

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1374 Disciplinary Docket No. 3
Petitioner :
 :
 : No. 56 DB 2008 and File Nos. C3-06-180,
v. : C3-07-834 and C3-11-59
 :
 :
DAVID JAMES GNALL, : Attorney Registration No. 72706
Respondent : (Lackawanna County)

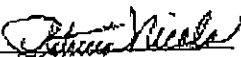
ORDER

PER CURIAM:

AND NOW, this 27th day of August, 2012, there having been filed with this Court by David James Gnull his verified Statement of Resignation dated June 5, 2012, stating that he desires to resign from the Bar of the Commonwealth of Pennsylvania in accordance with the provisions of Rule 215, Pa.R.D.E., it is

ORDERED that the resignation of David James Gnull is accepted; he is disbarred on consent from the Bar of the Commonwealth of Pennsylvania retroactive to July 31, 2008; and he shall comply with the provisions of Rule 217, Pa.R.D.E. Respondent shall pay costs, if any, to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As Of 8/27/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

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

OFFICE OF DISCIPLINARY COUNSEL	:	No. 1374 Disciplinary Docket No. 3
	:	
	:	No. 56 DB 2008 and File Nos. C3-06-180,
	:	C3-07-834 and C3-11-59
	:	
Petitioner	:	
	:	
v.	:	Attorney Registration No. 72706
	:	
DAVID JAMES GNALL	:	
	:	
Respondent	:	(Lackawanna County)

RESIGNATION BY RESPONDENT

Pursuant to Rule 215
of the Pennsylvania Rules of Disciplinary Enforcement

Re: Office of Disciplinary Counsel
v. DAVID JAMES GNALL
No. 1374 Disciplinary Docket No. 3
No. 56 DB 2008 and File Nos. C3-06-180,
C3-07-834 and C3-11-59
Attorney Registration No. 72706
(Lackawanna County)

RECORD OF PRIOR DISCIPLINE

None

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 1374 Disciplinary Docket No. 3
Petitioner :
: No. 56 DB 2008 & File Nos. C3-06-180,
: C3-07-834 & C3-11-59
v. :
: Attorney Registration No. 72706
DAVID JAMES GNALL :
Respondent : (Lackawanna County)

RESIGNATION STATEMENT UNDER RULE 215, PA. R.D.E.

I, David James Gnall, hereby resign from the practice of law in the Commonwealth of Pennsylvania in conformity with Rule 215 of the Pennsylvania Rules of Disciplinary Enforcement, and further state as follows:

1. I desire to resign from the Bar of the Commonwealth of Pennsylvania.
2. This resignation is freely and voluntarily rendered.
3. I am not being subjected to coercion or duress.
4. I am fully aware of the implications of submitting this resignation, including the fact it is irrevocable, and that I can only apply for reinstatement to the practice of law pursuant to the provisions of Pa.R.D.E. 218(b).
5. I am currently being represented by James C. Schwartzman, Esquire, Stevens & Lee, PC, 1818 Market Street, 29th Floor, Philadelphia, PA 19103.
6. On February 23, 2009, I was sentenced to imprisonment for one year and one day in connection with Federal Criminal charges docketed to 2008-cr-32 (United States District Court - Middle District of Pennsylvania).

7. The material facts related to this criminal conviction are more fully set forth in Exhibit A, which is attached hereto and incorporated herein.

8. I am also aware of an investigation by the Office of Disciplinary Counsel in three additional matters: Office of Disciplinary Counsel File No. C3-06-180; C3-07-834; and, C3-11-59. The material facts of these matters are set forth in the attachment hereto marked as Exhibit B, which is incorporated herein.

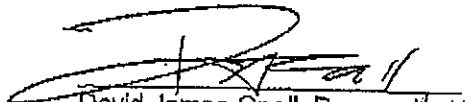
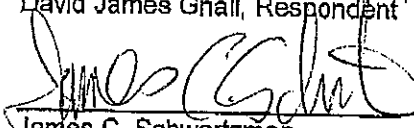
9. I acknowledge that the material facts in Exhibits A and B are true.

