

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2770 Disciplinary Docket No. 3
: :
Petitioner : No. 115 DB 2019
: :
v. : Attorney Registration No. 10044
: :
ROBERT G. YOUNG, : (Allegheny County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 16th day of March, 2021, upon consideration of the Report and Recommendation of the Disciplinary Board, Robert G. Young is suspended from the Bar of this Commonwealth for one year and one day, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 03/16/2021


Attest:
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 115 DB 2019
Petitioner	:	
	:	
v.	:	Attorney Registration No. 10044
	:	
ROBERT G. YOUNG,	:	
Respondent	:	(Allegheny 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 June 11, 2019, Petitioner, Office of Disciplinary Counsel, charged Respondent, Robert G. Young, with multiple violations of the Rules of Professional Conduct arising from his representation in three separate client matters. Following the stipulation of the parties to a one-time 20 day extension, Respondent filed an Answer to Petition on August 1, 2019.

On August 20, 2019, the Petition was referred to a District IV Hearing Committee (“Committee”) and a prehearing conference was held on September 4, 2019

and December 16, 2019. The Committee conducted a disciplinary hearing on January 28, 2020. At the time of the hearing, Petitioner and Respondent, through counsel, entered into a Stipulation of Facts and Law. Petitioner offered exhibits P-1 through P-34 and same were admitted into evidence. Respondent offered exhibit R-1, which was admitted into evidence. Petitioner presented the testimony of three witnesses. Respondent testified on his own behalf and presented no other witnesses.

On April 9, 2020, Petitioner filed a Brief to the Committee and requested that the Committee recommend to the Board that Respondent be suspended for a period of one year and one day. Respondent filed a Brief to the Committee on May 8, 2020 and requested that the Committee recommend discipline not to exceed a one year period of suspension.

By Report filed on July 2, 2020, the Committee concluded that Respondent violated the rules charged in the Petition for Discipline and recommended that he be suspended for a period of one year.

On July 22, 2020, Petitioner filed a Brief on Exceptions and requested that the Board recommend to the Court that Respondent be suspended for one year and one day. By letter dated August 3, 2020, Respondent advised that he did not object to the Committee's Report and recommendations.

The Board adjudicated this matter at the meeting on October 16, 2020.

II. FINDINGS OF FACT

The Board makes the following findings:

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, 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 various provisions of the aforesaid Rules.

2. Respondent is Robert G. Young, born in 1942 and admitted to practice law in the Commonwealth in 1972. Respondent's attorney registration mailing address is 300 Mt. Lebanon Boulevard, Ste. 212, Pittsburgh, PA 15234-1505. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of prior discipline. By Order dated November 14, 2002, the Supreme Court of Pennsylvania ordered that Respondent receive a Public Censure for misappropriation of \$6000 in client funds during his representation in an estate matter. PE 34.

THE MCCULLOUGH ESTATE MATTER

4. On March 22, 2011, Walter A. McCullough ("decendent McCullough"), a resident of Allegheny County, Pennsylvania, died testate. Stipulation ("Stip.") 4.

5. Decendent McCullough's Last Will and Testament, executed on December 12, 2009, named Irma A. Olson as the Executrix of decendent's estate.

Decedent McCullough's Will named both private individuals and charitable organizations as beneficiaries. Stip. 5.

6. At the end of March 2011, Mrs. Olson retained Respondent to handle decedent McCullough's estate, and on March 29, 2011, Respondent filed with the Department of Court Records, at docket number 02-11-01993, a Petition for Probate and Grant of Letters on behalf of Mrs. Olson. Stip. 6; PE 3.

7. By letter dated May 17, 2011, Respondent informed Mrs. Olson, among other things, that:

- a. His initial retainer fee would be \$7,500.00;
- b. He would undertake estate work on her behalf, which would include performing all of the estate's duties under the Pennsylvania Estates and Fiduciaries Code and the Pennsylvania Inheritance and Estate Tax Act; and,
- c. He would represent the estate for a fixed fee of 2% of the gross estate.

Stip. 7.

8. In May 2011, Mrs. Olson issued to Respondent a check in the amount of \$7,500.00, representing the initial retainer fee requested by Respondent for his representation in the McCullough estate. Stip. 8.

