

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1805 Disciplinary Docket No. 3  
Petitioner :  
 : No. 124 DB 2011  
v. :  
 : Attorney Registration No. 24448  
PETER CHARLES POVANDA, :  
Respondent : (Lackawanna County)

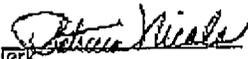
ORDER

PER CURIAM:

AND NOW, this 5<sup>th</sup> day of April, 2012, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated December 23, 2011, 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 Peter Charles Povanda is suspended on consent from the Bar of this Commonwealth for a period of three years retroactive to July 1, 2010, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola  
As Of 4/5/2012

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

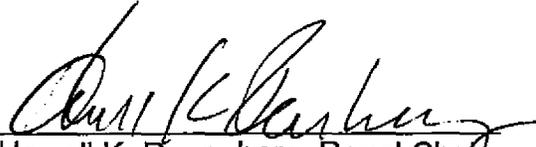
OFFICE OF DISCIPLINARY COUNSEL :  
Petitioner :  
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PETER CHARLES POVANDA :  
Respondent : (Lackawanna County)

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, Gabriel L. Bevilacqua, and Carl D. Buchholz, III, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on August 9, 2011.

The Panel approves the Joint Petition consenting to a three year suspension retroactive to the date of his voluntary transfer to inactive status 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: 12/23/2011

BEFORE THE DISCIPLINARY BOARD  
OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 124 DB 2011  
Petitioner :  
v. : Attorney Registration No. 24448  
PETER CHARLES POVANDA :  
Respondent : (Lackawanna County)

**JOINT PETITION IN SUPPORT OF DISCIPLINE ON CONSENT**

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Joseph J. Huss, Disciplinary Counsel, and Respondent, Peter Charles Povanda, file this Joint Petition in Support of Discipline on Consent under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement and respectfully state and aver the following:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

**FILED**

AUG 09 2011

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

2. Respondent, Peter Charles Povanda, was born in 1950, and admitted to the practice of law on November 15, 1976.

3. Respondent is currently residing at 107 Skyline Drive North, Clarks Summit PA 18411.

4. Respondent is not represented by counsel.

**FACTUAL ADMISSIONS**  
**(PETITIONER FILE NO. C3-10-719)**

5. On July 12, 2009, Respondent, while intoxicated, engaged in a physical altercation with his wife, who subsequently filed a Petition for Protection from Abuse (hereinafter "PFA") docketed to 40860 FC 2009 (Lackawanna County).

6. On July 13, 2009, the Lackawanna County Court of Common Pleas issued a temporary Order granting Respondent's spouse PFA relief. A final Order was not issued until June 10, 2010.

7. On or about July 22, 2009, Respondent, while intoxicated, again engaged in a physical altercation with his wife. He was charged with Criminal Contempt (23 Pa.C.S.A. 6114(a)), docketed to 318 MD 2009 (Lackawanna County).

8. A contempt hearing was scheduled for August 5, 2009. However, the hearing was generally continued to give Respondent the opportunity to enroll in an alcohol treatment facility.

9. Despite the conduct described in this Joint Petition, Respondent was never found guilty of contempt for violating PFA Orders.

10. On December 21, 2009, Respondent, while intoxicated, again engaged in a physical altercation with his wife. He was charged with misdemeanor Simple Assault and summary Harassment, which charges were subsequently docketed to 2631 CR 2010 (Lackawanna County). He was remanded to Lackawanna County Prison.

11. On January 4, 2010, Respondent was furloughed to Serenity Lodge, an inpatient substance abuse treatment facility.

12. On an unknown date in or about March 2010, Respondent left Serenity Lodge.

13. On April 9, 2010, Respondent, while intoxicated, again engaged in a physical altercation with his wife. He was again charged with Simple Assault and Harassment, which charges were subsequently docketed to 2647 CR 2010 (Lackawanna County). He was again remanded to the Lackawanna County Prison.

14. By Order dated April 30, 2010, Respondent was furloughed to Pyramid Health Care, a treatment facility for substance abuse and mental health problems.

