complaint of Ms. Hunsinger.

74. By an undated and handwritten letter to Ms. Hunsinger, the Respondent provided her with his personal check No. 109, for \$1,200, dated March 10, 2006, drawn on his PNC Bank account No. 9011758109. The check and letter were in an envelope postmarked March 31, 2006.

75. By letter of April 21, 2006, the Office of Disciplinary Counsel advised the Respondent that Ms. Hunsinger had informed ODC of the refund of



the fees she had paid the Respondent but also that she had not received her papers concerning her legal matter back from him. It was suggested that the Respondent immediately return those papers to Ms. Hunsinger.

76. On May 30, 2006, the Respondent called Ms. Hunsinger's residence and left a voice mail message asking her to call him and arrange a time for someone to deliver her papers to her residence. She subsequently called and left two voice mail messages for the Respondent. The last message was left in early to mid-June and she requested that the Respondent mail her documents to her residence.

77. Since May 30, 2006, the Respondent has neither returned Ms. Hunsinger's property to her nor otherwise communicated with her.

#### **MARCHETTI BANKRUPTCY MATTER**

78. Ruth Marie Marchetti, aka Ruth Marie Pauline, (hereafter Ms. Marchetti) retained the Respondent in July 2005 to represent her in filing and processing a Chapter 7 bankruptcy.

79. The Respondent when retained did not then, or thereafter, tell Ms. Marchetti that he was in the process of closing down his office and leaving the private practice of law.

**80.** On July 12, 2005, Ms. Marchetti paid the Respondent in cash the \$891 as the legal fee he requested and the requested \$209 for a filing fee, for a total of \$1,100.

**81.** The Respondent had no previous attorney-client relationship with Ms. Marchetti and never gave her anything in writing setting forth the rate or basis of his fee.

**82.** The fees and costs the Respondent received on July 12, 2005 constituted escrow funds that should have been maintained in trust.

**83.** The Respondent failed to put the total of \$1,100 in cash he received on July 12, 2005 in a trust account.

**84.** Shortly after receipt of the \$1,100 from Ms. Marchetti in July 2005, the Respondent without the knowledge or authority of Ms. Marchetti personally utilized those funds.

**85.** When the Respondent was retained, Ms. Marchetti gave him numerous documents that related to her creditors and debts and which were needed to properly file her bankruptcy.

**86.** The Respondent told Ms. Marchetti that he would copy the documents and return the originals to her.

**87.** The Respondent failed to timely file any bankruptcy petition for Ms. Marchetti.

**88.** In October, 2005, time became of the essence as substantial changes in the Bankruptcy Code were soon to become effective.

**89.** Because of the imminent changes in the Bankruptcy Code, the Respondent, on October 14, 2005, filed a handwritten Chapter 7 Petition on behalf of Ms. Marchetti.

**90.** The Petition the Respondent filed on October 14, 2005, docketed to No. 5-05-58674 in the Middle District of Pennsylvania, was seriously deficient as it did not include the appropriate Schedules.

**91.** The Petition the Respondent filed on October 14, 2005 was not accompanied by any filing fee, or by any application to pay in installments.

**92.** Prior to filing the Petition on October 14, 2005, the Respondent had personally utilized the \$209 in cash he had received in July 2005 for the filing fee.

**93.** On October 18, 2005, an Order was entered in the Marchetti bankruptcy directing that the \$209 filing fee be paid by October 25, 2005, or the case would be dismissed.

**94.** On October 20, 2005, the Respondent paid the \$209 filing fee from some source other than the cash he had received from Ms. Marchetti in July 2005.

**95.** On February 2, 2006, a Motion to Dismiss the Marchetti bankruptcy was filed by the US Trustee because of the Respondent's failure to file the appropriate Schedules and Statements, which motion noted that no extension had been sought for such filing.

**96.** On February 2, 2006, a Notice to Parties in Interest was sent to the Respondent relative to the Motion to Dismiss, and set forth that any objections to

the Motion should be filed by February 15, 2006, that a hearing on any objections would be held on March 9, 2006, and that if no objections were filed that an Order may be entered by the court without further notice.

**97.** On February 27, 2006, a Certificate of Default was filed as no objections were filed to the Motion to Dismiss. The Certificate was served on both the Respondent and Ms. Marchetti.