9. On June 20, 2011, Respondent made an estimated payment in the amount of \$50,000.00 to the Pennsylvania Department of Revenue for inheritance taxes due regarding decedent McCullough's estate. Stip. 9.

10. By letter dated July 19, 2011, the Internal Revenue Service ("IRS") informed Mrs. Olson, among other things, that:

- a. They received the Form 1310 that was sent into them;
- b. There was an overpayment on decedent McCullough's 2010 Federal tax return of \$1,398.00 which was applied to decedent McCullough's 2011 account;
- c. To claim this credit, a 2011 Federal tax return would have to be filed for decedent McCullough by April 16, 2012; and,
- d. If decedent McCullough did not owe any tax on the 2011 return, the credit was refundable.

Stip. 10.

11. Shortly after receiving the July 19, 2011 letter from the IRS, Mrs. Olson provided same to Respondent who agreed to file a Federal Income Tax Return and a Pennsylvania Income Tax Return, for 2011, on behalf of decedent McCullough. Stip. 11.

12. Respondent did not, at that time, file decedent McCullough's 2011 Federal or Pennsylvania Income Tax Returns. Stip. 12.

13. In September 2011 and November 2011, two estate checks totaling \$5,500.00 were made payable to Respondent or those in his employment, as part of the fee for representation in decedent McCullough's estate. Stip. 15.

14. In December 2011, Respondent issued to himself an estate check in the amount of \$11,232.00, as part of his fee for representation in decedent McCullough's estate. Stip. 16.

15. Between May 2011 and December 2011, for his representation in decedent McCullough's estate, Respondent received a total of \$24,232.00 in legal fees. Stip. 17.

16. Respondent did not file, within nine months of the date of decedent McCullough's death, an Inventory or an Inheritance Tax Return, as required by 20 Pa.C.S.A. §3301 and 72 P.S. § 9142, respectively. Stip. 18.

17. On May 19, 2012, Mrs. Olson met with Respondent regarding the status of decedent McCullough's estate. Stip. 19.

18. By letter dated August 29, 2012, Diane Franz with the Commonwealth of Pennsylvania, Department of Revenue Inheritance Tax Division, notified Mrs. Olson, among other things, that an Inheritance Tax Return had not been filed in decedent McCullough's estate. Stip. 21.

19. Respondent was copied on the August 29, 2012 letter from Ms. Franz to Mrs. Olson. Stip. 22.

20. On October 17, 2012, Respondent presented the Inheritance Tax Return to Mrs. Olson for her approval and signature. Mrs. Olson approved and signed the tax return and on October 19, 2012, Respondent filed the Inheritance Tax Return. Stip. 23.

21. According to the Inheritance Tax Return, the assets of the McCullough estate totaled \$1,404,901.65. Stip. 24.

22. On October 25, 2012, Respondent filed the Inventory in decedent McCullough's estate. Stip. 25.

23. On January 14, 2013, a Notice of Inheritance Tax Appraisement, Allowance or Disallowance of Deductions and Assessment of Tax regarding decedent McCullough's estate was filed, which accepted the return as filed and showed a refund of \$4,510.06 due decedent McCullough's estate based on an overpayment of inheritance taxes. Stip. 26.

24. On January 31, 2013, the Pennsylvania Bureau of Individual Taxes, Inheritance Tax Division, issued decedent McCullough's estate a refund check in the amount of \$4,510.06, and Mrs. Olson deposited the proceeds of that check into the estate account. Stip. 27.

25. In February 2013, Mrs. Olson again met with Respondent regarding the status of decedent McCullough's estate. Stip. 28.

26. Respondent informed Mrs. Olson that he was still working on decedent McCullough's estate, but that it should be completed shortly. Stip. 29.

27. From about April 2013 through May 2014, Mrs. Olson called Respondent numerous times and left messages on his answering machine for him to call her regarding the status of decedent McCullough's estate. Stip. 30.

28. On the rare occasion that Respondent returned Mrs. Olson's call, Respondent informed her that he was still working on the estate, or words to similar effect. Stip. 31.

29. On March 31, 2014, a Notice of Failure to File Orphans' Court Rule 6.12 Status Report was issued by the Department of Court Records regarding decedent McCullough's estate, of which Respondent was sent notice. Stip. 32.

30. In June 2014, Mrs. Olson again met with Respondent about the status of decedent McCullough's estate, at which time Respondent informed Mrs. Olson that he would have the administration of the Estate completed within 60 days and would mail her a progress report every ten days. Stips. 33, 34.

