

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL, : No. 2098 Disciplinary Docket No. 3  
: :  
Petitioner : 123 DB 2014  
: :  
v. : Attorney Registration No. 40703  
: :  
CHARLES JOSEPH DIORIO, : (Chester County)  
: :  
Respondent :

**ORDER**

**PER CURIAM**

**AND NOW**, this 20<sup>th</sup> day of November, 2014, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated September 3, 2014, 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 Charles Joseph Diorio is suspended on consent from the Bar of this Commonwealth for a period of five years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola  
As Of 11/20/2014

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

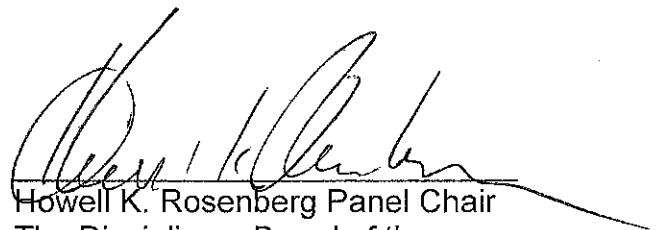
OFFICE OF DISCIPLINARY COUNSEL : No. 123 DB 2014  
Petitioner :  
v. : Attorney Registration No. 40703  
CHARLES JOSEPH DIORIO :  
Respondent : (Chester County)

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 Howell K. Rosenberg, Stefanie B. Porges, and Tracey McCants Lewis, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on August 7, 2014.

The Panel approves the Joint Petition consenting to a five year 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.

  
Howell K. Rosenberg Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: 9/3/2014

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 123 DB 2014  
Petitioner :  
v. :  
: Board File No. C2-13-1037  
: Attorney Reg. No. 40703  
CHARLES JOSEPH DIORIO, :  
Respondent : (Chester County)

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

Petitioner, the Office of Disciplinary Counsel (hereinafter, "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Ramona Mariani, Disciplinary Counsel and Respondent, Charles Joseph Diorio, Esquire (hereinafter "Respondent"), respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

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

FILED

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

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, Charles Joseph Diorio, was born on December 28, 1954, and was admitted to practice law in the Commonwealth on June 12, 1984. Respondent is on active status and his last registered address is 184 Lancaster Avenue, Malvern, PA 19355-2123. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

**SPECIFIC FACTUAL ALLEGATIONS ADMITTED**

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

4. Grace H. Carter ("Ms. Carter") died on March 1, 1999, while a resident of Chester County, Pennsylvania. Ms. Carter had a will dated February 10, 1996, which left her entire estate to her niece, Patricia Plant ("Ms. Plant").

5. The will named Ms. Plant as Executrix, and named Respondent in the alternative, should Ms. Plant fail to qualify

or cease to act as Executrix. Ms. Plant died on June 27, 2002, prior to completing the Carter estate administration.

6. On September 11, 2002, Respondent filed a Petition for Letters Testamentary in the Estate of Grace H. Carter, which was docketed as Case Number 1502-1331, in the Chester County Court of Common Pleas, Orphans' Court Division. The docket reflects that the Carter estate contained personal property of \$180,000.00, and no real estate. On September 12, 2002, a Decree of Letters Testamentary issued.

7. Thereafter, for the next nine years, until at least October of 2011, Respondent filed status reports reflecting that the administration was not complete. Respondent failed to promptly file any Inheritance Tax Return for Ms. Carter's estate. In addition, Respondent failed to promptly distribute any undistributed assets from Ms. Carter's estate.

8. Ms. Plant had a will dated March 23, 1999, which left her entire estate to her two sons, George and Albert Plant. Ms. Plant's will named Respondent Executor.

9. On September 1, 2002, Respondent filed a Petition for Letters Testamentary in the Estate of Patricia A. Plant, which was docketed as Case Number 1502-1330, in the Chester County Court of Common Pleas, Orphans' Court Division.

10. The docket reflects that the Plant estate contained personal property of \$120,000.00 and real estate valued at approximately \$116,000.00.

