

**IN THE SUPREME COURT OF PENNSYLVANIA**

|                                 |   |                                    |
|---------------------------------|---|------------------------------------|
| OFFICE OF DISCIPLINARY COUNSEL, | : | No. 1482 Disciplinary Docket No. 3 |
| Petitioner                      | : |                                    |
|                                 | : | No. 53 DB 2009                     |
| v.                              | : |                                    |
|                                 | : | Attorney Registration No. 30252    |
| GARY C. HOICKER,                | : |                                    |
| Respondent                      | : | (Philadelphia)                     |

**ORDER**

**PER CURIAM:**

**AND NOW**, this 17<sup>th</sup> day of February, 2010, upon consideration of the Recommendation of the Three-Member Panel of the Disciplinary Board dated December 23, 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 Gary C. Hoicker is suspended on consent from the Bar of this Commonwealth for a period of two years, that the suspension be stayed in its entirety, and that he be placed on probation for a period of two and one-half years, subject to the following conditions:

I. **COURT SUPERVISED TREATMENT AS DIRECTED  
BY COUNTY PROBATION DEPARTMENT**

1. Respondent shall attend any and all alcohol treatment as directed by the Delaware County Probation Department as part of his sentence.

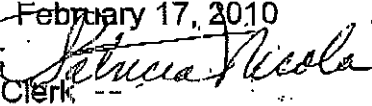
II. CONDITIONS OF PROBATION FOR FIRST YEAR IN ADDITION TO CONDITION I ABOVE

1. Respondent shall abstain from using alcohol or any other mind-altering chemical.
2. Respondent shall attend Alcoholics Anonymous meetings at least five (5) times a week.
3. Respondent shall obtain a sponsor in Alcoholics Anonymous and maintain weekly contact with that sponsor.
4. A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule §89.293(c).
5. Respondent shall furnish his sobriety monitor with his Alcoholics Anonymous sponsor's name, address and phone number.
6. Respondent shall establish his weekly attendance at Alcoholics Anonymous meetings by providing written verification to the Board on a Board-approved form.
7. Respondent shall file with the Secretary of the Board quarterly written reports.
8. With the sobriety monitor, Respondent shall:
  - a. meet at least twice a month;
  - b. maintain weekly phone contact; and
  - c. cooperate fully.
9. The appointed sobriety monitor shall:
  - a. monitor Respondent's compliance with the terms and conditions of the order imposing probation;
  - b. assist Respondent in arranging any necessary professional or substance abuse treatment;
  - c. meet with Respondent at least twice a month and maintain weekly telephone contact with Respondent;

- d. maintain direct monthly contact with Respondent's Alcoholics Anonymous sponsor;
- e. file with the Secretary of the Board quarterly reports; and
- f. immediately report to the Secretary of the Board any violations by the Respondent of the terms and conditions of the probation.

III. CONDITIONS OF PROBATION AFTER FIRST YEAR IN ADDITION TO CONDITION I ABOVE

1. Respondent shall abstain from using alcohol or any other mind-altering chemical.
2. Respondent shall regularly attend Alcoholics Anonymous meetings.

A True Copy Patricia-Nicola  
As of February 17, 2010  
Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

|                                |   |                                    |
|--------------------------------|---|------------------------------------|
| OFFICE OF DISCIPLINARY COUNSEL | : | No. 1482 Disciplinary Docket No. 3 |
| Petitioner                     | : |                                    |
| v.                             | : | No. 53 DB 2009                     |
| GARY C. HOICKER                | : | Attorney Registration No. 30252    |
| 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 Stephan K. Todd, R. Burke McLemore, Jr., and Mark S. Baer, has reviewed the Joint Petition in Support of Discipline on Consent filed in the above-captioned matter on November 23, 2009.

The Panel approves the Joint Petition consenting to a two year suspension to be stayed in its entirety and two and one-half years probation subject to the conditions set forth in the Joint Petition 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.