31. Thereafter, Respondent did not keep Mrs. Olson informed as to the status of the estate, nor did he send her progress reports. Stip. 35.

32. On September 30, 2014, Administrative Judge of the Court of Common Pleas of Allegheny County Orphans' Court Division, Lawrence J. O'Toole, issued an Order of Court directing that a Status Report be filed on or before October 31, 2014. Stip. 38.

33. Despite the Court's Order, Respondent did not file the Status Report until November 5, 2014, at which time he stated that the estate was not complete but Respondent reasonably believed that the administration would be completed by March 31, 2015. Stip. 39.

34. From about November 2014 through October 2015, Mrs. Olson called Respondent numerous times and left messages on his answering machine requesting that he call her regarding the status of McCullough's estate. Stip. 40.

35. During that time period, Respondent did not communicate with Mrs. Olson regarding McCullough's estate. Stip. 41.

36. On January 21, 2016, Mrs. Olson filed a complaint against Respondent with the District IV Office of Disciplinary Counsel. Stip. 45.

37. On January 28, 2016, Auditor/Investigator Brian J. Kline with the Office of Disciplinary Counsel called Respondent regarding the status of McCullough's estate. Stip. 46.

38. In the January 28, 2016 telephone call with Mr. Kline, Respondent indicated that he:

- a. Had been really busy and had had some minor medical issues;
- b. Should be able to get the Income Tax Returns filed within thirty days;

c. Would contact Mrs. Olson after he drafted the federal and state Income Tax Returns to have her sign them; and,

d. Would provide to Mr. Kline within thirty days, an update as to finalizing decedent McCullough's estate.

Stip. 47.

39. On February 26, 2016, Mr. Kline again contacted Respondent regarding the status of decedent McCullough's estate. Stip. 48.

40. In the February 26, 2016 telephone call with Mr. Kline, Respondent stated that he:

a. Had completed the Income Tax Returns regarding decedent McCullough's estate;

b. Would be sending them to Mrs. Olson within a few days; and,

c. Would send to Mr. Kline a copy of the Income Tax Returns.

Stip. 49.

41. Thereafter, Respondent did not contact Mrs. Olson, nor did he send her or Mr. Kline a copy of the Income Tax Returns. Stip. 50.

42. On March 14, 2016 and March 15, 2016, Mr. Kline called Respondent and left messages in which he requested that Respondent contact him regarding the status of decedent McCullough's estate. Stip. 51.

43. Respondent did not contact Mr. Kline nor Mrs. Olson, regarding the status of decedent McCullough's estate. Stip. 52.

44. On March 23, 2016, Respondent provided to Mr. Kline via hand-delivery, among other things, a draft of the First and Final Account of decedent McCullough's estate. Stip. 53.

45. Respondent did not file the Federal and State Income Tax Returns on behalf of decedent McCullough for 2011. Stip. 55.

46. By certified letter to Respondent dated March 21, 2016, Mrs. Olson informed him, among other things, that:

a. Respondent was retained almost five (5) years ago to be the attorney for decedent McCullough's estate;

b. She had not received from Respondent any work product relating to decedent McCullough's estate in over three (3) years;

c. Respondent had given her numerous empty promises, apologies, and excuses during that time;

d. She was requesting a status report of what needed to be done to finalize decedent McCullough's estate; and

e. She expected to receive a written status report from Respondent within fourteen days of the date of her letter.

Stip. 56.

47. Respondent received Mrs. Olson's March 21, 2016 letter but failed to respond. Stips. 57, 58.

48. On April 6, 2016, Petitioner sent to Respondent a Request for Statement of Respondent's Position ("Letter of Inquiry") regarding this matter. Stip. 59; PE 4.

49. On April 13, 2016, after receiving the Letter of Inquiry, Respondent called Petitioner to inquire as to whether he was permitted to complete the work in the McCullough estate in light of the fact that a complaint had been filed against him regarding the matter. Stip. 60.

50. During that telephone call, after confirming that Respondent had no counsel representing him at that time in the disciplinary matter, Petitioner informed Respondent that he was permitted to finish the work on decedent McCullough's estate. Stip. 61.

