

IN THE SUPREME COURT OF PENNSYLVANIA

|                                 |   |                                    |
|---------------------------------|---|------------------------------------|
| OFFICE OF DISCIPLINARY COUNSEL, | : | No. 1532 Disciplinary Docket No. 3 |
| Petitioner                      | : |                                    |
|                                 | : | No. 148 DB 2009                    |
| v.                              | : |                                    |
|                                 | : | Attorney Registration No. 88364    |
| MATTHEW FRANCIS HENRY,          | : |                                    |
| Respondent                      | : | (Philadelphia)                     |

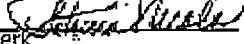
ORDER

PER CURIAM:

AND NOW, this 2<sup>nd</sup> day of April, 2012, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated November 18, 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 Matthew Francis Henry is suspended on consent from the Bar of this Commonwealth for a period of thirty months retroactive to November 5, 2009, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola  
As Of 4/2/2012

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

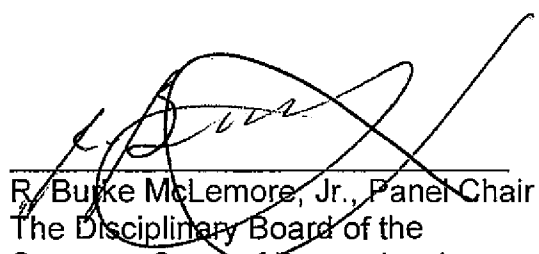
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| Respondent                     | : | (Philadelphia)                     |

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 R. Burke McLemore, Jr., Sal Cognetti, Jr., and Charlotte S. Jefferies has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on October 27, 2011.

The Panel approves the Joint Petition consenting to a 30 month suspension retroactive to November 5, 2009 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.

  
R. Burke McLemore, Jr., Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: 11/18/2011

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
: No. 148 DB 2009  
v. :  
: Atty. Reg. No. 88364  
MATTHEW FRANCIS HENRY, :  
Respondent : (Philadelphia)

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

Petitioner, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and Harriet R. Brumberg, Disciplinary Counsel, and by Respondent, Matthew Francis Henry, and Respondent's counsel, James C. Schwartzman, Esquire, file this Joint Petition In Support of Discipline on Consent under Pennsylvania Rule of Disciplinary Enforcement (Pa.R.D.E.) 215(d), and respectfully represent that:

**I. BACKGROUND**

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested pursuant to Pa.R.D.E. 207, with the power and 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

**FILED**

OCT 27 2011

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

brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Matthew Francis Henry, was admitted to practice law in the Commonwealth on December 14, 2001.

3. Respondent's last attorney registration address was Cozen O'Connor, 1900 Market Street, Philadelphia, PA 19103.

4. By Order dated November 15, 2009, the Supreme Court placed Respondent on temporary suspension.

5. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

## **II. FACTUAL ADMISSIONS AND VIOLATIONS OF RULES OF PROFESSIONAL CONDUCT**

6. Respondent specifically admits to the truth of the factual allegations and conclusions of law contained in paragraphs 1 through 73.

## **III. CHARGES**

### **CHARGE I: FALSE TIME SHEETS AND CLIENT BILLINGS**

7. From at least September 4, 2001, until April 30, 2009, Respondent was employed as an associate at the law firm of Cozen O'Connor, P.C., 1900 Market Street, Philadelphia, PA 19103.

- a. Respondent was assigned to the General Litigation Department.

A. Opdyke v. Knights of Columbus

8. On or about February 23, 1991, Marianne M. Opdyke fell at a dance held at the Knights of Columbus Hall in Montgomery County, PA.

9. On February 19, 1993, Ms. Opdyke filed a civil action in the Court of Common Pleas of Montgomery County against Knights of Columbus in a case captioned **Opdyke v. Knights of Columbus**; the Court docketed the case at No. 1993-03741.

- a. On February 23, 2007, the Court *sua sponte* issued a Notice to Terminate Pursuant to Pa.R.C.P. 230.2.

- b. On June 20, 2007, the Court terminated Ms. Opdyke's lawsuit.

10. Lititz Mutual Insurance Company (Lititz) insured Knights of Columbus.

- a. On or before January 17, 2006, Respondent was assigned to represent Lititz in this matter.

11. From August 20, 2007, through February 26, 2009, Respondent completed time sheets stating that Respondent

performed legal work for Lititz in *Opdyke v. Knights of Columbus*; Respondent's time sheets provided:

a. in 2007:

1. an August 20, 2007 docket search, which should have revealed that the case had been terminated two months earlier; and
2. over 50 hours of legal research and drafting on a motion for judgment *non pros*.

b. in 2008:

1. time spent researching and drafting a motion for judgment *non pros*;
2. time spent researching a motion to dismiss for lack of jurisdiction;
3. time spent viewing and researching Plaintiff's Opposition to Renewed Motion for Judgment of Non Pros, although neither defendant had filed a renewed motion nor had plaintiff filed a pleading in opposition thereto;
4. 9.3 hours preparing for a hearing on the non-existent renewed motion; and

5. 16.5 hours for travel to court for a hearing on the non-existent renewed motion.

c. in 2009:

1. 29 hours for "research for use in motion for reconsideration of denial of renewed motion for *non pros*"; and
2. 15.6 hours drafting a motion to reconsideration.