**98.** On February 28, 2006, an Order was entered granting, without prejudice, the Motion to Dismiss. The Order was served on both the Respondent and Ms. Marchetti.

**99.** When Ms. Marchetti received the Order dismissing her case she contacted the Respondent and he told her that he had closed his office and was not aware of what had transpired in her case. The Respondent told Ms. Marchetti that he would take corrective action.

**100.** Subsequent to initially speaking to the Respondent in or about March 2006, about the dismissal of her case, Ms. Marchetti repeatedly attempted to contact him regarding the matter but his office was closed. For a period of time she was able to leave messages at a phone number he had maintained but the Respondent returned none of her calls. Eventually, that phone number was disconnected.

**101.** The Respondent, without notice, abandoned Ms. Marchetti as a client.

**102.** The Respondent has failed to return Ms. Marchetti's file to her.

**103.** The Respondent has never accounted to Ms. Marchetti for the \$1,100 in cash she paid him in July 2005.

**104.** Ms. Marchetti has been unable to retain counsel as she needs the funds she paid the Respondent returned and needs the documents he was given.

### **KRIPP MATTER**

**105.** In 1988, Michele Kripp ("Ms. Kripp") was charged in Carbon County, PA with Harassment by Communications at No. 369 CR 1988 and placed in the ARD program, which she successfully completed.

**106.** In February 2006, Ms. Kripp retained the Respondent to have her criminal record from the 1988 charges in Carbon County expunged so that she could purchase a firearm for hunting.

**107.** Ms. Kripp's criminal record was expunged years ago from the records maintained in the Carbon County Courthouse but additional action would be needed to have the record expunged at the state level.

**108.** The Respondent agreed to represent Ms. Kripp for a total of \$250 which would include fees and costs.

**109.** The Respondent failed to provide any writing to Ms. Kripp that set forth the rate or the basis of his fee.

**110.** On or about February 11, 2006, the Respondent went to Ms. Kripp's residence and she gave him a check for \$250.

**111.** When picking up the check for \$250, the Respondent had Ms. Kripp sign a document captioned Petition to Expunge – ARD which set forth, *inter alia*, that it would be filed with Certifications from the Carbon County Adult Probation Department and the Office of the Carbon County District Attorney that they had no objection to the expungement of Ms. Kripp's criminal record.

**112.** The Carbon County Probation Department readily provides information to assist individuals in having their criminal records expunged at the state level when those records were expunged years ago in Carbon County in a mass expungement of records.

**113.** The Respondent immediately negotiated the check for \$250.

**114.** The Respondent immediately utilized the proceeds of the check for \$250.

**115.** Since signing the Petition to Expunge, Ms. Kripp has repeatedly attempted to contact the Respondent concerning the status of the matter. She found that the Respondent's Hazleton office was closed, that the phone for that office was disconnected, that the Respondent had not been seen for a long period of time at an office he worked out of in Wilkes-Barre, and that the Respondent had not been in touch with the Carbon County Probation Office concerning any attempts to have Ms. Kripp's criminal record expunged. Ms. Kripp eventually learned that the Respondent worked part-time for the Luzerne

County Office of Children and Youth and she left a message at that office asking the Respondent to contact her.

**116.** By letter of July 17, 2006 to the Respondent, Ms. Kripp outlined her attempts to contact him and asked that he contact her regarding her legal matter.

**117.** The Respondent has not communicated with Ms. Kripp since receiving her \$250.

**118.** Since receiving the \$250 from Ms. Kripp the Respondent has done nothing to attempt to have her criminal record expunged.

#### **MALARDI BANKRUPTCY MATTER**

**119.** On or about September 15, 2005, Richard J. Milardi contacted the Respondent relative to representing him in a personal bankruptcy. The Respondent advised him that the fees and costs would total \$800 and that the Respondent would need an initial payment of \$250 for costs to file the matter.

**120.** On or about September 20, 2005, Mr. Milardi called the Respondent and left a message that he had the \$250 and that it could be picked up at his residence.

