

IN THE SUPREME COURT OF PENNSYLVANIA

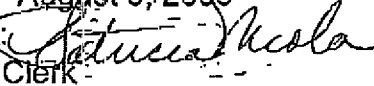
OFFICE OF DISCIPLINARY COUNSEL, : No. 1495 Disciplinary Docket No. 3
Petitioner :
v. : No. 56 DB 2009
: Attorney Registration No. 31005
EDWARD RAYMOND DOUGHERTY, :
Respondent : (Delaware County)

ORDER

PER CURIAM:

AND NOW, this 5th day of August, 2009, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated May 21, 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 Edward Raymond Dougherty be subjected to public censure by the Supreme Court .

A True Copy Patricia Nicola
As of: August 5, 2009
Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

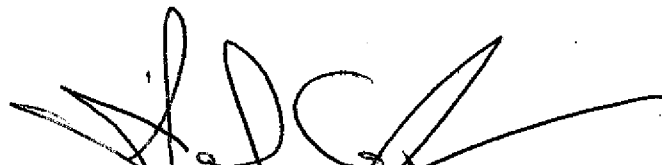
OFFICE OF DISCIPLINARY COUNSEL : No. 56 DB 2009
Petitioner :
v. : Attorney Registration No. 31005
EDWARD RAYMOND DOUGHERTY :
Respondent : (Delaware County)

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 Sal Cognetti, Jr., R. Burke McLemore, Jr., and Douglas W. Leonard, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on April 27, 2009.

The Panel approves the Joint Petition consenting to a Public Censure 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.



Sal Cognetti, Jr. Panel Chair
The Disciplinary Board of the
Supreme Court of Pennsylvania

Date: 5/21/09

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : ⁵⁰ No. DB 2009
Petitioner :
:
v. :
:
: Attorney Reg. No. 31005
EDWARD RAYMOND DOUGHERTY :
Respondent : (Delaware County)

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

Petitioner, the Office of Disciplinary Counsel (hereinafter, "ODC") by Paul J. Killion, Chief Disciplinary Counsel, and Harold E. Ciampoli, Jr., Disciplinary Counsel and Respondent, Edward Raymond Dougherty (hereinafter, "Respondent"), by and through his counsel, Samuel Stretton, Esquire, respectfully petition the Disciplinary Board in support of discipline on consent, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 215(d), and in support thereof state:

1. ODC, whose principal office is situated at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania, 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

FILED

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Office of the Secretary
The Disciplinary Board of the

disciplinary proceedings brought in accordance with the various provisions of the aforesaid Enforcement Rules.

2. Respondent, Edward Raymond Dougherty, was born on August 1, 1951, and was admitted to practice law in the Commonwealth on November 9, 1979. Respondent is on active status and maintains his office at 614 Darby Road, Havertown, Pennsylvania 19083. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

SPECIFIC FACTUAL ALLEGATIONS ADMITTED

3. PRDD, Inc., was the owner of a piece of real estate located in Upper Darby Township, Delaware County, Pennsylvania (hereinafter, the "Property").

4. Dennis Massimo is the principal of Oak Manor Development, Inc. (hereinafter, "Plaintiff").

5. On November 10, 2006, an assignor of Oak Manor entered into an Agreement of Sale with PRDD regarding the Property.

6. The Agreement of Sale allowed the buyer until February 10, 2007 to perform environmental audits if the buyer so chose and called for settlement on or before February 15, 2007.

7. Settlement in connection with the November 10, 2006 Agreement of Sale did not take place on or before February 15, 2007.

8. On February 23, 2007, Respondent filed a Complaint and entered his appearance on behalf of the Plaintiff in the case of *Oak Manor Development, Inc., Assignee of Delco Realty Associates, L.L.C. v. PRDD, Inc.*, in the Court of Common Pleas, Delaware County PA, No. 07-2198.

9. On February 23, 2007, Respondent filed a *Lis Pendens* against the Property.

10. The Complaint alleged, *inter alia*, that "Plaintiff elected pursuant to paragraph 10(c) to have the right to have audits and/or inspections concerning environmental hazards, underground storage tanks, property boundary/square footage verification/delineation, and flood plain verification delineation."

11. Plaintiff's case was premised on the allegation that Oak Manor had elected an environmental contingency and had secured environmental professionals to undertake pre-settlement environmental audits and testing, but the environmental professionals were unable to complete their work because PRDD denied access to the Property.