10. I am submitting my resignation because I cannot successfully defend against the charges of professional misconduct as set forth in attached Exhibits A and B.

11. By Order of your Honorable Court dated July 31, 2008, my law license was temporarily suspended pursuant to a Joint Request for Temporary Suspension submitted by myself, and the Office of Disciplinary Counsel. I respectfully request that your Honorable Court's Order disbaring me on consent be made retroactive to July 31, 2008 and am advised that Disciplinary Counsel does not oppose this request.

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

Signed this 5 day of JUNE, 2012.


David James Gnall, Respondent

James C. Schwartzman
Counsel for Respondent

FACTUAL ADMISSIONS
(PETITIONER FILE NO. C3-10-739)
(SUPERCEDING PETITIONER'S FILE NO. C3-06-180)

1. On April 11, 2006, Respondent was indicted by a federal grand jury. He was charged with one count of Criminal Conspiracy (18 U.S.C. 371), Wire Fraud (18 U.S.C. 1343 and 2), and False Statements (18 U.S.C. 1001). Forfeiture of his office building at 1120 South Washington Avenue, Scranton, PA was sought (pursuant to 18 U.S.C. 982). These criminal charges were docketed to 2007-cr-257 (United States District Court for the Middle District of Pennsylvania).

2. Following plea negotiations, a superseding criminal information was filed on January 23, 2008, docketed to 2008-cr-32, charging Respondent with withholding information on a crime (18 U.S.C. 4).

3. Respondent entered a plea of guilty to this superseding information on the filing date (January 23, 2008).

4. At Respondent's guilty plea proceeding on January 23, 2008, the Government offered the following summary of the facts underlying the charges against Respondent:

David Gnall is an attorney who is licensed by the Commonwealth. Involved in his offense conduct is James Peperno, Jr., who was the president and owner of J. J. P. Consulting in Old Forge. It's a financial and political consulting business.

Frank Peperno was a registered representative of Linsco Private Ledger Financial Services, L.P.L., also located in Old Forge. In 2004 Mr. Gnall moved his law practice to a building located at 1120 South Washington Avenue. On January 7th, 2005 Mr. Gnall entered into a lease purchase agreement to buy that property for

\$275,000. It was at that time to close no later than May 31st, 2005. The closing date was then extended by written agreement to no later than July 8th, 2005.

Mr. Gnall was denied conventional financing, and he thereafter referred individuals with substantial finances to James Peperno who placed some of the money for investment with L. P. L. and converted the remainder of the funds to his own use and that of Mr. Gnall. On March 15th, 2005, Robert Kafchinski, a client of Mr. Gnall, invested \$260,000 with James Peperno -- through James Peperno with L. P. L. In fact, only \$150,000 of it was invested in L. P. L. and \$105,000 of it was converted by James Peperno after he collected \$5,000 in fees. Mr. Peperno told investigators that he paid Mr. Gnall \$300 [sic] for the referral. On May 16th, 2005 Brenda Buntz, a client of Mr. Gnall, invested in excess of \$560,000 in stocks and money markets with James Peperno.

Unknown to her, Mr. Peperno had unauthorized investments totaling \$300,000 with L. P. L. He converted the remaining \$267,000 to his own use which included a fee of \$20,000. Mr. Peperno told investigators that he paid Mr. Gnall \$9,500 for this referral. On June 7th, 2005, Reese Thomas, another client of Mr. Gnall, invested \$863,000 with James Peperno.

Unknown to him, Mr. Peperno made unauthorized investments totaling \$400,000 with L. P. L. Mr. Peperno converted the remaining \$463,000 to his own use which included his fee of \$2,000. Mr. Peperno told investigators that he had Robert Semenza deliver \$9,500 in cash to Mr. Gnall for the referral.