12. Respondent's 2007, 2008, and 2009 time sheets for *Opdyke v. Knights of Columbus* were false in that Respondent failed to perform all the legal work Respondent stated that Respondent had performed.

- a. Respondent knew his time sheets were false when Respondent prepared them.

13. Respondent submitted Respondent's false 2007, 2008, and 2009 time sheets for *Opdyke v. Knights of Columbus* to Cozen O'Connor's Finance Department ("Finance Department").

14. After the Finance Department received Respondent's false time sheets, the Finance Department sent to Lititz bills for legal services Respondent purportedly rendered.

- a. Lititz received legal bills, totaling \$8,143, for legal services Respondent did not perform in 2007; and
- b. Lititz received legal bills, totaling \$48,188, for legal services Respondent did not perform in 2008.

15. Cozen O'Connor did not send Lititz Respondent's legal bills, totaling \$21,090, for legal services Respondent claimed to have performed in 2009.

16. In 2007 and 2008, Lititz paid \$18,927.50 to Cozen O'Connor for legal services Respondent did not perform.

17. On or about May 29, 2009, after discovery of Respondent's false billing statements, Cozen O'Connor advised Lititz that Cozen O'Connor would rescind Lititz's unpaid bills for 2008 and 2009.

18. By check dated August 26, 2009, made payable to Lititz Mutual Insurance Company, Cozen O'Connor refunded \$18,927.50 to Lititz.

B. Cheatham v. Masterbrand Cabinets

19. On June 1, 2004, twenty-two homeowner plaintiffs filed a civil action in Montgomery County, PA, against MasterBrand Cabinets and other defendants alleging that the cabinets installed above the ovens in their homes were discoloring and separating.



- a. The case is captioned ***Cheatham v. Realan Homes, et al.***, and docketed at No. 2004-14208. (hereinafter ***Cheatham v. MasterBrand Cabinets***)

20. On or before June 17, 2004, Respondent was assigned to represent MasterBrand Cabinets (MasterBrand).

21. On or about September 10, 2004, plaintiffs served Respondent, on behalf of MasterBrand, with a Second Amended Complaint.

- a. Respondent failed to act with reasonable competence and diligence and file an answer to the Second Amended Complaint.
- b. Respondent failed to inform MasterBrand that Respondent was not filing an Answer to the Second Amended Complaint.

22. On or about August 24, 2006, plaintiffs served Respondent, on behalf of MasterBrand, with a copy of a Third Amended Complaint.

- a. Respondent failed to act with reasonable competence and diligence and file an answer to the Third Amended Complaint.
- b. Respondent failed to inform MasterBrand that Respondent was not filing an Answer to the Third Amended Complaint.

23. From June 17, 2005 to October 28, 2008, Respondent completed time sheets stating that Respondent performed legal work for MasterBrand in **Cheatham v. MasterBrand Cabinets**; Respondent's time sheets provided:

- a. time spent analyzing co-defendants' motions that had no impact on MasterBrand's case;
- b. time spent attending hearings on co-defendants' motions that had no impact on MasterBrand's case;
- c. 6.7 hours drafting a status report on February 5, 2008, which was purportedly finalized on April 11, 2008, but never sent to MasterBrand;
- d. 16 hours researching and drafting a motion for summary judgment that was never sent to MasterBrand or filed with the court;
- e. time spent preparing for depositions that were never scheduled; and
- f. time spent drafting amended answers that were never filed.

24. Respondent's 2007 and 2008 time sheets for **Cheatham v. MasterBrand Cabinets** were false in that Respondent failed to perform all of the legal work Respondent represented he had performed.

- a. Respondent knew his time sheets were false when Respondent prepared them.

25. Respondent submitted his false 2007 and 2008 time sheets for ***Cheatham v. Masterbrand Cabinets*** to the Finance Department.

26. After the Finance Department received Respondent's false time sheets, the Finance Department sent MasterBrand bills for legal services Respondent purportedly rendered.

- a. MasterBrand received legal bills, totaling \$74,292, which it paid; and
- b. MasterBrand received legal bills, totaling \$74,444.42, which it did not pay.

27. In 2007 and 2008, MasterBrand paid \$45,172 to Cozen O'Connor for legal services Respondent did not perform.

28. On July 28, 2008, co-defendant Realen Homes served Respondent with discovery requests on behalf of MasterBrand.

- a. Respondent failed to advise MasterBrand of Realen Homes' discovery requests.
- b. Respondent failed to comply with the discovery requests.

29. On September 29, 2008, Realen Homes served Respondent with a Motion to Compel and a Memorandum of Law in support thereof; on October 3, 2009, the court docketed the Motion to Compel and Memorandum of Law.

- a. Respondent failed to file an answer to the Motion to Compel or provide the requested discovery.

30. On October 8, 2008, the Court issued a Rule Returnable for November 18, 2008.

- a. Respondent failed to file an answer to the Rule Returnable or provide the requested discovery.

31. On January 28, 2009, Realen Homes filed a Motion for Sanctions against MasterBrand and a Memorandum of Law in support thereof; on February 3, 2009, the Court docketed the Motion for Sanctions and Memorandum of Law; and on February 6, 2009, the Court scheduled the sanctions hearing for February 25, 2009.