15. By Order dated May 7, 2010, Respondent was transferred to the Lackawanna County Prison's work release facility.

16. By Order dated May 11, 2010, Respondent was released from the Lackawanna County Prison and placed on house arrest.

17. On June 11, 2010, Respondent was released from house arrest. He was directed to promptly report to the Lackawanna County Adult Probation Office to be fitted for an ankle bracelet/monitor. However, he failed to report to Adult Probation.

18. On June 18, 2010, Respondent was arrested in the parking lot of a Lackawanna County Wal-Mart while attempting to drive in a highly intoxicated state. He was combative and initially resisted attempts by emergency medical personnel to attend to him. He was taken for a physical examination/treatment, in that he was physically incapable of being processed by the police. A blood alcohol test performed as part of this physical examination established that his blood alcohol content was .438%.

19. He was charged with ungraded misdemeanor Driving Under the Influence of Alcohol (75 Pa.C.S.A. 3802(c) – maximum sentence of six months under 75 Pa.C.S.A. 3803(b)(2)) and misdemeanor Disorderly Conduct (18 Pa.C.S.A. 5503(a)(4) - persisting in disorderly conduct after warnings – maximum sentence of 1 year). He was again remanded to the Lackawanna County Prison, based upon his failure to report to Adult Probation for the installation of an ankle bracelet, and based upon the filing of these new charges.

20. By Order dated August 30, 2010, Respondent was again furloughed to Pyramid Health care.

21. On November 10, 2010, Respondent was again remanded to the Lackawanna County Prison for failure to comply with conditions of his release, where he remained until his sentencing on December 22, 2010.

22. On December 22, 2010, Respondent was sentenced as follows:
- a. At Docket No. 2647 CR 2010, he was sentenced to 90 days in prison, with credit for time served, on one count of summary Harassment; the Simple Assault charge was dismissed;
  - b. At Docket No. 2631 CR 2010, he was sentenced to 80 days in Lackawanna County Prison, consecutive to the sentence at 2647 CR 2010, with credit for time served, on one count of summary Harassment; the Simple Assault charge was dismissed;
  - c. At Docket No. 2646 CR 2010, he was sentenced to intensive probation for a period of six months, with the first 30 days on house arrest, followed by 60 days of daily reports to the Adult Probation Office. This sentence, on a single count of Driving Under the Influence of alcohol, was consecutive to the two previous sentences;
  - d. At Docket No. 2646 CR 2010, he was sentenced to one year of intensive probation consecutive to his DUI sentence, on one count of misdemeanor Disorderly Conduct; and
  - e. Respondent was granted immediate parole, and was released from the Lackawanna County Prison following sentencing.

23. On January 24, 2011, Respondent was detained by his probation officer as a result of various probation violations. He was released from custody on April 8, 2011.

24. On April 12, 2011, Respondent was again detained by his probation officer as a result of various probation violations. He was released from custody on May 20, 2011.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND PENNSYLVANIA RULES  
OF DISCIPLINARY ENFORCEMENT VIOLATED**  
**(PETITIONER FILE NO. C3-10-719)**

25. 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. C3-10-349)**

26. In 1979, Mary A. Connolly, (Complainant Louise E. Sadler's mother) retained Respondent to draft her will. Under the terms of the will, Mrs. Connolly bequeathed a life estate to her daughter Mary Alice Connolly, who was mentally incapacitated since birth. Mary A. Connolly appointed Complainant, her daughter and Mary Alice's sister, as the guardian of the person of Mary Alice, and requested in the will that Louise seek appointment as the guardian of her estate.

27. In October 1988, Mary A. Connolly died at the age of 96. She was survived by a son, Edward Charles Connolly, and three daughters: Mary Alice Connolly, Complainant, and Catherine C. Duncan.

28. Since the mid-1970's, Complainant cared for the decedent. She also provided, and continues to provide, care for Mary Alice.

29. Upon the decedent's death in October of 1988, Complainant retained Respondent to probate the will. Complainant paid Respondent \$500 by check dated October 2, 1988. The memo line of the check reads "Retainer-Est. of Mary Connolly."

30. No action of record was taken in the estate from 1988 until 2003.

31. At no time during the course of Respondent's representation of Complainant did he provide her with a fee writing setting forth the rate/basis of his fee.

32. Following the death of her husband in April 2001, Complainant considered selling the house that was the subject of Mary Alice's life estate, due to her physical and financial situation. At this time, Mary Alice was 71 years of age and Complainant was 70.