On June 7th, 2005, Mr. Gnall needed money to close on the building on South Washington Avenue. Attempts to obtain a mortgage from L. P. L. and other lenders had failed. His title company -- Mr. Gnall's title company, Reliable Abstract, advised him they had not received any wire from L. P. L., which was the original way it was going to close, and he advised them that he would close with cash. After a series of telephone calls between Mr. Gnall and Mr. Peperno, who was in Canada at this time, Mr. Peperno agreed and did, in fact, telephone P.N.C. bank and instructed them to prepare a cashier's check in the amount of \$275,000 from his money market to be made payable to Mr. Gnall.

After P.N.C. bank had Mr. Peperno confirm his instructions to them by e-mail, they issued a check in that amount to Mr. Gnall. In his statement to law enforcement on April 6th, 2006, Mr. Gnall

acknowledged that he was unable to obtain a conventional loan. He asked Mr. Peperno who said he can get Mr. Gnall a loan through P.N.C. as its president, Peter Dancheck, was a friend. Mr. Gnall stated that the \$275,000 check was transmitted directly to his escrow agent and he never saw it but assumed it was a P.N.C. loan.

Mr. Gnall acknowledged he signed no loan documents and stated his -- it was his impression that the \$275,000 was a line of credit from the bank. Mr. Gnall stated he was unaware Mr. Peperno caused a cashier's check to issue from his money market account. After he was asked by counsel for Peperno to refund the moneys as restitution to Mrs. Buntz, Mr. Gnall realized that the \$275,000 was never a loan and Mr. Peperno had merely used a portion of Reese Thomas' funds.

In his proffer to law enforcement on April 13th, 2007, Mr. Gnall stated that all three of his clients chose to deal with James Peperno, whom he believed -- that is Mr. Gnall believed -- to be in partnership with Frank Peperno. He had no idea why James Peperno was the only Peperno to show up in his office with funds transferred on all three occasions.

Mr. Gnall denied accepting cash from anyone. On the morning of July 7th, 2005 Mr. Gnall learned that L. P. L. would not finance the property, that P.N.C. had a better rate. And he claimed he was in court and that his aunt, Eleanor Dorin, picked up the \$275,000 check and documents and delivered them to Reliable Abstract. Mr. Gnall confirmed that he signed no loan documents but believed the \$275,000 was a loan from P.N.C. bank. Although Ms. Dorin testified before the grand jury that she did, indeed, pick up the check, that could not have happened.

P.N.C. bank officials when they handed Mr. Gnall the check, printed his photograph from the internet imprinted with the date July 7th, 2005 to assure that he was who he said he was as he appeared at the bank with no identification. Personnel with Reliable Abstract informed investigators that Mr. Gnall brought the check to the closing and signed documents indicating it was a cash deal with no mortgage associated with it.

(Notes of Testimony from Guilty Plea Proceeding on January 23, 2008, pp. 16-20.)

5. On February 23, 2009, Respondent was sentenced by the Honorable Thomas I. Vanaskie to imprisonment for one year and one day, and was fined \$10,000. He was directed to make restitution of \$221,522.28 to Reese J. Thomas and \$73,477.72 to Brenda Buntz. Respondent was also placed on supervised release for a period of one year.

6. Respondent has made restitution as ordered, in substantial part from the proceeds from the sale of 1120 South Washington Avenue, Scranton, which was forfeited as part of Respondent's plea agreement.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT VIOLATED
(PETITIONER FILE NO. C3-10-739)**

7. Respondent admits to violations of the following Rules of Professional Conduct and the Pennsylvania Rules of Disciplinary Enforcement:

- a. RPC 8.4(b), which prohibits a lawyer from committing a criminal act, that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
- b. Pa.R.D.E. 203(b)(1) which provides that a conviction of a crime shall be grounds for discipline.

FACTUAL ADMISSIONS
(PETITIONER FILE NO. C3-06-180)
These Admissions Supplement and Further Describe
Respondent's Dealings with the Victims
of his Criminal Conduct)

1. Brenda Buntz was a family friend, part-time employee, and occasional client of Respondent's prior to October 2001.

2. On October 30, 2001, Ms. Buntz was injured in an automobile accident when her car was rear-ended by a vehicle driven by a priest from the Diocese of Scranton. Initially, the injuries appeared relatively minor.

