

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1853 Disciplinary Docket No. 3  
Petitioner :  
 : No. 58 DB 2012  
v. :  
 : Attorney Registration No. 59933  
JOHN RICHARD BANKE, II, :  
Respondent : (Westmoreland County)

ORDER

PER CURIAM:

AND NOW, this 16<sup>th</sup> day of August, 2012, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated June 13, 2012, the Joint Petition in Support of Discipline on Consent is hereby granted pursuant to Rule 215(g), Pa.R.D.E., and it is

ORDERED that John Richard Banke, II, is suspended on consent from the Bar of this Commonwealth for a period of one year and one day and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

A True Copy Patricia Nicola  
As Of 8/16/2012

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

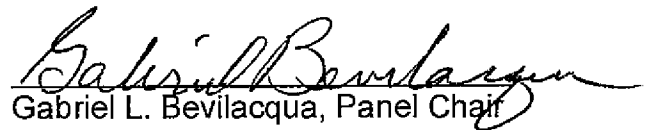
OFFICE OF DISCIPLINARY COUNSEL : No. 58 DB 2012  
Petitioner :  
v. : Attorney Registration No. 59933  
JOHN RICHARD BANKE, II :  
Respondent : (Westmoreland County)

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 Gabriel L. Bevilacqua, Gerald Lawrence, and David E. Schwager has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on May 21, 2012.

The Panel approves the Joint Petition consenting to a one year and one day 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.

  
Gabriel L. Bevilacqua, Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: 6/13/2012

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
: Petitioner : No. 58 DB 2012  
: v. :  
JOHN RICHARD BANKE, II, : Attorney Registration No. 59933  
: Respondent : (Westmoreland County)

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

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION  
CHIEF DISCIPLINARY COUNSEL

Susan N. Dobbins  
Disciplinary Counsel  
Suite 1300, Frick Building  
437 Grant Street  
Pittsburgh, PA 15219  
(412) 565-3173

and

John Richard Banke, II, Esquire  
Respondent  
1035 Edgewood Road  
New Kensington, PA 15068  
(724) 335-1092

Craig E. Simpson, Esquire  
Counsel for Respondent  
1500 Ardmore Boulevard, Suite 207  
Pittsburgh, PA 15221  
(412) 731-3100

**FILED**

MAY 21 2012

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

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	
	:	
Petitioner	:	No. 58 DB 2012
	:	
v.	:	
	:	
JOHN RICHARD BANKE, II,	:	Attorney Registration No. 59933
	:	
Respondent	:	(Westmoreland County)

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

Petitioner, Office of Disciplinary Counsel, by Paul J. Killion, Chief Disciplinary Counsel, and Susan N. Dobbins, Disciplinary Counsel, and Craig E. Simpson, Esquire, Counsel for Respondent, and Respondent, John Richard Banke, II, Esquire, file this Joint Petition in Support of Discipline on Consent Under Rule 215(d), Pa.R.D.E. and respectfully represent as follows:

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 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 alleged misconduct of an attorney

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

2. Respondent, John Richard Banke, II, was born on June 21, 1964. He was admitted to practice law in the Commonwealth of Pennsylvania on December 19, 1990. Respondent's attorney registration mailing address is 1035 Edgewood Road, New Kensington, PA 15068. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. By Order of Court entered by the Supreme Court of Pennsylvania, dated September 20, 2011, effective October 20, 2011, Respondent was Administratively Suspended from the practice of law in Pennsylvania due to his failure to comply with Rule 219 of the Pennsylvania Rules of Disciplinary Enforcement (non-payment of annual attorney assessment fee).

#### SPECIFIC FACTUAL ALLEGATIONS ADMITTED

##### CHARGE I: THE CAPPONE MATTER

4. On or about August 1, 2004, Roberta Cappone (hereinafter, Mrs. Cappone) sustained personal injuries while a guest at the Americana Stowaway Motel, Inc. d/b/a/ Stowaway Grand Hotel, Inc. (hereinafter, The Grand Hotel) in Ocean City, Maryland.

5. Sometime thereafter, Mrs. Cappone:

(a) Retained Respondent to represent her in her personal injury matter; and,

(b) Entered into a contingency fee agreement with Respondent in which he was to receive 33% of any recovery.

6. On or about March 7, 2005, Respondent settled Mrs. Cappone's claim against The Grand Hotel for \$15,000.

7. By e-mail dated March 7, 2005, Karen Osburn, Claim Specialist with Ward North America, Inc. (the third party administrator for First Specialty Insurance, The Grand Hotel's insurance carrier) informed Respondent that:

(a) They had settled Mrs. Cappone's claim for \$15,000;

(b) With the letter, they were enclosing a Release of All Claims that would need to be signed by Mr. and Mrs. Cappone and returned; and,

(c) Also, a W-9 was attached that would need to be completed and returned to their office prior to the settlement check being issued.

8. By letter dated March 8, 2005, Respondent informed Ms. Osburn, among other things, that:

(a) With regard to Mrs. Cappone's matter, enclosed was the Release of All Claims and W-9, both of which had been properly executed;

(b) He had enclosed a return envelope for overnight return of the settlement proceeds; and,

(c) He requested that the appropriate funds be forwarded by using the enclosed overnight delivery envelope as soon as possible.

9. At that time, Respondent was aware that the settlement amount of the Cappones' matter was \$15,000.

10. By check number 054883 dated March 15, 2005, in the amount of \$20,000.00, made payable to "Roberta Cappone & Andrew Cappone, Individually & as Husband & Wife & John R. Banke, Their Attorney," First Specialty Insurance Corporation, the insurer for The Grand Hotel, settled the Cappones' civil matter against their insured.

11. On March 20, 2005, Respondent met with the Cappones to provide them with their portion of the settlement. At that time, Respondent had the Cappones endorse the \$20,000 settlement check.

12. At the meeting on March 20, 2005, Mrs. Cappone told Respondent that:

(a) The amount of the settlement check was \$5,000 more than the settlement amount; and,

(b) It would be best for Respondent to send the \$20,000 check back to the insurance company and have them reissue a check in the correct amount of \$15,000.

13. Respondent told the Cappones that it would be easier to negotiate the \$20,000 check, and he would then send the insurance company a check in the amount of \$5,000 which was the amount of the overpayment.

14. Mrs. Capone asked Respondent to provide them with something in writing to acknowledge that he would be sending the \$5,000 back to the insurance company.

15. On March 20, 2005, Respondent issued check number 456, in the amount of \$9,447.00, from his National City Bank personal account to the Cappones, providing them with their portion of the settlement.

16. Shortly thereafter, Respondent provided the Cappones with a Statement of Settlement and Distribution of Funds which indicated, among other things, that:

- (a) The total gross recovery was \$15,000.00;
- (b) Less KDL + Chiropractic Balance - \$900.00;
- (c) Less attorney fee of 33% - \$4,653.00;
- (d) Total net recovery to client - \$9,447.00; and,



(e) The parties acknowledged that the settlement draft was mistakenly made in the amount of \$20,000.00 and \$5,000.00 would be returned by him.

17. On March 21, 2005, Respondent called First Specialty Insurance and informed a representative of their company that they had issued their check to the Cappones for \$5,000 more than the agreed upon settlement amount, and he would send the additional \$5,000 to them.

18. On March 21, 2005, Respondent deposited or caused to be deposited the \$20,000.00 check into his National City Bank personal account number 967750506 (hereinafter, personal account).

19. Thereafter, Respondent did not return the \$5,000.00 to The Grand Hotel or to the insurance company, First Specialty Insurance Corporation.

20. By check number 469, dated April 14, 2005, in the amount of \$900.00, made payable to KDL + Chiropractic, drawn on his personal account, and annotated "Cappone, Roberta," Respondent paid the remaining balance owed to the medical provider for Ms. Cappone.

21. In about December 2009, Mrs. Cappone called Respondent and asked why he had never paid the \$5,000 back to the insurance company.

22. Respondent told Mrs. Cappone that the insurance company had never asked for the money back.

23. Mrs. Cappone then:

(a) Told Respondent that she was going to turn him into the Disciplinary Board if he did not return the money to the insurance company; and,

(b) Provided him with the name and telephone number of Carolyn Shockey (hereinafter, Ms. Shockey) with Swiss Re, the Administrator for First Specialty Insurance, for him to talk to regarding the money that was due the insurance company from the overpayment of the settlement funds regarding her case.

24. In about December 2009 and January 2010, Ms. Shockey called Respondent and left messages for him to call her about the overpayment of \$5,000 that had been made regarding the Cappones' claim.

25. Respondent did not respond to Ms. Shockey's telephone calls.

26. By letter dated January 11, 2010 sent by certified mail, return receipt requested, Ms. Shockey informed Respondent that:

(a) She had been unable to reach him by telephone;

(b) He was previously advised that they requested reimbursement of the \$5,000 overpayment which was included in the settlement check for the Cappones' claim;

(c) His client, Ms. Cappone, indicated he was going to send the reimbursement some time ago;

(d) If he needed to make payment arrangements, contact her at his earliest convenience or send payment forthwith; and,

(e) She had attached the following in support of their reimbursement request;

(i) A copy of their payment screen;

(ii) The memo outlining the settlement;

(iii) A copy of his letter in agreement with the settlement;

(iv) Signed release executed by his client; and,

(v) A copy of the front and back of the cashed check.

27. Respondent did not respond to Ms. Shockey's letter dated January 11, 2010.

28. On about March 11, 2010, Respondent called Ms. Shockey and informed her that he wanted to make payment arrangements with Swiss Re and/or First Specialty Insurance to repay the \$5,000 owed to them.

29. By letter dated April 6, 2010, Ellen Wolf, Recovery Analyst with National Subrogation Services, LLC, (hereinafter, National Subrogation Services), informed Respondent that:

(a) Swiss Re (First Specialty Ins Co) had paid him [o]n [sic] behalf of his client;

(b) It appeared that an overpayment of \$5,000 was issued to him;

(c) Her client, Carolyn Shockey, indicated that he had spoken to her and had informed her that he would not be able to make one lump payment to them on this matter and would need to pay over a period of time;

(d) She would like to talk to him about payment options;

(e) National Subrogation Services represented recovery efforts for Swiss Re – First Specialty;

(f) Please call her to discuss this matter;

(g) All checks should be made payable to National Subrogation Services A/S/O American Stowaway Motel; and,

(h) NSS would then forward same to Swiss Re.

30. Respondent did not respond to Ms. Wolf's letter dated April 6, 2010.

31. By letter dated May 14, 2010, sent to him by certified mail, return receipt requested, Ms. Wolf informed Respondent, among other things, that:

(a) As her previous letter and voice mail to him indicated, National Subrogation Services had been retained by Swiss Re Insurance Company to recover the \$5,000 that was overpaid to his office on a matter he handled on behalf of Robin Cappone;

(b) Thus far, he had not contacted their office to arrange repayment after previously indicating that he was willing to pay her client;

(c) If they did not hear from him within the next 30 days they would take all professional and civil remedies available to ensure payment; and,

(d) She requested that he contact her to resolve this matter or if Respondent wished to send payment immediately, it should be made payable to National Subrogation Services A/S/O American Stowaway Motel and mailed to their address.

32. On June 18, 2010, Respondent called Ms. Wolf and left her a voicemail message that he would like to discuss the Cappone overpayment matter with her, and repay the money to National Subrogation Services.

33. On June 22, 2010, Ms. Wolf called Respondent about his voicemail message to her, and asked him to call her.

34. On June 22, 2010, Respondent:

(a) Called Ms. Wolf;

(b) Informed her that he would repay \$1,000 a month for five (5) months; and,

(c) Told her that she would receive his first repayment check on July 20, 2010.

35. By letter dated July 29, 2010, Ms. Wolf informed Respondent that:

(a) He indicated in his last telephone call that he would be sending a check each month for \$1,000 for 5 months and that his first check would be sent July 20, 2010;

(b) As of that date, they had not received his check;

(c) He should send a check immediately to avoid having her company take further steps to get this matter resolved;

(d) If they did not receive same within 10 business days, they would have no option but to take further steps, as outlined in her previous letter; and,

(e) They requested that he send a money order made out to National Subrogation Services and put the NSS matter number on his correspondence.

36. By letter dated August 5, 2010, Respondent informed Ms. Wolf that in regard to the referenced matter regarding American Stowaway Motel (dba) the Grand Hotel – NSS Matter Number: 10012857, enclosed was a payment which he asked that they credit to the matter.

37. By check number 103, dated August 4, 2010, in the amount of \$1,000.00, made payable to National Subrogation Services, LLC, drawn on his PNC Bank IOLTA Client Trust Fund Account No. 1135686016, and annotated "NSS Matter #10012857," Respondent made a payment to National Subrogation Services toward the \$5,000 that Respondent owed The Grand Hotel.

38. By letter dated September 30, 2010, Ms. Wolf informed Respondent that:

(a) He should send in his second check or the full \$4,000 he still owed;

(b) His payment was overdue and they had been very patient in regard to this matter; however, if they did not have his cooperation they would need to take further steps to get the matter resolved; and,

(c) He should make the check payable to NSS A/S/O American Stowaway Motel.

39. Thereafter, Respondent did not forward another payment to Ms. Wolfe in regard to the \$4,000 that he still owed The Grand Hotel.

40. Respondent's attorney fees in the Capbone matter were \$4,653.00.

41. During the end of March and up and through April 20, 2005, Respondent used the \$4,653 in attorney fees by paying personal expenses from his personal account.

42. By April 20, 2005, after making all disbursements in regard to the Cappones' civil action, Respondent was still entrusted with the \$5,000 overpayment that he had received from the Cappones' settlement in March 2005.

43. On April 20, 2005, the balance in Respondent's personal account was \$1,858.40, which was \$3,141.60 below the entrustment he owed to the Grand Hotel and/or First Specialty Insurance Corporation.

44. On May 19, 2005, the balance in Respondent's personal account was \$722.25, which was \$4,277.75 below his entrustment on behalf of the Grand Hotel and/or First Specialty Insurance Corporation.

45. On July 5, 2005, the balance in Respondent's personal account was a negative \$185.77, which was \$5,000 below his entrustment on behalf of the Grand Hotel and/or First Specialty Insurance Corporation.

46. Respondent misappropriated the \$5,000 in entrusted funds related to the Cappones' settlement.



47. Respondent was sent a Letter of Inquiry regarding the Cappone matter by certified mail on December 20, 2010. The letter was received and signed for by Respondent on December 22, 2010.

48. On March 14, 2011, Attorney Craig Simpson contacted Office of Disciplinary Counsel advising that he represented Respondent.

49. By check number 1088, dated March 18, 2011, in the amount of \$4,000.00, made payable to National Subrogation Services, LLC, drawn on the PNC Bank IOLTA Account from the Law Office of Craig Simpson, and annotated "NSS Matter Number 10012857 Funds from John R. Banke, II, Esq." Mr. Simpson, on Respondent's behalf, paid back National Subrogation Services, LLC, the balance of the funds that Respondent had misappropriated.

#### CHARGE II: THE HILLERY MATTER

50. On or about August 31, 2007, Donald Hillery (hereinafter, Mr. Hillery) sustained personal injuries as a result of a motorcycle accident.

51. Sometime thereafter, Mr. Hillery:

(a) Retained Respondent to represent him and his wife in a personal injury matter against Todd Zeiler; and,

(b) Entered into a contingent fee agreement with Respondent in which Respondent was to receive 33% of any recovery.

52. By check dated June 19, 2008, in the amount of \$9,000.00, made payable to "Donald Hillery and Kathleen Hillery, Individually and as Husband & Wife & John R. Banke, Attorney of Record," Respondent settled the Hillerys' civil matter against Mr. Zeiler and/or his insurance carrier, Bristol West Insurance Group.

53. On June 23, 2008, Respondent deposited or caused to be deposited the \$9,000 check into his National City Bank IOLTA Account numbered 261000468 (hereinafter, National City Bank IOLTA Account).