**121.** On September 29, 2005, the Respondent returned Mr. Milardi's call and then met with him that evening at his residence. The Respondent and he discussed his creditors and the Respondent filled in and had him sign some

forms. The Respondent told Mr. Milardi that he would complete the forms and file the matter with the bankruptcy court.

**122.** At the September 29, 2005 meeting Mr. Milardi gave the Respondent the \$250 in cash that he requested for filing fees.

**123.** The Respondent personally utilized the \$250 in cash he received, which funds should have been maintained in escrow.

**124.** The Respondent never before represented Mr. Milardi and failed to give him the rate or basis of his fees in writing.

**125.** On October 3, 2005, Mr. Milardi sent the Respondent his check no. 2511 for \$300 in payment of additional fees. The Respondent negotiated this check and personally utilized the proceeds, which should have been maintained in trust.

**126.** On November 5, 2005, Mr. Milardi sent the Respondent his check no. 2519 for \$250 in payment of the balance due for his bankruptcy. The Respondent negotiated this check and personally utilized the proceeds, which should have been maintained in trust.

**127.** The total of \$800 the Respondent received from Mr. Milardi should have been, but was not, maintained in trust for the payment of costs and for payment of fees as those fees were earned.

**128.** Bankruptcy records reflect that no bankruptcy was ever initiated for Mr. Milardi and the filing fee portion of the \$800 the Respondent received, as well as the unearned fee portion of the balance, should have been put into escrow



and should have remained there. These funds were all "Qualified Funds" as provided for in the Rules of Professional Conduct.

**129.** The Respondent did not disclose to Mr. Milardi that he had or was closing down his private practice at the time he was retained by Mr. Milardi.

**130.** The Respondent converted to his own use the entire \$800 he received from Mr. Milardi.

**131.** Since in or about October 2005, Mr. Milardi has repeatedly called the Respondent and left voice mail messages inquiring about the status of his bankruptcy. The Respondent returned none of his calls and has not communicated with him in any manner since he met him at his residence on September 29, 2005.

**132.** Subsequent to retaining the Respondent in September 2005, Mr. Milardi continued to be called by creditors. As the Respondent directed, he told them that he had retained the Respondent and that the Respondent was filing bankruptcy for him.

**133.** The Respondent never filed any bankruptcy on behalf of Mr. Milardi, and abandoned him as a client without notice to him.

**134.** Mr. Milardi has been forced to retain new counsel to pursue his bankruptcy.

**135.** The Respondent has not accounted to Mr. Milardi for his \$800 or returned any of those fees and costs.

## GRAAF ESTATE MATTER

136. On January 10, 2005, Dorothy Graaf died intestate in Luzerne County, PA survived by six children.

137. Richard Neely, a son of Dorothy Graaf, retained the Respondent to represent him relative to his mother's estate and to file her income tax return for 2004.

138. By three payments in cash, the last occurring in March or April 2005, Mr. Neely paid the Respondent his requested retainer of \$1,000 for fees and costs.

139. The Respondent had not previously represented Mr. Neely and did not give him any writing setting forth the rate or the basis of his fee.

140. Mr. Neely gave the Respondent at least the following relative to the income taxes and the administration of the estate: the title to the decedent's automobile; the key to the decedent's safe deposit box at the Church Hill Mall branch of PNC Bank; and, W-2 and 1099 statements for 2004.

141. On March 7, 2005, the Respondent filed a Petition for Letters of Administration and Letters were granted to Mr. Neely in Luzerne County at No. 4005-0401. The Respondent filed Renunciations of the right to administer the estate of all of the other children except John Graaf of Stockton, PA.

**142.** All of the children except John Graaf executed renunciations in favor of Richard Neely of their respective intestate interests in the decedent's real estate at 9 Main Street, Harleigh, PA.

**143.** On October 28, 2005, the Respondent filed a Certification of Notice under Rule 5.6(a), that he dated March 22, 2005, and by which the Respondent certified that notice of the estate administration had been sent on March 14, 2005, to the six children of Dorothy Graaf.

**144.** The filing of the Certification on March 22, 2005, was the last thing of record that the Respondent did relative to the administration of the Graaf Estate.