3. Ms. Buntz contacted Respondent about the accident. Respondent agreed to represent her, opened a file, and proceeded to seek compensation from the Diocese to repair her car.

4. Ms. Buntz's physical condition deteriorated substantially over the months and years following her accident.

5. As a result of her deteriorating physical condition, Ms. Buntz underwent several major surgeries.

6. From late 2001 into early 2002, Ms. Buntz was in frequent contact with Respondent about her case. She told him that her physical condition was seriously deteriorating. Respondent advised her she should consider a personal injury lawsuit.

7. In or about August 2002 Respondent began sharing office space with Attorney Nicholas Fick.

8. On or about September 11, 2002, at Respondent's suggestion, after he discussed the matter with Attorney Fick, Ms. Buntz met with Attorney Fick.

9. Attorney Fick agreed to represent Ms. Buntz in connection with a personal injury lawsuit. Respondent agreed to assist, and made his file available to Attorney Fick.

10. Over the next several months, Ms. Buntz continued to frequently meet with Respondent, and to a lesser extent, with Attorney Fick. Respondent and Attorney Fick both requested and obtained police reports, medical records, and other materials.

11. During the period September 2002 through December 2003 Respondent and Ms. Buntz frequently spoke about the status of her case. Increasingly, she questioned Respondent about the apparent lack of progress. Respondent consistently and repeatedly advised her that the matter was being handled properly and that the case was moving forward.

12. In or about December 2003, Ms. Buntz checked the records at the Lackawanna County Courthouse and discovered that no suit had ever been filed.

13. Ms. Buntz promptly called Respondent. Respondent advised her to contact Attorney Allison Long of the Silverman and Fodera law firm in Philadelphia. Respondent told her that he had gone to law school with Attorney Long, and that he would call Attorney Long to advise her of the situation. Respondent also told Ms. Buntz not to come to the office he shared with Nicholas Fick anymore.

14. Ms. Buntz subsequently contacted Attorney Long. In November 2004, a civil complaint was filed by Attorney Leonard Fodera of the Silverman and Fodera firm on behalf of Ms. Buntz docketed to 04-3264 (Lackawanna County). This suit alleged, on behalf of Plaintiff Brenda Buntz, that Defendant Nicholas Fick had committed legal

malpractice, in that he had allowed the statute of limitations to expire in Ms. Buntz's case.

15. On January 7, 2005, Respondent entered into a lease/purchase agreement to buy a property at 1120 South Washington Avenue, Scranton, PA. The purchase price was \$275,000. Respondent was required to obtain financing on or before May 31, 2005, which date was subsequently extended by the parties to July 8, 2005.

16. In February 2005, Respondent was joined as an additional defendant by Attorney Fick in the pending legal malpractice lawsuit.

17. On April 15, 2005 this lawsuit was settled. A payment of \$1,000,000 by Nicholas Fick and Zurich American Insurance Company was made to Ms. Buntz. In exchange for this payment, Ms. Buntz signed a release of her claims against both Nicholas Fick and Respondent.

18. As a result of this settlement, Ms. Buntz was due \$567,831.10 from the Silverman and Fodera law firm, representing the total amount of the settlement less expenses and the Fodera firm's 40% contingent fee.

19. In May 2005, Respondent received a referral fee from the Silverman firm, via check, in an amount of \$133,332.00, which was 1/3 of their fee. Respondent never disclosed to Ms. Buntz that he had a referral fee arrangement with the Silverman firm, nor did he disclose to her that he received these funds.

20. In late April or May 2005, Ms. Buntz called Attorney Long of the Silverman firm and inquired about the whereabouts of her settlement funds, in that she had not been paid. Long indicated that she was sending the check to Respondent's office.

21. A few days later, Ms. Buntz came to pick up her check. Instead of giving her the check, Respondent gave her a photocopy of it, and indicated that he would not give her the actual check until she met with a financial advisor. Respondent scheduled an appointment for her to meet with such an advisor and he kept the check.

