

IN THE SUPREME COURT OF PENNSYLVANIA

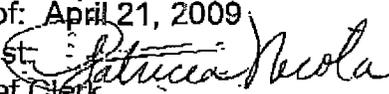
OFFICE OF DISCIPLINARY COUNSEL, : No. 1462 Disciplinary Docket No. 3
Petitioner :
 : No. 171 DB 2008
v. :
 : Attorney Registration No. 31480
DAVID ALLEN GNIEWEK, :
Respondent : (Out of State)

ORDER

PEIR CURIAM:

AND NOW, this 21st day of April, 2009, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated January 30, 2009, 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 David Allen Gniewek is suspended on consent from the Bar of this Commonwealth for a period of three years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola
As of: April 21, 2009
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 171 DB 2008
Petitioner :
v. : Attorney Registration No. 31480
DAVID ALLEN GNIEWEK :
Respondent : (Out of State)

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 David A. Nasatir, Jonathan H. Newman and Laurence H. Brown, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on November 5, 2008.

The Panel approves the Joint Petition consenting to a three 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.



David A. Nasatir, Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 1/30/2009

**BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 171 DB 2008
Petitioner	:	
vs.	:	Sur File No. C3-07-967
	:	
DAVID ALLEN GNIEWEK,	:	Attorney Registration
Respondent	:	No.31480
	:	
	:	(Out of State)

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

Petitioners, Office of Disciplinary Counsel ("ODC"), by Paul J. Killion, Chief Disciplinary Counsel, and John Francis Dougherty, Disciplinary Counsel, and David Allen Gniewek ("Mr. Gniewek"), respectfully petition this Honorable Board in support of discipline on consent for a three year suspension, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), *et. seq.*, and in support thereof state:

1. ODC, whose principal office is located at Suite 1400, 200 North 3rd Street, Harrisburg, PA 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "Pa.R.D.E."), with the power and the duty to investigate all matters involving professional misconduct of an attorney admitted to

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

practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Mr. Gniewek was admitted to the practice of law in this Commonwealth on January 16, 1980, has Attorney Registration Number 31480, and a Registered Address of 244 Boulevard, Mountain Lakes, NJ 07046-1231. Mr. Gniewek is presently on Inactive Status. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Mr. Gniewek's affidavit stating, *inter alia*, his consent to the recommended discipline of a three year suspension is attached hereto as Exhibit "A."

SPECIFIC FACTUAL ALLEGATIONS ADMITTED:

4. Mr. Gniewek was a sole practitioner with an office in Milford, Pike County, Pennsylvania. At all times pertinent hereto, Mr. Gniewek had IOLTA account No. 765204014 at Pennstar Bank ("Trust Account").

5. Allan R. Knox died on May 2, 2005, a resident of Pike County, PA., and survived by five children. His primary asset was real estate at 147 Christian Hill Road, Dingman Township, Pike County, PA., which real estate was subject to a Revocable Living Trust he had executed in January 2002. Sister Sharon Culhane was to receive the equitable benefit of \$50,000 to be paid to her Order by distributions from the estate made through the five children of the decedent, with the children to share equally in any residue. Mr. Gniewek was retained to represent Sister Culhane in the administration of the estate and the trust.

6. The real estate was sold and on September 16, 2006, the net proceeds of \$111,379.94 were deposited to the Trust Account. In October 2006, partial distributions were made of \$8,000 to each of the five children. The final distributions were not to occur until after PA Transfer Inheritance Tax issues were resolved and the final amount of the tax due was determined and paid.

7. In October 2006, the PA Transfer Inheritance Tax Return was filed and \$5,592.54 was paid on account of the tax due.

8. By check No. 4502, dated April 19, 2007, drawn on the Trust Account, in the amount of \$60,000, and payable to a relative of Mr. Gniewek, Mr. Gniewek made a loan of that amount to the relative. The check was paid on April 20, 2007.

9. The \$60,000 loan by Mr. Gniewek to his relative was made from the funds he was holding for the Knox Estate and Trust.

10. Mr. Gniewek had no actual or implied authority to use any proceeds of the Knox Estate or Trust for any personal purpose and he acknowledges that the \$60,000 loan to his relative from the Trust Account represented his misappropriation of funds of the Knox Estate or Trust.

11. In May 2007, Mr. Gniewek returned \$30,000 to the Trust Account, by two deposits of \$15,000. The source of the funds was a joint account he maintained with his wife.

12. The Department of Revenue finished processing the PA Transfer Inheritance Tax Return in or about October 2007, and the final tax due of \$270.59 was paid on November 13, 2007, by one of the decedent's children.

13. In 2007, Mr. Gniewek had become increasingly unresponsive to inquiries from Sister Culhane, and those made on her behalf by some of the decedent's children, as to the administration of the estate and about when the final distributions would occur, which resulted in a complaint to the Office of Disciplinary Counsel ("ODC") in late 2007.