33. On an unknown date in 2001 following her husband's death, Complainant met with Respondent. She indicated she wanted to sell the aforementioned house. Respondent agreed to assist her.

34. However, Respondent took no action related to this estate, or this house, until December 10, 2003, at which time Respondent filed a Petition for Grant of Letters Testamentary. The estate was docketed to File No. 2003-01403 (Lackawanna County). Complainant was named Executrix.

35. There has been no action of record in this estate other than this initial filing.

36. After a further period of inactivity and non-communication, in April 2008 Complainant again contacted Respondent about the sale of the house. By then, Mary Alice was 80 years old, and Complainant was 79.

37. On May 1, 2008, Respondent met with Complainant. He indicated his fee would be \$1,500 to commence appropriate legal proceedings. Complainant gave Respondent a down payment of \$500.

38. Between May and December 2008, despite at least seven attempts by Complainant to contact Respondent by telephone, he failed to communicate with her.

39. On December 10, 2008, Respondent contacted Complainant, thanked her for her patience, and stated that all the paperwork was "completed." However, Respondent failed to file anything of record.

40. On March 28, 2009, Respondent met with Complainant to discuss the status of her case. He assured Complainant that he would take immediate action. However, no action was taken.

41. On May 1, 2009, Respondent advised Complainant that he would be filing "papers" and that a hearing would be scheduled. However, no action was taken.

42. Between May and July 2009, Complainant did not hear further from Respondent, and he failed to return her many phone calls. In July Complainant sent Respondent a letter stating that if he did not take immediate action, she would file a disciplinary complaint against him.

43. Upon receipt of the letter, Respondent called Complainant to set up a meeting for July 7, 2009. On that date, Respondent met with Complainant and Complainant's sister, Catherine C. Duncan. Respondent promised he would have "everything ready" by July 31, 2009.

44. On September 8, 2009, Complainant paid Respondent \$500, leaving a balance due of \$500. On the same day, Respondent filed a *Petition for Appointment of Guardian of the Estate and Person of an Incapacitated Person* (Lackawanna County Orphan's court docket No. 35-09-1079).

45. A hearing was held on September 25, 2009.

46. On September 28, 2009, the court issued an Order decreeing Mary Alice to be incompetent and named Complainant as guardian of both her estate and person.

47. On October 2, 2009, Complainant paid the \$500 balance of Respondent's fees.

48. Since September 2009, Respondent has taken no action to help Complainant sell this house, despite Complainant's repeated efforts to communicate with Respondent and obtain his assistance in this regard.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED**  
**(PETITIONER FILE NO. C3-10-349)**

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

- a. RPC 1.3, which requires that a lawyer shall act with reasonable diligence and promptness in representing a client.
- b. RPC 1.4(a)(3), which requires a lawyer to keep the client reasonably informed about the status of the matter.
- c. RPC 1.4(a)(4), which requires a lawyer to promptly comply with reasonable requests for information.
- d. RPC 1.5(b), which requires that 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.

**FACTUAL ADMISSIONS**  
**(PETITIONER FILE NO. C3-10-525)**

50. Lorraine L. Snyder died Testate in April 1984. Respondent represented Kevin Snyder, in his capacity as Executor, in connection with the filing of a Petition seeking his appointment as Estate Personal Representative, which occurred in or about May 1984.

51. The estate assets included real estate in Wyoming County, and real estate in Scranton, Lackawanna County. Under the terms of the decedent's will, this real estate was devised to the decedent's five children in equal shares. The five children were Kevin Snyder, Kimberly Snyder, Kathleen Snyder, Kerry Snyder, and Keith Snyder (Complainant herein).

52. An Inheritance Tax Return was filed by Respondent, as was a Family Settlement Agreement, during the period 1984-1986.

53. In March 2010, Respondent was contacted by Complainant. He requested that Respondent represent him, and his family, in connection with a possible partition action concerning the aforementioned real estate.

54. On March 11, 2010, Complainant paid Respondent \$5,000. Respondent provided Complainant with a handwritten receipt stating "Received \$5,000 from Keith Snyder and family. Payment in full for Estate of Lorraine L. Snyder and Kerry (2-5-07) and related children (Kelsey and Kody) in matters relating to preparation of deed to surviving children of Lorraine L. Snyder."

55. Respondent failed to take action to resolve this matter.

56. Respondent treated the aforementioned \$5,000 retainer as his upon receipt, and spent this money, despite the fact that he did not earn any portion thereof.

57. During 2010, Respondent did not have an IOLTA, trust, or escrow account with any financial institution.

58. At some point in or about July 2010, Complainant learned that Respondent had various personal problems, including pending criminal charges. Complainant contacted Attorney Andrew Phillips, whom he subsequently retained to handle this matter. He discharged Respondent.

59. Attorney Phillips, who was personally familiar with Respondent (and who had represented Respondent in connection with some of his criminal charges), requested that Respondent turn over any file materials. Respondent failed to provide any such materials.

60. By check dated August 1, 2011, the Pennsylvania Lawyers Fund for Client Security (the "Fund") paid Complainant \$5,000, Complainant having filed a claim based upon the conduct of Respondent described above. Reimbursement to the Fund is a condition of Respondent's reinstatement (see Pa.R.D.E. 531).

**SPECIFIC RULES OF PROFESSIONAL CONDUCT VIOLATED**  
**(PETITIONER FILE NO. C3-10-525)**

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

- a. RPC 1.3, which requires that a lawyer shall act with reasonable diligence and promptness in representing a client.
- b. RPC 1.15(b), which requires that a lawyer shall hold all funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.
- c. RPC 1.15(i), which requires that 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.

- d. RPC 1.15(m), which requires that all Qualified Funds which are not Fiduciary Funds shall be placed in an IOLTA Account.
- e. RPC 1.16(d), which requires that 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.
- f. RPC 8.4(c), which prohibits conduct involving dishonesty, fraud, deceit or misrepresentation.

### **RECOMMENDATION FOR DISCIPLINE**

62. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a three-year suspension, retroactive to July 1, 2010, the date he was voluntarily transferred to inactive status.

63. Respondent hereby consents to the imposition of this discipline by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed

affidavit required by Pa.R.D.E. 215(d), stating that he consents to the recommended discipline including the mandatory acknowledgments contained in Pa.R.D.E. 215(d)(1) through (4).

64. Effective July 1, 2010, Respondent voluntarily transferred to inactive status, in that he recognized his personal circumstances, particularly his alcohol abuse, rendered him unfit to practice law.

65. In support of Petitioner's and Respondent's joint recommendation, it is respectfully submitted there are mitigating circumstances, as follows:

- a. Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b. Respondent has cooperated with Petitioner, as evidenced by Respondent's admissions herein and his consent to receiving the jointly recommended discipline;
- c. Respondent is remorseful for his misconduct;
- d. Respondent has no record of discipline;
- e. Respondent has practiced law for 35 years; and
- f. Respondent's use of alcohol caused, or substantially contributed, to the criminal charges, and Protection from Abuse matters, described above.

66. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted there are aggravating circumstances, as follows:

- a. Respondent has repeatedly engaged in abusive, and otherwise criminal, behavior despite being given numerous opportunities to obtain treatment for substance abuse and/or mental health problems; and
- b. Respondent has demonstrated an inability to consistently maintain sobriety, and to otherwise act in a manner consistent with the criminal and domestic abuse laws of this Commonwealth.

### RELEVANT LEGAL PRECEDENT

67. In *Office of Disciplinary Counsel v. Keith Acton Halterman*, 34 and 120 DB 2001, respondent was convicted of possession of cocaine, and engaged in client neglect and misrepresentation in ten matters. While there was substantial evidence of cocaine addiction, the Disciplinary Board determined the evidence, which did not include expert testimony, was insufficient to meet the *Braun* standard. Moreover, the Board found that, while respondent appeared to recognize the severity of his cocaine and alcohol problems, "he was unable to demonstrate any consistent ability to maintain sobriety. A long separation from the practice of law is necessary to ensure that respondent is committed to recovery and will not repeat his misconduct." (Disciplinary Board Report dated July 29, 2003, at p. 29). The Disciplinary Board unanimously recommended, and the Supreme Court imposed, a three-year suspension.