22. On or about May 16, 2005 Respondent met with Ms. Buntz and James Peperno. Respondent had told Ms. Buntz that Peperno was an "excellent" financial advisor who worked with his cousin, Frank Peperno, in the LPL Financial Services Office in Old Forge. Respondent told Ms. Buntz that he had referred other clients to Peperno. Peperno told Ms. Buntz he would handle all of her financial affairs, including investing her settlement money, paying bills, and helping her purchase a house. Respondent vouched for Peperno and what he was saying. Peperno presented a contract to Ms. Buntz which entitled him to a \$20,000 up front fee. Ms. Buntz gave the contract to Respondent. Respondent reviewed it and told her it was a good contract. Respondent then presented both the contract and the \$567,831.10 settlement check to Ms. Buntz and instructed her to sign both, which she did. Respondent then provided the signed check and contract to Peperno.

23. After convincing Ms. Buntz to invest funds with Peperno, Respondent received \$9,500 from Peperno as a referral fee. Respondent never disclosed to Ms. Buntz that he had a referral fee arrangement, nor did Respondent disclose to her that he received these funds.

24. By July 7, 2005, Respondent had been unable to obtain conventional financing to purchase the building on South Washington Avenue. Respondent contacted Peperno. Peperno then contacted PNC Bank, and instructed them to prepare

a cashier's check, in the amount of \$275,000, drawn on Peperno's money market account, payable to Respondent.

25. A substantial portion of the funds in Peperno's money market account were funds he had received from Ms. Buntz in May. Rather than investing Buntz's funds (\$567,831.10), Peperno had converted approximately \$267,000 and deposited a substantial portion of this money into his money market account, which also contained funds he converted from other clients referred to him by Respondent, as described in the next FACTUAL ADMISIONS section (relating to Petitioner File No. C3-07-834).

26. Respondent personally picked up Peperno's \$275,000 check. Respondent then used these funds to purchase 1120 South Washington Avenue.

27. Between May and August 2005, Ms. Buntz was in regular and frequent contact with Peperno and Respondent. She made a number of requests of Peperno that he pay various bills. Peperno frequently refused to do so, saying that he had to contact Respondent first. When questioned about this arrangement, Peperno stated that he was working with Respondent.

28. On August 24, 2005 Ms. Buntz executed an agreement of sale to purchase a home in Scranton for \$117,500. Settlement was to occur on or before November 15, 2005.

29. Subsequent to August 2005 Ms. Buntz experienced increasing difficulties communicating with Peperno. He was not paying her bills as promised. She contacted Respondent, and directed Respondent to fire Peperno. Respondent declined to do so, instead telling her that he would resolve the problems.

30. When these problems continued, Ms. Buntz demanded a meeting with Respondent and Peperno. They met in or about October 2005. At this meeting, Respondent told Ms. Buntz, and her sister who had accompanied her, that both Respondent and Peperno were caring for Ms. Buntz and that everything was fine. Peperno, who was present, also indicated that he was working with Respondent and that they were looking after Ms. Buntz's best interests. The meeting concluded with Ms. Buntz allowing Peperno to remain in control of her finances.

31. On November 23, 2005 Ms. Buntz came to Respondent's office to complete the purchase of her home. Respondent told her he had to do a "dry closing" in that the funds to purchase Ms. Buntz's home were not available. Respondent provided Ms. Buntz with several closing documents, including a HUD-1 Settlement Sheet. Respondent also provided her with a lease, and explained that such documents were necessary because this was a "dry closing." When Ms. Buntz expressed concern about these unusual circumstances and the fact this would cost her additional money, Respondent told her that Peperno would be responsible for any additional costs and that the sellers were fully aware of everything that was happening and had agreed. Based on Respondent's assurances, Ms. Buntz signed all of the documents he provided. Among other things, these documents provided for Ms. Buntz to lease the property until early January 2006, at which time closing would occur.

32. Respondent's statement to her that Peperno would pay the additional costs was a misrepresentation. Respondent had no such agreement with Peperno. In fact, Respondent failed to disclose to Ms. Buntz that Peperno was not cooperating with

him and that he was unaware of Peperno's whereabouts, and was unaware of the status of the funds he had urged her to invest with Peperno.

