

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1555 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 126 DB 2009
v.	:	
	:	Attorney Registration No. 64987
ADAM J. RODGERS,	:	
Respondent	:	(Philadelphia)

ORDER

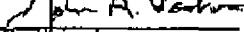
PER CURIAM:

AND NOW, this 4th day of May, 2012, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated January 24, 2012, 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 Adam J. Rodgers is suspended on consent from the Bar of this Commonwealth for a period of one year retroactive to January 15, 2010, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that upon being reinstated to active status, respondent shall be placed on probation for a period of three years subject to the condition that during the period of probation he shall not commit any violations of the Rules and must submit quarterly sworn certifications to the Board, with copies to Disciplinary Counsel, that he is in compliance with this condition.

A True Copy John A. Vaskov, Esquire
As Of 5/4/2012

Attest: 
Deputy Prothonotary
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL	:	No. 1555 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 126 DB 2009
v.	:	
	:	Attorney Registration No. 64987
ADAM J. RODGERS	:	
Respondent	:	(Philadelphia)

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 Charlotte S. Jefferies, Stephan K. Todd, and Howell K. Rosenberg, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on December 22, 2011.

The Panel approves the Joint Petition consenting to a one year suspension retroactive to January 15, 2010, to be followed by three years' probation with the condition that no further violations occur during the period of probation, 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.


Charlotte S. Jefferies, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: January 24, 2012

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner :

: No. 126 DB 2009

: (C1-09-29 & C1-09-42);

v.

: C1-09-973; C1-10-1210

:

: Atty. Reg. No. 64987

ADAM J. RODGERS,

:

Respondent : (Philadelphia)

JOINT PETITION IN SUPPORT OF DISCIPLINE
ON CONSENT UNDER RULE 215(d), Pa.R.D.E.

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and Robert P. Fulton, Esquire, Disciplinary Counsel, and Respondent, Adam J. Rodgers, pro se, file this Joint Petition In Support Of Discipline On Consent Under Rule 215(d) of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E.") and respectfully represent that:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania 17106, is vested, pursuant to Pa.R.D.E. 207, 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

DEC 22 2011

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

2. Respondent, Adam J. Rodgers, was born in 1965 and was admitted to practice law in the Commonwealth on July 6, 1992. Respondent's registered office address is 1816 West Girard Avenue, Philadelphia, Pennsylvania 19130. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. By DB-7 letters dated May 27, 2009, July 16, 2010 and September 14, 2011, ODC notified Respondent of allegations of misconduct.

4. By Order dated August 6, 2009, effective September 5, 2009, the Supreme Court of Pennsylvania transferred Respondent to administrative suspension pursuant to Pa.R.C.L.E. 111(b), for failure to complete the requisite continuing legal education credits.

5. By Order dated December 16, 2009, which was docketed at 126 DB 2009 and effective January 15, 2010, the Supreme Court of Pennsylvania, pursuant to Pa.R.D.E. 208(f)(5), temporarily suspended Respondent from the practice of law in the Commonwealth of Pennsylvania.

SPECIFIC FACTUAL ADMISSIONS AND
RULES OF PROFESSIONAL CONDUCT VIOLATED

6. Respondent stipulates that the following factual allegations are true and correct and that he violated the

Rules of Professional Conduct and Rules of Disciplinary Enforcement set forth in paragraph 41, *infra*.

7. By letter dated August 6, 2009, Suzanne Price, attorney registrar, notified Respondent of the Supreme Court Order of administrative suspension and the requirements of Pa.R.D.E. 217 via United States First Class Mail and Certified Mail, return receipt requested, which letter, Order, and notice Respondent received.

8. From September 5, 2009 to present, Respondent has been continuously suspended (initially administratively and thereafter on an interim disciplinary basis) from the bar of the Commonwealth of Pennsylvania. See ¶¶ 4-5, *supra*.

9. At no point did Respondent file with the Disciplinary Board Secretary the requisite verified statement of compliance pursuant to Pa.R.D.E. 217(e).

10. At no point did Respondent notify the courts, his clients, or his opponents that he was suspended from the practice of law in the Commonwealth of Pennsylvania.