14. In 2008, after inquiry from ODC and notification that ODC had issued subpoenas for records of the Trust Account, Mr. Gniewek used \$4,500 in funds of he and his wife, and \$37,500 borrowed from his mother, to return sufficient funds to the Trust Account so that the final distributions of funds of the Knox Estate and Trust could be made. These deposits occurred on March 10 and 11, 2008.

15. By checks dated March 5, 2008, drawn on the Trust Account, Mr. Gniewek made the final distributions totaling \$60,000 that were due to the heirs of the Knox Estate and Trust.

16. Mr. Gniewek's conduct as set forth Paragraphs 3 through 15 above violates the following Rules of Professional Conduct:

Rule 1.3 Diligence

A lawyer shall act with reasonable diligence and promptness in representing a client.

Rule 1.4 Communication

(a) A lawyer shall:

(1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;

(2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;

(3) keep the client reasonably informed about the status of the matter; and

(4) promptly comply with reasonable requests for information.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

Rule 1.15 Safekeeping Property

(a) A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

(b) Upon receiving property of a client or third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the client or third person. Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property.

Rule 8.4 misconduct

It is professional misconduct for a lawyer to:

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

RECOMMENDATION FOR A THREE YEAR SUSPENSION

The preceding agreed to facts, and the clearly supported and agreed to violations of the above Rules of Professional Conduct, evidence misconduct involving the mishandling and misuse of \$60,000 in trust funds, and a resultant failure to properly communicate, account, and make proper and timely distribution of those funds. The parties hereto agree that the misconduct warrants a three year suspension.

In determining the appropriate measure of discipline, precedent must be examined to measure the Respondent's misconduct against other similar matters. *In re Anonymous No. 56 DB 1994, 28 Pa.D.&C.4th398(1995)*. Any aggravating and mitigating factors are also to be considered. *In re Anonymous No. 35 DB 1988, 8 Pa. D.&C.4th 344(1990)*.

The following are disciplinary cases most analogous to the facts, circumstances and rule violations in this matter. In *Office of Disciplinary Counsel v. Harmon*, No. 15 DB 2003 (Pa. December 13, 2004)¹, the attorney had commingled trust funds with her own funds, used client funds to pay personal bills, and utilized entrusted funds of a client to pay prior clients whose funds had been improperly utilized by the attorney. The Rule violations included, as here, dishonest conduct in converting escrow funds to her own uses in violation of RPC 8.4(c), and RPC 1.15(a) for the failure to segregate trust funds. The Hearing Committee in *Harmon* recommended a suspension of two years but

¹ Available at <http://www.courts.state.pa.us/OpPosting/disciplinaryboard/dboardopinions/15DB2003-Harmon.pdf>

the Disciplinary Board recommended a suspension of three years, which is the discipline that was imposed.

In recommending three years in the *Harmon* case, the Board noted the following cases: *Office of Disciplinary Counsel v. Foti*, No. 89 DB 2001 (Pa. July 24, 2003)², in which an attorney with no prior record of discipline and who presented mitigation was suspended for three years for having converted \$33,000 in fiduciary funds and for failing to timely pay over settlement proceeds to a client; *Office of Disciplinary Counsel v. Olshock*, No. 28 DB 2002 (Pa. October 24, 2003)³, in which the attorney was suspended for three years for having converted \$18,000 from an estate; and, the case of *In re Anonymous No. 115 DB 97* (Pa. March 23, 2000)⁴, in which the attorney had, as Mr. Gniewek, no prior history of discipline but who also commingled and converted client funds over a period of time and was suspended for three years.

Mr. Gniewek believes he is an alcoholic, for which he is presently undergoing treatment, and he acknowledges that ODC has discussed with him that in appropriate circumstances such might serve to mitigate the otherwise appropriate degree of discipline warranted by his misconduct as set forth herein. He affirmatively asserts in this matter that he is fully aware of and understands his rights in this regard and that he does not desire to attempt to establish, through an expert or otherwise, any factors that might serve to mitigate the discipline recommended herein.

² Available at <http://www.courts.state.pa.us/OpPosting/disciplinaryboard/dboardopinions/89DB2001-Foti.pdf>

³ Available at <http://www.courts.state.pa.us/OpPosting/disciplinaryboard/dboardopinions/28DB2002-Olshock.pdf>

⁴ Available at <http://www.courts.state.pa.us/OpPosting/disciplinaryboard/dboardopinions/115DB97.RPT.pdf>

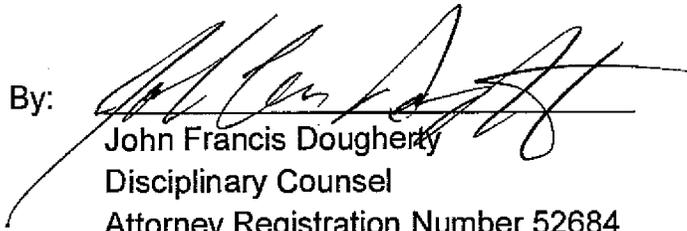
WHEREFORE, Joint Petitioners respectfully ask that your Honorable Board:

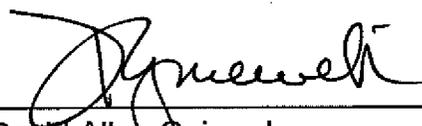
- a. Approve this Petition; and
- b. File this Petition and a recommendation for a three year suspension with the Supreme Court of Pennsylvania.

