

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1131 Disciplinary Docket No. 3
Petitioner	:	
	:	
v.	:	Disciplinary Board No. 140 DB 2005
	:	
	:	
FRANK C. ARCURI,	:	Attorney Registration No. 21317
Respondent	:	(York County)

ORDER

PER CURIAM:

AND NOW, this 7<sup>th</sup> day of April, 2006, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated February 13, 2006, 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 FRANK C. ARCURI is suspended on consent from the Bar of this Commonwealth for a period of one year, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

Madame Justice Baldwin did not participate in this matter.

A True Copy Patricia Nicola

As of: April 7, 2006

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

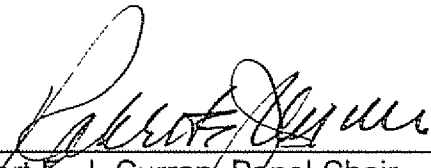
OFFICE OF DISCIPLINARY COUNSEL	:	No. 140 DB 2005
Petitioner	:	
	:	
v.	:	Attorney Registration No. 21317
	:	
FRANK C. ARCURI	:	
Respondent	:	(York County)

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 Robert E. J. Curran, Laurence H. Brown and Louis N. Teti, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on January 20, 2006.

The Panel approves the Joint Petition consenting to a One 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.

  
Robert E. J. Curran, Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: February 13, 2006

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner :

: NO. 140 DB 2005

vs. :

: Attorney Registration

FRANK C. ARCURI, :

: No. 21317 (York County)

Respondent :

JOINT PETITION IN SUPPORT OF DISCIPLINE  
ON CONSENT UNDER RULE 215(d) OF THE PENNSYLVANIA  
RULES OF DISCIPLINARY ENFORCEMENT

The Petitioner, the Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Patti S. Bednarik, Esquire, Disciplinary Counsel, and the Respondent, Frank C. Arcuri, by his counsel, Samuel C. Stretton, Esquire, 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. The Respondent, Frank C. Arcuri, has a date of birth of November 03, 1948 and is 57 years of age. He was admitted to practice law in the Commonwealth of Pennsylvania in 1975.

2. The Respondent's mailing address is 18 South George Street, 4<sup>th</sup> Floor, P.O. Box 429, York, PA 17401.

3. The Office of Disciplinary Counsel filed a Petition for Discipline against Mr. Arcuri with the Secretary of the Disciplinary Board on September 22, 2005. Subsequently, on or about November 6, 2005, Mr. Arcuri, the Respondent, filed a timely answer.

4. Mr. Arcuri originally represented himself when he filed an Answer and subsequently in the end of December 2005, retained the services of Samuel C. Stretton, Esquire, who is currently representing him.

5. After conferring with Mr. Stretton and reviewing all of the evidence, the Respondent has agreed to enter into this Joint Petition.

6. A pre-hearing conference has already taken place on December 20, 2005 and the case is assigned a Hearing Committee consisting of Attorneys James D. Campbell, Jr., Robert Eugene Benion, and Jeffrey A. Ernico.

7. A hearing on the merits is scheduled for Monday, January 27, 2006 before the aforementioned Hearing Committee.

8. This office only received two complaints from Respondent's clients. The first complaint involved Derrick Cramer, who complained because Respondent failed to advise him that his Petition for Allowance of Appeal had been

denied for a period of five months after the denial. The second complaint involved Mr. Loucks, who complained about Respondent's lack of communication and lack of diligence in handling the case. The rest of the matters at issue in this case were initiated by the Office of Disciplinary Counsel.

9. In the instant disciplinary case, Respondent failed to file timely appeals for two of his criminal defense clients [Brown and Loucks]. As a result, Mr. Loucks' and Mr. Brown's appeals were quashed. In three other matters, Respondent failed to file appellate briefs on behalf of three criminal clients [Thran, Duncan and Mahanes], which caused their appeals to be dismissed. Respondent filed Applications to Reinstate the Appeals in the Duncan and Mahanes cases, but the Applications were denied.

10. Moreover, Respondent filed his briefs in an untimely manner in the following fourteen cases:

Case Name	Due Date	Date Filed	Days Late
Loucks	10/21/03	11/19/03	[30 days late]
Brown	8/7/02	10/8/02	[61 days late]
Jackson	6/26/03	9/8/03	[73 days late]
Atanasov	7/27/04	8/31/04	[35 days late]
Brito	10/19/04	11/18/04	[30 days late]

Hawkins	10/25/04	11/29/04	[34 days late]
Banfield	10/19/04	11/16/04	[28 days late]
Austin	11/1/04	12/1/04	[30 days late]
King	11/29/04	12/30/04	[31 days late]
Walker	2/15/05	3/21/05	[34 days late]
Yeager	4/20/05	5/20/05	[30 days late]
Rodriguez	3/16/05	4/18/05	[33 days late]
Romero	3/9/05	4/11/05	[32 days late]
Thelen	5/2/05	6/1/05	[30 days late]

11. Few of these clients suffered prejudice from the late filing of these briefs. Respondent had been told by the staff in the Prothonotary's Office of Superior Court that they did not dismiss appeals until thirty days after the appeal was due. Respondent interpreted this statement to mean that attorneys had a "grace period of 30 days" after briefs were due to file their briefs since there would be no prejudice to their clients. Even assuming a "grace period" of thirty days, Respondent filed seven briefs in an untimely manner.