12. On April 13, 2007, PRDD answered Plaintiff's Complaint and filed a Counterclaim, alleging that Plaintiff failed to exercise its option to conduct environmental audits or inspection and therefore waived the contingencies.

13. On May 29, 2007, Respondent filed an Answer to PRDD's New Matter and Counterclaim and alleged:

- a) PRDD failed to grant Plaintiff access to perform environmental inspections of the Property;
- b) PRDD was in breach for failure to grant access; and
- c) The environmental inspection contingency had not been waived.

14. The deposition of Mr. Massimo was noticed by PRDD for April 27, 2007, and May 7, 2007, and was cancelled by Respondent on each occasion.

15. Because Respondent failed to produce his client and was non-responsive with respect to scheduling, PRDD filed a Motion to Compel.

16. On June 6, 2007, PRDD took the deposition of Dennis Massimo.

17. Respondent was present and represented Mr. Massimo at the June 6, 2007 deposition.

18. At the June 6, 2007 deposition, Mr. Massimo:

- a) Produced three letters from Accredited Environmental Technologies, Inc., (hereinafter, the "AET Letters") signed by William Otten, addressed to Mr. Massimo, and dated January 15, 2007;
- b) Testified under oath that he had contacted Mr. Otten shortly before January 15, 2007 and that as of January 15, 2007, he was going to engage AET to perform the environmental studies; and
- c) Testified under oath that he did not pay the retainer that AET required because there was not enough time to get the environmental work done before the February 15, 2007 settlement date.

19. Following the June 6, 2007 deposition, Respondent submitted verified Answers to Interrogatories in which Mr. Massimo continued to assert that the AET Letters actually existed as of January 15, 2007.

20. On September 17, 2007, PRDD filed a Motion for Summary Judgment and argued that based upon the deposition testimony of Mr. Massimo:

- a) The environmental audits and testing were not performed because Oak Manor had failed to timely retain AET;
- b) The environmental contingency was waived; and
- c) Oak Manor was obligated to go to settlement and its failure to do so constituted an act of default and breach of contract.

21. On September 24, 2007, Respondent filed a separate suit on behalf of the Plaintiff against Christopher Yangello, the real estate agent representing PRDD in the November 10, 2006 Agreement of Sale, and alleged that Yangello was in some way complicit with regard to denying access to the Property.

22. On October 17, 2007, Respondent filed an Answer to the Motion for Summary Judgment and a verified statement by Mr. Massimo in which:

- a) The AET letters were included as exhibits;
- b) Respondent averred that AET had sent its three proposals to Mr. Massimo on January 15, 2007; and
- c) Respondent argued that there were material facts in dispute that precluded summary judgment because the Massimo statement demonstrated that Mr. Massimo "would have been able to get the environmental audit completed in the appropriate amount of time" and that "Oak Manor did timely retain environmental professionals. Oak Manor had retained Accredited Environmental Technologies and had a proposal as of January 15, 2007."

23. On November 16, 2007, Yangello filed an Answer, New Matter and Counterclaim.

24. By Order dated January 25, 2008, the Court denied PRDD's Motion for Summary Judgment.

25. By Order dated January 30, 2008, the Court consolidated Plaintiff's cases against PRDD and Yangello.

26. On May 30, 2008, Respondent was present at the deposition of William Otten.

27. Mr. Otten testified under oath that he:

- a) Was first asked by Mr. Massimo to work up the proposals in May of 2007;
- b) Drafted the AET letters on May 14, 2007; and
- c) Had been asked by Mr. Massimo and as a favor to Mr. Massimo to back-date the AET letters to January 15, 2007.

28. After May 30, 2008, Respondent knew or should have known that:

- a) Mr. Massimo had fraudulently manufactured evidence;
- b) Mr. Massimo had perjured himself in his June 6, 2007 deposition;
- c) Mr. Massimo could not have done the environmental audit by February 10, 2007, because he had not even requested one until May 2007;
- d) The Complaint, Verified Statements, and Verified Answers to Interrogatories Respondent had filed on behalf of the Plaintiff contained material false statements and were being supported by falsely manufactured documents and perjured testimony;
- e) The denial of PRDD's Motion for Summary Judgment was based on Mr. Massimo's perjured testimony and manufactured evidence; and

f) The commencement of the action against PRDD was based on false pretenses.