54. Shortly thereafter, Respondent provided the Hillerys with a Statement of Settlement and Distribution of Funds which indicated, among other things, that:

(a) The total gross recovery was \$9,000.00;

(b) Less attorney fee [33%] – [Attorney Fee reduced to recovery after medical expenses paid] - \$2,008.63;

(c) Less expenses totaling \$2,913.24;

(d) Total net recovery to client - \$4,078.13.

55. After deduction of his fees, in the amount of \$2,008.63, Respondent was still entrusted with \$6,991.37 (\$9,000 minus \$2,008.63) on behalf of the Hillerys.

56. On June 30, 2008, the balance in Respondent's National City Bank IOLTA Account was \$5,511.20.

57. On June 30, 2008, Respondent's National City Bank IOLTA Account was deficient at least \$1,480.17 (\$6,991.37 minus \$5,511.20) in regard to his entrustment for the Hillerys.

58. By check number 1996, dated June 22, 2008, in the amount of \$4,078.13, made payable to Donald and Kathleen Hillery, annotated "Dist. v. Zeiler" and negotiated on July 8, 2008, Respondent disbursed the funds to the Hillerys that were due them from their settlement.

59. Following disbursement of the \$4,078.13 to the Hillerys, Respondent was still entrusted with \$2,913.24 on their behalf.

60. On July 31, 2008, the balance in Respondent's National City Bank IOLTA Account was \$89.57.

61. On July 31, 2008, Respondent's National City Bank IOLTA Account was deficient at least \$2,823.67 (\$2,913.24 minus \$89.57) in regard to his entrustment on behalf of the Hillerys.

62. On September 30, 2008, the balance in Respondent's National City Bank IOLTA Account was \$11.57.

63. On September 30, 2008, Respondent's National City Bank IOLTA Account was deficient at least \$2,901.67 (\$2,913.24 minus \$11.57) in regard to his entrustment on behalf of the Hillerys.

64. By check number 2040, dated February 4, 2009, in the amount of \$2,000.00, and made payable to KDL+ Chiropractic, Respondent disbursed from his National City Bank IOLTA Account funds with which he was entrusted in the Hillerys' matter.

65. By check number 2051, dated February 25, 2009, in the amount of \$913.24, made payable to ACS Recovery Services, annotated "#10133732," and which cleared his National City Bank IOLTA Account on March 11, 2009, Respondent disbursed the remaining funds with which he was entrusted on behalf of the Hillerys.

66. Between June 30, 2008 and March 11, 2009:

(a) Respondent made various deposits into and disbursements from his National City Bank IOLTA Account that were unrelated to his entrustment on behalf of the Hillerys; and,

(b) Respondent's National City Bank IOLTA Account was deficient on various occasions in regard to his entrustment on behalf of the Hillerys.

67. By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

(a) Rule of Professional Conduct 1.15(a) (for conduct occurring prior to 9/20/08) - 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) Rule of Professional Conduct 1.15(b) (for conduct occurring on or after 9/20/08) - A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

(c) Rule of Professional Conduct 1.15(b) (for conduct occurring prior to 9/20/08) - 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.

(d) Rule of Professional Conduct 1.15(d) (for conduct occurring on or after 9/20/08) - Upon receiving Rule 1.15 Funds or property which are not Fiduciary Funds or property, a lawyer shall promptly notify the client or third person, consistent with the requirements of applicable law. Notification of receipt of Fiduciary Funds or property to clients or other persons with a beneficial interest in such Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of confidentiality and notice applicable to the Fiduciary entrustment.

(e) Rule of Professional Conduct 1.15(e) (for conduct occurring on or after 9/20/08) - 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, including but not limited to Rule 1.15 Funds, 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 the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

(f) Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

68. Office of Disciplinary Counsel and Respondent jointly recommend that the appropriate discipline for Respondent's admitted misconduct in this matter is a one (1) year and one (1) day suspension. Attached to the Petition is Respondent's executed Affidavit required by Rule 215(d)(1) through (4), Pa.R.D.E.