**145.** The Respondent never filed an Inheritance Return for the Graaf Estate.

**146.** The Respondent never caused the Graaf Estate to be advertised.

**147.** In 2005 and 2006, Mr. Neely would attempt to contact the Respondent every two or three weeks, on average and the Respondent did not return any of the numerous messages Mr. Neely left on his answering machine.

**148.** On one of the very few occasions when Mr. Neely was successful in speaking to the Respondent, the Respondent misrepresented that he had H&R Block doing the decedent's tax return for 2004.

**149.** In 2005 the Respondent was winding down his private practice of law, terminating the employment of his staff, closed his law office in September

2005, and failed to notify Mr. Neely of that fact or of where he could be contacted.

**150.** At some time in late 2005 and into 2006, the Respondent abandoned Mr. Neely as a client with no notice to him.

**151.** The last time Mr. Neely was able to speak to the Respondent was in June 2006, and the Respondent then told Mr. Neely that he would have to prepare a deed transferring the decedent's real estate to Mr. Neely.

**152.** In October 2006, Mr. Neely attempted to call the Respondent and learned that his phone was disconnected.

**153.** The Respondent never attempted to communicate with Mr. Neely and advise him how he could attempt to contact the Respondent.

**154.** In November 2006, Mr. Neely retained Gordon Bigelow to represent him relative to his mother's estate.

**155.** By letter to the Respondent of November 15, 2006, Mr. Bigelow sent the Respondent a withdrawal of appearance for the estate and requested that the Respondent transmit Mr. Neely's file to Mr. Bigelow, to include the original title to the decedent's automobile, the key to her safe deposit box, her W-2 and 1099's for 2004, and any other documents the Respondent had been given or had generated both relative to the administration of the estate or attending to the income tax matters.

**156.** The Respondent did not reply to Mr. Bigelow's letter, transmit the estate file, or turn over the items Mr. Neely gave the Respondent.

157. The \$1,000 the Respondent was given was a retainer for fees and costs and should have been maintained by the Respondent in a trust account and charged against as fees and costs were incurred.

158. The Respondent failed to deposit the \$1,000 in cash received from Mr. Neely to a trust account.

159. The Respondent has never accounted to Mr. Neely for the \$1,000 he paid the Respondent nor returned any balance Mr. Neely might be due.

160. The \$1,000 in cash the Respondent received from Mr. Neely in early 2005 was personally utilized by the Respondent shortly after receipt of those funds and for purposes not related to the Graaf Estate.

#### **DIXON BANKRUPTCY MATTER**

161. In addition to the matters set forth above in Paragraphs 3 through 160, which are as set forth in the Petition for Discipline in the pending formal charges, the Petitioner has received a complaint from Albert J. Dixon of Harleigh, PA which is filed at File No. C3-07-441.

162. Mr. Dixon retained the Respondent in October 2004 to prosecute a Chapter 7 bankruptcy.

162. By letter of October 8, 2004, to Mr. Dixon, the Respondent acknowledged the retention and the receipt of \$100, paid on October 4, 2004, to be applied toward a total of \$1,100.

**162.** The Respondent's letter of October 8, 2004, set forth that the total of \$1,100 to be paid by Mr. Dixon was to be allocated as \$891.00 for the Respondent's fee and \$209.00 to costs.

**163.** The Respondent's letter of October 8, 2004, set forth that he would prepare the bankruptcy petition but that it would not be filed until the total of fees and costs were paid.

**164.** Mr. Dixon made periodic payments to the Respondent's office, by cash and one or more checks, for which he received receipts from the Respondent's staff.

**165.** On May 4, 2005, Mr. Dixon made a final payment to the Respondent's office and the receipt he then received reflected a zero balance due.

**166.** All funds paid to the Respondent by Mr. Dixon were "Qualified Funds" as defined by the Rules of Professional Conduct and should have been maintained in an IOLTA account.

**167.** Subsequent to May 4, 2005, Mr. Dixon would periodically stop at the Respondent's office to determine the status of his bankruptcy but the Respondent was never available and did not attempt to contact him.

**168.** When Mr. Dixon attempted to call the Respondent's office he learned that the phone was disconnected.

**169.** The Respondent left the private practice of law and around mid-2005, closed his office, and had his business phone disconnected.

170. The Respondent never advised Mr. Dixon either that he intended leaving the private practice of law or, after his office was closed, that he had done so.