51. On May 26, 2016, Jeffrey McCarron, Esquire submitted a verified answer to the Letter of Inquiry on Respondent's behalf. Stip. 63; PE 5.

52. In that answer, among other things, Respondent:

a. Admitted to a lack of diligence in handling decedent McCullough's estate;

b. Admitted to a lack of communication in handling decedent McCullough's estate;

c. Admitted that his failure to timely prepare a Federal Income Tax Return on behalf of the estate resulted in the loss of \$1,398 in a tax refund that would have been due to decedent McCullough's estate;

d. Cited several reasons for his misconduct in this regard, including being overwhelmed with his workload, difficulty with new estate administration software, difficulty with staffing, and successive minor medical issues;

e. Stated that he took steps to address these issues, including reducing his caseload and discontinuing use of the new software; and,

f. Stated that he "acknowledges his obligation to complete the work for which he was retained and will complete the work for which

he was retained including completion of the accounting and present the accounting for court approval."

Stip. Stip. 64; PE 5.

53. On January 4, 2017, Respondent emailed to Mrs. Olson, for her review and signature, two Income Tax Returns on behalf of the estate, and on January 7, 2017, Mrs. Olson returned the executed tax returns to Respondent. Stip. 66.

54. Thereafter, Mrs. Olson received a letter from the PA Department of Revenue, dated January 27, 2017, stating that the recently submitted Income Tax Return filed on behalf of decedent McCullough's estate was filed after the three year statute of limitations, and therefore the office had "no authority to grant a refund." Stip. 67; PE 6.

55. On February 24, 2017, Judge O'Toole issued an Order directing Respondent to file, within thirty days, a First and Final Account of his administration of decedent McCullough's estate. Stip. 69; PE 8.

56. Respondent did not file a First and Final Account of his administration of decedent McCullough's estate within the allotted thirty day period, nor within a reasonable amount of time thereafter. Stip. 70.

57. In March 2017, the Commonwealth of Pennsylvania, in its role as *parens patriae* for the charitable beneficiaries, by and through Attorney General Josh Shapiro and Eugene Herne, Senior Deputy Attorney General, Charitable Trusts and Organizations Section ("Commonwealth") filed a Motion for Contempt in decedent McCullough's estate for failure to file a First and Final Account. Stip. 71; PE 9.

58. On March 28, 2017, Judge O'Toole issued an Order of Court in decedent McCullough's estate in which he scheduled a hearing for April 13, 2017 on the Commonwealth's Motion for Contempt. Stip. 72; PE 10.

59. On April 12, 2017, Respondent hand-wrote, executed, and provided to Mrs. Olson a Promissory Note to her in which he stated that he would “Pay to the order of Irma Olson, two thousand, one hundred, nineteen and 00/100 regarding a tax issue in the Walter McCullough estate. That is \$2,119.--.” Stip. 73; PE 11.

60. By Order of Court dated April 13, 2017, Judge O’Toole gave Respondent two additional weeks in which to file a First and Final Account in decedent McCullough’s estate. Stip. 74; PE 12.

61. On April 27, 2017, Respondent filed a Petition for Adjudication and an Account in decedent McCullough’s estate. Stip. 75; PE 13.

62. On June 2, 2017, Respondent filed a Notice of Audit of Final Account. Stip. 76.

63. On June 19, 2017, the Commonwealth filed Objections to First and Final Account of Irma A. Olson ("Objections"), in which the Commonwealth, among other things, objected to the allocation of inheritance tax and discrepancies between the Inventory and the First and Final Account. Stip. 77; PE 14.

64. Respondent did not take any action of record in decedent McCullough’s estate in response to the Commonwealth’s Objections. Stip. 78.

65. In July 2017, a hearing was held in decedent McCullough’s estate regarding the Objections filed by the Commonwealth. Stip. 79.

66. At that hearing, among other things, Respondent agreed that he made an error in his tax apportionment regarding the estate. Stip. 80.

67. Another hearing regarding McCullough’s estate was scheduled for September 6, 2017. Stip. 81.

68. At that hearing, among other things, Judge O'Toole urged Respondent to work out a settlement with the Commonwealth regarding the Objections to the First and Final Account. Stip. 82.

69. After the hearing, Mrs. Olson attempted to reach Respondent regarding what occurred at the September 6, 2017 hearing, but received no reply. Stip. 83.