11. In 2009, Respondent was served with a subpoena to appear in the District I Office of Disciplinary Counsel and provide his IOLTA books and records, which he failed to do. Subsequently, Respondent informed disciplinary counsel that he had not maintained the requisite records pursuant to RPC 1.15 and Pa.R.D.E. 221.

The Grant Matter (C1-09-29)

12. On June 30, 2008, Respondent was retained by Elizabeth N. Grant ("Grant") to represent her in a divorce in the Philadelphia Court of Common Pleas.

13. Respondent's fee agreement with Grant stated, *inter alia*, that "a fixed fee of \$1,000 will be charged" for a divorce by mutual consent, which fee Respondent received.

14. Respondent did not file the Complaint in Divorce on behalf of Grant until September 23, 2008.

15. From July 3, 2008 until December 31, 2008, Grant made various and numerous attempts to contact Respondent via telephone and e-mail to which Respondent failed to respond.

16. On December 30, 2008, Grant retained a new attorney to represent her in her divorce matter and requested a partial or full refund of the retainer paid to Respondent, to which Respondent did not respond.

CLIENT SECURITY FUND MATTER (C1-09-42)

17. At all times relevant hereto, Respondent maintained an IOLTA Account, number 8606505253, with PNC Bank ("PNC").

18. By letter dated November 3, 2008, Respondent was notified by the Pennsylvania Lawyers Fund for Client

Security ("Fund") that overdraft balances were created in Respondent's IOLTA Account with PNC in October 2008.

19. By letter dated December 12, 2008, the Fund sent to Respondent, via Certified Mail - Return Receipt Requested, a copy of all prior correspondence with a request that Respondent provide a "written, documented explanation of the circumstances surrounding these overdrafts on or before. . . December 29, 2008." (underscore in original).

20. On December 17, 2008, Respondent received the December 12, 2008 letter.

21. Respondent did not respond to the Fund.

22. By letter dated January 5, 2009, the Fund notified Respondent that the matter was being referred to the Office of Disciplinary Counsel for further inquiry.

The Bolling Matter (C1-09-973)

23. In January 2009, Respondent was retained by Roxine Bolling ("Bolling") to represent her son, Stephen Richardson, in a criminal matter in the Montgomery County Court of Common Pleas under caption *Commonwealth v. Steven Allen Richardson*, CP-46-CR-0009919-2008 ("Richardson Matter").

24. On or about January 5, 2009, Ms. Bolling paid Respondent \$1,500.

25. On or before April 28, 2008, Bolling paid Respondent an additional \$3,500.

26. By letter dated August 16, 2009, Bolling informed Respondent that she was terminating Respondent's services and demanded a return of the fees paid to Respondent.

27. By an undated letter, Respondent responded to Bolling's August 16, 2009 letter and refused to refund any fees paid to Respondent.

28. The Richardson Matter was scheduled for trial on September 25, 2009.

a. Respondent appeared at the call of the trial list.

29. At the time of the September 25, 2009 call of the list, the Richardson Matter was put on the "Stand-by Trial List" for the weeks of October 12, 2009 and October 19, 2009.

30. At the time of the September 25, 2009 call of the list, Respondent knew he was administratively suspended.

31. At the time of the September 25, 2009 call of the list, Respondent failed to notify the court, the prosecutor, Bolling, and Richardson that Respondent was administratively suspended and not able to practice law.

a. If the matter were to proceed to a hearing, Respondent would testify that on September

25, 2009, he believed that he did not need to notify the parties or the court that he was administratively suspended because he was aware that new counsel was going to enter an appearance on behalf of Richardson; Respondent acknowledges that his belief was erroneous and contrary to Pa.R.D.E. 217(b) and Pa.R.D.E. 217(j)(4)(vii).

32. On September 30, 2009, Cynthia Ann Thornton, Esquire, entered her appearance on behalf of Mr. Richardson.

The Johnson Matter (C1-10-1210)

33. On August 26, 2009, Respondent was attorney of record for the defendant in a criminal matter, Kenneth Johnson ("K.J."), in the Philadelphia Municipal Court under caption of *Commonwealth v. Kenneth A. Johnson*, MC-51-CR-0028952-2009 ("Johnson Matter").