171. The Respondent never filed any bankruptcy action for Mr. Dixon.

172. When the Respondent left the private practice of law he closed his IOLTA account.

173. The Respondent personally utilized, and thereby misappropriated, the entire \$891.00 in fees and the \$209.00 in costs that he received from Mr. Dixon.

174. The Respondent abandoned Mr. Dixon as a client with no notice to him.

175. The Respondent has never accounted to Mr. Dixon for the \$1,100 he gave the Respondent or returned any portion thereof to him.

176. Mr. Dixon eventually retained new counsel, Thomas Lisella, Esquire, to address his debt problems.

\*\*\*\*\*

177. By his conduct as alleged in Paragraphs Nos. 3 through 176 above, Respondent violated the following Rules of Professional Conduct:

**Rule 1.1 Competence**

A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill,

thoroughness and preparation reasonably necessary for the representation.

### **Rule 1.3 Diligence**

A lawyer shall act with reasonable diligence and promptness in representing a client.

### **Rule 1.4 Communication**

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter; and

(4) promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

### **Rule 1.5 Fees**

(b) When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

### **Rule 1.15 Safekeeping Property**

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance



and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

**(b)** Upon receiving property of a client or third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

**(e)** The responsibility for identifying an account as a Trust Account shall be that of the lawyer in whose name the account is held. A lawyer shall not deposit the lawyer's own funds in a Trust Account except for the sole purpose of paying bank services charges on that account, and only in an amount necessary for that purpose. A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner. At all times while a lawyer holds funds of a client or third person in connection with a client-lawyer relationship, the lawyer shall also maintain another account that is not used to hold such funds.

**(g)** All Qualified Funds shall be placed in an IOLTA Account.

#### **Rule 1.16 Declining or Terminating Representation**

**(d)** Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

### **Rule 8.4 Misconduct**

It is professional misconduct for a lawyer to:

- (c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and,
- (d) engage in conduct that is prejudicial to the administration of justice.

### **RECOMMENDATION FOR A TWENTY-ONE MONTH SUSPENSION**

The preceding agreed to facts, and the clearly supported and agreed to violations of the above Rules of Professional Conduct, evidences misconduct that for a period spanning approximately three years includes, *inter alia*, multiple instances of: mishandling and misuse of fiduciary funds; failure to account for funds and make timely restitution of unearned fees and costs; failure to proceed appropriately in estate, bankruptcy, family law and other matters; failure to advise clients of the Respondent's having left the private practice of law and of where he could be contacted; failure to return files to clients; and, failure to do as directed by an order of court. The parties hereto agree that the misconduct and the limited mitigation warrant a twenty-one month suspension.

In determining the appropriate measure of discipline, precedent must be examined to measure the Respondent's misconduct against other similar matters. *In re Anonymous No. 56 DB 1994, 28 Pa.D.&C.4<sup>th</sup> 398(1995)*. Any aggravating and mitigating factors are also to be considered. *In re Anonymous No. 35 DB 1988, 8 Pa. D.&C.4<sup>th</sup> 344(1990)*. The Disciplinary Board has noted in

cases involving the serial neglect of client matters, as is a central issue in this case, that the Pennsylvania Supreme Court has routinely imposed suspensions of at least one year and one day, the minimum period of suspension that will require formal reinstatement proceedings. See *Office of Disciplinary Counsel v. Howard Goldman*, 157 DB 2003 (year and one day suspension imposed by Order of August 30, 2005; available at <http://www.courts.state.pa.us/OpPosting/disciplinaryboard/dboardopinions/157DB2003-Goldman.pdf> ).

By Order of January 30, 2007, the attorney in *Office of Disciplinary Counsel v. Anthony Norman Thomas*, No. 141 DB 2006, (available at <http://www.courts.state.pa.us/OpPosting/disciplinaryboard/dboardopinions/141DB2006-Thomas.pdf>) was suspended on consent for one year and one day for multiple charges of neglect, failure to communicate, misrepresentations, and failure to return unearned fees. As the Respondent Ferry, Thomas had no prior record of discipline. The facts in the instant case are, however, more egregious as they also include additional serious misconduct, including the misappropriations of costs in the bankruptcy matters and a clear failure to take remedial actions as directed by the Orphan's Court in the Paul Estate Matter.