11. During the next few years Respondent made some partial distributions from Ms. Plant's estate to her two children, but he failed to fully distribute all estate funds or provide any formal or informal accounting. In addition, Respondent failed to promptly file any inheritance Tax Return for Ms. Plant's estate, or complete estate administration within a reasonable time from assuming responsibility for the estate. Instead, for the next nine years, until at least November of 2011, Respondent periodically filed status reports claiming that the administration was not complete.

12. Despite his failure to complete estate administration in either the Carter or Plant Estates, Respondent periodically assured the beneficiaries that undistributed assets remained in the estates. Those assurances were false, as those bank records currently obtainable reflect that Respondent regularly converted funds from Ms. Plant's estate. Respondent did this by writing multiple checks to himself over the years which he labelled as "Admin Expense" or "Expense." There is no underlying documentation to support these claimed "expenses." Further, the

total amount taken is clearly in excess of any amount that could have been supported by a percentage pursuant to the percentages generally utilized and approved by the Chester County Orphans' Court for estate work.

13. In or around March of 2012, George Plant retained Richard H. Morton, Esquire, to assist Mr. Plant in obtaining information and some resolution of the Plant and Carter Estates. For the next six months, Mr. Morton unsuccessfully sought to informally obtain an accounting and information from Respondent about the two estates.

14. In or around November of 2012, Mr. Morton filed Petitions to remove Respondent as Executor from both the Carter and Plant Estates, and to require Respondent to provide asset information and an accounting. These Petitions were set for a hearing, and with Respondent's consent, were granted by Orders dated May 20, 2013. In addition to removing Respondent as the Executor, the Court Orders required Respondent to provide all other parties with a full and complete accounting of his administration of the Estates within thirty days of the date of the Orders, at Respondent's expense. Respondent failed to comply with the Court Orders. As a result, on July 26, 2013, Mr. Morton filed a Motion to Compel and Impose Sanctions in both

cases. Respondent failed to respond to the motions or appear at the hearing scheduled for September 16, 2013. On September 16, 2013, the Court entered Decrees in both cases, requiring Respondent to, among other things, provide to the other party a full and complete accounting and pay Petitioner \$150.00 as sanctions. Respondent failed to comply with the Court's Decrees. On November 27, 2013, Mr. Morton filed Motions to Compel and Impose Sanctions in both cases due to Respondent's failure to respond and/or comply with the Court's Decrees. Respondent failed to respond to the motions or appear at the hearing scheduled for December 3, 2013.

15. On December 3, 2013, the Court entered Decrees in both cases, which, among other things:

- a. found that Respondent had failed to comply with the Court's Decrees of September 16, 2013;
- b. stated that Respondent would be reported to the Pennsylvania Disciplinary Board;
- c. required Respondent to pay \$100.00 to Petitioner as a Sanction, in addition to the \$150.00 previously assessed;
- d. directed Respondent to file and to provide to all other parties a full and complete accounting of the Estates within fifteen days from the date of the Order; and
- e. stated that Petitioner could file a future motion for contempt with potential sanctions including incarceration if there was further failure to comply.



Respondent failed to comply with the Court's decrees, and on December 12, 2013, Mr. Morton filed a complaint with the Office of Disciplinary Counsel ("ODC").

16. By letter dated December 20, 2013 (hereinafter the "DB-7 letter"), ODC wrote to Respondent and notified him that based on the evidence received to date, his conduct in the Carter and Plant estates appeared to violate multiple Rules of Professional Conduct. In addition, ODC directed Respondent to produce his entire file for both estates to this office within thirty days.

17. Rather than producing the files to ODC, Respondent gave his files, as well as a check in the amount of \$227,000.00, to complainant, Mr. Morton. Respondent did not retain any file copies. By letter dated January 7, 2014, Mr. Morton wrote to Judge Platt to let her know that he had received Respondent's check as well as a "pile of papers" purporting to be the entire estate files.