- a. The Johnson Matter was continued until September 25, 2009 due to the failure of co-defendant's counsel to appear.
- b. Respondent did not inform the court, opposing counsel, or Respondent's client that Respondent was scheduled to be

administratively suspended effective
September 5, 2009.

34. On September 25, 2009, Respondent filed an Order for Appearance on behalf of K.J. in the Johnson Matter.

a. Respondent requested that the Johnson Matter be continued.

b. The court granted the continuance and a new date of October 30, 2009 was assigned.

35. Respondent failed to inform the court, opposing counsel, or Respondent's client that Respondent was administratively suspended and ineligible to practice in the Commonwealth.

36. On October 30, 2009, Respondent did not appear for the Johnson Matter and informed court personnel that Respondent was attending Continuing Legal Education.

a. The Johnson Matter was continued to December 2, 2009.

37. Respondent failed to inform the court, opposing counsel, or Respondent's client that Respondent was administratively suspended and ineligible to practice in the Commonwealth.

38. On December 2, 2009, the Johnson Matter was continued to January 8, 2010.

39. Respondent failed to inform the court, opposing counsel, or Respondent's client that Respondent was administratively suspended and ineligible to practice in the Commonwealth..

40. On January 8, 2010, Gerald Ingram, Esquire, appeared for K.J. in the Johnson Matter.

41. Respondent admits that by his conduct as alleged in Paragraphs 6 through 40 above, Respondent has violated the following Rules of Professional Conduct ("RPC") and Rules of Disciplinary Enforcement ("Pa.R.D.E."):

- a. RPC 1.1 [Grant], which states that a lawyer shall provide competent representation to a client;
- b. RPC 1.3 [Grant, Bolling], which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(3) [Grant, Bolling], which states that a lawyer shall keep the client reasonably informed about the status of the client's matter;
- d. RPC 1.4(a)(4) [Grant], which states that a lawyer shall promptly comply with reasonable requests for information;

- e. RPC 1.4(b) [*Johnson*], which states that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;
- f. RPC 1.15(c) [*Fund*], which states that complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be properly preserved for a period of five years after termination of the client-lawyer relationship or after the distribution or disposition of the property, whichever is later;
- g. RPC 1.16(d) [*Grant*], which states, in part, that upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as refunding any advance payment of fee or expense that has not been earned or incurred;
- h. RPC 5.5(a) [*Bolling, Johnson*], which states that a lawyer shall not practice in a jurisdiction in violation of the regulation

of the legal profession in that jurisdiction;

- i. RPC 8.4(c) [Bolling, Johnson], which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- j. RPC 8.4(d) [Bolling, Johnson], which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice;
- k. Pa.R.D.E. 203(b) (3) [Fund, Bolling, Johnson], which states that it is grounds for discipline for a lawyer to willfully violate any other provision of the Enforcement Rules, via the Enforcement Rules charged in subsections (1) through (s), *infra*;
- l. Pa.R.D.E. 217(b) [Bolling, Johnson], which states, in part, that a formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients

involved in pending litigation, of the suspension, administrative suspension or transfer to inactive status, and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the suspension, administrative suspension or transfer to inactive status;

- m. Pa.R.D.E. 217(c) [Johnson], which states, in part, that a formerly admitted attorney shall promptly notify, or cause to be notified, of the suspension, administrative suspension or transfer to inactive status, by registered or certified mail, return receipt requested: (1) all persons to whom a fiduciary duty is or may be owed at any time after the suspension, administrative suspension or transfer to inactive status; and (2) all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing. The responsibility of the

formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is suspended, administratively suspended or on inactive status;

- n. Pa.R.D.E. 217(e) [*Bolling, Johnson*], which states that within ten days after the effective date of the disbarment, suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing that the provisions of the order and these rules have been fully complied with and all other state, federal and administrative jurisdictions to which such person is admitted to practice. Such statement shall also set forth the residence or other address of the formerly admitted attorney where communications to such person may thereafter be directed;
- o. Pa.R.D.E. 217(j)(1) [*Bolling, Johnson*], which states, in part, that all law-related activities of the formerly admitted attorney

shall be conducted under the supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of this subdivision (j);

p. Pa.R.D.E. 217(j)(2) [*Bolling, Johnson*], which states that the only law-related activities that may be conducted [under the direct supervision of a member in good standing of the Bar of this Commonwealth, as provided in Pa.R.D.E. 217(j)(1)] by a formerly admitted attorney are the following:

- (i) legal work of a preparatory nature, such as legal research, assembly of data and other necessary information, and drafting of transactional documents, pleadings, briefs, and other similar documents;
- (ii) direct communication with the client or third parties to the extent permitted by paragraph (3); and
- (iii) accompanying a member in good standing of the Bar of this

Commonwealth to a deposition or other discovery matter or to a meeting regarding a matter that is not currently in litigation, for the limited purpose of providing clerical assistance to the member in good standing who appears as the representative of the client;

q. Pa.R.D.E. 217(j)(3) [Johnson], which states, in part, that a formerly admitted attorney may have direct communication with a client or third party, on behalf of another attorney who is representing the client, only if the direct communication is limited to ministerial matters and the formerly admitted attorney clearly indicates in any such communication that he or she is a legal assistant and identifies the supervising attorney;

r. Pa.R.D.E. 217(j)(4)(ii) [Johnson], (iii) [Johnson], (iv) [Bolling, Johnson], (v) [Johnson], (vi) [Johnson], (vii) [Bolling, Johnson], (ix) [Johnson] and (x) [Johnson], which state respectively that without

limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities:

- (ii) performing any law-related activities from an office that is not staffed by a supervising attorney on a full time basis;
- (iii) performing any law-related activities for any client who in the past was represented by the formerly admitted attorney;
- (iv) representing himself or herself as a lawyer or person of similar status;
- (v) having any contact with clients either in person, by telephone, or in writing, except as provided for in paragraph (3);
- (vi) rendering legal consultation or advice to a client;
- (vii) appearing on behalf of a client in any hearing or proceeding or before any judicial officer;
- (ix) negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or

transaction; and (x) receiving, disbursing or otherwise handling client funds; and

- s. Pa.R.D.E. 221(g) [Fund], which states that the records required to be maintained pursuant to this rule may be subject to subpoena in connection with an investigation pursuant to these rules.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

42. ODC and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is as follows:

- a. a one-year suspension retroactive to January 15, 2010 (the effective date of the Order of temporary suspension under Pa.R.D.E. 208(f)(5)); and
- b. three years of probation to commence when Respondent is reinstated to active status.

43. Respondent hereby consents to that discipline being imposed upon him by the Supreme Court of Pennsylvania. Attached to this Petition is Respondent's executed Affidavit required by Rule 215(d), Pa.R.D.E., stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Rule 215(d)(1) through (4), Pa.R.D.E.

44. In support of ODC and Respondent's joint recommendation, it is respectfully submitted that the following mitigating factors are present:

- a. if this matter proceeded to hearing, Respondent would testify that: 1) he misunderstood the effective date of the administrative suspension; and 2) during a period in which the misconduct was occurring his father was terminally ill.
- b. Respondent is remorseful.
- c. Respondent has cooperated with ODC as evidenced by his agreement to enter into this Joint Petition for Consent Discipline.

45. Respondent's unauthorized practice was short in duration and did not result in direct prejudice to the client, but a suspension is appropriate for Respondent's misconduct. Short terms of suspension have been determined to be appropriate where the unauthorized practice has not been significant enough to require that the respondent be required to petition for reinstatement. See *Office of Disciplinary Counsel v. Julie Ann Marzano*, 46 DB 2006 (S.Ct. Order 8/1/2007) (nine-month suspension) (three matters of unauthorized practice representing family or friends); *Office of Disciplinary v. John V. Buffington*, 45 DB 2004

(S.Ct. Order 9/20/2005) (six-month suspension) (three matters of unauthorized practice, no prior record); *Office of Disciplinary Counsel v. Perella*, No. 19 DB 2001, 66 Pa. D.&C.4th 119 (2003) (three-month suspension) (one matter of unauthorized practice; attempted to be admitted *pro hac vice*; informed client of inactive status).

46. Respondent has been the recipient of three separate informal admonitions as follows: 1) lack of adequate communication and failure to properly terminate his representation of a client (1999); 2) neglect, lack of adequate communication, and a lack of oversight in his practice (2005); and 3) commingling of funds in his IOLTA account (2007).