By Order of May 8, 2007, in *Office of Disciplinary Counsel vs. James Garland Giles*, No. 1248 Disciplinary Docket No. 3, 149 DB 2006 (available at <http://www.courts.state.pa.us/OpPosting/disciplinaryboard/dboardopinions/149DB2006-Giles.pdf>), the attorney was suspended on consent for two years relative

to four matters for misconduct that included, as in the instant matter, failure to have fee agreements, failure to appear for scheduled court appearances, failure to communicate appropriately, commingling of fiduciary and personal funds, and failure to maintain an appropriate IOLTA account. Attorney Giles had also practiced during a period of inactive status but had not, as Respondent Ferry, clearly misappropriated costs and unearned fees. The pending charges against the Respondent are also quantitatively and qualitatively more serious than those in *Giles* as there are eight matters evidencing a greater range of misconduct than the four matters in *Giles*.

The Respondent's misconduct is more egregious than the prior cases that resulted suspensions of a year and a day and is more closely analogous to the misconduct that resulted in the two year suspension in *Giles*. The appropriate degree of discipline is, as noted, subject to aggravating and mitigating evidence.

There is no prior record of discipline or other aggravating evidence in this matter. As to mitigation, evidence of psychiatric problems that are proven to be causally related to some or all of the misconduct may mitigate the otherwise appropriate degree of discipline. *ODC v. Braun*, 520 Pa. 157, 552 A.2d 894 (1989).

The Respondent's Licensed Psychologist, Linda Brownback, M.A., has provided a letter opinion of July 11, 2007, attached hereto as Exhibit "B," that sets forth that Ms. Brownback is aware of the nature of some of the misconduct

as set forth herein, such as the failure to complete work for clients after collecting fees, and the failure to return calls and respond to correspondence. Ms. Brownback opines that the Respondent has cognitive defects, including Attention Deficit Disorder, Combined Type (DSM-IVR, Axis I, 314.01) and Dysthymic Disorder (DSM-IVR, Axis 1, 300.4). The substance of her opinion is that while Mr. Ferry's behavior is inappropriate for a lawyer and is not to be excused, that his cognitive problems have a causal relationship to some of his misconduct.

ODC and the Respondent agree for the purposes of this Consent that there is a causal relationship established between some of the passive misconduct, that involving the failure to communicate appropriately with clients and to timely do that for which the Respondent was retained, such as should serve to mitigate the otherwise appropriate degree of discipline of twenty-four months. The appropriate weight to give the mitigation is agreed to be a reduction of three months to the agreed upon recommendation of a twenty-one month suspension.

**WHEREFORE,** Joint Petitioners respectfully ask that your Honorable Board:

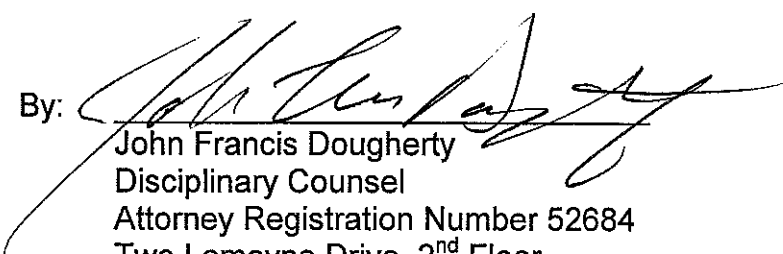
- a. Approve this Petition; and

b. File this Petition and a recommendation for a Twenty-One Month Suspension with the Supreme Court of Pennsylvania.