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Stephan K. Todd, Panel Chair  
The Disciplinary Board of the  
Supreme Court of Pennsylvania

Date: 12/23/09

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1482 Disciplinary  
Petitioner : Docket No. 3  
:  
:  
v. : No. 53 DB 2009  
:  
:  
GARY C. HOICKER, : Atty. Reg. No. 30252  
:  
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 Carmen C. Nasuti, Disciplinary Counsel, and by Respondent, Gary C. Hoicker, Esquire and his counsel, Stuart L. Haimowitz, 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:

1. Petitioner, whose principal office is situated at PA Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

**FILED**

NOV 23 2009

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

2. Respondent, Gary C. Hoicker, was born on September 10, 1954 and was admitted to practice law in the Commonwealth of Pennsylvania on October 12, 1979. His most recently registered office address is 42 S. 15<sup>th</sup> Street, Suite 1316, Philadelphia, PA 19102. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. By Order dated July 1, 2009, the Supreme Court referred Respondent's conviction matters, as set forth below, to the Disciplinary Board pursuant to Pa.R.D.E. 214(f)(1) and (g). A true and correct copy of the Order is attached as "Appendix A."

#### CONVICTION I

4. On September 26, 2008, Respondent was charged in Delaware County with aggravated assault, in violation of 18 Pa.C.S. §2702; driving under the influence, in violation of 75 Pa.C.S. §3802(a)(1); driving under the influence of a controlled substance, in violation of 75 Pa.C.S. §3802(d); and recklessly endangering another person, in violation of 18 Pa.C.S. §2705.

5. On February 17, 2009, Respondent entered a plea of guilty in the Court of Common Pleas of Delaware County to Criminal No. CP23-CR-0007878-2008 to the offenses of driving under the influence of alcohol and a controlled substance, to

wit, cocaine, in violation of 75 Pa.C.S. §3802(d), and reckless endangering another person, in violation of 18 Pa.C.S. §2705.

6. On February 17, 2009, on the charge of driving under the influence, the Honorable Kevin Kelly sentenced Respondent to imprisonment for a period of ninety days to twenty-three months, with the minimum term to be served on 45 consecutive weekends commencing on March 27, 2009; a consecutive term of probation of three years; and a fine of \$1,500. On the charge of reckless endangerment, Judge Kelly imposed a two-year term of probation to run consecutively to the probation on the driving under the influence charge, for a total term of probation of five years. Judge Kelly also ordered that Respondent complete a CRN Evaluation, perform ninety-six hours of community service, undergo drug-and-alcohol evaluation and a psychological evaluation, and pay a \$100 mandatory cost assessment.

7. The conviction for driving under the influence was Mr. Hoicker's "second offense" for sentencing purposes (first DUI conviction on July 23, 2003) and therefore is graded as a misdemeanor of the first degree, 75 Pa.C.S. §3803(b)(4), punishable by imprisonment of not less than ninety days, 75 Pa.C.S. §3804(c)(2), and not more than five years, 18 Pa.C.S. §§106(b)(6) and 1104(1).

8. The conviction of reckless endangerment is a misdemeanor of the second degree, 18 Pa.C.S. §2705, punishable by imprisonment of not more than two years, *id.* §§106(b)(7) and 1104(2).

9. Each of the two crimes to which Respondent pled guilty is a "serious crime" as defined by Pa.R.D.E. 214(i).

10. Respondent's convictions constitute a *per se* basis for discipline under Pa.R.D.E. 203(b)(1).

11. Respondent acknowledges that his conduct as set forth in paragraphs 4 through 10 violated the following Rule of Disciplinary Enforcement:

- a. Pa.R.D.E. 203(b)(1), which provides that conviction of a crime which under Enforcement Rule 214 (relating to attorneys convicted of crimes) may result in suspension, shall be grounds for discipline.

#### CONVICTION II

12. On August 18, 2008, Respondent was charged in Montgomery County with harassment, in violation of 18 Pa.C.S. §2709(a)(4) and §2709(a)(1).

13. On January 13, 2009, Respondent entered a plea of guilty in the Court of Common Pleas of Montgomery County under criminal docket No. CP-46-CR-0007690-2008 to the offense of harassment, in violation of 18 Pa.C.S. §2709(a)(1).

14. On January 13, 2009, the Honorable Richard J. Hodgson sentenced Respondent to three months of probation and to pay a fine of \$100. The special conditions of probation are that Respondent serve twelve hours of community service; pay \$30 per month as an offender supervision fee; have no contact with the victim, David Resnick, or his family; and write a letter of apology to the victim.

15. The crime of harassment is graded as a summary offense, 18 Pa.C.S. §2709(c)(1), and is punishable by imprisonment for not more than ninety days, *id.*, §§106(c)(2) and 1105. Harassment under the above statutory subsection is not a "serious crime" under the definition of Pa.R.D.E. 214(i).

16. Respondent acknowledges that his conduct as set forth in paragraphs 12 through 15 violated the following Rule of Professional Conduct:

- a. RPC 8.4(b), which states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

SPECIFIC JOINT RECOMMENDATION FOR DISCIPLINE

17. ODC and Respondent jointly recommend that the appropriate discipline for Respondent's admitted criminal

conduct is a suspension for a period of two years with the suspension stayed in its entirety and Respondent placed on probation for a period of two and one-half years upon the following conditions:

I. COURT SUPERVISED TREATMENT AS DIRECTED  
BY COUNTY PROBATION DEPARTMENT

1. Respondent shall attend any and all alcohol treatment as directed by the Delaware County Probation Department as part of his sentence.

II. CONDITIONS OF PROBATION FOR FIRST YEAR  
IN ADDITION TO CONDITION I ABOVE

1. Respondent shall abstain from using alcohol or any other mind altering chemical.

2. Respondent shall attend Alcohol Anonymous meetings at least five (5) times a week.

3. Respondent shall obtain a sponsor in Alcohol Anonymous and maintain weekly contact with that sponsor.

4. A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule §89.293(c).

5. Respondent shall furnish his sobriety monitor with his Alcohol Anonymous sponsor's name, address and phone number.

6. Respondent shall establish his weekly attendance at Alcohol Anonymous meetings by providing written verification to the Board on a Board-approved form.

7. Respondent shall file with the Secretary of the Board quarterly written reports.

8. With the sobriety monitor, Respondent shall:

- a. meet at least twice a month;
- b. maintain weekly phone contact; and
- c. cooperate fully.

9. The appointed sobriety monitor shall:

- a. monitor Respondent's compliance with the terms and conditions of the order imposing probation;
- b. assist Respondent in arranging any necessary professional or substance abuse treatment;
- c. meet with Respondent at least twice a month and maintain weekly telephone contact with Respondent;
- d. maintain direct monthly contact with Respondent's Alcohol Anonymous sponsor;
- e. file with the Secretary of the Board quarterly reports; and

f. immediately report to the Secretary of the Board any violations by the Respondent of the terms and conditions of the probation.

III. CONDITIONS OF PROBATION AFTER FIRST YEAR  
IN ADDITION TO CONDITION I ABOVE

1. Respondent shall abstain from using alcohol or any other mind altering chemical.

2. Respondent shall regularly attend Alcohol Anonymous meetings.

\* \* \* \* \*

18. Respondent hereby consents to the above discipline being imposed upon him by the Disciplinary Board of the Supreme Court of Pennsylvania.

19. 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 acknowledgments contained in Pa.R.D.E. 215(d)(1) through (4).

20. In support of ODC and Respondent's joint recommendations it is respectfully submitted that there are a number of mitigating circumstances as follows:

a. Respondent notified the Office of Disciplinary Counsel of his conviction for the misdemeanors in Delaware County as he was required to do.

- b. Respondent has cooperated with the Office of Disciplinary Counsel in connection with its investigation in this matter.
- c. Respondent's conduct was not related to the representation of a client.
- d. Respondent's conduct occurred as a direct result of a relapse in his disease of alcoholism.
- e. Respondent had previously received mitigation for misconduct that was directly related to his disease of alcoholism and should receive mitigation again in connection with the instant misconduct, which is also directly related to the alcoholism.
- f. Respondent had a relapse in his disease that was caused by a severe domestic dispute involving the separation from his spouse and a custody battle in connection with his children.
- g. Respondent has sought and obtained help and counseling from Dr. Steven Samuel, who filed a report that was received by the Office of Disciplinary Counsel on August 27, 2009. (A

copy of Dr. Samuel's report is attached hereto.)

- h. As stated in Dr. Samuel's report, Respondent was introduced to the drug cocaine by a female acquaintance with whom he had a sexual encounter and it only occurred once and would not be repeated.
- i. Respondent advised Petitioner that his domestic problems are behind him, he has been sober since September 28, 2008 (a little over one year), he is attending AA meetings on a daily basis, and he is extremely remorseful for his conduct.