- a. Respondent received the Motion for Sanctions and Memorandum of Law.
- b. Respondent failed to inform MasterBrand of the Motion for Sanctions.
- c. Respondent failed to file an answer to the Motion for Sanctions.

d. Respondent failed to provide the requested discovery to Realen Homes.

32. On February 25, 2009, the Court rescheduled the hearing on the Motion for Sanctions to March 19, 2009.

33. Respondent's failure to comply with discovery requests and court orders was conduct prejudicial to the administration of justice.

34. On or before August 27, 2009, after Cozen O'Connor discovered Respondent's false billing, Cozen O'Connor advised MasterBrand that:

- a. Cozen O'Connor would rescind all unpaid bills for Respondent's purported legal services; and
- b. Cozen O'Connor would refund \$45,172 to MasterBrand.

35. On October 9, 2009, Cozen O'Connor refunded \$45,172 to MasterBrand.

C. Eric Strayer

36. On or about February 9, 2004, Cozen O'Connor assigned Respondent to represent Eric Strayer on a plaintiff contingency matter.

37. From February 9, 2004 through February 20, 2009, Respondent prepared time sheets for work Respondent purportedly performed in the Strayer matter.

38. Respondent's time sheets in the Strayer matter were false in that Respondent failed to perform all of the legal work Respondent represented he had performed.

a. Respondent knew his time sheets were false when Respondent prepared them.

39. Respondent submitted his false time sheets in the Strayer matter to the Finance Department.

40. Respondent submitted the false time sheets so that it would appear that Respondent was performing legal work, when in fact, Respondent was not performing legal work.

D. Mercantile Capital

41. On or about May 16, 2006, Respondent was assigned to represent Mercantile Capital on a plaintiff contingency matter.

42. From May 16, 2006 through February 6, 2009, Respondent prepared time sheets for work Respondent purportedly performed in the Mercantile Capital matter.

a. Respondent's time sheets showed that Respondent worked 635.9 hours, which resulted in a total bill of \$86,096.

43. Respondent's time sheets in the Mercantile Capital matter were false in that Respondent failed to

perform all of the legal work Respondent represented he had performed.

- a. Respondent knew his time sheets were false when Respondent prepared them.

44. Respondent submitted his false time sheets in the Mercantile Capital matter to the Finance Department.

45. Respondent submitted the false time sheets so that it would appear that Respondent was performing legal work, when in fact, Respondent was not performing legal work.

46. On or before August 13, 2007, a settlement was reached in the Mercantile Capital matter.

47. Following the settlement, Cozen O'Connor distributed a portion of the settlement to attorneys who had billed time on the matter.

- a. Cozen O'Connor distributed \$40,000 to Respondent, having determined that Respondent's \$86,096 in billable hours was excessive.

E. Basement Doctor Waterproofing Company

48. Prior to March 31, 2006, Cozen O'Connor represented Basement Doctor Waterproofing Company (Basement Doctor) in connection with a liability claim filed against the company.

49. On March 31, 2006, the court granted Cozen O'Connor's Petition to Withdraw from the representation.

50. After the Petition to Withdraw was granted, Respondent was:

- a. assigned the responsibility of filing a complaint seeking payment of the unpaid \$35,352.88 legal fee; and
- b. instructed to do as little work as possible because there was small likelihood of collecting payment.

51. From March 31, 2006 through April 28, 2008, Respondent completed time sheets stating that Respondent had performed legal work on the Basement Doctor matter; Respondent's time sheets provided:

- a. 2.2 hours drafting an opening statement for an arbitration hearing on the collection matter;
- b. 73.1 hours for research and drafting memoranda;
- c. 3.9 hours for attendance at a Sanctions Hearing on the underlying case from which Cozen O'Connor had withdrawn;
- d. 5.3 hours for travel to and from Harrisburg to attend the Sanctions Hearing on the



underlying case from which Cozen O'Connor had withdrawn;

e. 4.40 hours for attendance at a deposition on the underlying case from which Cozen O'Connor had withdrawn; and

f. 5.2 hours for travel to and from Harrisburg to attend a deposition on the underlying case from which Cozen O'Connor had withdrawn.

52. Respondent's 2006, 2007 and 2008 time sheets for the Basement Doctor matter were false in that Respondent failed to perform all of the legal work Respondent represented he had performed.

a. Respondent knew his time sheets were false when Respondent prepared them.

53. Respondent submitted his false 2006, 2007, and 2008 time sheets for the Basement Doctor matter to the Finance Department; Respondent's time sheets showed:

a. Respondent billed 205.90 hours, of which over 183 hours were after Cozen O'Connor had withdrawn from the underlying case; and

b. Respondent's total legal fees were \$44,647.50.

54. By his conduct as alleged in paragraphs 7 through  
53 above, Respondent violated the following Rules of  
Professional Conduct:

- a. RPC 1.1, which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;
- b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;
- c. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;
- d. RPC 1.5(a), which states that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee;
- e. RPC 4.1(a), which states that in the course of representing a client a lawyer shall not knowingly: (a) make a false statement of material fact or law to a third person;
- f. RPC 8.4(c), which states that it is professional misconduct for a lawyer to

- engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and
- g. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

**CHARGE II: UNAUTHORIZED PRACTICE OF LAW**

55. Prior to July 1, 2008, Respondent received his 2008-2009 Annual Attorney Registration form from the Attorney Registrar's Office.