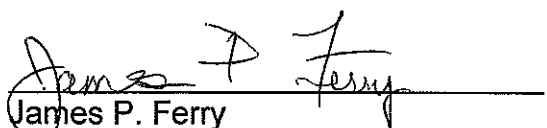
Respectfully Submitted,

OFFICE OF DISCIPLINARY COUNSEL  
Paul J. Killion  
Chief Disciplinary Counsel

By:



John Francis Dougherty  
Disciplinary Counsel  
Attorney Registration Number 52684  
Two Lemoyne Drive, 2<sup>nd</sup> Floor  
Lemoyne, PA 17043  
717-731-7083



James P. Ferry  
Respondent  
Attorney Reg. No. 38871  
8 Laurel Hill  
P.O. Box 321  
Hazleton, PA 18201  
570-455-0788

Dated: July 19, 2007

**BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. Disciplinary
	:	Docket No.
Petitioner	:	- Supreme Court
vs.	:	
	:	No. 41 DB 2007
JAMES P. FERRY,	:	- Disciplinary Board
Respondent	:	
	:	Attorney Reg. No. 38871
	:	
	:	(Luzerne County)

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

James P. Ferry, being duly sworn according to law, submits this affidavit consenting to the recommendation of a Twenty-One Month Suspension in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. He is an attorney in the Commonwealth of Pennsylvania, having been admitted to the Bar on October 25, 1983, and having been assigned Attorney Registration No. 38871.

2. He desires to submit a *Joint Petition in Support of Discipline on Consent pursuant to Pa. R.D.E. 215(d), et. seq.* requesting that the Disciplinary Board recommend to the Supreme Court that he be suspended for twenty-one months.

3. His consent is freely and voluntarily rendered, he is not being subjected to coercion or duress, he is fully aware of the implications of submitting

**Petitioner's Exhibit**

**"A"**

this affidavit. He has conferred in this matter with Frank Nocito, Esquire of Kingston, PA but is presently *pro se*.

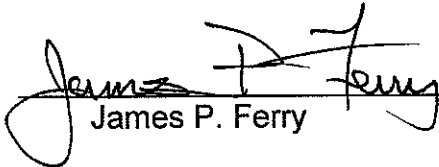
4. He is aware that there is presently pending a proceeding involving allegations that he has been guilty of misconduct as set forth in the Petition.

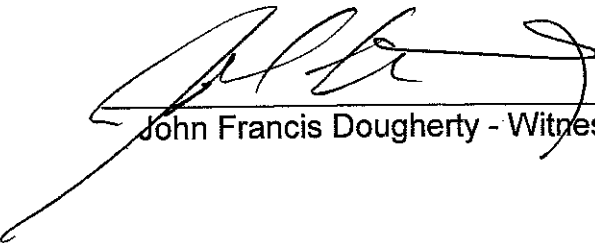
5. He acknowledges that the material facts in the Petition are true.

6. He consents to the recommended discipline because he knows if he continues to be prosecuted in the pending proceeding that he could not successfully defend against the misconduct set forth in the Petition.

The statements contained in the foregoing *Affidavit Under Rule 215(d), Pa.R.D.E.* are true and correct to the best of my information, knowledge and belief and are subject to the penalties of 18 Pa.C.S.A. §4904 relating to unsworn falsification to authorities.

Signed this 19<sup>th</sup> day of July, 2007

  
James P. Ferry

  
John Francis Dougherty - Witness



*Brownback, Mason and Associates*  
*Group Psychological Practice*  
*Providing Healing, Health and Wholeness*  
*for the Body, Mind and Spirit*

By Appointment  
(610) 434-1540

1702 West Walnut Street  
Allentown, PA 18104-6741

11 July 2007

To Whom It May Concern:

It is my understanding that James Ferry has been brought before a professional review committee for his failure to complete work for a number of clients, although he had collected fees from them, and for failing to return calls and respond to mail from the clients. While Mr. Ferry's behavior is inappropriate for a lawyer and is not to be excused, there are mitigating factors, which Mr. Ferry has authorized me to share.

I have been seeing Mr. Ferry since June 2006, when he came to me with copies of medical and psychological reports from the Amen Clinic (January 2006) and from the Williamsport Hospital. While the Amen Clinic had recommended a number of medications, Mr. Ferry had not found them helpful. He sought my services as a licensed psychologist with the hope of decreasing the severity of his symptoms through cognitive-behavioral therapy and neurofeedback. My clinical experience with Mr. Ferry supports the findings of the Amen Clinic and Williamsport Hospital: Mr. Ferry has several cognitive deficits, including Attention Deficit Disorder, Combined Type (DSM-IVR, Axis I, 314.01) and Dysthymic Disorder (DSM-IVR, Axis I, 300.4).