18. By letter dated January 14, 2014, Respondent answered ODC's DB-7 letter. Respondent acknowledged a failure to promptly distribute and file inheritance tax returns. Respondent attributed this delay to a massive heart attack he suffered in October of 2012. Thereafter, Respondent states he

suffered some cognitive issues and as a result has difficulty with administrative details and keeping track of his time.

19. Mr. Morton provided ODC with copies of the records he received from Respondent, and ODC issued subpoenas compelling production of records to those banks in which estate assets had been held. However, due to the length of time the estates remained open, not all bank records are available. As a result, it is impossible to determine starting balances for either estate or to determine whether all estate assets have been properly accounted for and distributed to Mr. Morton.

20. In particular, there are no bank records for the Carter estate, only the Plant estate. As Ms. Plant was Ms. Carter's sole beneficiary, it is possible that she took an early distribution, but there is no way of knowing or confirming whether that is the case.

21. Shortly after his removal as Executor of the estates, Respondent deposited his own money into the Plant estate account. He did so first on May 30, 2013, by way of a cashier's check from Malvern Federal Savings Bank in the amount of \$50,000.00. On July 25, 2013, Respondent deposited a check in the amount of \$11,000.00 from one Sanjay Radadio. Further investigation revealed that Mr. Radadio purchased a car from

Respondent for \$11,000.00. Based on these deposits, it is Respondent's position that he has restored any missing funds to the estates. However, as noted, the dearth of records renders it impossible to independently corroborate Respondent's claim.

22. The audit uncovered further evidence of fraud in connection with estate transactions that clearly pre-date Respondent's illness. Bank records for a First Financial Account No. 31053130 (titled to the Plant estate) reflected an \$8,000.00 deposit on July 30, 2007, from the Estate of Mary Ann Falini, payable to Bruce Herald. Further investigation revealed that Respondent acted as the estate attorney for the Falini Estate. The \$8,000.00 "expense" was purportedly for the purpose of Mr. Herald's preparing taxes for the Falini Estate. Estate records obtained from the Register of Wills reflect an Inheritance Tax Return purportedly prepared and signed by Mr. Herald. Similarly, the accounting for the Falini estate lists an \$8,000.00 fee to Mr. Herald for tax preparation. However, upon being contacted by ODC Investigator Daniel Richer, Mr. Herald denied preparing taxes for the Estate of Mary Ann Falini. Further, Mr. Herald would testify that the signature on the return is not his, and that he was never paid \$8,000.00 in connection with Ms. Falini's estate. Mr. Herald did prepare

taxes, at Respondent's request, several years before Ms. Falini died for the estate of her husband. This evidence demonstrates that Respondent engaged in a pattern and practice for years of utilizing Plant estate assets as his own, and then attempting to periodically replace at least some of the money taken.

23. Respondent has a history of discipline consisting of an informal admonition administered on October 20, 2010, for violating RPC 1.2(a), 1.3, 1.5(a), 1.5(c), 8.4(c), 1.16(d) and 8.4(d) in one client matter.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND  
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED**

24. Respondent violated the following Rules of Professional Conduct:

a. RPC 1.1 RPC 1.1[effective 1-1-05], which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;

b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;

c. RPC 1.15(b) [effective 9-20-08], which states that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded;

d. RPC 1.15(c) [effective 9-20-08], which states that complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later. A lawyer shall maintain the following books and records for each Trust Account and for any other account in which Fiduciary Funds are held pursuant to Rule 1.15(1): (1) all transaction records provided to the lawyer by the Financial Institution or other investment entity, such as periodic statements, cancelled checks, deposited items and records of electronic transactions; and (2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date, and amount of each deposit, and the matter involved for each transaction. (3) The records required by this rule may be maintained in electronic or hard copy form. If records are

kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device;

e. RPC 1.15(d)[effective 9-20-08], which states that upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality and notice applicable to the Fiduciary entrustment;

f. RPC 1.15(e)[effective 9-20-08], which states that 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, including but not limited to Rule 1.15 Funds, 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 the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules

governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment;

g. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

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

**SPECIFIC RECOMMENDATION FOR DISCIPLINE CONSISTING OF A FIVE-YEAR LICENSE SUSPENSION**

Precedent establishes that Respondent's serious misconduct warrants either a lengthy license suspension or disbarment. This matter involves conversion of fiduciary funds, dishonesty including forgery, extensive neglect and delay. Respondent has recently had some serious health issues. However, this provides little by way of mitigation since Respondent's misconduct largely preceded the onset of his health related problems.