33. Shortly after this "dry closing" Ms. Buntz moved into her new home. However, Ms. Buntz began receiving phone calls from creditors in connection with bills that she thought Peperno had paid, but which remained unpaid.

34. Over the ensuing months Ms. Buntz repeatedly attempted to contact Peperno about these bill collectors and the whereabouts of her money, and about whether or not he would pay for her home. Also, she repeatedly contacted Respondent about these circumstances. Respondent's consistent response was that everything was fine and that he would take care of any problems.

35. These statements were misrepresentations. Peperno was not cooperating with Respondent, and Respondent was unaware of Peperno's whereabouts and was unaware of the status of the funds Respondent had urged Ms. Buntz to invest with Peperno.

36. In January 2006, Ms. Buntz contacted Respondent and indicated that she was going to the District Attorney, and the media, if Peperno and Respondent did not return her money. Respondent told her to contact Secret Service Agent David Baker because there was a problem with Peperno. She did so.

37. Respondent, James Peperno, and Frank Peperno were all subsequently charged with federal criminal offenses. All were convicted and sentenced to terms of incarceration. Respondent's criminal conviction is described in the FACTUAL ADMISSIONS section of EXHIBIT-A (Petitioner's File No. C3-10-739).

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT VIOLATED
(PETITIONER FILE NO. C3-06-180)**

38. Respondent admits to violations of the following Rules of Professional Conduct and the Pennsylvania Rules of Disciplinary Enforcement:

- a. RPC 1.7(a)(2) which prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- b. RPC 4.1(a) which prohibits a lawyer from knowingly making a false statement of material fact or law to a third person.
- c. RPC 8.4(b) which prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.
- d. RPC 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation.

**FACTUAL ADMISSIONS
(PETITIONER FILE NO. C3-07-834
These Admissions Supplement and Further Describe
Respondent's Dealings with the Victims
of his Criminal Conduct)**

39. In April 2003, Reese J. Thomas was named Power of Attorney for Ada Williams, Mr. Thomas' elderly aunt. Respondent prepared the Power of Attorney document.

40. During late-2004 Ms. Williams' health deteriorated, and it became apparent that she would need to be placed in a nursing home.

41. Respondent contacted Mr. Thomas to discuss the disposition of Ms. Williams' assets, which Respondent knew to be substantial, based upon his previous contacts with Ms. Williams.

42. On or about December 14, 2004, Respondent met with Mr. Thomas. Respondent directed Mr. Thomas to close all Ms. Williams' bank accounts, which then contained approximately \$900,000, and directed Mr. Thomas to deposit these funds into an account in Mr. Thomas' name only.

43. During this same meeting Respondent also provided Mr. Thomas with a fee agreement entitled "Medical Assistance Planning & Estate Probate Fee Agreement" that provided for a \$200,000 non-refundable fee. After expressing some concerns and reservations about the amount of the fee, Mr. Thomas signed the fee agreement as POA.

44. During the next several days Mr. Thomas closed Ms. Williams' bank accounts, and obtained checks payable to Mr. Thomas for the account balances. Respondent arranged for accounts to be opened, and for these funds to be deposited, in Mr. Thomas' name only.

45. On January 7, 2005, Respondent entered into the previously described lease/purchase agreement to buy a property at 1120 South Washington Avenue, Scranton, PA. This agreement provided for a purchase price of \$275,000, and required that Respondent obtain financing on or before May 31, 2005, which date was subsequently extended by the parties to July 8, 2005.

46. In early 2005 Respondent called Mr. Thomas on several occasions and suggested that Mr. Thomas invest the Williams' funds with an investment advisor

named James Peperno, whom Respondent recommended. Peperno also called Mr. Thomas. Mr. Thomas agreed to meet with Peperno.

47. In June 2005 Mr. Thomas met with Respondent and Peperno in Respondent's office. Respondent and Peperno both stated that James Peperno was an experienced financial advisor who worked with his cousin Frank Peperno in the LPL Financial Services office in Old Forge. Respondent urged Mr. Thomas to provide James Peperno with the Williams funds so that they could be invested.