12. Respondent also filed several docketing statements in an untimely fashion in fourteen cases. No prejudice occurred as a result of these late filings. Finally, Respondent was charged with not supervising his

paralegal who made a misrepresentation when he told one of Respondent's clients that Superior Court had mistakenly dismissed an appeal when in fact the brief had been filed 2½ months late. The appeal was reinstated the same day. Finally, Respondent was charged with failing to keep his clients informed of the status of their cases in the Jackson and Mahanes matters.

13. The following 198 paragraphs comprise the Petition for Discipline that was filed in this case. Respondent has stipulated to the proposed findings of facts and conclusions of law that were originally charged, and was cooperative in this case. A discussion of Respondent's prior disciplinary history, the mitigating factors found in this case, and disciplinary case law follows the recitation of the Petition for Discipline.

Specific Factual Admissions and  
Rules of Professional Conduct Violated

DERRICK R. CRAMER MATTER

14. Respondent represented Derrick R. Cramer, Sr. in a first degree murder case in the Court of Common Pleas of York County at docket number 1906 CA 2002 before the Honorable John S. Kennedy.

15. Mr. Cramer's conviction was affirmed on appeal at docket number 952 MDA 2003 before the Honorable John T. Bender, Kate Ford Elliott and Stephen J. McEwen, Jr.

16. Respondent filed a Petition for Allowance of Appeal on April 12, 2004 at docket number 288 MAL 2004.

17. The Pennsylvania Supreme Court denied the Petition for Allowance of Appeal by a *per curiam* order dated August 12, 2004.

18. Respondent was sent notice of this order by the Prothonotary of the Pennsylvania Supreme Court on the same date that the order was issued.

19. By letter dated January 12, 2005, Respondent's paralegal advised Mr. Cramer that the Petition for Allowance of Appeal was denied on August 12, 2004.

20. Respondent failed to advise Mr. Cramer that the Pennsylvania Supreme Court had denied the Petition for Allowance of Appeal for five months after the order denying the Petition was entered.

DWAYNE LOUCKS MATTER

21. On May 12, 2003, Dwayne E. Loucks pled guilty to numerous counts of burglary and theft-related crimes in the Court of Common Pleas of York at docket numbers 3752, 5557, 5558, 5559, 5560, 5561, 5562, 5563, 5564, 6195, 9169, 6197,

6198, 6199 CA 2002, and was sentenced to eight to sixteen years incarceration. Respondent was court-appointed to represent Mr. Loucks in these matters.

22. Respondent filed a Motion to Withdraw Guilty Plea and/or Modify Sentencing *nunc pro tunc* on June 18, 2003. This Motion was denied without a hearing on June 19, 2003 as being untimely.

23. Respondent failed to advise Mr. Loucks that his Motion to Withdraw Guilty Plea and/or Modify Sentencing *nunc pro tunc* was dismissed as untimely.

24. Respondent filed a Notice of Appeal to the Superior Court on June 26, 2003.

25. Mr. Loucks' brief was due on October 21, 2003.

26. Respondent failed to file a Motion for Extension of Time to file a brief.

27. Respondent failed to file a brief in this matter until November 19, 2003.

28. On April 27, 2004, the Superior Court filed a Memorandum Opinion in this case quashing Mr. Loucks' appeal as a result of Respondent's failure to file a timely appeal, and stated:

In the present case, since the trial court denied Appellant's post-sentence motion and did not expressly grant *nunc pro tunc* relief, the time for filing an appeal was neither tolled nor extended. Thus,

Appellant was required to file his notice of appeal within 30 days of the date of imposition of sentence (May 12, 2003); the notice of appeal filed on June 26, 2003 was untimely. Superior Court Opinion (4/27/04 p. 3).

Since Respondent's Post-Sentence Motions were untimely, the filing of these documents did not toll the 30-day period within which an appeal must be filed.

DEVON BROWN MATTER

29. On May 3, 2001, Respondent was court-appointed to represent Devon Brown in the Court of Common Pleas of York County on a criminal matter. Mr. Brown was sentenced on May 2, 2001.

30. Respondent failed to file any written Post-Sentence Motions. As a result of Respondent's failure to file Post-Sentence Motions, Mr. Brown's appeal had to be filed within 30 days of May 2, 2001.

31. Respondent filed a Notice of Appeal on April 16, 2002, approximately ten months after the Notice of Appeal was due.

32. Respondent's brief on this case was due in the Superior Court on August 7, 2002 in the case captioned Commonwealth v. Brown, at Docket Number 612 MDA 2002.