Two very recent cases involving conversion resulted in disbarments on consent. In *ODC v. Bratic*, 135 DB 2013 (2014), Bratic failed to promptly distribute a personal injury settlement. Bratic made a partial distribution to his client,

and then took "loans," some documented and others not, which he was unable to promptly repay. Eventually Bratic repaid his client in full, albeit the repayment admittedly took years. Similarly, in *ODC v. Fitzgerald*, 97 DB 2013 (2013) Respondent Fitzgerald converted \$30,000.00 in client funds he held in trust for the purpose of satisfying a mortgage. Respondent failed to satisfy the mortgage or provide the clients with the funds. Instead, he converted the funds, which had been received in 2004, by August of 2005. From 2003 through approximately November of 2010, a son and heir of the decedents to whom the funds were owed periodically contacted Respondent, who falsely assured the son that he held the money in trust. Eventually, the son engaged a lawyer who negotiated a settlement with Fitzgerald, which Fitzgerald failed to honor. On May 1, 2013, the Pennsylvania Lawyers Fund for Client Security paid the Estate the full amount converted, \$30,000.00.

In *ODC v. Gefsky*, 162 DB 2009 (2011) the Supreme Court imposed a five-year license suspension where Respondent Gefsky converted client funds, failed to communicate with his client and lied to his client. In its Report and Recommendation the Disciplinary Board noted that Gefsky presented no mitigation and had a prior history of private discipline. In *ODC v. Quinn*, 33



DB 2010 (2012) Respondent Quinn converted over \$30,000.00 belonging to an estate. Quinn eventually made partial restitution to the estate with "no strings attached." In addition, Quinn had serious drug and alcohol issues which resulted in several criminal convictions in 2009 and 2010. Quinn provided evidence of mitigation, including his cooperation with ODC, psychological testimony relating to his addiction to alcohol and drugs and its effect on his criminal conviction and conversion, and evidence relating to his subsequent efforts at rehabilitation. The Pennsylvania Supreme Court granted the Joint Petition in Support of Discipline on Consent, and Ordered a five-year license suspension. In *ODC v. Harbaugh*, 192 DB 2005 (2007), Respondent-Harbaugh converted \$33,951.82 belonging to her client and her client's estranged husband. Harbaugh made full restitution after receiving a letter of inquiry from ODC. In another matter Harbaugh lied to her client concerning the status of his matter and neglected the matter. The Pennsylvania Supreme Court granted a Joint Petition for Discipline on Consent for a four-year license suspension. In mitigation, the Petition notes that Harbaugh cooperated with ODC and had recently been treated for depression, anxiety and co-dependency.

In the instant case Respondent has cooperated with ODC. He has made restitution to the beneficiaries, albeit it is impossible to determine whether that restitution is complete. Respondent has expressed remorse and acceptance of responsibility through the filing of this joint petition. Finally, Respondent is 59 years old and currently suffers from extremely poor health including cognitive issues. Considering all of these circumstances, it is respectfully suggested that a five-year license suspension is the appropriate level of discipline.


WHEREFORE, Joint Petitioners respectfully pray that your Honorable Board:

- a. Approve this Petition; and
- b. File a recommendation for a five-year license suspension and this Petition with the Supreme Court of Pennsylvania.