29. Prior to May 30, 2008, Respondent was not aware of Mr. Massimo's perjury and fabricated documents.

30. After May 30, 2008, Respondent had a duty to take reasonable remedial measures in connection with Mr. Massimo's perjury and fabricated documents.

31. Respondent failed to take reasonable remedial measures in connection with Mr. Massimo's perjury and fabricated documents.

32. By letters dated May 30, 2008, June 3, 2008, and June 4, 2008, Denis M. Dunn, attorney for Yangello, and Nancy J. Glidden, attorney for PRDD, requested Respondent to withdraw his case and the Lis Pendens, based upon the perjured statements and fraudulently manufactured evidence of Mr. Massimo.

33. Ms. Glidden's June 4, 2008 letter specifically advised Respondent of Respondent's obligations under the Rules of Professional Conduct and suggested Respondent review RPC 1.6, 1.16, 3.3, and 8.4.

34. Prior to June 5, 2008, Respondent did not respond to the May 30, June 3 and June 4, 2008 letters.

35. By letter dated June 5, 2008, Respondent confirmed to Mr. Dunn and Ms. Glidden that Respondent had received their letters and advised that he would be taking no further action until he had the opportunity to discuss the case with his client.

36. By letter to Respondent dated June 11, 2008, Ms. Glidden:

- a) Advised that she was still waiting for a substantive response to her letters to Respondent and was still waiting for a file-stamped copy of the discontinuance and confirmation that the Lis Pendens had been removed; and
- b) Pointed out to Respondent again that the case raised issues with respect to Respondent's duties under the Rules of Professional Conduct.

37. Respondent did not respond to Ms. Glidden's June 11, 2008 letter.

38. By letter dated June 13, 2008, Mr. Dunn advised Respondent that Mr. Dunn had noticed depositions for Mr. Massimo and corporate designees for July 9, 2008, because he had not received a response or an indication that he was ever going to hear an explanation for Mr. Massimo's perjury and fraud.

39. On June 19, 2008, Respondent telephoned Mr. Dunn and requested copies of the exhibits from the Otten deposition.

40. By e-mail dated June 19, 2008, Mr. Dunn provided Respondent with the requested exhibits and advised Respondent that Dunn intended to move forward with Mr. Massimo's deposition unless an agreement was reached to reimburse his client's counsel fees.

41. By letter dated June 23, 2008, Ms. Glidden:

- a) Advised Respondent she was going to prepare a Motion asking the Court to strike the Lis Pendens;
- b) Requested that Respondent advise her immediately in writing as to whether Respondent intended to contest such a Motion;
- c) Suggested that Respondent simply file a Praecipe to discontinue the Lis Pendens if Respondent did not intend to contest the Motion; and
- d) Requested the courtesy of a response by the close of business the next day.

42. Respondent did not respond to Ms. Glidden's June 23, 2008 letter.

43. By letter to the Delaware County Civil Court Administrator dated June 27, 2008, Ms. Glidden:

- a) Stated that she needed to bring a series of developments to the attention of the Court

in keeping with her ethical duty of candor to the tribunal; and

- b) Requested the case be assigned to a Judge and that an administrative conference be scheduled.

44. By letter dated July 7, 2008, Respondent inquired of Ms. Glidden as to whether her principal would be willing to resolve the case by selling the property to Oak Manor for the amount of \$300,000.00.

45. By letter dated July 7, 2008, Respondent inquired of Mr. Dunn as to the amount of attorney's fees he would be requesting in settlement of the case.

46. By letter dated July 8, 2008, Ms. Glidden responded to Respondent's settlement proposal.

47. By letter dated July 8, 2008, Respondent advised Ms. Glidden that Respondent's client was not willing to agree to an additional payment of \$15,000.00 being held in escrow.

48. By facsimile letter dated July 8, 2008, Respondent advised Mr. Dunn that Respondent's client would not be appearing the next day to testify at the scheduled deposition.

49. By letter to Respondent dated July 8, 2008, Mr. Dunn:

- a) Reiterated that the only way he would cancel the deposition was if he had a certified check to reimburse the attorney's fees and Respondent's claims were withdrawn with prejudice;
- b) Advised that he had not agreed to stop any of the three depositions scheduled for the next day; and
- c) Advised that he would be preparing a Motion to Compel the deposition testimony of Mr. Massimo.