While Mr. Ferry would benefit greatly from neurofeedback, this therapeutic intervention is not financially feasible for him. We did spend some of our session time on cognitive-behavioral strategies especially for coping with the Attention Deficit Disorder. However, our session time came to be dominated by marital problems, which were exacerbated by his wife being treated for breast cancer during the second half of 2006.

Since one of my areas of expertise is working with adults who have Attention Deficit Disorder (ADD), I have significant experience in working with successful professionals who have ADD whose ability to perform declines dramatically due to a change in their work environment and/or their personal lives. I consistently teach professionals who have ADD about the tremendous importance of support staff who can offset their difficulties with focusing, organization, and perseverance in completing tasks. Mr. Ferry's decision to close his law office with the intent of completing his caseload without support staff, in an effort to reduce some of the financial strain he was under, is, sadly, a perfect example of what happens in the life of professional who has ADD who attempts to "go it alone." Because of Mr. Ferry's cognitive difficulties, this decision had a catastrophic impact on his ability to perform appropriately as a lawyer.

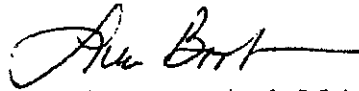
Petitioner's Exhibit

"B"

In addition, the stressors in his personal life exacerbated the ADD. The constant sense of hopelessness resulted in an ongoing depressive state; i.e., dysthymia. Dysthymia impacts the brain in a number of ways, including decreasing motivation and focusing capability. Thus, Mr. Ferry's cognitive problems were further exacerbated.

In the medical and psychological professional communities we have "impaired professional" programs, which allow impaired professionals to get the help necessary to resume their work. Getting psychological help and being supervised by the appropriate licensing board to ensure that the impaired professional follows through on the recommendations of the psychologist are required by the licensing board. It would be my hope that the legal profession has a similar program and that such requirements could be a part of any disciplinary action taken for Mr. Ferry's failure to perform appropriately in the last two years with some of his clients.

Sincerely,

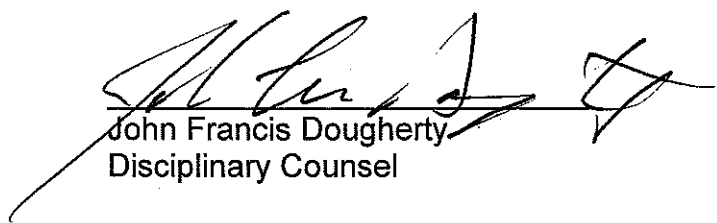


Linda Brownback, M.A.  
Director  
Licensed Psychologist

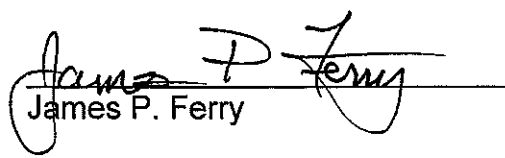
**VERIFICATION**

The statements contained in the foregoing *Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d), et.seq.* 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.A. §4904, relating to unsworn falsification to authorities.

7-19-07  
Date

  
John Francis Dougherty  
Disciplinary Counsel

7-19-07  
Date

  
James P. Ferry


**BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. Disciplinary
	:	Docket No.
Petitioner	:	- Supreme Court
vs.	:	
	:	No. 41 DB 2007
JAMES P. FERRY,	:	- Disciplinary Board
Respondent	:	Attorney Reg. No. 38871
	:	(Luzerne County)

**CERTIFICATE OF SERVICE**

I hereby certify that on July 19, 2007, I served the *Joint Petition in Support of Discipline on Consent Pursuant to Pa. R.D.E. 215(d), et.seq.* upon all parties of record in this proceeding in accordance with the provisions of 204 Pa. Code §89.22 (relating to service by a participant), as follows:

Personal service on James P. Ferry, Esquire at Two Lemoyne Drive, Lemoyne, PA.

  
\_\_\_\_\_  
John Francis Dougherty  
Disciplinary Counsel  
Attorney Registration No. 52684  
Two Lemoyne Dr., 2<sup>nd</sup> Floor  
Lemoyne, PA 17043  
717-731-7083

Dated: July 19<sup>th</sup>, 2007