70. By email to Mrs. Olson on October 4, 2017, Respondent attached the Objections filed by the Commonwealth and informed Mrs. Olson that the "results were that counsel for the Attorney General's division on charities, Eugene Herne, was told to work out a settlement with me to the State's objections. We have agreed on all matters except the fee to you. More explanation will follow." Stip. 84; PE 15.

71. In October 2017, Respondent provided some additional information to the Commonwealth regarding the error in his tax apportionment regarding the estate. Stip. 85.

72. The Commonwealth performed an audit of Respondent's Account of decedent McCullough's estate, in light of the additional documentation and information provided by Respondent. Stip. 86.

73. On July 31, 2018, Judge O'Toole entered an Order of Court scheduling a status conference for September 25, 2018. Stip. 87; PE 16.

74. Respondent did not take any action of record in decedent McCullough's estate either before or after the status conference. Stip. 88.

75. On December 12, 2018, Judge O'Toole issued an Order of Court scheduling a contempt hearing for December 28, 2018. Stip. 89; PE 17.

76. On December 28, 2018, Judge O'Toole issued an Order of Court scheduling a contempt hearing for January 11, 2019. Stip. 91; PE 18.

77. Respondent did not appear for this contempt hearing because he was out of town for the holidays when the notice was issued and the hearing date was scheduled. Stip. 92.

78. As Respondent failed to appear, the contempt hearing was rescheduled for January 22, 2019. Stip. 93.

79. On January 22, 2019, Judge O'Toole held a contempt hearing in decedent McCullough's estate. Stip. 94.

80. After that hearing, Judge O'Toole entered an Order of Court in which he set forth, among other things, that:

a. Respondent has "willfully disregarded and failed to comply with this Court's prior Orders";

b. Respondent "will be sanctioned the sum of one hundred (\$100.00) dollars per day until all necessary estate documents have been filed to complete the administration" of decedent McCullough's estate;

c. Respondent must file, by the close of business on February 4, 2019, all necessary documents to complete the administration of decedent McCullough's estate; and,

d. Failure to file the estate documents and complete the administration of decedent McCullough's estate would result in the issuance of a bench warrant for Respondent to compel respondent's immediate attendance before the Court.

Stip. 95; PE 19.

81. Respondent did not take any action of record in decedent McCullough's estate in response to the January 22, 2019 Order of Court. Stip. 96.

82. On February 12, 2019, Judge O'Toole issued an Order of Court in which he set forth, among other things, that:

a. Respondent shall deposit into the Allegheny County Orphans' Court the remainder of the McCullough estate funds totaling \$100,682.80;

b. After the deposit of those funds, the Allegheny County Orphans' Court Audit Division will issue a Decree;

c. The Commonwealth will petition the Court for the release of the funds to the charitable beneficiaries;

d. Respondent, "having been found in Contempt of this Honorable Court in its January 22, 2019 Order, shall pay the sum of Fourteen (\$1,400.00) hundred dollars into the Allegheny County Orphans' Court."

Stip. 97; PE 20.

83. On February 26, 2019, Respondent deposited into the Department of Court Records-Orphans' Court Division the remainder of the McCullough estate funds totaling \$100,682.80, as directed by Judge O'Toole. Stip. 98.

84. Judge O'Toole waived Respondent's fine due to his compliance with the Court's February 12, 2019 Order. RE 1.

ENGLERT ESTATE MATTER

85. On January 7, 2015, Patricia J. Englert, a resident of Allegheny County, Pennsylvania, died testate. Stip. 101.

86. Decedent Englert's Last Will and Testament named her daughter, Suzanne Englert, now Suzanne Gonzales, as Executrix of decedent Englert's estate. Stip. 102.

87. In addition to decedent Englert's Last Will and Testament, decedent Englert executed a codicil which bequeathed to her son, Michael Englert, property at 610 Wood Street, Verona, Pennsylvania ("Wood Street Property"). Stip. 103.

88. In about the end of January 2015, Ms. Gonzales retained Respondent to handle decedent Englert's estate. Stip. 104.

89. Although Respondent had never before represented Ms. Gonzales, he did not provide Ms. Gonzales with a fee agreement or other writing setting forth the basis or rate of his fee, either before or within a reasonable period of time after the commencement of his representation in the Englert estate. Stip. 105.

90. Respondent received a fee of \$3,750.00 in the Englert estate. Stip. 106.

91. On February 9, 2015, Respondent filed with the Department of Court Records of Allegheny County, at docket number 02-15-00851, a Petition for Probate and Grant of Letters on behalf of Ms. Gonzales, with respect to decedent Englert's estate. Stip. 107; PE 24.

92. From the spring of 2015 to September 2015, Respondent took the necessary steps to effectuate the terms of the codicil, selling the Wood Street property to Mr. Englert in exchange for Mr. Englert paying the various costs and debts of the estate. Stip. 108.

93. In November 2015, Respondent filed the Inheritance Tax Return and made an inheritance tax payment in the amount of \$2,666.36 with regard to decedent Englert's estate. Stip. 109.

94. Respondent informed Ms. Gonzales that, once the inheritance tax return was accepted as filed, all she would need to do was distribute the remaining funds to the heirs of the estate, or words to that effect. Stip. 111.

95. On April 18, 2016, the Pennsylvania Department of Revenue issued an Appraisement in decedent Englert's estate, accepting the inheritance tax return as filed. Stip. 112.

96. Respondent acknowledges that on various occasions between May 2016 and July 2016, Ms. Gonzales attempted to reach Respondent by telephone regarding the status of the estate, but Respondent did not respond to Ms. Gonzales' calls. Stip. 113.

97. In late August 2016 and early September 2016, Ms. Gonzales attempted to reach Respondent by telephone and email to inform him that she had not yet received from him the inheritance tax information, and to confirm her mailing address. Stip. 115.

98. Respondent did not respond to Ms. Gonzales' attempts to reach him until September 28, 2016, when he emailed Ms. Gonzales to advise her of the next steps to take. Stip. 116.

99. That same day, Ms. Gonzales emailed Respondent to provide him with the numbers he told her he needed, to ask him additional questions regarding finalizing the estate, and to again request that he send to her the details of the inheritance tax return. Stip. 117.

100. Respondent did not respond to Ms. Gonzales' email of September 28, 2016. Stip. 118.

101. Ms. Gonzales sent Respondent several follow up emails from October 2016 through January 2017, with no response from Respondent. Stip. 119.

102. On February 6, 2017, the Department of Court Records sent Respondent a notice stating that he had failed to file a Status Report under Orphans' Court Rule 10.6 with regard to decedent Englert's estate. Stip. 120.

103. Throughout February and early March 2017, Ms. Gonzales attempted to reach Respondent by email and telephone regarding the estate, with no reply from Respondent. Stip. 121.

104. On or about March 9, 2017, Respondent called Ms. Gonzales and left her a voicemail message in which he stated that he wanted to try and finalize decedent Englert's estate, or words to that effect. Stip. 122.

105. By email to Respondent of that same date, Ms. Gonzales noted that she received Respondent's voicemail and would love to finish the estate, asked Respondent to review the numbers she provided to him by email in September 2016, and asked that Respondent contact her regarding whether the numbers she provided to him were correct. Stip. 123.

106. Respondent did not respond to Ms. Gonzales' email of March 9, 2017. Stip. 124.

107. By email to Ms. Gonzales of April 13, 2017, Respondent stated, among other things, that:

- a. As he and she had discussed earlier, the filing of a formal (and costly) accounting with the Court and the subsequent audit of the account did not appear to be needed in this matter;
- b. He had earlier offered to draft a “family settlement agreement” for the signatures and approval of the beneficiaries;
- c. He suggested that she as Executrix would be adequately protected by sending an informal account of some sort for her sibling’s approval;
- d. Assuming she did this, he would file a Status Report with the Court similar to the draft as attached;
- e. He would do this even though he had never received a complete reconciliation of the Estate checking account he requested earlier – on at least one occasion; and,
- f. Assuming she wanted to implement this approach, he would send the informal account as noted above, but he could not do it until about the end of April.

Stip. 125.

108. Ms. Gonzales replied to Respondent on that same date, as well as on the following day, providing to him the information she believed he was requesting, and asking him for further clarification regarding what he wanted her to do. Stip. 126.

109. Respondent did not respond to Ms. Gonzales' emails of April 13 and 14, 2017. Stip. 127.

110. Throughout April and May 2017, Ms. Gonzales sent follow up emails to Respondent asking that he contact her, but received no reply from Respondent. Stip. 128.

111. On May 23, 2017, Petitioner sent a Letter of Inquiry regarding this matter to Respondent by regular and certified mail. Stip. 129; PE 25.

112. On May 25, 2017, Respondent or someone on his behalf signed for the Letter of Inquiry sent by certified mail. Stip. 130.

113. Respondent did not provide an answer to the Letter of Inquiry within the allotted thirty day period, nor did he or anyone on his behalf, request an extension of time in which to respond to the Letter of Inquiry. Stip. 131.

114. On or about June 12, 2017, Ms. Gonzales attempted to reach Respondent by telephone regarding the estate, but was unable to reach him and left a voice mail for him to return her call. Stip. 134.

115. Ms. Gonzales followed that telephone call with an email to Respondent in which she stated that she had “[c]alled your office and left a message. Still haven’t heard from you. Would really like to finish this.” Stip. 135.

116. Respondent did not reply to this email, nor did he return Ms. Gonzales’ telephone call. Stip. 136.

117. On June 20, 2017, Ms. Gonzales sent to Respondent an email in which she stated that she still had not heard from him, as well as “Please what is the issue? Why can’t this be finished up? Why?” Stip. 137.

118. On June 20, 2017, Respondent sent to Ms. Gonzales an email in which he stated “What is going on? I have written you like twice. Yet I couldn’t receive

any response from you. Am getting your email but it appears you're not getting mine. Kindly get back to me as soon as you receive this email." Stip. 138.

119. On June 21 and 22, 2017, Ms. Gonzales attempted to reach Respondent several times via email, as well as by telephone, leaving three voice mails, regarding the estate. Stip. 139.

120. Respondent did not return any of Ms. Gonzales' calls nor did he respond to her emails. Stip. 140.

121. On July 3, 2017, Ms. Gonzales sent another email to Respondent stating that she had still not heard from him and would leave another voice mail for him as well. Stip. 141.

122. On July 3, 2017, Respondent sent to Ms. Gonzales an email in which he stated, among other things, that he "will set in motion the steps to close your mother's estate tomorrow in a comprehensive email to you." Stip. 142.

123. Respondent did not follow up with an email to Ms. Gonzales, regarding the steps to close the estate, as he represented he would do in his email of July 3, 2017. Stip. 143.

124. On July 11, 2017, Ms. Gonzales sent to Respondent an email in which she stated that "I have not received anything as promised." Stip. 144.

125. On July 12, 2017, Ms. Gonzales sent to Respondent an email to which she attached a letter from the Audit Supervisor and a blank Status Report pursuant to Pennsylvania Orphans' Court Rule 10.6, both of which she received via mail from the Orphans' Court Division that day. Stip. 145.

126. On July 13, 2017, Respondent filed a Status Report pursuant to Orphans' Court Rule 10.6 in decedent Englert's estate, stating that the estate was not yet

completed, and that he reasonably expected that it would be completed by October 1, 2017. Stip. 146; PE 27.

127. On July 29, August 9, and August 25, 2017, Ms. Gonzales sent emails to Respondent in which she stated that she still had not heard from Respondent regarding finalizing the estate. Stip. 147.

128. On August 25, 2017, Respondent and Ms. Gonzales spoke regarding the estate. Stip. 148.

129. On August 30, 2017, Respondent filed the Inventory in the estate. Stip. 149.

130. Throughout September and early October 2017, Ms. Gonzales sent emails to Respondent and left voicemails, in which she stated that she still had not heard from him and the estate was not yet finalized. Stip. 150.

131. Respondent did not respond to Ms. Gonzales' emails or voice mails. Stip. 151.

132. In mid-October of 2017, Ms. Gonzales and Respondent corresponded via email regarding finalizing the estate. Stip. 152; PE 28.

133. On February 23, 2018, Respondent filed with the Department of Court Records a Status Report, setting forth that the Englert estate was completed on December 14, 2017. Stip. 153; PE 29.

THE BUTLER MATTER

134. In January of 2017, Michael W. Butler met with Respondent with respect to resolving certain corporate tax matters regarding Paps Pizza & Pasta, Inc., a business that Mr. Butler previously owned. Stip. 155.