50. Respondent's client, without a protective order or legitimate excuse and with Respondent's knowledge and consent, willfully failed to appear for a properly noticed deposition scheduled for July 9, 2008.

51. By letter dated July 9, 2008, Ms. Glidden reiterated to Respondent the settlement terms her client was willing to accept and requested Respondent agree to the release of the money being held in escrow.

52. Respondent did not respond to Ms. Glidden's July 9, 2008 letter.

53. By facsimile letter dated July 9, 2008, Respondent requested Mr. Dunn to provide a full bill.

54. By facsimile letter dated July 9, 2008, Mr. Dunn refused to provide the bill and advised Respondent that his Motion to Compel would be filed on Friday.

55. On July 14, 2008, Mr. Dunn filed the Motion to Compel Mr. Massimo's deposition.

56. The Motion to Compel contained, *inter alia*, allegations that Mr. Massimo had manufactured evidence and had committed perjury in connection with his June 6, 2007 deposition and that Mr. Massimo's perjury related to a material factual issue in the *Oak Manor v. PRDD et al.* case.

57. Respondent did not file an Answer to the Motion to Compel.

58. By letter to Respondent and Counsel for the Defendants dated July 28, 2008, the Court listed the case for trial commencing December 29, 2008.

59. On August 6, 2008, Ms. Glidden filed the Motion to Strike the Lis Pendens.

60. By letter to Judge Burr dated August 14, 2008, Mr. Dunn:

- a) Advised he had not received a response to his Motion to Compel;
- b) Requested the Judge enter an Order compelling Mr. Massimo's deposition;
- c) Alleged that Mr. Massimo has perpetuated a fraud upon the Court and requested a conference; and
- d) Advised that Ms. Glidden had brought Respondent's duties as required by the Rules

of Professional Conduct to Respondent's attention but that Respondent had left it to Defense Counsel to act.

61. By Order dated August 19, 2008, Judge Burr granted the Motion to Compel the deposition of Mr. Massimo and scheduled a conference for Tuesday, September 2, 2008.

62. On August 27, 2008, Respondent filed a *Praeipie To Remove Lis Pendens Against Lot 1A Boro Road, Upper Darby, PA* and an *Order to Settle, Discontinue and End All of Plaintiff's Claims Against Defendants, PRDD, Inc. and Christopher Yangello*.

63. Prior to August 27, 2008, Respondent:

- a) Had not disclosed to the Court the facts relating to Mr. Massimo's false testimony, false statements, and false evidence;
- b) Had not taken any steps to withdraw or correct Mr. Massimo's false testimony, false statements and false evidence; and
- c) Had repeatedly asked Mr. Massimo, and Mr. Massimo would not grant, permission for Respondent to take remedial measures in connection with Mr. Massimo's perjury and fabricated documents.

64. The *Praecipes* filed by Respondent on behalf of Oak Manor did not end the matter because the Defendants had Counterclaims and the escrow money held by Respondent's client had not been released.

65. On September 2, 2008, a conference was conducted before Judge Burr, at which time:

- a) Settlement possibilities were discussed and rejected regarding the Defendants' Counterclaims; and
- b) The Judge re-scheduled the trial date for the Defendants' Counterclaims.

66. On September 2, 2008, Respondent and Mr. Massimo appeared at Mr. Dunn's office for the scheduled deposition.

67. Respondent advised Mr. Massimo not to produce requested documents and to plead the Fifth Amendment.

68. By letter to Respondent dated September 2, 2008, Mr. Dunn:

- a) Advised that he reported Respondent's conduct to the Disciplinary Board; and
- b) Suggested Respondent contact Respondent's insurance carrier and advise Mr. Massimo it is time for him to find other counsel.

69. On November 12, 2008, Defendant Yangello filed a Petition to Have Counsel Fees Awarded ("Petition") and alleged that Respondent and Mr. Massimo had engaged in conduct that was arbitrary, vexatious and/or in bad faith.

70. By letter to Respondent dated November 13, 2008, Ms. Glidden requested the release of the escrow monies.

71. By letter to Ms. Glidden and Mr. Dunn dated November 21, 2008, Respondent stated, "[p]lease be advised

that my client's position is that neither one of your clients is entitled to the \$15,000.00 deposit money."

72. On December 1, 2008, Respondent filed an Answer to the Petition.

73. On December 16, 2008, a hearing was conducted in connection with the Petition, at which time:

- a) Judge Burr stated, "if I were you, Mr. Dougherty, I'd clean this mess up as fast as I can before the stain on the rug gets any bigger";
- b) Ms. Glidden made an oral motion for the release of the escrow money; and
- c) Judge Burr granted Ms. Glidden's motion

74. By Order dated December 17, 2008, Judge Burr granted the relief sought in the Petition and found that Respondent "engaged in conduct in commencing this matter, during the pendency of this matter, and otherwise which was arbitrary, dilatory, obdurate, vexatious and/or in bad faith warranting that reasonable counsel fees be awarded..."

75. On December 23, 2008, Respondent filed a Petition to Withdraw as Counsel.

**SPECIFIC RULES OF PROFESSIONAL CONDUCT AND
RULES OF DISCIPLINARY ENFORCEMENT VIOLATED**

Respondent violated the following RPCs

- A. **RPC 1.6(b)**, which states that a lawyer shall reveal information relating to the

representation of a client if necessary to comply with the duties stated in Rule 3.3.

- B. RPC 1.16 (a)(1), which states that where representation has commenced, a lawyer shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.
- C. RPC 3.3(a)(1), which states that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer:
- D. RPC 3.3(a)(3), which states that if a lawyer or the lawyer's client has offered material evidence before a tribunal or in an ancillary proceeding conducted pursuant to a tribunal's adjudicative authority, such as a deposition, and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.
- E. RPC 3.3(b), which states that a lawyer who represents a client in an adjudicative proceeding and who knows that a person is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable measures, including, if necessary, disclosure to the tribunal.
- F. RPC 8.4(d), which states it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

SPECIFIC RECOMMENDATION FOR DISCIPLINE

76. Petitioner and Respondent jointly recommend that the appropriate discipline for Respondent's admitted mis-

conduct is a public censure.

77. 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 Pa.R.D.E. 215(d), stating that he consents to the recommended discipline and including the mandatory acknowledgements contained in Rule 215(d) (1) through (4) Pa.R.D.E.

78. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there are several mitigating circumstances:

- a) Respondent has admitted engaging in misconduct and violating the charged Rules of Professional Conduct;
- b) Respondent has cooperated with Petitioner, as is evidenced by Respondent's admissions herein and his consent to receiving a public censure;
- c) Respondent is remorseful for his misconduct and understands he should be disciplined, as is evidenced by his consent to receiving a public censure; and
- d) Respondent has practiced law for over twenty-nine years and has no record of discipline.

79. Precedent establishes that discipline in cases involving breach of a lawyer's duty of candor toward the

tribunal range from private discipline to disbarment, depending upon the aggravating or mitigating circumstances. See, e.g., *Office of Disciplinary Counsel v. Gregory G. Holston*, 619 A.2d. 1054 (Pa. 1993) (disbarment for attorney who knowingly forged a court order and certificate and lied to a judicial authority upon being questioned as to the origins of the document); *In re Anonymous No. 86 DB 92 (Jerome J. Verlin)*, 32 Pa.D. & C. 4th 35 (1995) (disbarment for attorney convicted of criminal conspiracy, perjury, theft by deception and false swearing in official matters where misconduct which led to respondent's conviction consisted of inaction when he knew his client in a civil litigation matter was conducting himself in a fraudulent manner by impersonating a dead man who was a party to the action and lying under oath; respondent dropped the case only when partners in his firm became aware of the situation and started to investigate); *In re Anonymous Nos. 41 and 54 DB 80, (Clifford C. Cooper)* 23 D. & C.3d 243 (1982) 26 Pa. D. & C. 3d 511, (1983) (six-month suspension for respondent who permitted his law clerk to falsely testify that the clerk was the defendant in a lawsuit and failed to later reveal his law clerk's false testimony); *In re Anonymous No. 85 DB 97 (Alan S.*

Fellheimer), 44 Pa.D. & C. 4th 299 (1999) (public censure for respondent who engaged in a conflict of interest by advocating on behalf of the principal of the debtor rather than his client (the corporate debtor), filed frivolous and false pleadings on behalf of the principal, failed to correct a material misrepresentation to the bankruptcy court and made a false representation to a court clerk, all in an effort to gain advantage for the principal); *In re Anonymous No. 68 DB 97 (Donald B. Hoyt)*, 41 Pa.D. & C.4th 38 (1998) (public censure for respondent who made specific factual statements and argued factual conclusions in a lawsuit he knew were untrue and continued to make misleading statements to the court to perpetuate the false impression he had created); *In re Anonymous No. 23 DB 93*, 26 Pa.D. & C.4th 339 (1994) (private reprimand for respondent, with history of discipline of an informal admonition, who neglected a domestic relations case, misrepresented to her client that a divorce decree had been entered on July 12, 1991, and then presented a document to her client purporting to be the one supposedly entered on that date; significant mitigating circumstances established where respondent had suffered great personal tragedy resulting in a deep depression and physical and mental

illness, which in the opinion of her psychiatrist caused her to commit the misconduct); In re Anonymous No. 123 DB 91, 19 Pa. D. & C.4th 233 (1992) (private reprimand for respondent who offered evidence he knew to be false by submitting an unmodified order to a district justice when respondent knew it had been modified by another judge and respondent failed to take remedial measures when the district justice relied on the order presented in dismissing the charges against respondent's client).

80. Petitioner and Respondent submit that a public censure is a fair and appropriate resolution based upon the specific facts and analysis of prior cases. Respondent's misconduct is distinguishable from other cases involving candor towards the tribunal in that Respondent made no affirmative knowing misrepresentations to the court. Respondent also in no way attempted to conceal his client's fraudulent activity, as opposing counsel became aware of the artifice at the same time Respondent did. It is undisputed that Respondent had no involvement or complicity in his client's decision to create false documents and testify untruthfully at a deposition. Accordingly, it is submitted that a suspension is unwarranted.

However, Respondent's misconduct stems from his failure to act to correct the fraud his client had perpetuated upon the court, once he came to know of his client's wrongdoing. Respondent's failure to take such action clearly merits a public censure because RPC 3.3 (a)(3) unambiguously created a **mandatory** duty upon him to "take reasonable remedial measures, including, if necessary, disclosure to the tribunal." Comment [10] to RPC 3.3 provides clear and unambiguous guidance for situations where the lawyer had offered material evidence in the belief that it was true and subsequently comes to know of its falsity:

... [i]n such situation, the advocate's proper course is to remonstrate with the client confidentially, advise the client of the lawyer's duty of candor to the tribunal and seek the client's cooperation with respect to the withdrawal or correction of the false statements or evidence. **If that fails, the advocate must take further remedial action.** If withdrawal from the representation is not permitted or will not undo the effect of the false evidence, the advocate must make disclosure to the tribunal as is reasonably necessary to remedy the situation, even if doing so requires the lawyer to reveal information that otherwise would be protected by Rule 1.6. (emphasis added).

Respondent's duty was applicable "even if compliance requires disclosure of information otherwise protected by Rule 1.6." RPC 3.3 (c) Notwithstanding such a duty, other

than remonstrating with his client, Respondent took no remedial measures for close to three months after learning that the pleadings he had previously offered were supported by falsely manufactured documents and perjured testimony. During that time period, Respondent continued to negotiate with opposing counsel and ignored their numerous requests for him to withdraw the false pleadings. Additionally, after belatedly withdrawing his client's underlying claims, Respondent continued to represent the client on counterclaims and remained in the case for an additional four months, prior to finally filing a petition to withdraw. Based on the foregoing, the parties agree that a public censure is appropriate. A public censure has been meted out in other jurisdictions in situations where the attorney has failed to take remedial measures to correct a client's fraud. See, **Matter of Scahill**, 767 N.E.2d 976 (Ind.2002) (public reprimand where client had dissipated main marital asset and respondent later failed to take corrective action in dissolution pleadings); **Matter of Page**, 774 N.E.2d 49 (Ind.2002) (public reprimand for respondent who failed to inform the court that his client had lied under oath).

81. In sum, the jointly proposed discipline of a public censure is appropriate when considering the specific facts of Respondent's misconduct. Suspension is not warranted because Respondent made no affirmative misrepresentations to the court, did not attempt to conceal his client's fraudulent activity and was in no way responsible for his client's illicit actions. A public censure, as opposed to private discipline, is warranted because Respondent clearly breached his duty to take reasonable remedial measures to rectify the fraud perpetuated by his client.