68. In *Office of Disciplinary Counsel v. Brent Eric Peck*, 200 DB 2003, respondent misappropriated \$2,700 from a client. Respondent eventually did repay the misappropriated funds approximately one year later. While the disciplinary prosecution in that matter was pending, respondent was charged with Driving Under the Influence of alcohol, and was admitted into the Accelerated Rehabilitative Disposition Program (ARD), from which he was subsequently removed as a result of testing positive for cocaine. He was subsequently incarcerated for 48 hours, and was then transferred to inpatient drug treatment. Expert testimony established that his cocaine and alcohol addiction were strong causal factors in connection with his misappropriation of funds, which conduct satisfied the standards set forth in *Office of Disciplinary Counsel v. Braun*, 553 A.2d 894 (Pa. 1989). The Supreme Court imposed a two-year suspension.

69. The parties believe that the recommended three-year suspension, retroactive to July 1, 2010, is consistent with the above-cited disciplinary case law, given the circumstances of the instant matter.

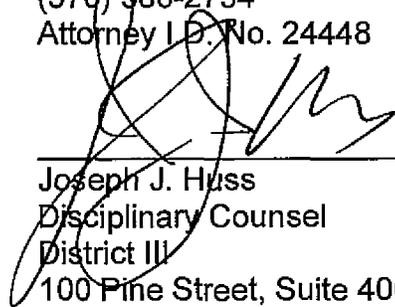
WHEREFORE, Petitioner and Respondent respectfully request that your Honorable Board recommend the imposition of the proposed discipline, a three-year suspension, retroactive to July 1, 2010, by the Supreme Court of Pennsylvania.

Respectfully submitted,

8/5/11  
DATE

  
\_\_\_\_\_  
Peter Charles Povanda  
107 Skyline Drive N  
Clarks Summit, PA 18411  
(570) 586-2754  
Attorney I.D. No. 24448

8/9/11  
DATE

  
\_\_\_\_\_  
Joseph J. Huss  
Disciplinary Counsel  
District III  
100 Pine Street, Suite 400  
Harrisburg, PA 17101  
(717) 772-8572  
Attorney I.D. No. 27751

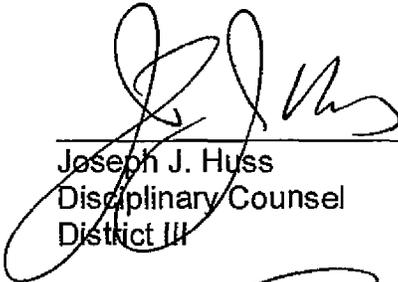
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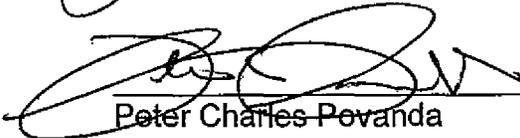
**VERIFICATION**

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

8/4/11  
Date

  
\_\_\_\_\_  
Joseph J. Huss  
Disciplinary Counsel  
District III

8/5/11  
Date

  
\_\_\_\_\_  
Peter Charles Povanda

BEFORE THE DISCIPLINARY BOARD  
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OFFICE OF DISCIPLINARY COUNSEL : No. \_\_\_ DB 2011  
Petitioner :  
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PETER CHARLES POVANDA :  
Respondent : (Lackawanna County)

**RESPONDENT'S AFFIDAVIT UNDER RULE 215(D) OF THE  
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT**

I, PETER CHARLES POVANDA, being duly sworn according to law, hereby submit this affidavit in support of the *Joint Petition for Discipline on Consent* and aver as follows:

1. I am an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about November 15, 1976.
2. I desire to submit a *Joint Petition for Discipline on Consent* pursuant to Pa.R.D.E. 215(d).
3. My consent is freely and voluntarily rendered. I am not being subjected to coercion or duress, and am fully aware of the implications of submitting this *Joint Petition*.
4. I am aware there is presently an investigation into allegations that I am guilty of misconduct as set forth in the *Joint Petition*.
5. I acknowledge that the material facts set forth in the *Joint Petition* are true.
6. I consent to the imposition of discipline because I know that if the charges against me were prosecuted I could not successfully defend against them.

7. I am fully aware of my right to consult and employ counsel to represent me in the instant proceeding.

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<sup>th</sup> day of AUGUST, 2011.

  
\_\_\_\_\_  
PETER CHARLES POVANDA