33. Respondent filed a brief on this matter with the Superior Court on October 8, 2002, approximately two months late.

34. The Superior Court directed the trial court to file a supplemental record with the Superior Court including a finding of whether Respondent had filed any Post-Sentence Motions, and the date of the filing.

35. The trial court sent a supplemental record. In a March 26, 2003 Memorandum, the lower court explained that, while no written Post-Sentence Motions had been filed for Devon Brown, it was the mutual understanding of the defense, the Commonwealth and the court "that Mr. Brown's Post-Sentence Motions were to be identical to the Co-Defendant, Corrine Wright. We therefore, addressed those issues as if they applied to both parties." (Mem. Op. 3/26/03) The lower court further suggested that "judicial economy might be best served if Mr. Brown's attorney (Respondent) files a Statement with the Superior Court adopting the Post-Sentence Motions of Corrine Wright on behalf of Devon Brown." (Mem Op. 3/26/03)

36. On April 11, 2003, Respondent filed a Statement Adopting Co-Defendant's Post-Sentence Motion in the

Superior Court pursuant to the recommendation in the trial court's Memorandum.

37. Despite the lower court's memorandum, by Order dated May 7, 2003, the Superior Court quashed Mr. Brown's appeal because Respondent failed to file his appeal in a timely fashion.

BRIAN THRAN MATTER

38. Respondent represented Brian Thran in the Court of Common Pleas of York County on a criminal matter. Mr. Thran was sentenced on August 22, 2002.

39. Respondent filed a Notice of Appeal on August 22, 2002.

40. Respondent's brief on Mr. Thran's appeal was due on December 16, 2002.

41. Respondent failed to file a brief.

42. On February 6, 2003, Mr. Thran's case was dismissed as a result of Respondent's failure to file a brief.

JAMAL JACKSON MATTER

43. Jamal Jackson filed a pro se appeal on January 10, 2003, which was docketed in Superior court on February 20, 2003.

44. Respondent was court-appointed to represent Jamal Jackson by the Honorable John S. Kennedy, and Respondent filed a Notice of Appearance in the Superior Court on June 24, 2003 at Docket Number 261 MDA 2003.

45. At the time that Respondent was court-appointed, Mr. Jackson's former counsel had previously requested and been granted two extensions to file a brief. The brief was due on June 26, 2003, two days after Respondent entered his appearance.

46. Respondent failed to ask for an additional extension to file a brief on this matter.

47. Mr. Jackson wrote several letters to Respondent regarding his case asking the status of his appeal.

48. Respondent failed to respond to Mr. Jackson's letters.

49. Respondent never wrote to Mr. Jackson and asked him what issues he wanted to raise in his appeal.

50. On September 8, 2003, Mr. Jackson's appeal was dismissed as a result of Respondent's failure to file a brief.

51. On September 8, 2003, the same day as the Superior Court dismissed Mr. Jackson's appeal, Respondent filed a brief on this matter with the Superior Court.

52. Respondent filed a Petition to Reinstate the Appeal on September 18, 2003.

53. By letter dated October 8, 2003, Respondent's paralegal, William Trayer, wrote to Mr. Jackson and informed him that he was enclosing a copy of the Superior Court brief filed by the Commonwealth. He also enclosed a copy of the Motion to Reinstate Mr. Jackson's Appeal. Mr. Trayer wrote that the Motion to Reinstate the Appeal was necessary because the Superior Court mistakenly dismissed his appeal on September 8, 2003 for failure to file the brief, which was actually filed on the same day. (emphasis added)

54. This statement was a misrepresentation in that the Superior Court did not mistakenly dismiss Mr. Jackson's appeal for failure to file a timely brief. The brief was overdue by 2 ½ months, and had been due on June 26, 2003.

55. The Superior Court granted Respondent's Application to Reinstate the Appeal on October 10, 2003, and docketed Respondent's brief to the Superior Court as filed on the same date.

56. On June 23, 2004, the Superior Court affirmed Mr. Jackson's conviction.

SUSIC T. DUNCAN MATTER

57. Respondent was court-appointed to represent Susic T. Duncan on a criminal matter in the Court of Common Pleas of York County at Docket Numbers 3552 CA 2003, 6025 CA 2003, 6414 CA 2003 and 3136 CA 2003.

58. Respondent filed a Notice of Appeal on this matter on November 19, 2003.

59. The docketing statement exited the Superior Court on December 2, 2003 and Respondent's docketing statement was due 14 days thereafter.

60. Respondent failed to timely file a docketing statement.

61. On January 5, 2004, the Superior Court issued an order that Respondent comply with Pa.R.A.P. 3517 by filing a docketing statement no later than January 15, 2004.

62. Respondent filed the docketing statement on January 16, 2004, one day after Superior Court's second deadline.

63. On February 5, 2004, the Superior Court received the trial court record.

64. Respondent's brief was due on August 7, 2002.

65. Respondent failed to file a brief. By Order dated April 22, 2004, the Superior Court dismissed Susic Duncan's

appeal for failure to file a brief. Respondent was directed to file with the Superior Court, within ten days, a certification that his client had been notified of the dismissal. The Court advised Respondent that failure to comply with the order might result in a referral to the Disciplinary Board.