69. Respondent has no prior discipline of record.

70. In support of Petitioner and Respondent's joint recommendation, it is respectfully submitted that there is case law precedent relevant to this matter:

(a) In consent discipline matters, the Supreme Court of Pennsylvania has approved and imposed discipline of a year and a day in similar misappropriation cases. In *Office of Disciplinary Counsel v. James Lawrence Paz*, No. 97 DB 2010, No. 1630 Disciplinary Docket No. 3 (August 2010), Mr. Paz was suspended on consent by the Supreme Court for a period of a year and one day. He had misappropriated \$3,953 in entrusted client funds which he repaid;

(b) In *Office of Disciplinary Counsel v. Mackarey*, No. 115 DB 2006, No. 1209 Disciplinary Docket No. 3, Mr. Mackarey was suspended by the Supreme Court for one year and one day, pursuant to a Joint Petition in Support of Discipline on Consent. He had misappropriated \$10,000 in entrusted client funds. Mr. Mackarey admitted his misconduct, cooperated with Disciplinary Counsel, was 79 years old and in poor health, and had voluntarily gone on inactive status. He had a prior suspension of three months due to the commingling of client funds with his own; and,

(c) In *Office of Disciplinary Counsel v. Galfand*, No. 25 DB 2004, No. 1083 Disciplinary Docket No. 3, Mr. Galfand was suspended for one year and one day for misappropriating funds of \$18,000 and \$30,000 in two separate client matters. This was not a consent discipline case.

71. The proposed discipline herein is similar to the discipline set forth in the aforementioned cases.

72. Respondent has participated and cooperated with Disciplinary Counsel in the investigation and prosecution of the within matter.

73. Respondent, through the filing of this Joint Petition, expresses great regret and accepts responsibility for his actions.



74. Respondent has repaid to his clients and third parties all the funds he misappropriated.

75. For the reasons set forth above, Petitioner and Respondent believe that a one (1) year and one (1) day suspension is appropriate considering all of the facts and circumstances herein.

WHEREFORE, Petitioner and Respondent respectfully request that pursuant to Rules 215(d) and 215(f), Pa.R.D.E., the Three Member Panel of the Disciplinary Board review and approve this Joint Petition in Support of Discipline on Consent under Rule 215(d), Pa.R.D.E. and files its recommendation with the Supreme Court of Pennsylvania, in which it is recommended that the Supreme Court enter an Order imposing upon Respondent a one (1) year and one (1) day suspension.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION  
CHIEF DISCIPLINARY COUNSEL

By Susan N. Dobbins  
Susan N. Dobbins  
Disciplinary Counsel

and

By Craig E. Simpson  
Craig E. Simpson, Esquire  
Counsel for Respondent

By John R. Banke II  
John Richard Banke, II, Esquire  
Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
: Petitioner :  
: :  
: No. 58 DB 2012 :  
v. :  
: :  
JOHN RICHARD BANKE, II, : Attorney Registration No. 59933 :  
: :  
Respondent : (Westmoreland County)

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.

5/16/12  
Date

Susan N. Dobbins  
Susan N. Dobbins  
Disciplinary Counsel

5/14/2012  
Date

John R. Banke II  
John Richard Banke, II, Esquire  
Respondent

5-14-12  
Date

Craig E. Simpson  
Craig E. Simpson, Esquire  
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, :  
: Petitioner :  
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: Attorney Registration No. 59933 :  
JOHN RICHARD BANKE, II, :  
: Respondent : (Westmoreland County)

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


Respondent, John Richard Banke, II, hereby states that he consents to the imposition of a one (1) year and one (1) day suspension, jointly recommended by Petitioner, Office of Disciplinary Counsel, and Respondent and Counsel for 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 counsel in connection with the decision to consent to discipline;

2. He is aware that there is presently pending an investigation into allegations that he has been guilty of 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 charges predicated upon the matter under investigation were filed, he could not successfully defend against them.

  
John Richard Banke, II, Esquire  
Respondent

  
Craig E. Simpson, Esquire  
Counsel for Respondent

Sworn to and subscribed  
before me this 14  
day of May, 2012.

  
Notary Public

COMMONWEALTH OF PENNSYLVANIA  
Notarial Seal  
Christine E. Williams, Notary Public  
Forest Hills Boro, Allegheny County  
My Commission Expires Aug. 6, 2013  
Member, Pennsylvania Association of Notaries