47. Respondent's current misconduct coupled with Respondent's previous discipline dictates that his continued practice of law be conducted under a probationary period to ensure that he complies with the requirements of the Rules of Professional Conduct and the Rules of Disciplinary Enforcement.

48. Respondent acknowledges that at the time of the signing of this Joint Petition for Discipline on Consent, he remains on administrative suspension and the instant Petition will not affect the requirements that Respondent complete the necessary C.L.E. and be reinstated pursuant to

C.L.E. Board Regulations §9 before being removed from administrative suspension.

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Rule 215(e) and 215(g), Pa.R.D.E., a three-member panel of the Disciplinary Board review and approve the above Joint Petition In Support Of Discipline On Consent and file its recommendation with the Supreme Court of Pennsylvania in which it is recommended the Supreme Court enter an Order that:

1. Respondent is suspended for one year retroactive to January 15, 2010;
2. Respondent is placed on a period of probation for a period of three years to commence when Respondent is reinstated to active status.

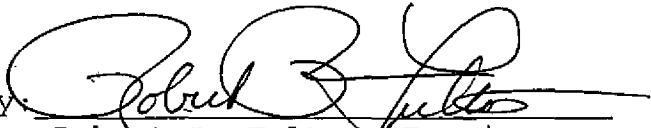
- b. Pursuant to Rule 215(i), the three-member panel of the Disciplinary Board order Respondent to pay the necessary expenses incurred in the investigation of this matter as a condition to

the grant of the Petition and that all expenses
be paid by Respondent before the imposition of
discipline under Rule 215(g), Pa.R.D.E.

Respectfully submitted,
OFFICE OF DISCIPLINARY COUNSEL


PAUL J. KILLION
CHIEF DISCIPLINARY COUNSEL

19 DEC 2011
Date

By: 
Robert P. Fulton, Esquire
Disciplinary Counsel
Attorney Regis. No. 37935
Seven Penn Center, 16th Floor
1635 Market Street
Philadelphia, PA 19103
(215) 560-6296

and

12-11
Date

By: 
Adam J. Rodgers
Attorney Regis. No. 64987
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner :

: No. 126 DB 2009

: (C1-09-29 & C1-09-42);

v.

: C1-09-973; C1-10-1210

:

: Atty. Reg. No. 64987

ADAM J. RODGERS,

:

Respondent : (Philadelphia)

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

Respondent, Adam J. Rodgers, hereby states that he consents to the imposition of: 1) a suspension of one year, retroactive to January 15, 2010; and 2) probation for a period of three years to commence when Respondent is reinstated to active status, as jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent in the Joint Petition In Support Of Discipline On Consent and further states that:

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

2. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has not retained or consulted with counsel in connection with his decision to consent to discipline;

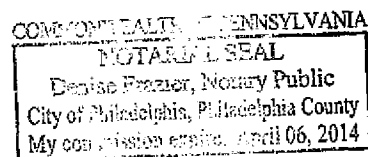
3. He is aware that there are presently pending informal disciplinary proceedings at No. 129 DB 2009 (C1-09-29; C1-09-42) (the Grant and Fund matters), C1-09-973 (the Bolling matter), and C1-10-1210 (the Johnson matter) involving allegations that he has been guilty of misconduct as set forth in the Joint Petition;


4. He acknowledges that the material facts set forth in the Joint Petition are true; and

5. He consents because he knows that if charges predicated upon the matters under investigation were filed, he could not successfully defend against them.


Adam J. Rodgers
Respondent

Sworn to and subscribed
before me this 19 day
of December, 2011.




Notary Public

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner :

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: (C1-09-29 & C1-09-42);

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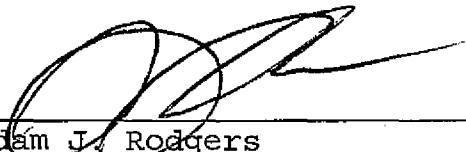
VERIFICATION

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

19 DEC 2011
Date

By: 
Robert P. Fulton, Esquire
Disciplinary Counsel

12-11
Date

By: 
Adam J. Rodgers
Respondent