66. On May 5, 2004, Respondent notified the Superior Court that he had informed his client of the dismissal of his appeal, but Respondent's notification did not comply with the certification required by the Superior Court.

67. On May 5, 2004, Respondent filed an Application to Reinstate the Appeal.

68. By Order dated May 17, 2004, the Court denied Respondent's Application to Reinstate the Appeal.

69. By Order dated May 17, 2004, the Court further found that Respondent had not complied with the Order dated April 22, 2004, because he had not supplied the required certification.

70. By Order dated May 17, 2004, the Court ordered Respondent to supply certification to the court within ten days that he had complied with their directive that he notify his client that the case had been dismissed.

71. On May 21, 2004, Respondent filed an Application for Reconsideration of the Order, which was denied. In the denial of the Application for Reconsideration, the Superior Court found that the matter concerning notice to the client was rendered moot by the fact that Respondent served a copy of the Application for Reconsideration on the Appellant on May 5, 2004, which the Court found was sufficient to satisfy the Court's instruction that counsel inform Appellant of the dismissal of the appeal.

CHARLES R. MAHANES MATTER

72. Respondent represented Charles R. Mahanes on a DUI-related driver's license suspension case. Mr. Mahanes was found guilty at the district justice level and in the Court of Common Pleas of York County at Docket Number CP-67-SA-000306-2003.

73. Respondent advised Mr. Mahanes that he had thirty days to file an appeal to the Superior Court.

74. Mr. Mahanes paid Respondent \$2,500 to file an appeal with the Superior Court. The basis of his defense was that he never received notice from PennDot that his driver's license was suspended.

75. Mr. Mahanes did not hear from Respondent after Respondent told him that he would file an appeal.

76. Respondent told Mr. Mahanes that this process takes a long time so he did not call Respondent to find out the status of the case.

77. Respondent filed a timely Notice of Appeal on February 24, 2004, and the appeal was docketed to No 315 MDA 2004.

78. On February 27, 2004, the docketing statement was exited from Superior Court and Respondent's docketing statement was due 14 days thereafter.

79. Respondent failed to timely file the docketing statement.

80. On March 29, 2004, the Superior Court issued an order directing Respondent to comply with Pa.R.A.P. 3517 by filing a docketing statement no later than April 8, 2004.

81. Respondent filed the docketing statement on April 5, 2004.

82. Respondent's brief in Superior Court was due on May 24, 2005.

83. On June 24, 2004, Mr. Mahanes' case was dismissed for failure to file a brief.

84. On June 28, 2004, Respondent filed an Application to Reinstate the Appeal, which was denied on July 1, 2004.

85. On July 14, 2004, Respondent filed a Petition for Allowance of Appeal to the Supreme Court, which was denied on November 12, 2004 at Docket Number 608 MAL 2004.

86. Respondent did not notify Mr. Mahanes of the denial of his Petition for Allowance of Appeal.

ATANAS ATANASOV MATTER

87. Respondent was retained to represent Atanas Atanasov in an appeal to the Superior Court at Docket Number 699 MDA 2004.

88. Respondent filed a timely Notice of Appeal on April 22, 2004.

89. Respondent's brief on this matter was due on July 27, 2004.

90. Respondent failed to request an extension to file a brief.

91. On August 31, 2004, an Order dismissing the appeal was issued.

92. On the same day that the Superior Court dismissed the appeal, Respondent filed a brief.

93. On September 1, 2004, the Superior Court sua sponte reinstated Mr. Atanasov's appeal. The Superior Court ordered that Respondent's brief be docketed as

untimely filed and that the appeal shall be submitted on briefs without oral argument.

94. On April 28, 2005, the Superior Court affirmed Mr. Atanasov's judgment of sentence, and Respondent filed a timely Petition for Allowance of Appeal on May 27, 2005.

#### ALL REMAINING CASES

95. In all the following cases, the Respondent's briefs were all filed approximately one month late. Respondent had relied on information that he received from the staff at the Prothonotary Office that they had a policy where they would not dismiss appeals for thirty days after the briefs were due. After being told about the thirty-day policy, Respondent thereafter believed that he had a 30-day grace period to file the briefs. Therefore, in the following cases the briefs were filed late in reliance on the thirty-day policy, which Respondent interpreted as a grace period. The Respondent admits he should have filed petitions to extend the briefing schedule.

#### ADES BRITO MATTER

96. Respondent was court-appointed to represent Ades Brito in an appeal to the Superior Court at Docket Number 892 MDA 2004.

97. Respondent filed a timely Notice of Appeal on May 24, 2004.

98. The docketing statement exited the Superior Court on June 8, 2004 and Respondent's docketing statement was due 14 days thereafter.