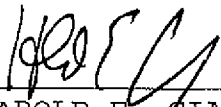
WHEREFORE, Petitioner and Respondent respectfully request that, pursuant to Pennsylvania Rules of Disciplinary Enforcement 215(e) and 215(g), a three member panel of the Disciplinary Board review and approve the Joint Petition in Support of Discipline on Consent and file a recommendation with the Supreme Court of Pennsylvania that Respondent receive a public censure and that Respondent be ordered to pay all necessary expenses incurred in the investigation and prosecution of this

matter as a condition to the grant of the Petition.


Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL
PAUL J. KILLION
Attorney Reg. No. 20955,
Chief Disciplinary Counsel

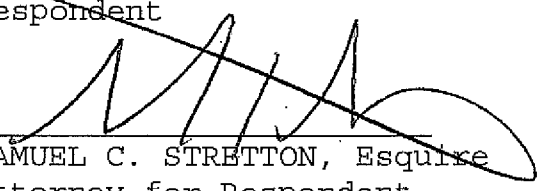
Date: 4/19/09


HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel
Attorney Reg. No. 51159
Suite 170, 820 Adams Avenue
Trooper, PA 19403
(610) 650-8210

Date: 4/22/09


EDWARD RAYMOND DOUGHERTY, Esquire
Respondent

Date: 4/23/09


SAMUEL C. STRETTON, Esquire
Attorney for Respondent

VERIFICATION

The statements contained in the foregoing *Joint Petition In Support of Discipline on Consent Discipline* are true and correct to the best of my 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.

4/9/09

Date

H. E. Ciampoli, Jr.

HAROLD E. CIAMPOLI, JR.
Disciplinary Counsel

4/22/09

Date

Edward R. Dougherty

EDWARD RAYMOND DOUGHERTY
Respondent

4/23/09

Date

S. C. Stretton

SAMUEL C. STRETTON, Esquire
Attorney for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. ___DB 2009
Petitioner :
 :
v. :
 : Attorney Reg. No. 31005
EDWARD RAYMOND DOUGHERTY :
Respondent : (Delaware County)

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

COMMONWEALTH OF PENNSYLVANIA
COUNTY OF DELAWARE

EDWARD RAYMOND DOUGHERTY, being duly sworn according to law, deposes and hereby submits this affidavit consenting to the recommendation of a three month suspension from the practice of law in the Commonwealth of Pennsylvania in conformity with Pa.R.D.E. 215(d) and further states as follows:

1. He is an attorney admitted in the Commonwealth of Pennsylvania, having been admitted to the bar on or about November 9, 1979.
2. He desires to submit a Joint Petition in Support of Discipline on Consent pursuant to Pa.R.D.E. 215(d).
3. His consent is freely and voluntarily rendered; he is not being subjected to coercion or duress, and he is fully aware of the implications of submitting this affidavit.
4. He is aware that there are presently pending investigations into allegations

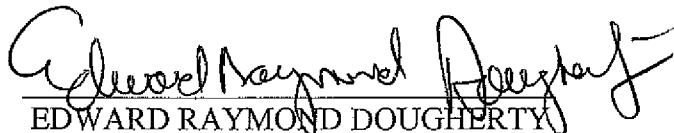
that he has been guilty of misconduct as set forth in the Joint Petition in Support of Discipline on Consent of which this affidavit is attached hereto.

5. He acknowledges that the material facts set forth in the Joint Petition are true. 6. He submits the within affidavit because he knows that if charges predicated upon the matter under investigation were filed, or continued to be prosecuted in the pending proceeding, he could not successfully defend against them.

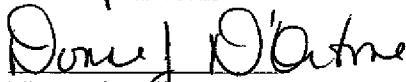
7. He acknowledges that he is fully aware of his right to consult and employ counsel to represent him in the instant proceeding. He has retained, consulted and acted upon the advice of counsel, Samuel C. Stretton, Esquire in connection with his decision to execute the within Joint Petition.

It is understood that the statements made herein are subject to the penalties of 18 Pa.C.S.A. §4904 (relating to unsworn falsification to authorities).

Signed this 22 day of April, 2009


EDWARD RAYMOND DOUGHERTY

Sworn to and subscribed
before me this 22nd day
of April 2009


Notary Public