Respectfully Submitted,

OFFICE OF DISCIPLINARY COUNSEL
Paul J. Killion
Chief Disciplinary Counsel

By:


John Francis Dougherty
Disciplinary Counsel
Attorney Registration Number 52684
Two Lemoyne Drive, 2nd Floor
Lemoyne, PA 17043
717-731-7083


David Allen Gniewek
Attorney Reg. No. 31480
244 Boulevard
Mountain Lakes, NJ 07046-1231
973-335-6412

Dated: *November 5, 2008*

**BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. DB 2008
Petitioner	:	
vs.	:	Sur File No. C3-07-967
	:	
DAVID ALLEN GNIEWEK,	:	Attorney Registration
Respondent	:	No.31480
	:	
	:	(Out of State)

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

David Allen Gniewek submits this affidavit consenting to the recommendation of a three year suspension in conformity with Pa.R.D.E. 215(d), and further states as follows:

1. He is an attorney in the Commonwealth of Pennsylvania, having been admitted to the Bar on January 16, 1980, and having been assigned Attorney Registration No. 31480.
2. He desires to submit a *Joint Petition in Support of Discipline on Consent pursuant to Pa. R.D.E. 215(d), et. seq.* requesting that the Supreme Court of Pennsylvania impose a three year suspension.
3. 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 this affidavit. He has not conferred with counsel regarding this matter.

EXHIBIT "A"

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

5. He acknowledges that the material facts in the Petition are true.

6. He consents to the recommended discipline because he knows if he continues to be prosecuted in the pending proceeding that he could not successfully defend against the misconduct set forth in the Petition.

I, David Allen Gniewek, state, under the penalties provided by 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities), that I am the Respondent in the above captioned disciplinary matter, and that the statements in this *Affidavit Under Rule 215(d), Pa.R.D.E.* are true and correct to the best of my knowledge, information and belief.



David Allen Gniewek

Signed this 13 day of October, 2008

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,
Petitioner

vs.

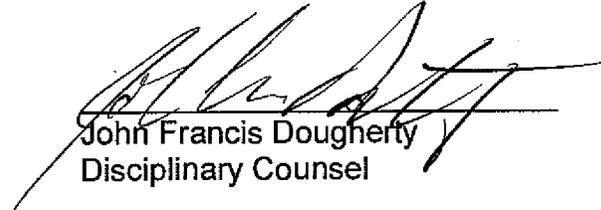
DAVID ALLEN GNIEWEK,
Respondent

: No. DB 2008
:
: Sur File No. C3-07-967
:
: Attorney Registration
: No.31480
:
: (Out of State)

VERIFICATION

The statements contained in the foregoing *Joint Petition in Support of Discipline on Consent Pursuant to Pa.R.D.E. 215(d), et.seq.* 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.A. §4904, relating to unsworn falsification to authorities.

November 5, 2008
Date


John Francis Dougherty
Disciplinary Counsel

10/31/08
Date


David Allen Gniewek

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

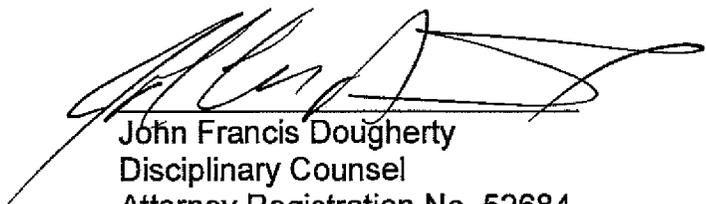
OFFICE OF DISCIPLINARY COUNSEL,	:	No.	DB 2008
Petitioner	:		
vs.	:	Sur File No.	C3-07-967
	:		
DAVID ALLEN GNIEWEK,	:	Attorney Registration	
Respondent	:	No.31480	
	:		
	:	(Out of State)	

CERTIFICATE OF SERVICE

I hereby certify that on November 5, 2008, I served the *Joint Petition in Support of Discipline on Consent Pursuant to Pa. R.D.E. 215(d), et.seq.* upon all parties of record in this proceeding in accordance with the provisions of 204 Pa. Code §89.22 (relating to service by a participant), as follows:

First Class Mail, postage prepaid, to:

David Allen Gniewek, Esquire
244 Boulevard
Mountain Lakes, NJ 07046-1231



John Francis Dougherty
Disciplinary Counsel
Attorney Registration No. 52684
Two Lemoyne Dr., 2nd Floor
Lemoyne, PA 17043
717-731-7083