- a. Respondent failed to complete his 2008-2009 Annual Attorney Registration form.

56. By Order dated December 1, 2008, effective December 31, 2008, the Supreme Court transferred Respondent to inactive status for Respondent's failure to file his annual attorney registration form and pay the annual fee, as required by Pa.R.D.E. 219.

57. By certified letter to Respondent dated December 1, 2008, from Elaine M. Bixler, Secretary to the Pennsylvania Disciplinary Board, Ms. Bixler:

- a. enclosed a certified copy of the Supreme Court's December 1, 2008 Order; and
- b. enclosed copies of the Disciplinary Board Rules and the Rules of Disciplinary

Enforcement concerning the duties of attorneys transferred to inactive status.

58. Respondent received Ms. Bixler's December 1, 2008 letter.

59. Respondent failed to file a verified statement of compliance within ten days after the effective date of Respondent's transfer to inactive status, as required by Pa.R.D.E. 217(e).

60. Respondent failed to notify Cozen O'Connor and Respondent's clients that Respondent was transferred to inactive status and ineligible to practice law.

61. As an associate at Cozen O'Connor, from January 1, 2009 until April 30, 2009, Respondent handled at least two client matters, *Opdyke v. Knights of Columbus* and *Cheatham v. MasterBrand Cabinets*.

62. In the *Cheatham v. MasterBrand Cabinets* case, Respondent:

- a. researched and drafted legal pleadings;
- b. attended court hearings;
- c. spoke with clients;
- d. gave clients legal advice; and
- e. held himself out to clients and third parties as an attorney authorized to practice law in Pennsylvania.

63. Respondent failed to file with the Disciplinary Board a notice of engagement, identifying Respondent's supervising attorney and certifying that the supervising attorney would monitor Respondent's activities for compliance with Pa.R.D.E. 217(j).

64. Respondent practiced law in Pennsylvania in violation of the regulation of the legal profession in Pennsylvania.

65. From January 1, 2009 through April 30, 2009, Respondent was listed as an active member of the Pennsylvania bar on Cozen O'Connor's Internet web site.

66. Respondent made a false communication about himself or failed to act to prevent a false communication about himself in that Respondent were not an active member of the Pennsylvania Bar after December 31, 2008.

67. By his conduct as alleged in paragraphs 55 through 66 above, Respondent violated the following Rules:

- a. RPC 5.5(a), which states that a lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so;
- b. RPC 7.1, which states that a lawyer shall not make a false or misleading communication

about the lawyer or the lawyer's services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading;

- c. RPC 8.4(c), which states that it is professional misconduct to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
- d. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice;
- e. Pa.R.D.E. 203(b)(3), which states that wilful violation of any other provision of the Enforcement Rules, shall be grounds for discipline;
- f. Pa.R.D.E. 217(a), which states that a formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or

administrative proceedings, of the  
disbarment, suspension, administrative  
suspension or transfer to inactive status  
and the consequent inability of the formerly  
admitted attorney to act as an attorney  
after the effective date of the disbarment,  
suspension, administrative suspension or  
transfer to inactive status and shall advise  
said clients to seek legal advice elsewhere;

- g. Pa.R.D.E. 217(b), which states that a  
formerly admitted attorney shall promptly  
notify, or cause to be notified, by  
registered or certified mail, return receipt  
requested, all clients who are involved in  
pending litigation or administrative  
proceedings, and the attorney or attorneys  
for each adverse party in such matter or  
proceeding, of the disbarment, 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  
disbarment, suspension, administrative  
suspension or transfer to inactive status.

The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney. In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension, administrative suspension or transfer to status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is pending for leave to withdraw. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the formerly admitted attorney;

- h. Pa.R.D.E. 217(c)(1), which states that a formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or transfer to inactive status, by registered or certified mail, return receipt requested: all persons or their agents or guardians to whom a fiduciary duty



is or may be owed at any time after the  
disbarment, suspension, administrative  
suspension or transfer to inactive status;

- i. Pa.R.D.E. 217(c)(2), which states that a  
formerly admitted attorney shall promptly  
notify, or cause to be notified, of the  
disbarment, suspension, administrative  
suspension or transfer to inactive status,  
by registered or certified mail, return  
receipt requested: 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 disbarred, suspended,  
administratively suspended or on inactive  
status;
- j. Pa.R.D.E. 217(e), which states that within  
ten days after the effective date of the

disbarment, suspension, administrative suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing: (1) that the provisions of the order and these rules have been fully complied with; and (2) 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;

- k. Pa.R.D.E. 217(j)(1), which states 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). If the formerly admitted attorney is engaged by a law firm or other organization providing legal services, whether by employment or

other relationship, an attorney of the firm or organization shall be designated by the firm or organization as the supervising attorney for purposes of this subdivision;

1. Pa.R.D.E. 217(j)(2), which states that for purposes of this subdivision (j), the only law-related activities that may be conducted 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;