48. Mr. Thomas agreed to do so. Before this meeting concluded, Mr. Thomas provided three checks drawn on the Williams funds: One in the amount of \$20,000 to cover Peperno's advisor fee; and two more, in amounts of \$16,427 and \$863,000, which funds were to be invested by Peperno. Also, Mr. Thomas signed "consulting" and "subscription" agreements with Peperno, as well as other unknown documents.

49. After arranging for Mr. Thomas to invest Williams' funds with Peperno in June 2005, Respondent received \$9,500 from Peperno as a "referral fee."

50. By July 7, 2005, Respondent had been unable to obtain conventional financing to purchase the building on South Washington Avenue. Respondent contacted Peperno. Peperno then contacted PNC Bank, and instructed them to prepare a cashier's check, in the amount of \$275,000, drawn on his money market account, payable to Respondent.

51. The funds held by Peperno in this money market account were, in substantial part, Williams' funds that he had received from Mr. Thomas a month earlier. Rather than investing all of the Williams funds, Peperno had converted approximately

\$400,000 of Williams' funds and deposited them into his money market account, along with funds belonging to Brenda Buntz, as aforesaid.

52. Respondent personally picked up Peperno's \$275,000 check. Respondent then used these funds to purchase 1120 South Washington Avenue.

53. In late December 2005, Mr. Thomas, who had previously inquired about the status of his investments with Peperno, questioned Respondent as to why he had not received any statements from Peperno or his company reflecting the amount or disposition of his funds. Respondent assured Mr. Thomas that everything was fine.

54. In late January 2006, Mr. Thomas questioned Respondent about the fact Mr. Thomas had never received an IRS Form 1099 in connection with these investments. Respondent indicated that he should not worry, in that Peperno would take care of filing tax returns and would generally take care of any tax issues related to these investments.

55. In March 2006, Mr. Thomas was contacted by Secret Service Special Agent David Baker, who was investigating Peperno, and who was interested in interviewing Mr. Thomas.

56. Respondent attended Agent Baker's first interview of Mr. Thomas on April 10, 2006, as Mr. Thomas' counsel. Respondent subsequently advised Mr. Thomas that there was a problem and that Respondent could no longer represent Mr. Thomas. Mr. Thomas retained new counsel.

57. In late July 2006, Mr. Thomas, accompanied by new counsel, was interviewed by Agent Baker a second time.

58. Mr. Thomas subsequently confronted Respondent about the disposition of the Williams funds and Respondent's relationship with Peperno. Respondent told Mr. Thomas that Peperno had paid Respondent a referral fee out of the \$20,000 "advisor" fee that Mr. Thomas had paid Peperno. Additionally, Respondent told Mr. Thomas that Peperno had given him money to buy a building on South Washington Avenue in Scranton.

59. Until Respondent made these disclosures, Mr. Thomas was unaware that Respondent had received money from Peperno, and knew nothing about any business relationships, agreements, or associations between Respondent and Peperno.

60. In April 2007, and subsequent occasions, Respondent was interviewed by Agent Baker. Respondent falsely stated that he believed the funds Peperno provided were a loan from PNC, despite the fact that no loan documents were provided by any bank, or any other person or entity, related to Respondent's receipt of \$275,000 in July 2005. Respondent knew, or should have known, that these were funds provided by Peperno, and that Peperno had provided these funds from monies he received from Mr. Thomas, and possibly from money he had received from other clients of Respondent's whom he had referred to Peperno.

61. During Respondent's interviews with Agent Baker, he stated that he had played no role in the transfer of these funds from Peperno's bank to Respondent's closing. Respondent initially stated that the funds had been directly transferred, presumably by wire, to the escrow agent conducting the South Washington Avenue closing. Respondent subsequently stated that the funds had not been directly transferred to his escrow agent, but that, due to his unavailability, Respondent's aunt,

Eleanor Doran, had picked up the check and delivered them to Respondent's escrow agent, along with relevant loan documents. Both statements were false, in that Respondent personally picked up Peperno's cashier's check, payable to Respondent, at Respondent's bank on or about July 7, 2005, and he personally brought this instrument to Respondent's closing.