21. There exists the following aggravating circumstances:

- a. Respondent has a prior record of discipline for his first criminal conviction for DUI, which consisted of a private reprimand followed by two years of alcohol probation, which Respondent successfully completed.

22. The recommended discipline of a suspension stayed in its entirety with a term of probation and alcohol-related conditions is within the range of discipline for attorneys convicted of driving under the influence and DUI-related

offenses who have a prior record of discipline and who demonstrated a causal connection between their alcoholism and the misconduct.

In *Office of Disciplinary Counsel v. Thomas James Bonavita*, 184 DB 2007, No. 1340 Disciplinary Docket No. 3 (2009), the Supreme Court approved a consent discipline of a suspension stayed in its entirety and a period of probation for two years with various alcohol-related conditions based upon two separate convictions for driving under the influence, one of which involved the summary offense of careless driving, and the other involving the summary offense of driving while operator's license under suspension, which is punishable by imprisonment of not less than 90 days. In that case, the respondent was serving a three-year suspension based upon a conviction for indecent assault; and had received a private reprimand and informal admonition for misconduct involving client-related matters. The Court made the stayed suspension effective upon an Order granting the respondent's reinstatement to the practice of law.

In other DUI-conviction matters, the Supreme Court has imposed stayed suspensions with probationary terms. In *In re Anonymous No. 79 DB 1994*, 32 Pa. D.&C.4th 104 (1995), for example, the respondent was convicted of driving under the influence of alcohol. He acknowledged a history of alcoholism

as well as previous attempts at sobriety by attending AA meetings prior to his DUI conviction. The Disciplinary Board determined that *Braun* mitigation was appropriate. In addition, the Board noted the respondent's history of prior discipline - a three-month suspension for a weapons conviction - as well as three arrests, all of which involved the respondent's substance abuse, occurring prior to the respondent's bar admission. The Board ultimately recommended that the respondent be suspended for a period of three years stayed with a three-year period of probation with numerous alcohol-related conditions. See also *In re Anonymous No. 114 DB 1990*, 19 Pa. D.&C.4<sup>th</sup> 197 (1993) (respondent's fifth DUI charge, one of which involved a hit and run accident and giving a false report to the police, for which the respondent was incarcerated; respondent sober for three years at the time of the hearing; *Braun* mitigation also applicable; respondent was suspended for three years, stayed in its entirety, and placed on probation for three years subject to numerous alcohol-related conditions).

WHEREFORE, Petitioner and Respondent respectfully request pursuant to Pa.R.D.E. 215(e) and 215(g), the three-member panel of the Disciplinary Board review and approve this Joint Petition in Support of Discipline on Consent in which it is recommended that Respondent receive a two-year suspension

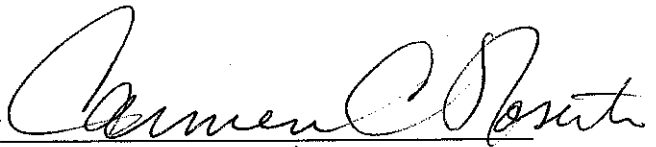
stayed in its entirety and probation for a period of two and one-half years with conditions, as enumerated above.

Respectfully and jointly submitted,

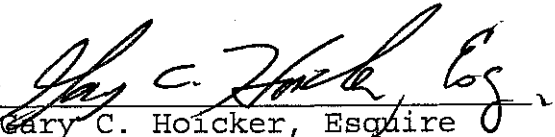
OFFICE OF DISCIPLINARY COUNSEL

PAUL J. KILLION  
CHIEF DISCIPLINARY COUNSEL

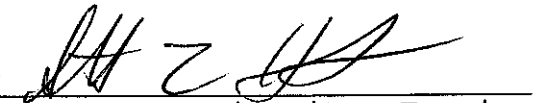
11/20/09  
Date

By   
Carmen C. Nasuti  
Disciplinary Counsel

11-18-09  
Date

By   
Gary C. Hoicker, Esquire  
Respondent

11-17-09  
Date

By   
Stuart L. Haimowitz, Esquire  
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