- m. Pa.R.D.E. 217(j)(3), which states that a formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney, organization or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney;
- n. Pa.R.D.E. 217(j)(4)(iii), (iv), (v), (vi), (vii), (viii) and (ix), which states that a formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (iii)

performing any law-related services 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 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, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body; (viii) appearing as a representative of the client at a deposition or other discovery matter; and (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

- o. Pa.R.D.E. 217(j)(5), which states that a formerly admitted attorney may not engage in any form of law-related activities in this

Commonwealth except in accordance with the following requirements: The supervising attorney and the formerly admitted attorney shall file with the Disciplinary Board a notice of engagement, identifying the supervising attorney and certifying that the formerly admitted attorney's activities will be monitored for compliance with this subdivision (j). The supervising attorney and the formerly admitted attorney shall file a notice with the Disciplinary Board immediately upon the termination of the engagement between the formerly admitted attorney and the supervising attorney.

### **III. JOINT RECOMMENDATION FOR DISCIPLINE**

68. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct is a thirty-month suspension, retroactive to the date the Supreme Court placed Respondent on temporary suspension.

69. Respondent hereby consents to the discipline being imposed 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 and including the mandatory acknowledgements contained in Pa.R.D.E. 215(d)(1) through (4).

70. Respondent and ODC respectfully submit that there are the following mitigating factors:

- a. Respondent is a young attorney, having been admitted to practice law seven years before being placed on inactive status for not completing his annual attorney registration;
- b. If this matter were to proceed to a hearing, Respondent would be able to establish mitigation under *Office of Disciplinary Counsel v. Braun*, 520 Pa. 157, 553 A.2d 894 (1989) (See letter from Norman W. Pitt, Ph.D., attached hereto as Exhibit "A");
- c. Respondent has undergone treatment for a long-standing alcohol and substance abuse problem; and
- d. Respondent, through his counsel, has cooperated with ODC, self-reported his bogus billings, and filed a Joint Petition for Emergency Temporary Suspension.

71. Discipline for attorneys who submit false time sheets ranges from a suspension of one year and one day to

three years. In pinpointing the appropriate discipline within this range, the Disciplinary Board has considered the following factors: number of client matters; length of time during which the false billings occurred; monetary amount of fraudulent billings; impact on the law firm; impact on clients; and whether the attorney reported his wrongdoing to the firm.

In *Office of Disciplinary Counsel v. Michael Keith Hollinger*, 19 DB 2004, 76 D.&C.4<sup>th</sup> 315 (Supreme Court Order 6/16/2005), a workers' compensation defense attorney received a suspension of one year and one day for engaging in a pattern of billing clients for work he did not perform and significantly overstating the time he spent on services he actually performed. Over the course of ten months, Hollinger sent false bills to ten clients in twenty-four different workers' compensation matters. Hollinger's law firm discovered the false billings and suffered a financial loss as a result of Hollinger's misconduct, including refunding \$26,730 to clients, lost attorney productivity, and payment of legal fees to outside counsel.

Similarly, in *Office of Disciplinary Counsel v. John Anthony Lord*, No. 149 DB 1995, D.Bd. Rpt. 10/20/1997 (Supreme Court Order 12/30/1997), the Supreme Court imposed a suspension of one year and one day on an attorney who:



altered time sheets to reflect that he had performed work that had been performed by others; submitted time sheets for work he had already performed or work he had not performed at all; and submitted false travel vouchers. Lord's conduct spanned seventeen months and involved false billings totaling \$18,000 and false travel vouchers totaling \$9,000. Lord's law firm discovered the overbillings, made restitution to the clients who were overbilled, and absorbed the losses; Lord repaid the \$9,000 for the false travel vouchers.

The Supreme Court imposed a significantly longer period of suspension on an attorney whose false billing practices extended over a five-year period and involved in excess of \$30,000 in overcharges. In *Office of Disciplinary Counsel v. James Francis Pearn*, No. 82 DB 1999, D.Bd. Rpt. 10/26/2000 (Supreme Court Order 12/28/2000), a workers' compensation defense attorney received a three-year suspension for billing clients for work that he failed to perform and failing to inform his clients that their cases may be adversely affected thereby. After one of Pearn's clients complained to Pearn's law firm about a judge's opinion that ruled against the client because Pearn did not submit a brief, the law firm undertook a major audit of Pearn's work and discovered the

false billings. In addition to Pearn's law firm's refunding the overcharges to the clients, Pearn's law firm lost a major client, lost the confidence of other firm clients, and devoted substantial time performing the services for which Pearn had billed but not performed.

The Supreme Court likewise imposed a three-year suspension in *Office of Disciplinary Counsel v. James A. Matthews, III*, No. 49 DB 1992, D.Bd. Rpt. 11/4/1993 (S.Ct. Order 5/20/1994). During a three-year period, Matthews inflated out-of-pocket expenses and submitted falsified expense reports for which he received \$31,600 from clients and \$22,482 from his law firm. Matthews, who used the misappropriated funds to pay for prostitutes, subsequently reimbursed his firm, which in turn reimbursed the firm's clients. In recommending a three-year suspension, the Disciplinary Board opined that "[t]his case absolutely requires the imposition of a strict disciplinary sanction. We must communicate our intolerance for this type of conduct." D.Bd. Rpt. at p. 7.

72. Respondent's misconduct is almost identical to the misconduct committed by Hollinger, Lord, Matthews, and Pearn. All five attorneys submitted false time sheets to their law firm for work that the attorney did not perform or expenses that the attorney did not incur, the law firm

billed the clients based on the false time sheets, and the clients paid the bogus bills they had received. All of the law firms were financially harmed by the attorneys' misconduct and refunded the misappropriated funds. Although Hollinger's, Lord's, Pearn's, and Respondent's law firms each undertook the expense of an audit, Respondent's and Pearn's law firm also suffered the loss of a client as a result of the overbilling.

Unlike the misconduct of Hollinger and Lord, however, Respondent's misconduct spanned a lengthy period of time and involved many false billing entries. Respondent's five-year period of misconduct was identical to Pearn's period of misconduct. Furthermore, Respondent's overbilling, totaling \$64,096, exceeded the amount of the overbilling in all four of the above-cited cases.

In addition, for four months, Respondent was employed as an attorney while on inactive status, holding himself out to Cozen O'Connor, his clients, and third parties as being eligible to practice law in Pennsylvania. This additional fact makes the totality of Respondent's misconduct more egregious than the misconduct of Hollinger, Lord, Pearn, and Matthews.

But dissimilar to Hollinger, Lord, Pearn and Matthews, Respondent has weighty mitigation. At a disciplinary

hearing, Respondent would be able to establish a causal relationship between his alcoholism and his misconduct. Dr. Pitt, with whom Respondent sought treatment from August 2009 through January 2010, found that "Mr. Henry's highly excessive use of alcohol was a major part of the clinical picture at the time of his misconduct and on a long standing basis." Dr. Pitt diagnosed Respondent as meeting the criteria for "Alcohol Dependence" and "Cannabis Abuse at the minimum" and concluded that "the[se] psychological conditions... were directly and causally related to the misconduct of which Mr. Henry was guilty in his practice of law." (Exhibit "A")

Respondent also advised his law firm, albeit belatedly, of his overbilling in one client matter. Finally, Respondent has cooperated with ODC, self-reported his professional misconduct, and agreed to an emergency temporary suspension.

73. Application of the facts and mitigating circumstances of Respondent's case to the above precedent should result in Respondent receiving a suspension greater than that imposed in Hollinger and Lord, but not greater than that imposed in Pearn and Matthews. A thirty-month suspension, retroactive to the date of the Supreme Court's Order placing Respondent on temporary suspension, would be

appropriate for Respondent's misconduct. Retroactivity is appropriate where, as here, an attorney has cooperated with Office of Disciplinary Counsel and agreed to withdraw from the practice of law while awaiting a final disposition order from the Supreme Court. See, e.g., **Office of Disciplinary Counsel v. Michael J. Burke**, No. 1 DB 2009, D.Bd. Rpt. 7/29/2009 (Supreme Court Order 8/31/2009) (one-year-and-one-day suspension on consent, retroactive to date Burke placed on voluntary inactive attorney status); **Office of Disciplinary Counsel v. Thomas E. Butler, Jr.**, No. 83 DB 2008, D.Bd. Rpt. 7/2/2008 (Supreme Court Order 10/16/2008) (one-year suspension on consent, retroactive to date Butler placed on voluntary inactive attorney status).

WHEREFORE, Petitioner and Respondent respectfully request that:

- a. Pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file its recommendation with the Supreme Court of Pennsylvania recommending that the Supreme Court enter an Order that Respondent receive a thirty-month suspension retroactive to the

date of the Supreme Court's Order placing Respondent on temporary suspension; and

- b. Pursuant to Pa.R.D.E. 215(i), the three-member panel of the Disciplinary Board enter an Order for Respondent to pay the necessary expenses incurred in the investigation and prosecution 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 Pa.R.D.E. 215(g).

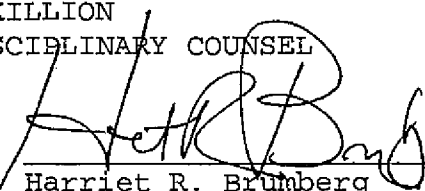
Respectfully and jointly submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION  
CHIEF DISCIPLINARY COUNSEL

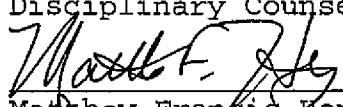
10/10/11  
Date

By

  
Harriet R. Brumberg  
Disciplinary Counsel

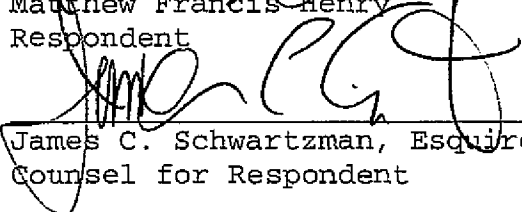
10.20.11  
Date

By

  
Matthew Francis Henry  
Respondent

10/20/11  
Date

By

  
James C. Schwartzman, Esquire  
Counsel for Respondent



## CHESTNUT HILL PSYCHOLOGICAL ASSOCIATES

7932 GERMANTOWN AVENUE (REAR), PHILADELPHIA, PA 19118

(215) 247-6464

September 27, 2011

To Whom It May Concern:

This letter constitutes a summary of my professional contacts with and impressions of Mr. Matthew Henry. It is my understanding that this information will be used in proceedings related to Mr. Henry's right to practice law. Mr. Henry met with me for a total of sixteen individual therapy sessions and one couple's session during the period from August, 2009 January, 2010.

Mr. Henry first came to see me after his problematic conduct in his work as an attorney had come to light. Over the first few sessions, Matt provided a general account of his difficulties. He said that for a period of many months, he had been unable to motivate himself to do his work at his law firm. Since he was required to provide a certain number of hours of billable work, starting approximately in August, 2008, he did this increasingly by falsifying the documents used to account for his time. He would report that he had done work for clients which, in fact, he had not done. He then would withdraw the claims for the work before the client could be billed. His goal, he said, was to obscure the fact that he was producing too few billable contacts for the purposes of his own firm, without billing the client illegitimately. I want to make it clear that as he described it, Mr. Henry's behavior seemed to be an effort to cover his inability to perform, rather than to be a calculated effort to mislead. Furthermore, his inability to perform appeared to be a function of his depressed, agitated state which reduced his capacity to motivate himself and to focus.

In May of 2009 Matt left his job at the firm when it became officially clear that he would not be considered further for partnership, and thus could not remain at his job. In the course of his leave taking, Matt reportedly was too late in withdrawing his report of some billable hours to avoid the clients being billed. When the client or clients complained about incorrect charges, Matt's misconduct became apparent to the management of his firm and he was confronted with his behaviors. It is my understanding that Matt reported his own misconduct to the Pennsylvania Bar on a voluntary basis.

In talking about this conduct over a period of time, Matt said, essentially, that he had never been very clear about his own commitment to the practice of law. He said that while he felt competent in his work, he did not find it interesting, and he had not pursued it with the vigor that might lead to a successful future at the firm. Thus, he assumed he would never be a candidate for the partnership track

at his firm, and he made no real effort compete in that regard. At the time that the problematic behavior began to appear, he already had been denied partnership in a first review process, and was anticipating a second and final process in the coming months, with a negative outcome already being a foregone conclusion.

Since he was so equivocal about continuing as an attorney, Matt seemed to feel himself to be trapped, ~~in that he had no idea of what to do professionally in the longer run.~~ He reported feeling a particular desperation at this point because his wife was pregnant with their first child. He described a period of escalating despair and anxiety as he felt less and less able to motivate himself to do his work, and as he engaged in more and more problematic behaviors in his avoidance of his dilemma. He reported spending as little time at his office as he possibly could get away with, and he avoided contacts with any colleagues, especially those who were looking to him to complete related work. He says that he did almost nothing productive with his time, usually at home in the afternoon after escaping from the office; he reported flipping through TV channels and doing crossword puzzles, just waiting until he felt it was late enough in the day to begin drinking.

In fact, it is quite clear that Mr. Henry's highly excessive use of alcohol was a major part of the clinical picture at the time of his misconduct and on a long standing basis. Matt also admitted to occasional use of marijuana, but denied that he ever was a heavy user. At the time of my first meetings with Matt, he denied that he was continuing to misuse alcohol. He said he still drank a small number of beers on most days, but said that he was drinking far less than he had during the time he was submitting the misleading claims. When questioned about this, he explained that he felt vastly relieved now that his misconduct had come to light. He said that he had felt virtually certain that he would be caught throughout the time he was submitting false documentation, so it was a relief that the inevitable, dreaded outcome had occurred. He admitted to some anxiety about his situation, but denied feeling depressed. Rather, he talked about strong feelings of shame, not primarily for himself, but more for his father and his wife, both of whom are practicing attorneys, and both of whom would need to bear the public embarrassment that would come by virtue of his conduct. For himself, he seemed to hope or wish for little leniency, feeling that he deserved whatever punishment might come.

The forgoing discussion provides an account of Mr. Henry's circumstances and emotional state at the time we began our contacts, and I believe his description was a reasonably honest and accurate account of the events in a narrow sense. However, over time, a larger context for the problems began to become more apparent. In a general way, I began to become impressed with Matt's strong impulse to avoid almost any matter that involved conflict with others regarding his own welfare. For instance, he claimed that he had been able to negotiate forcefully on behalf of clients he had represented, but in his personal life, he had difficulty with any sort of conflict, including matters as mundane as negotiating a fair share of child care responsibilities with his wife.

In describing his own life history, Matt talked about being a relatively compliant youngster up until high school, doing what he was expected to do. However, when he got to college, he had no sense of direction and took his responsibilities there lightly. He also began a pattern of heavy drinking which persisted to a greater or lesser degree up to the present. He reported that he chose to go to law school



mostly as a default option since he had no alternative sense of what he wanted to do with his life. He worked hard and did well during his first year of law school, but then fell in with other students who were not very serious about competing academically, and he allowed himself to drift with minimal effort much as he had done in college.

Matt's half-hearted approach to his work once he began to practice law seemed to be part of this larger picture of avoiding conflict. He never sought to define a direction for himself or to decide to commit himself to anything in a more serious, adult fashion. There was a very strong impression of Matt feeling himself to be adrift and nearly directionless in his own life. The pervasive scale of this difficulty became evident in a wide range of circumstances, including the therapy sessions themselves, in that Matt had great difficulty even thinking about the nature of what our focus should be or what problems he might have to address. He also alluded to very general patterns of avoidance with his family, wife and others, and it became clear at some point that he was continuing to use alcohol to a very excessive extent.