99. Respondent failed to timely file a docketing statement.

100. Respondent filed a docketing statement on June 30, 2004, eight days after it was due.

101. Respondent's brief on this matter was due on October 19, 2004.

102. Respondent failed to request an extension of time to file a brief.

103. Respondent failed to file his brief until November 18, 2004, approximately one month after it was due.

104. By *per curiam* Order of the Superior Court dated June 17, 2005, Mr. Brito's conviction was affirmed.

WILLIAM HAWKINS III MATTER

105. Respondent was court-appointed to represent William Henry Hawkins, III, in his PCRA appeal in the Superior Court at Docket Number 1042 MDA 2004.

106. Respondent filed a timely Notice of Appeal on June 15, 2004.

107. The docketing statement exited the Superior Court on July 6, 2004 and Respondent's docketing statement was due fourteen days thereafter.

108. Respondent failed to file the docketing statement in a timely manner.

109. On August 9, 2004, the Superior Court issued an order directing Respondent to comply with Pa.R.A.P. 3517 by filing a docketing statement by August 19, 2004.

110. On August 12, 2004, Respondent filed a docketing statement on Mr. Hawkins' behalf.

111. Respondent's brief was due on October 25, 2004.

112. Respondent filed a brief on November 29, 2004, over one month after it was due.

113. By *per curiam* Order of the Superior Court dated June 30, 2005, Mr. Hawkins' conviction was affirmed.

RUDO BANFIELD MATTER

114. Respondent was court-appointed to represent Rudo Banfield at Docket Number 1043 MDA 2004.

115. Respondent filed a timely Notice of Appeal on June 15, 2004.

116. The docketing statement exited the Superior Court on July 6, 2004 and Respondent's docketing statement was due fourteen days thereafter.

117. Respondent failed to file the docketing statement in a timely manner.

118. On August 9, 2004, the Superior Court issued an order directing Respondent to comply with Pa.R.A.P. 3517 by filing a docketing statement by August 19, 2004.

119. On August 10, 2004, Respondent filed a docketing statement on Mr. Banfield's behalf.

120. Respondent's brief was due on October 19, 2004.

121. Respondent filed his brief on November 16, 2004, almost one month late.

122. On April 26, 2005, the Superior Court affirmed Mr. Banfield's denial of PCRA relief. Respondent filed a timely Petition for Allowance of Appeal on Mr. Banfield's behalf on May 26, 2005.

STEVEN AUSTIN MORRIS MATTER

123. Respondent was court-appointed to represent Steven Austin Morris in Superior Court at Docket Number 1206 MDA 2004.

124. Respondent filed a timely Notice of Appeal on July 9, 2004.

125. The docketing statement exited the Superior Court on August 5, 2004 and Respondent's docketing statement was due fourteen days thereafter.

126. Respondent failed to file the docketing statement in a timely manner.

127. Respondent filed the docketing statement on August 27, 2004, eight days after it was due.

128. Respondent failed to file his brief by the due date of November 1, 2004.

129. Respondent failed to request any extension of time to file his brief late.

130. Respondent filed his brief on December 1, 2004, one month after it was due.

ALBERT L. KING, SR. MATTER

131. Respondent was court-appointed to represent Albert L. King, Sr. in Superior Court at Docket Number 1208 MDA 2004.

132. Respondent filed a timely Notice of Appeal on July 13, 2004.

133. A docketing statement exited the Superior Court on August 4, 2004 and Respondent's docketing statement was due 14 days thereafter.

134. Respondent failed to file the docketing statement until August 20, 2004, two days after it was due.

135. Respondent failed to file his brief by the due date of November 29, 2004.

136. Respondent failed to request any extension of time to file his brief late.

137. Respondent filed his brief on December 30, 2004, over one month after the brief was due.

138. By *per curiam* Order dated May 11, 2005, Superior Court affirmed Mr. King's conviction.

139. On June 9, 2005, Respondent filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court at Docket Number 491 MAL 2005.

KEVIN WALKER MATTER

140. Respondent was court-appointed to represent Kevin Walker at Docket Number 1683 MDA 2004.

141. The docketing statement exited the Superior Court on November 1, 2004 and Respondent's docketing statement was due fourteen days thereafter.

142. Respondent failed to timely file a docketing statement.

143. Respondent filed a docketing statement on November 19, 2004, five days after it was due.

144. On January 28, 2005, Mr. Walker filed an Application for Relief to Amend the Concise Statement of Matters Complained of on Appeal pro se.

145. On February 16, 2005, the Court denied the pro se Application for Relief.

146. Respondent's brief was due on February 15, 2005.

147. Respondent failed to request any extension of time to file his brief late.

148. Respondent filed his brief on March 21, 2005 over one month after the brief was due.

DAVID BRIAN YEAGER MATTER

149. Respondent was court-appointed to represent David Brian Yeager in Superior Court at Docket Number 1938 MDA 2004.

150. Respondent's brief was due in this matter on April 20, 2005.

151. Respondent filed his brief on May 20, 2005, thirty days late.

FELIX RODRIGUEZ MATTER

152. Respondent was court-appointed to represent Felix Rodriguez in the Superior Court at Docket Number 1949 MDA 2004.

153. The docketing statement exited Superior Court on December 14, 2004 and Respondent's docketing statement was due fourteen days thereafter.