Respectfully submitted,

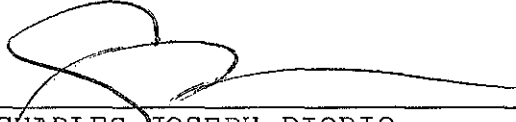
OFFICE OF DISCIPLINARY COUNSEL  
PAUL J. KILLION,  
Attorney Registration No. 20955,  
Chief Disciplinary Counsel

8/4/2014  
DATE

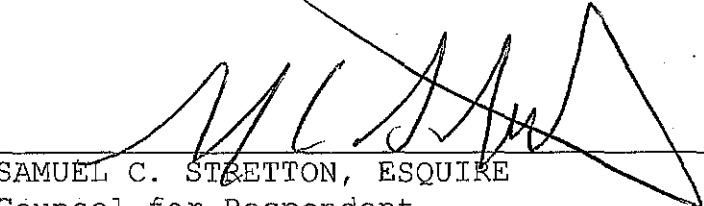
  
RAMONA MARIANI,  
Disciplinary Counsel

Attorney Registration Number 78466  
Office of Disciplinary Counsel  
Suite 170, 820 Adams Avenue  
Trooper, PA 19403  
(610) 650-8210

8/4/2014  
\_\_\_\_\_  
DATE

  
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CHARLES JOSEPH DIORIO  
Respondent

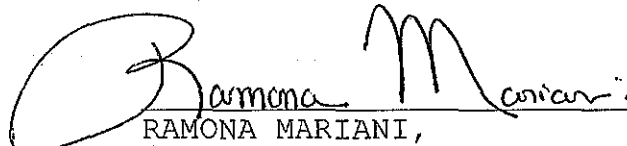
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SAMUEL C. STRETTON, ESQUIRE  
Counsel for Respondent

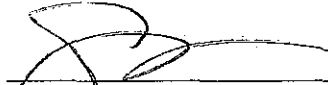
VERIFICATION

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

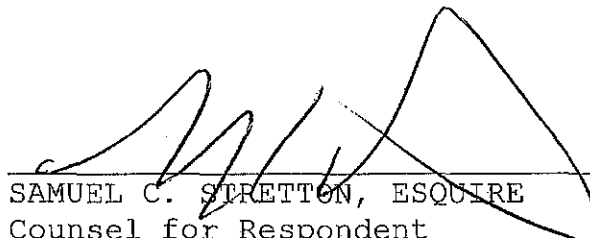
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RAMONA MARIANI,  
Disciplinary Counsel

8/4/2014  
DATE

  
CHARLES JOSEPH DIORIO  
Respondent

8/4/14  
DATE

  
SAMUEL C. STRETTON, ESQUIRE  
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. DB 2014  
Petitioner :  
 :  
v. : Board File No. C2-13-1037  
 :  
 : Attorney Reg. No.40703  
CHARLES JOSEPH DIORIO, :  
Respondent : (Chester County)

AFFIDAVIT

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

1. He freely and voluntarily consents to the proposed discipline; he is not being subjected to coercion or duress; he is fully aware of the implications of submitting the consent; and he has consulted with counsel in connection with the decision to consent to discipline.

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

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

4. He consents because he knows that if charges continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

Signed this            day of            , 2014.



CHARLES JOSEPH DIORIO  
Attorney Registration No. 40703

Sworn to and subscribed  
Before me this *5th* day  
of *August* , 2014.

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Jennifer Cava-Harris, Notary Public  
West Chester Boro, Chester County  
My Commission Expires Aug. 5, 2014  
Member, Pennsylvania Association of Notaries

BEFORE THE DISCIPLINARY BOARD OF THE  
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OFFICE OF DISCIPLINARY COUNSEL, : No. DB 2014  
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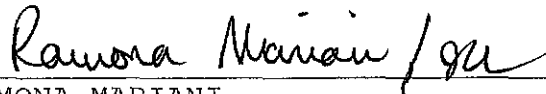
CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the foregoing document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code §89.22 (relating to service by a participant).

First Class as follows:

Samuel C. Stretton, Esquire  
301 S. High Street  
P.O. Box 3231  
West Chester, PA 19381

Dated: \_\_\_\_\_



RAMONA MARIANI,  
Disciplinary Counsel  
Attorney Registration No. 78466  
Office of Disciplinary Counsel  
District II Office  
Suite 170, 820 Adams Avenue  
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