In reality, I was never clear whether or not Matt had been drinking heavily throughout the time we were meeting; my impression is that he did drink less for a time, but that his drinking escalated again over time as is the typical pattern with substance dependent people. In any case, by about the time of the beginning of the holiday season in late fall of 2009, Matt's drinking was an obvious problem. He began coming to sessions smelling of alcohol and, at times, clearly being under the influence. He also talked with alarm about events where he created unpleasant scenes with family members at family events, even after explicit promises that he would not drink.

Eventually, his wife insisted on coming to a session and reported a yet more serious picture of his drinking than I had heard up until that point, as well as almost daily marijuana use. Matt did not deny her claims, and seemed generally ashamed of the truth in what she reported. I saw Matt only one more time after that joint session. At that time he was expressing desperation about what seemed like his inability to control his substance use and he seemed to be prepared to regard his drinking as a chronic problem. We discussed more aggressive treatment options, as we had at our previous meeting. He agreed to attend a specific Alcoholics Anonymous meeting the following evening, as well as to attempt to begin a period of total abstinence from alcohol. He called in some desperation two days later to ask for recommendations for an inpatient rehabilitation facility. I suggested the Caron Foundation, and Matt apparently arranged for his own admission that day. It is my understanding that he completed a full course of treatment there and remains an active participant in AA.

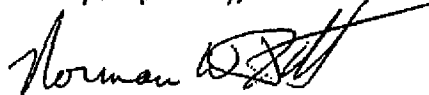
In terms of a formal diagnosis, Mr. Henry obviously meets the criteria for a diagnosis of Alcohol Dependence and for a diagnosis of Cannabis Abuse at the minimum. It also is my impression that he suffers from a low level of chronic depression and frequent periods of clinically significant anxiety, and thus would meet criteria for Dysthymic Disorder and Generalized Anxiety Disorder. Any discussion of these two latter features of the clinical picture is complicated by Matt's very general need to avoid any source of reasonable conflict in close interpersonal relationships. In that regard, he exhibits some major features of an Avoidant Personality Disorder, although I do not believe he meets all of the necessary criteria. Thus, an alternative diagnosis of Personality Disorder, not otherwise specified, might be

applicable, although I was never entirely clear that this was the most meaningful way to think about his conflicts during the relatively brief time Matt was in treatment with me.

I trust that the forgoing discussion is a clear and reasonably understandable account of my experience with and impressions of Mr. Henry. He clearly is a very bright and capable individual who probably could succeed at any endeavor he is able to embrace wholeheartedly. His difficulties seem to reflect a ~~broad inability to define his own direction in life as a function of his ambivalent need to avoid conflict~~ with those close to him. These difficulties certainly have been amplified and, in part made possible, by a long standing pattern of substance abuse. It is my understanding that recently Matt has had good success in managing the latter, very significant problem. I also want to state explicitly that it seems clear to me that the psychological conditions I have described here were directly and causally related to the misconduct of which Mr. Henry was guilty in his law practice.

Please feel free to contact me if you have need of additional information. I would be happy to discuss Mr. Henry's case further with his prior permission.

Very Respectfully,

A handwritten signature in black ink, appearing to read "Norman W. Pitt", with a stylized flourish extending from the end.

Norman W. Pitt, Ph.D.

Licensed Psychologist

PS-003177-L

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
: No. 148 DB 2009  
v. :  
: Atty. Reg. No. 88364  
MATTHEW FRANCIS HENRY, :  
Respondent : (Philadelphia)

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.

10/10/11  
Date

By

Harriet R. Brumberg  
Harriet R. Brumberg  
Disciplinary Counsel

10.20.11  
Date

By

Matthew F. Henry  
Matthew Francis Henry  
Respondent

10/20/11  
Date

By

James C. Schwartzman  
James C. Schwartzman, Esquire  
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
Petitioner :  
: No. 148 DB 2009  
v. :  
: Atty. Reg. No. 88364  
MATTHEW FRANCIS HENRY, :  
Respondent : (Philadelphia)

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

Respondent, Matthew Francis Henry, hereby states that he consents to the imposition of a thirty-month suspension, retroactive to November 19, 2009, the date of the Supreme Court's Order placing Respondent on temporary suspension, as jointly recommended by the Petitioner 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; he is fully aware of the implications of submitting the consent; and he has consulted with James C. Schwartzman, Esquire, in connection with the decision to consent to discipline;

2. He is aware that there is presently pending a disciplinary proceeding at No. 148 DB 2009 involving allegations that he has committed misconduct as set forth in the Joint Petition;

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

4. He consents because he knows that if the charges pending at No. 148 DB 2009 continue to be prosecuted, he could not successfully defend against them.

Matthew Henry  
Matthew Francis Henry

Sworn to and subscribed

before me this 20th

day of October, 2011.

Patricia S. Bradley  
Notary Public

COMMONWEALTH OF PENNSYLVANIA

NOTARIAL SEAL

PATRICIA S. BRADWAY, Notary Public  
City of Philadelphia, Phila. County  
My Commission Expires March 17, 2014