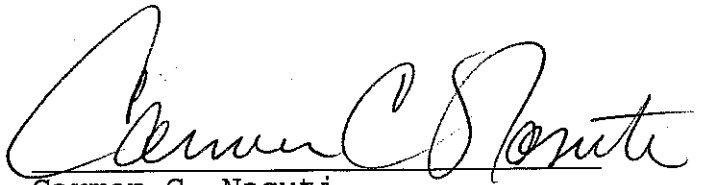
OFFICE OF DISCIPLINARY COUNSEL, : No. 1482 Disciplinary  
Petitioner : Docket No. 3  
:  
: No. 53 DB 2009  
v. :  
: Atty. Reg. No. 30252  
GARY C. HOICKER, :  
Respondent : (Philadelphia)

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.

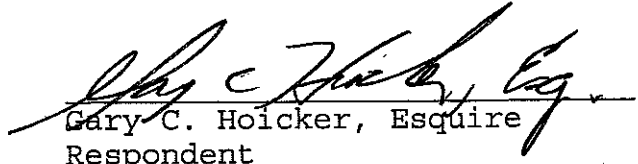
Date

11/20/09

  
Carmen C. Nasuti  
Disciplinary Counsel

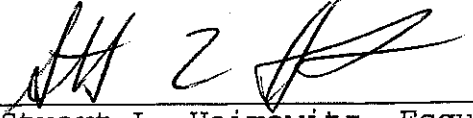
Date

11-18-09

  
Gary C. Hoicker, Esquire  
Respondent

Date

11-17-09

  
Stuart L. Haimowitz, Esquire  
Counsel for Respondent

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1482 Disciplinary  
Petitioner : Docket No. 3  
:  
: No. 53 DB 2009  
v. :  
: Atty. Reg. No. 30252  
GARY C. HOICKER, :  
Respondent : (Philadelphia)

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

Respondent, Gary C. Hoicker, hereby states that he consents to the imposition of a two-year suspension stayed in its entirety and probation for a period of two and one-half years on the conditions enumerated above, as jointly recommended by Petitioner, Office of Disciplinary Counsel, 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 counsel in connection with the decision to consent to discipline;

2. He is aware that there is presently pending a proceeding involving 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

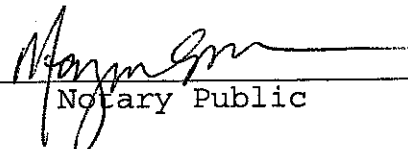
4. He consents because he knows that if charges predicated upon the matter under investigation were filed, he could not successfully defend against them.

  
\_\_\_\_\_  
Gary C. Hoicker, Esquire  
Respondent

Sworn to and subscribed

before me this 16<sup>th</sup>

day of November, 2009.

  
\_\_\_\_\_  
Notary Public

**COMMONWEALTH OF PENNSYLVANIA**

Notarial Seal  
Marjorie E. Donohue, Notary Public  
Haverford Twp., Delaware County  
My Commission Expires Aug. 18, 2012  
Member, Pennsylvania Association of Notaries

IN THE SUPREME COURT OF PENNSYLVANIA

In the Matter of : No. 1482 Disciplinary Docket No. 3  
: :  
GARY C. HOICKER : Board File Nos. C1-09-315 and C1-09-323  
: :  
: (Court of Common Pleas of Delaware  
: County, Criminal Division, No. CP-23-CR-  
: 0007878-2008; Court of Common Pleas of  
: Montgomery County, Criminal Division,  
: No. CP-46-CR-0007690-2008)  
: :  
: Attorney Registration No. 30252  
: (Philadelphia)

ORDER

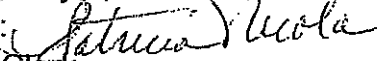
PER CURIAM:

AND NOW, this 1<sup>st</sup> day of July, 2009, Gary C. Hoicker having been convicted in the Court of Common Pleas of Delaware County of the crimes of driving under the influence of alcohol or a controlled substance and recklessly endangering another person and having been convicted in the Court of Common Pleas of Montgomery County of the crime of harassment, it is

ORDERED that this matter be referred to the Disciplinary Board pursuant to Rule 214(f)(1) and (g), Pa.R.D.E.

A True Copy Patricia Nicola

As of: July 1, 2009

Attest:   
Chief Clerk

Supreme Court of Pennsylvania