154. Respondent failed to timely file the docketing statement.

155. Respondent filed the docketing statement on January 12, 2005, eleven days late.

156. Respondent's brief was due on March 16, 2005.

157. Respondent failed to request any extension of time to file his brief.

158. Respondent filed his brief in this matter on April 18, 2005, over one month late.

JIMMY ROSADO ROMERO MATTER

159. Respondent was court-appointed to represent Jimmy Rosado Romero in the Superior Court at Docket Number 2031 MDA 2004.

160. The docketing statement exited Superior Court on December 30, 2004 and Respondent's docketing statement was due fourteen days thereafter.

161. Respondent filed the docketing statement on January 20, 2005, approximately six days after it was due.

162. Respondent's brief was due on March 9, 2005.

163. Respondent failed to request any extension of time to file his brief late.

164. Respondent filed his brief on this matter on April 11, 2005, over a month after the due date.

ALFRED J. PONCE MATTER

165. Respondent was court-appointed to represent Alfred J. Ponce in the Superior Court at Docket Number 318 MDA 2005.

166. The docketing statement exited Superior Court on February 24, 2005, and Respondent's docketing statement was due fourteen days thereafter.

167. By letter March 29, 2005, the Superior Court issued an Order that Respondent comply with Pa.R.A.P. 3517 by filing a docketing statement by April 7, 2005.

168. Respondent filed his docketing statement on April 6, 2005, approximately 26 days after it was originally due.

MAYRA BRITO MATTER

169. Respondent was court-appointed to represent Mayra Brito in the Superior Court at Docket Number 350 MDA 2005.

170. A docketing statement exited Superior Court on March 3, 2005 and Respondent's docketing statement was due fourteen days thereafter.

171. Respondent failed to file a docketing statement in a timely manner.

172. By *per curiam* Order dated April 4, 2005, the Superior Court ordered Respondent to comply with Pa.R.A.P. 3517 by filing a docketing statement no later than April 14, 2005.

173. Respondent filed the docketing statement on April 11, 2005.

JOSEPH ALAN MORRISON MATTER

174. Respondent was retained to represent Joseph Alan Morrison in the Superior Court at Docket Number 352 MDA 2005.

175. The docketing statement exited Superior Court on March 17, 2005 and Respondent's docketing statement was due fourteen days thereafter.

176. Respondent failed to timely file a docketing statement.

177. On April 4, 2005, Superior Court issued an order that Respondent comply with Pa.R.A.P. 3517 by filing a docketing statement no later than April 14, 2005.

178. Respondent filed his docketing statement on April 12, 2005, almost a month after the docketing statement was originally due.

179. Respondent's brief was due on May 2, 2005.

180. Respondent filed his brief and reproduced record on June 1, 2005, approximately one month after the due date.

JONATHAN HENRY THELEN

181. Respondent represented Jonathan Henry Thelen in the Superior Court at Docket Number 353 MDA 2005.

182. A docketing statement exited Superior Court on March 3, 2005 and Respondent's docketing statement was due fourteen days thereafter.

183. Respondent failed to file a timely docketing statement.

184. Therefore, on April 4, 2005, Superior Court issued an order that Respondent comply with Pa.R.A.P. 3517 by filing a docketing statement no later than April 14, 2005.

185. Respondent filed the docketing statement on April 12, 2005, almost a month after the docketing statement was originally due.

186. Respondent's brief on this matter was due on May 2, 2005.

187. Respondent filed the brief on this matter on June 1, 2005, almost a month after it was due.

EDWIN PATINO MATTER

188. Respondent was court-appointed to represent Edwin Patino in the Superior Court at Docket Number 354 MDA 2005.

189. The docketing statement exited Superior Court on March 3, 2005 and Respondent's docketing statement was due on March 17, 2005.

190. Respondent did not file his docketing statement in a timely manner.

191. On April 4, 2005, the Superior Court issued an order that Respondent comply with Pa.R.A.P. 3517 by filing a docketing statement no later than April 14, 2005.

192. Respondent filed the docketing statement on April 11, 2005, 25 days after it was originally due.

Proposed Conclusions of Law

193. By his conduct in the Cramer matter, Respondent violated Rule of Professional Conduct 1.4(a)

194. By his conduct in the Loucks matter, Respondent violated Rule of Professional Conduct 1.1 , 1.3, 1.4(a) and 1.4(b) .

195. By his conduct in the Thran matter, Respondent violated Rules of Professional Conduct 1.1 and 1.3.

196. By his conduct in the Jackson matter, Respondent violated Rules of Professional Conduct 1.1, 1.3, 1.4(a), 1.4(b), 5.3(c)(1), 5.3(c)(2), 8.4(a), 8.4(c) and 8.4(d).