62. Respondent, James Peperno, and Frank Peperno were all subsequently charged with federal criminal offenses. All were convicted and sentenced to terms of incarceration. Respondent's criminal conviction is described in the FACTUAL ADMISSIONS section of EXHIBIT-A (Petitioner's File No. C3-10-739).

SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED
(PETITIONER FILE NO. C3-07-834)

63. Respondent admits to violations of the following Rules of Professional Conduct:

- a. RPC 1.5(a) which prohibits a lawyer from entering into an agreement for, charge, or collect an illegal or clearly excessive fee.
- b. RPC 1.7(a)(2) which prohibits a lawyer from representing a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.
- c. RPC 4.1(a) which prohibits a lawyer from knowingly making a false statement of material fact or law to a third person.
- d. RPC 8.4(b) which prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

- e. RPC 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation.

FACTUAL ADMISSIONS
(PETITIONER FILE NO. C3-11-59)

77. Despite Respondent's suspended status, through January 2011 he held himself out to the general public as an active practicing attorney, through a variety of advertisements and media, including but not limited to the following:

- a. At 203 Davis Street, Taylor, PA, a sign stated: "Professional offices . . . David James Gnall, Attorney-at-Law";
- b. In the 2010-2011 Yellow Book for Scranton, Clarks Summit, Carbondale, a listing stated "Gnall, David J. Attorney, 203 Davis Street, Taylor, PA (570-562-3172)";
- c. In the 2009-2010 Yellow Book for Scranton, Clarks Summit, Carbondale, a listing stated "Gnall, David J. Attorney, 203 Davis Street, Taylor, PA (570-562-3172)";
- d. In the 2008-2009 Yellow Book for Scranton, Clarks Summit, Carbondale, a listing stated "Gnall, David J. Attorney, 203 Davis Street, Taylor, PA (570-562-3172)";
- e. Under the heading "Attorneys-Employment & Labor Relations (near Old Forge, PA)" a listing stated "Gnall, David J. 570-562-3172, 203 Davis Street, Taylor, PA," which listing appears in the AOL local Yellow Pages;
- f. The listing "Gnall David J. Attorney, 203 Davis Street, Taylor, PA (570-562-3172)" appeared when his name was searched at the 570 Directory.com website;
- g. The listing "Gnall David J. Attorney, 203 Davis Street, Taylor, PA (570-562-3172)" appeared when his name was searched at the dexknows.com website;
- h. The listing "david j. gnall," 203 Davis Street, Taylor, PA (570-562-3172)" appeared when his name was searched at Pocono services.com website under the heading "Category 1: "Attorneys";

- i. The listing "David J. Gnall & Assoc," 1120 S. Washington Avenue, Scranton, PA 18505, (570-343-5500) appeared when his name was searched at Yellow Pages.com; and
- j. The listing "Gnall, David J - David J. Gnall & Assoc, with the address 1120 S. Washington Avenue, Scranton, PA 18505, (570-343-5500)" appears when his name was searched at the 101DUIAttorney.com website.

64. By DB-7 Letter of Inquiry dated January 31, 2011, Petitioner put Respondent on notice that it was aware of these advertisements and listings, and that they were problematic, given Respondent's professional status.

65. After receiving this letter, Respondent removed the sign and otherwise undertook substantial efforts to remove the remaining advertisements and listings from the public domain.

SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED
(PETITIONER FILE NO. C3-11-59)

66. Respondent admits to violations of the following Rules of Professional Conduct:

- a. RPC 5.5(b)(2) which prohibits a lawyer who is not admitted to practice shall not hold out to the public or otherwise represent that the lawyer is admitted to practice law.
- b. RPC 7.1 which prohibits a lawyer from making false or misleading communication about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.
- c. RPC 8.4(b) which prohibits a lawyer from committing a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects. (See 42 Pa.C.S.A. 2524, prohibiting holding oneself out to

the public as authorized to practice law, when not so authorized.)

- d. RPC 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation.