

IN THE SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL, : No. 2833 Disciplinary Docket No. 3
: :
Petitioner : No. 107 DB 2020
: :
v. : Attorney Registration No. 312671
: :
: (Bucks County)
BRITTANY MAIRE YURCHYK, : :
: :
Respondent : :

ORDER

PER CURIAM

AND NOW, this 27th day of December, 2021, upon consideration of the Report and Recommendations of the Disciplinary Board, Brittany Maire Yurchyk is suspended from the Bar of this Commonwealth for a period of one year and one day. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 12/27/2021

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 107 DB 2020
Petitioner	:	
	:	
v.	:	Attorney Registration No. 312671
	:	
BRITTANY MAIRE YURCHYK,	:	
Respondent	:	(Bucks County)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania (“Board”) herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on July 20, 2020, Petitioner, Office of Disciplinary Counsel, charged Respondent, Brittany Maire Yurchyk, with violations of Pennsylvania Rules of Professional Conduct (“RPC”) 1.1, 1.3, 3.3(a)(1), 4.1(a), 8.4(c) and 8.4(d) and Pennsylvania Rule of Disciplinary Enforcement (“Pa.R.D.E.”) 203(b)(7) arising from allegations of misconduct in four client matters and failure to respond to disciplinary inquiries. Respondent accepted service of the Petition for Discipline on July 27, 2020 but failed to file a timely answer. On November 16, 2020, Respondent filed a Motion

Requesting Leave to File Answer to Petition for Discipline. By Order dated November 24, 2020, the Hearing Committee Chair granted the Motion and made the Answer to Petition for Discipline part of the record.

Following a prehearing conference on September 28, 2020, a District II Hearing Committee conducted a disciplinary hearing on January 7, 2021. Petitioner introduced exhibits ODC-1 through ODC-20, which were admitted over Respondent's objections. The Committee overruled the objections due to Respondent's failure to comply with the September 28, 2020 Pre-Hearing Order that objections to exhibits be raised within seven days of receipt. Petitioner offered the testimony of Melissa Boyd, Esquire. Respondent appeared pro se and testified on her own behalf but presented no other witnesses. The Committee precluded Respondent from introducing exhibits due to her failure to timely exchange any proposed exhibits with Petitioner pursuant to the September 28, 2020 Pre-Hearing Order. At the conclusion of the hearing, the Committee requested briefing on the issue of whether evidence introduced by Petitioner established a prima facie violation of at least one of the disciplinary rules alleged in the Petition for Discipline to have been violated.

On February 4, 2021, Petitioner filed the requested post-hearing brief to the Committee and requested that the Committee recommend that Respondent be suspended for a period of one year and one day. Respondent failed to file the requested post-hearing brief.

By Report filed on April 22, 2021, the Committee concluded that Respondent violated RPC 1.1 (Competence), RPC 1.3 (Diligence), RPC 8.4(d) (Misconduct Prejudicial to the Administration of Justice) and Pa.R.D.E. 203(b)(7) (Failure Without Good Cause to Respond to Request for Statement of Respondent's Position).

The Committee further concluded that Petitioner did not meet its burden as to RPC 3.3(a)(1) and RPC 3.3(a)(3) (Candor Toward the Tribunal),¹ RPC 4.1(a) (Truthfulness in Statement to Others) and RPC 8.4(c) (Misconduct Involving Dishonesty, Fraud, Deceit or Misrepresentation). The Committee recommended that a public reprimand be imposed.

On May 3, 2021, Petitioner filed a Brief on Exceptions to the Committee's Report and recommendation and contended that the Committee erred in failing to make any findings of fact regarding the Famiglietti matter, failing to conclude that Respondent violated RPC 3.3(a)(1), RPC 3.3(a)(3), RPC 4.1(a) and RPC 8.4(c), and failing to recommend a sanction that would require Respondent to demonstrate that she is fit to practice law prior to regaining the privilege of doing so. Respondent did not file a Brief on Exceptions to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on July 23, 2021.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106 is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), 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

¹ At the commencement of the January 7, 2021 hearing, Petitioner moved to amend the Petition for Discipline to include RPC 3.3(a)(3), arguing that it was implicated by Respondent's Answer. N.T. 9. Respondent objected and the Committee determined to hear the evidence before ruling on the motion. N.T. 13. At the conclusion of the hearing, the motion was still pending. While the Committee's Report did not expressly rule on the motion, the Committee concluded that Respondent did not violate RPC 3.3(a)(3).

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

2. Respondent is Brittany Maire Yurchyk, born in 1985 and admitted to practice law in the Commonwealth of Pennsylvania in 2011. Ans. at ¶ 2.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. Ans. at ¶ 3.

4. At all times relevant hereto, Respondent was employed as an associate at the law firm of High Swartz, LLP. Ans. at ¶ 4.

April Onufrak v. Nicholas Onufrak

5. On June 3, 2016, April Onufrak, through counsel, filed a Complaint in Divorce against Nicholas Onufrak in the Court of Common Pleas of Montgomery County, case number 2016-11144 (hereinafter the “Onufrak Proceedings”). Ans. at ¶ 39; ODC-2 at 1.

6. On September 13, 2019, Respondent entered an appearance in the Onufrak Proceedings on Mr. Onufrak’s behalf. Ans. at ¶ 39; ODC-2 at 3.

7. By Order dated November 20, 2019, a hearing was scheduled in the Onufrak Proceedings for January 13, 2020. Ans. at ¶¶ 30, 39; ODC-2 at 3; ODC-3 at 1. This Order directed the parties to “exchange and provide to the Court” pre-trial statements. ODC-3 at 1 (citing Pa.R.C.P. 1915.4-4).

8. On January 3, 2020, Ms. Onufrak, through counsel, filed a pre-trial statement. Ans. at ¶ 39; ODC-2 at 3; ODC-4.

9. On January 3, 2020, Respondent was served with Ms. Onufrak’s pre-trial statement. Ans. at ¶ 39; ODC-4 (January 3, 2020 email from Respondent’s

legal assistant to Mr. Onufrak transmitting Ms. Onufrak's pre-trial statement); ODC-6 at 2 (invoice including 0.30 hour charge for Respondent's January 3, 2020 "Receipt and initial review of OP's pretrial").

10. Respondent failed to file a pre-trial statement in the Onufrak Proceedings, as required by the November 20, 2019 Order. Ans. at ¶ 40; N.T. at 34-35, 192, 199, 223 ("In the Onufrak case, let me begin by saying I did not file a pretrial statement."). See ODC-3 at 1; Pa.R.C.P. 1915.4-4(b).

11. Respondent appeared for the January 13, 2020 hearing at which time, *inter alia*, she represented to the Court that she had filed a pre-trial statement on January 10, 2020, and served a copy thereof on opposing counsel. Ans. at ¶ 41; N.T. at 225-226.

12. These representations were false. Ans. at ¶ 41; N.T. at 34-35.

13. Respondent testified at the disciplinary hearing that she prepared a pre-trial statement and attached it to an email that she forgot to send to her secretary and opposing counsel. N.T. at 193-194, 197, 223-224.

14. Respondent testified that the pre-trial statement was "completed from [her] home computer, and not from the system computer." N.T. at 197-198.

15. Respondent has never produced a copy of the pre-trial statement that she claims to have prepared from her "home computer." N.T. at 224-225. See *also* ODC-19 (Respondent's untimely Statement of Position). Respondent testified that she "do[es] not have access" to this pre-trial statement. N.T. at 224-225.

16. Respondent's testimony is not credible.

17. Melissa Boyd, Esquire is a family law attorney and partner with High Swartz, LLP. She credibly testified at the disciplinary hearing that the only pre-trial

statement regarding the Onufrak Proceedings in High Swartz's system is "a very bare bones form of a pretrial statement that was by no means finalized" that had been prepared by a paralegal. N.T. at 41-43. See also ODC-5 (incomplete pre-trial statement).

18. Attorney Boyd further testified that "Nothing in our system exists that includes any of that information. Nothing exists in our system that shows any kind of conferral between Mr. Onufrak and Ms. Yurchyk about the contents of a pretrial statement or any edits. And certainly in our system, there is no verification that was supplied by Mr. Onufrak to finalize and approve the filing of any pretrial statement." N.T. 37-41, 120-122.

19. On January 20, 2020, High Swartz, LLP terminated Respondent's employment. Ans. at ¶ 42; N.T. at 50-51.

Eileen Reeding v. Thomas Reeding

20. On September 19, 2017, Eileen Reeding filed a Complaint in Divorce against Thomas Reeding in the Court of Common Pleas of Montgomery County, case number 2017-22831 (hereinafter the "Reeding Proceedings"). Ans. at ¶ 67; ODC-13 at 1.

21. On November 26, 2018, Respondent entered an appearance in the Reeding Proceedings on Mr. Reeding's behalf. Ans. at ¶ 67; ODC-13 at 3.

22. On August 30, 2019, Respondent filed an Amended Claim for Counsel Fees in the Reeding Proceedings. Ans. at ¶¶ 57, 67; ODC-13 at 4; ODC-14.

23. On September 24, 2019, Ms. Reedinger, through counsel, filed Plaintiff's Response to Amended Claim for Counsel Fees. Ans. at ¶ 67; ODC-13 at 5; ODC-15.

24. On October 17, 2019, Respondent appeared for a hearing in the Reedinger Proceedings regarding the Amended Claim for Counsel Fees at which time, *inter alia*, the Court directed the parties to file and serve proposed findings of fact and conclusions of law within ten days of receipt of the notes of testimony from the hearing. Ans. at ¶¶ 58, 67; N.T. at 206, 231; ODC-16 ("the Court having held a hearing on the above-referenced petition on October 17, 2019, at the conclusion of which the parties were directed to file and serve proposed findings of fact and conclusions of law within 10 days of receipt of the notes of testimony from the hearing...").

25. On December 23, 2019, the notes of testimony from the October 17, 2019 hearing were sent to Respondent and attorney Michael McFarlin, who represented Ms. Reedinger. Ans. at ¶¶ 59, 67; N.T. at 206, 231; ODC-16 ("...and the Court having been informed that the notes of testimony were sent to the parties on December 23, 2019..."). The proposed findings of fact and conclusions of law were due on or before January 2, 2020. N.T. at 231.

26. Respondent failed to timely file proposed findings of fact and conclusions of law as directed by the Court, or to timely file any request or stipulation to extend the time in which to do so. Ans. at ¶ 68; N.T. at 76, 231, 233; ODC-16 ("...and the docket reflecting that neither party has subsequently made said post-hearing filings...").

27. By email to Mr. McFarlin dated January 8, 2020, at 2:32 p.m., six days after such filings were due, Respondent asked “[w]hen do you propose we have the finding [*sic*] of facts and conclusions of law done by? Are you agreeable to this Friday?” Ans. at ¶ 69; ODC-17 at 3.

28. By email to Respondent dated January 8, 2020, at 10:49 p.m., Mr. McFarlin said “[w]orks for me. I forget when the exhibits were filed but I think we are pretty close to on the mark with that.” Ans. at ¶ 69; ODC-17 at 2-3.

29. By Order dated January 9, 2020, the Amended Claim for Counsel Fees was denied. ODC-16. See *also* N.T. at 76, 159-160, 233-234 (“And because no findings of fact and conclusions of law had been submitted, the judge who had heard the matter denied the petition -- ended up denying the petition.”).

30. On January 10, 2020, Respondent spoke with Mr. McFarlin at which time Respondent agreed to stipulate to extend the deadline to submit proposed findings of fact and conclusions of law until January 13, 2020. Ans. at ¶ 71.

31. By email to Mr. McFarlin dated January 10, 2020, eight days after the proposed findings of fact and conclusions of law were due, Respondent, *inter alia*, attached a stipulation extending the deadline to submit such filings until January 13, 2019 [*sic*]. Ans. at ¶ 71; ODC-17 at 2.

32. Respondent admitted that she failed to file proposed findings of fact and conclusions of law in accordance with the court order and testified that although she and opposing counsel had agreed to extend the deadline, she failed to notify the court of the agreement. N.T. 206, 208.

Zaheerulla Khan Abduljabbar v. Syeda Amina Ali

33. On October 25, 2018, Zaheerulla Khan Abduljabbar filed a Complaint in Divorce against Syeda Amina Ali in the Court of Common Pleas of Delaware County, docket number CV-2018-008448 (hereinafter the “Ali Proceedings”). Ans. at ¶ 51; ODC-11 at 1.

34. On December 11, 2018, Respondent entered an appearance in the Ali Proceedings on behalf of Ms. Ali. Ans. at ¶ 51; ODC-11 at 1.

35. On May 1, 2019, Respondent appeared for a master’s hearing regarding Mr. Abduljabbar’s alimony pendente lite obligation to Ms. Ali, at which time, *inter alia*, a verbal agreement was reached regarding Mr. Abduljabbar’s alimony pendente lite obligation. Ans. at ¶¶ 45, 51.

36. By Order dated May 1, 2019, the master directed:

The Parties to file a stipulation within the next seven (7) days. If a stipulation is not received by DRO, the case shall be relisted on the next available date.

ODC-12 at 2; N.T. at 229-230.

37. By Order dated May 2, 2019, the Court adopted the master’s May 1, 2019 order. ODC-12 at 4 (“The foregoing provisions are hereby approved and entered as an Order of this Court...”); N.T. at 229-230 (“Q. Page 4 at the bottom, this is signed by a judge as an order of court, correct? A. Yes.”).

38. Respondent failed to file a stipulation regarding Mr. Abduljabbar’s alimony pendente lite obligation to Ms. Ali. N.T. at 71, 230-231 (“There was no stipulation filed”).

39. As a result of Respondent’s failure to file this stipulation, Ms. Ali did not receive the full amount of alimony pendente lite to which she was entitled. N.T.

at 71-75 (“...So there was a lot of dollars, unfortunately, left on the table because of Ms. Yurchyk’s failure to memorialize the stipulation and have it adopted as an order of the court.”).

Michael Famiglietti v. Alexandra Goldstein

40. On October 4, 2017, Michael Famiglietti filed a Complaint for Custody against Alexandra Goldstein in the Court of Common Pleas of Montgomery County, case number 2017-24110 (hereinafter the “Famiglietti Proceedings”). Ans. at ¶ 21; ODC-7 at 1.

41. On October 21, 2019, Respondent entered an appearance in the Famiglietti Proceedings on Mr. Famiglietti’s behalf. Ans. at ¶ 21; ODC-7 at 2.

42. On November 4, 2019, Respondent appeared for a custody conciliation in the Famiglietti Proceedings at which time Mr. Famiglietti represented that his employer had recently conducted a drug test, the results of which were negative. Ans. at ¶¶ 9, 22; N.T. at 181-182, 226; ODC-8 at 2.

43. Mr. Famiglietti later informed Respondent that this representation was false. Ans. at ¶¶ 11, 23 (“Respondent admits that a few days after the November 4th custody conference, Mr. F. contacted her and stated that Geico just notified him that his drug test was positive...”); N.T. at 182-183, 227.

44. Respondent failed to notify the master that presided over the November 4, 2019 custody conciliation that this representation was false. N.T. at 66, 227.

45. Respondent failed to take any remedial action after learning that this representation was false. *Id.*

46. On November 7, 2019, the master filed a Custody Conciliation Report in the Famiglietti Proceedings which stated, *inter alia*, "Father states that he has a hair follicle drug test that is negative for drugs that was just performed by his new employer and he is willing to share results with Mother." Ans. at ¶ 24; ODC-8 at 2.

47. On December 17, 2019, Respondent appeared on Mr. Famiglietti's behalf for a Prehearing Conference, at which time Respondent failed to notify the court that Mr. Famiglietti's representation at the November 4, 2019 custody conciliation that his employer had recently conducted a drug test, the results of which were negative, was false. Ans. at ¶¶ 14, 25; N.T. at 227-228.

48. After Respondent's termination from High Swartz, High Swartz attorneys disclosed to opposing counsel and the court that Mr. Famiglietti's representation at the November 4, 2019 custody conciliation that his employer had recently conducted a drug test, the results of which were negative, was false. N.T. at 69-70, 153-154, 166-173.

49. Respondent testified at the disciplinary hearing and conceded that she took no action to advise the master or the court that Mr. Famiglietti misrepresented that his drug test was negative. N.T. 227-229.

DB-7 Request for Statement of Respondent's Position

50. By letter to Respondent dated March 27, 2020, Disciplinary Counsel requested Respondent's Statement of Position regarding the allegations set forth in paragraphs 4 through 47 of the Petition for Discipline. Ans. at ¶ 72; ODC-18.

51. This letter advised that "failure to respond to this request for your statement of position without good cause is an independent ground for discipline

pursuant to Rule 203(b)(7) of the Pennsylvania Rules of Disciplinary Enforcement.”

Ans. at ¶ 72; ODC-18 at 8 (emphasis removed).

52. Respondent received Disciplinary Counsel’s March 27, 2020 letter.

Ans. at ¶ 72.

53. Respondent’s answer to Disciplinary Counsel’s March 27, 2020 letter was due on or before April 27, 2020. ODC-18 at 8. See D.Bd. Rules § 87.7(b) (“...the respondent-attorney shall have 30 days from the date of such notice within which to file a statement of position in the district office”). On April 27, 2020, Respondent called Petitioner at which time Respondent requested and was granted an extension until April 29, 2020, within which to submit this answer.

54. On July 24, 2020, four days after the Petition for Discipline in this matter was filed with the Board Prothonotary, Respondent submitted an untimely response to Disciplinary Counsel’s March 27, 2020 letter. Ans. at ¶ 73; ODC-19.

55. Respondent testified that she failed to timely respond to Disciplinary Counsel’s March 27, 2020 letter because her mother contracted COVID-19. N.T. at 212. Medical records that Respondent attached to her November 16, 2020 Motion Requesting Leave to File Answer to Petition for Discipline indicate that her mother’s first COVID-19 test was on May 11, 2020, almost two weeks after the response to Disciplinary Counsel’s March 27, 2020 letter was due, and more than two months before Respondent provided such response. N.T. 218-223; Motion Requesting Leave to File Answer at Exhibit A; ODC-19.

Additional Findings

56. Melissa Boyd, Esquire’s testimony was credible. N.T. at 32-173.

57. On September 24, 2019, High Swartz issued a Performance Correction Notice due to Respondent's failure to adequately communicate with various clients and "multiple times when [Respondent's] assignments were not completed, and where [Respondent] neglected to communicate that [she] would be delayed." ODC-20.

58. Respondent's testimony was not credible.

59. Respondent did not express remorse.

60. Respondent did not present any character witnesses.

III. CONCLUSIONS OF LAW

By her conduct as set forth above, Respondent violated the following Pennsylvania Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement:

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

3. RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal.

4. RPC 3.3(a)(3) – A lawyer shall not knowingly offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, 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. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

5. RPC 4.1(a) – In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

6. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

7. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

8. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel’s request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney’s position is a ground for discipline.

IV. DISCUSSION

In this disciplinary matter, the Board considers the Committee’s unanimous recommendation that Respondent be subjected to a public reprimand for her misconduct in three client matters and her failure to respond to Petitioner’s DB-7 Request for Statement of Respondent’s Position. Petitioner contends that the Committee erred in its findings of fact and conclusions of law, and requests that the Board reject the Committee’s recommendation of a public reprimand and instead recommend to the Court that Respondent be suspended for a period of one year and one day.

Petitioner bears the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). Upon this record, the Board concludes that Petitioner satisfied its burden of proof as to each of the rule violations charged in the Onufrak, Reeding, Ali, and Famiglietti client matters and in the DB-7 Request matter. For the following reasons, the Board recommends that Respondent be suspended for a period of one year and one day.

The record established that in three client matters, Respondent demonstrated incompetence in violation of RPC 1.1 and lack of diligence in violation of RPC 1.3. In the Onufrak matter, the court directed the parties to exchange and file with the court pre-trial statements. Respondent conceded that she failed to file the pre-trial statement. Similarly, in the Ali matter, Respondent failed to abide by the court's order to file a stipulation within seven days regarding alimony pendente lite obligations of her client's spouse. In the Reeding matter, following the conclusion of a hearing at which Respondent represented her client on a claim for counsel fees, the court directed the parties to file proposed findings of fact and conclusions of law within ten days of receipt of the notes of testimony. After Respondent failed to file the proposed findings and conclusions, the court denied Respondent's claim. Although Respondent testified that she and opposing counsel had agreed to extend the deadline for filing the proposal, she conceded that she had never notified the court of the agreement. The evidence further showed that the agreement was never even proposed until six days after the deadline set by the court for the submissions. Respondent's failure to abide by court orders and directives violated RPC 8.4(d).

In addition to Respondent's incompetence, lack of diligence and conduct prejudicial to the administration of justice, the record established that in two matters, Respondent engaged in dishonesty. In the Onufrak matter, Respondent misrepresented to the court that she filed a pre-trial statement. At the disciplinary hearing, Respondent attempted to explain her false representation to the court by claiming that she worked with her client on the statement and prepared it on her home computer. Respondent further claimed she attached the statement to an email to her secretary and opposing counsel, but forgot to send the email. While claiming that she prepared the statement on her home computer, confusingly, Respondent then claimed that she had no access to the pre-trial statement. Respondent did not produce the pre-trial statement in these disciplinary proceedings. Respondent's misrepresentation to the court and opposing counsel violated RPC 3.3(a), 4.1(a) and 8.4(c).

In the Famiglietti matter, Respondent's client made a misrepresentation to the master during a custody conciliation that the results of his drug test were negative. Although Respondent was not aware at that time that her client had made a misrepresentation, she failed to take remedial action to correct the record upon learning several days later that in fact her client's drug test was positive. Respondent shirked her professional duty under RPC 3.3(a)(3) to remedy the false statement and never advised the master or the court in subsequent proceedings of her client's falsity. Following Respondent's termination from High Swartz, LLP and upon discovering what had happened, the firm notified opposing counsel and the court of Mr. Famiglietti's false representation. Respondent's conduct violated RPC 3.3(a)(3) and 8.4(c).

Respondent's delay, inaction and failure to comply with filing deadlines and court orders in her client matters is markedly similar to the manner in which she

conducted her own defense in the instant disciplinary proceeding. In violation of Pa.R.D.E. 203(b)(7), Respondent failed to timely respond to Petitioner's March 27, 2020 DB-7 Request for Statement of Position, even after Petitioner agreed to Respondent's request to extend the deadline to file the response. Respondent's testimony that she failed to timely respond because her mother contracted COVID-19 is not credible, as the records Respondent produced demonstrated that her mother was not diagnosed with COVID-19 until nearly two weeks after the response was due. In any event, Respondent's proffered explanation that her mother's COVID-19 prevented her from filing the timely response by April 29, 2020 does not explain why Respondent thereafter did not submit a response until July 24, 2020, almost three months after it was due.

Similar to her failure to timely file the DB-7 response, Respondent failed to timely file an Answer to the Petition for Discipline filed on July 20, 2020. On November 16, 2020, approximately four months after the Petition for Discipline was filed, Respondent filed a Motion Requesting Leave to File Answer to Petition for Discipline, which the Committee granted. Respondent also failed to exchange exhibits or raise objections within the deadlines set by the September 28, 2020 Pre-Hearing Order. Significantly, Respondent failed to file a post-hearing brief to the Committee in support of her defense after the Committee directed the parties to do so.

Respondent has practiced law in Pennsylvania since 2011 and has no prior history of discipline. Respondent presented no other mitigation evidence for consideration, including character testimony. In aggravation, the record demonstrated that Respondent did not express sincere remorse for her misconduct and in some instances was reluctant to acknowledge that she bore any responsibility for the events in

question. Furthermore, Respondent's incredible explanations for her misconduct in the Onufrak matter are troubling and raise doubts as to her fitness to practice law.

Having concluded that Respondent engaged in professional misconduct, this matter is ripe for the determination of discipline. It is well-established that the goals of the attorney disciplinary system include protecting the public from unfit attorneys, maintaining the integrity of the bar and upholding respect for the legal system. **Office of Disciplinary Counsel v. John Keller**, 506 A.2d 872, 875 (Pa. 1986). In assessing appropriate discipline, the Board must weigh any aggravating and mitigating circumstances. **Office of Disciplinary Counsel v. Brian Preski**, 134 A.3d 1027, 1031 (Pa. 2016).

Respondent's deficient representation in three matters, dishonesty and lack of candor in two matters, conduct prejudicial to the administration of justice in three matters and mishandling of her own disciplinary proceedings as exemplified by a parade of untimely filings and missed deadlines demonstrate unfitness to practice law. This serious misconduct is compounded by Respondent's lack of credibility and lack of remorse.

While there is no *per se* discipline in Pennsylvania, the Board is mindful of precedent and the need for consistency. **Office of Disciplinary Counsel v. Robert Lucarini**, 472 A.2d 186, 189-91 (Pa. 1983). Prior cases support a suspension of one year and one day as consistent and appropriate to address Respondent's misconduct. See, **Office of Disciplinary Counsel v. Valerie Andrine Hibbert**, No. 215 DB 2019 (D. Bd. Rpt. 2/17/2021) (S. Ct. Order 4/27/2021) (suspension for one year and day, neglect in three client matters and nonconformance with recordkeeping duties, failed to respond to Office of Disciplinary Counsel's inquiries, failed to file a timely Answer to Petition for

Discipline, expressions of remorse not sincere, no prior discipline); **Office of Disciplinary Counsel v. Peter Jude Caroff**, No. 42 DB 2019 (D. Bd. Rpt. 2/25/2020) (S. Ct. Order 6/5/2020) (suspension for one year and one day, neglect in one client matter, lack of diligence and promptness, communication deficiencies, misrepresentations, failed to properly hold entrusted funds, failed to respond to Office of Disciplinary Counsel's request for information, failed to file an Answer to Petition for Discipline, record of prior private discipline, failed to express sincere remorse); **Office of Disciplinary Counsel v. Tangie Marie Boston**, 99 DB 2018 (D. Bd. Rpt. 12/10/2019) (S. Ct. Order 2/12/2020) (suspension for one year and one day, multiple instances of client neglect, communication failures and failures to protect client interests, conduct prejudicial to the administration of justice, cooperated with disciplinary authorities by stipulating to facts and rule violations, no prior discipline); **Office of Disciplinary Counsel v. Bret Keisling**, No. 65 DB 2017 (D. Bd. Rpt. 6/19/2018) (S. Ct. Order 8/30/2018) (suspension for one year and one day, severe neglect in one client matter, misrepresentations to client and third parties, failed to respond to Office of Disciplinary Counsel's inquiries, failed to file an Answer to Petition for Discipline, failed to file a post-hearing brief, expressed remorse, no prior discipline); **Office of Disciplinary Counsel v. Blair Harry Hindman**, No. 122 DB 2013 (D. Bd. Rpt. 12/8/2014) (S. Ct. Order 2/10/2015) (public censure imposed on respondent-attorney who engaged in a lack of candor to the tribunal by submitting a document to the court that he redacted in order to hide information not favorable to his client and making a misrepresentation to the judge when questioned on the matter; the respondent-attorney admitted his misconduct and expressed sincere remorse, no prior discipline, five character witnesses credibly testified to respondent-attorney's very good reputation in the community for honesty and truthfulness).

Respondent's misconduct bears similarities to the misconduct in the above cited matters. Like Hibbert and Boston, she engaged in multiple acts of incompetence and lack of diligence. Similar to Hibbert, Caroff and Keisling, Respondent failed to respond to Petitioner's inquiries and did not file a timely response to the Petition for Discipline. In the same manner as Hibbert and Caroff, Respondent failed to express genuine remorse for her misconduct. Comparable to Hindman, Respondent engaged in lack of candor to the tribunal. However, we conclude that Respondent's lack of candor is more serious as it occurred in two client matters and she failed to show remorse, instead proffering incredible explanations for her conduct. Hindman's lack of candor occurred in one matter, for which he apologized to the court and demonstrated remorse.

Upon reviewing the totality of the facts and circumstances of this record, and after considering the goals of the disciplinary system and the established precedent to ensure the application of consistent discipline, we respectfully recommend that Respondent be suspended for one year and one day.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Brittany Maire Yurchyk, be Suspended for one year and one day from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: Celeste L Dee
Celeste L Dee, Member

Date: 10/22/2021