197. By his conduct in the Duncan matter, Respondent violated Rules of Professional Conduct 1.1, 1.3, and 8.4(d).

198. By his conduct in the Mahanes matter, Respondent violated Rules of Professional Conduct 1.1, 1.3, 1.4(a) and 1.4(b).

199. By his conduct in the Atanasov matter, Respondent violated Rules of Professional Conduct 1.1 and 1.3.

200. By his conduct in the Brito, Hawkins, Banfield, Morris, Walker, Yeager, Rodriguez, Romero, Ponce, Morrison, Thelen and Patino matters, Respondent violated Rule 1.1 and 1.3.

201. By his conduct in all the above cases, Respondent violated Rule 8.4(d).

202. The Respondent also has prior discipline of two non-summary private reprimands and one summary private reprimand, including the total of eleven (11) client cases.

203. The first private reprimand is docketed at 67 D.B. 97 and was imposed on January 15, 1998 for violations

of Rules of Professional Conduct 1.3, 1.4(a), 1.4(b) and 1.5(b) for three different files.

204. The second private reprimand was imposed on February 18, 2004 and docketed at 24 D.B. 2003 for violations of Rule 1.3, 1.4(a) and 1.5(b) in a divorce matter.

205. The third private reprimand was on October 7, 2004 at Docket No. 148 D.B. 2004 and the Respondent was found to have violated Rules of Professional Conduct 1.4(a), 1.4(b), 1.5(e)(1), 1.5(e)(2), 1.8(f)(1), 1.8(f)(2), and 1.16(d).

#### Mitigating Circumstances

206. The Respondent has cooperated with the Office of Disciplinary Counsel. Further, the Respondent handled many court appointed cases at extremely reduced compensation levels.

207. The Respondent, for a substantial period of time, has suffered from severe depression, which has essentially gone untreated.

#### Specific Joint Recommendations for Discipline

208. The Petitioner and Respondent jointly recommend that the appropriate discipline for the Respondent for his

admitted misconduct is a suspension from the practice of law for a period of one year.

209. The 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) of the Pennsylvania Rules of Disciplinary Enforcement stating that he consents to the recommended discipline, including the mandatory acknowledgements contained in Rule 215(d)(1) through (4) of the Pennsylvania Rules of Disciplinary Enforcement.

210. In support of the Petitioner and the Respondent's joint recommendation, it is respectfully there are the following:

A. There are several mitigating circumstances as noted above, including the fact that the Respondent has admitted violating the Rules of Conduct, has cooperated with the Office of Disciplinary Counsel, is cooperating with the clients, was suffering from severe depression during pertinent times, and handled many court-appointed cases at very reduced rates of compensation.

211. Further, the Respondent has practiced law for almost 31 years in York County and handled many criminal cases, including many court-appointed cases.

212. Although there is no per se rule for discipline, there are cases which would justify the recommendation of a one year suspension because of the Respondent's remorse and reform, cooperation, admission of misconduct, and the fact that he is now seeking help for the rather severe depression which has been an underlying cause of the current and past disciplinary problems.

213. In Pennsylvania, there is no per se discipline for a particular type of misconduct, but instead each case is reviewed individually, as established in the case of Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa., 1983). Applying the standard, there are many cases where substantial neglect and misrepresentation, even with a past history of neglect, has resulted in minor discipline. One case is that of In re Anonymous (Neil Jokelson), 58 D.B. 1998 and 102 D.B. 1998. Mr. Jokelson neglected two client matters and received a public censure with three years' probation and a practice monitor. Mr. Jokelson had an extensive prior history of discipline, including two private reprimands and two informal

admonitions for similar types of neglectful misconduct. Using the Jokelson case as an example, the joint recommendation of a one year suspension is far greater than the discipline Mr. Jokelson received. In the case of In re Anonymous, 32 D&C 4<sup>th</sup> 130 (1995), an attorney received a private reprimand along with probation of one year for three counts of neglectful and related misconduct. In the case of In re Anonymous, 24 D&C 4<sup>th</sup> 347 (1994), a private reprimand was given to an attorney for neglect of an estate and misrepresentation. In the case of Office of Disciplinary v. Anonymous, 2 D.B. 2003, an attorney who neglected four matters and admitted violating Rules of Professional Conduct 1.3, 1.4(a) and (b), 3.2 and 8.4(d), received a private reprimand. Finally, in the case of In re Anonymous, 31 D&C 4<sup>th</sup> 209 (1996), an attorney was suspended for twelve months and placed on two years probation with a practice monitor for misconduct, which included five cases of not providing competent representation, three cases of misrepresentation, knowing misappropriation of funds that had been advanced for the expense of litigation, and which resulted in violations of nine separate Rules of Professional Conduct. In that case, the Disciplinary Board noted as follows:

Where neglect of a client's matter does not appear to be an isolated instance, but affects numerous clients, and where the attorney does not proffer a legitimate excuse for such neglect, the required discipline is usually some length of a suspension. In the instant case, it is clear that the Respondent's neglect was not isolated to one client's situation but rather his severe lack of administration and business acumen seeped into six of his client's cases. The Respondent was not able to wisely choose which cases to take, nor was he able to set reasonable fees. When some aspect of a case began to sour, the Respondent was not able to tell the client about the problem, but instead ignored it and the client. The Respondent testified that he saw a psychiatrist twice about his avoidance problems . . . in reaching this decision, the Board considered the mitigating circumstances. Numerous attorneys from . . . county testified to the Respondent's excellent legal abilities and interest in the law. The Respondent's active participation in mock trial competition was highlighted . . . balancing the Respondent's misconduct with the above enumerated mitigating and aggravating circumstances, leads to a conclusion that a twelve month suspension is warranted. Id. 259, 260.


In the present case, if there had been a trial, there would have been numerous character witnesses who would have testified. Further, the Respondent's otherwise good activities would have been highlighted.

Therefore, the joint recommendation of twelve months suspension by the Petitioner and the Respondent clearly is consistent with existing case law and in fact far greater than some of the more recently imposed discipline, such as the Jokelson case which was aforementioned.

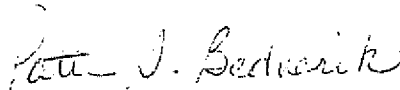
WHEREFORE, the Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e) and 215(g), that the three member panel Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania, in which it is recommended that the Supreme Court enter an Order suspending the Respondent from the practice of law for a period of one year and directing this Respondent to comply with all of the provisions of Pennsylvania Rules of Disciplinary Enforcement 217. Further, it is requested that the three member panel order the Respondent to pay the necessary expenses incurred in the investigation of this matter as a condition of the grant of the Petition and that

all expenses be paid by the Respondent before the  
imposition of discipline under Pennsylvania Rules of  
Disciplinary Enforcement 215(g).

Respectfully submitted,

A handwritten signature in black ink, appearing to read 'Samuel C. Stretton', written over a horizontal line.

Samuel C. Stretton, Esquire  
Attorney for the Respondent  
301 S. High Street, P.O. Box 3231  
West Chester, PA 19381  
610-696-4243  
Attorney I.D. No. 18491

A handwritten signature in black ink, appearing to read 'Patti S. Bednarik', written over a horizontal line.

Patti S. Bednarik, Esquire  
Disciplinary Counsel  
Office of Disciplinary Counsel  
Two Lemoyne Dr., Second Floor  
Lemoyne, PA 17043

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner :

: NO. 140 DB 2005

vs. :

: Attorney Registration

FRANK C. ARCURI,

: No. 21317 (York County)

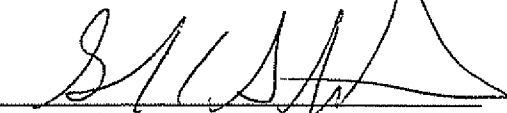
Respondent :

VERIFICATION

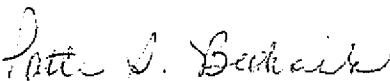
The statements contained in the foregoing Petition in Support of Discipline on Consent of the Pennsylvania Rules of Disciplinary Enforcement 215(d) are true and correct to the best of our knowledge, information and belief, and are made subject to penalties of 18 Pa.C.S.A. 4904 relating to unsworn falsification to authorities.

Respectfully submitted,

1/19/06  
Date

  
Samuel C. Stretton, Esquire  
Attorney for the Respondent  
301 S. High Street  
P.O. Box 3231  
West Chester, PA 19381  
610-696-4243  
Attorney I.D. No. 18491

1/20/06  
Date

  
Patti S. Bednarik, Esquire  
Disciplinary Counsel  
Office of Disciplinary Counsel  
Two Lemoyne Dr., Second Floor  
Lemoyne, PA 17043

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :

Petitioner :

: NO. 140 DB 2005

vs. :

: Attorney Registration

FRANK C. ARCURI,

: No. 21317 (York County)

Respondent :

AFFIDAVIT UNDER RULE 215(d) OF  
PENNSYLVANIA RULES OF DISCIPLINARY ENFORCEMENT

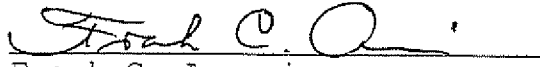
The Respondent, Frank Arcuri, hereby states that he consents to the imposition of discipline from the practice of law for a period of one year, as jointly recommended by the Petitioner, Office of Disciplinary Counsel, and himself, in the Joint Petition in Support of Discipline on Consent, and further states the following:

1. This consent is freely and voluntarily rendered; it is not being subject 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 Petition for Discipline in the captioned matter, with a hearing set for January 27, 2006;

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

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

  
Frank C. Arcuri  
Respondent

Sworn to and subscribed  
Before me this 19<sup>th</sup> day  
Of January, 2006.