135. Respondent informed Mr. Butler that the fee to represent him would be \$500.00, and by check number 2094, dated January 28, 2017, in the amount of \$500.00, and made payable to Respondent, Mr. Butler paid Respondent for his representation in the corporate tax matters. Stip. 156.

136. Although Respondent had never before represented Mr. Butler, nor Paps Pizza & Pasta, Inc., he did not provide Mr. Butler with a fee agreement or other writing setting forth the basis or rate of his fee, either before or within a reasonable period of time after representation of him commenced. Stip. 157.

137. On or about February 1, 2017, Respondent or someone on Respondent's behalf negotiated a check from Mr. Butler, and deposited the \$500.00 proceeds from the check into Respondent's business operating account. Stip. 158.

138. Respondent received payment in the amount of \$500.00 on behalf of Mr. Butler to provide services. Stip. 159.

139. Respondent did not deposit the \$500.00 into his IOLTA or other trust account. Stip. 160.

140. On or about February 2, 2017, Respondent had Mr. Butler complete and sign a Pennsylvania Department of Revenue Declaration of Representative form. Stip. 161.

141. Respondent informed Mr. Butler about the possibility of filing for tax amnesty in regard to the taxes that he owed. Stip. 162.

142. By letter to Mr. Butler, dated March 6, 2017, Respondent informed Mr. Butler, among other things, that the Pennsylvania Department of Revenue advised a Tax Amnesty program would be available to taxpayers for a short period in 2017 (April

21, 2017 through June 19, 2017), and he wanted to alert Mr. Butler to this program so he had time to consider whether it applied to him. Stip. 163.

143. In June 2017, Respondent responded to one of Mr. Butler's telephone calls to him. Stip. 167.

144. In that telephone call Respondent informed Mr. Butler that he sent the tax amnesty program form to the Pennsylvania Department of Revenue. Stip. 168.

145. In about the beginning of October 2017, Mr. Butler received a letter from the Pennsylvania Department of Revenue denying the application and informing him that an appeal must be taken within 90 days of the date of the letter. Stip. 172; PE 32.

146. After receiving this letter, Mr. Butler attempted to reach Respondent by telephone several times and left messages for Respondent to return his calls. Stip. 173.

147. Respondent did not return Mr. Butler's telephone calls nor otherwise communicate with Mr. Butler regarding the matter. Stip. 174.

148. In about mid-October 2017, Mr. Butler called Respondent. Respondent answered that telephone call, and informed Mr. Butler that he no longer wanted to represent him and would refund to Mr. Butler his retainer. Stips. 175, 176.

149. In about the beginning of November 2017, Mr. Butler left several telephone messages for Respondent regarding the status of his refund, but received no reply from Respondent. Stip. 177.

150. As a result of Mr. Butler's inability to obtain a response or assistance from Respondent, Mr. Butler filed a pro se appeal from the denial of his tax amnesty request. N.T, 27; PE 33.

151. On February 28, 2018, Petitioner sent to Respondent a Letter of Inquiry as to the Butler matter. Stip. 178.

152. On August 27, 2018, Respondent issued a refund to Mr. Butler in the amount of \$500.00. Stip. 179.

ADDITIONAL FINDINGS

153. Mrs. Olson, Ms. Gonzales, and Mr. Butler credibly testified at the disciplinary hearing.

154. Respondent credibly testified on his own behalf.

155. For the past 35 years, Respondent has operated a solo legal practice in Mt. Lebanon, Pennsylvania, concentrating in the areas of tax, bankruptcy, and real estate. N.T. 55.

156. For a period of time, Respondent acted as local counsel in asbestos matters on behalf of a Philadelphia law firm. N.T. 55.

157. Respondent accepted responsibility for his misconduct and acknowledged that he has done things wrong, particularly in more recent years, with communication being a problem. N.T. 58, 59.

158. Respondent apologized for bringing disrepute to the profession. N.T. 59.

159. Respondent explained that his misconduct was due to the fact that he was overwhelmed with too much work and had problems with his office staffing. N.T. 56.

160. Approximately three or four years ago, Respondent hired a part-time paralegal in an effort to address his office problems and testified that he believed his communications problems “improved substantially.” N.T. 56, 58.

161. Respondent's paralegal was employed at his firm during his representation in the Englert Estate and Butler Matter, where he exhibited a lack of communication. N.T. 62.

162. Respondent took other measures to address his problems, such as ceasing handling asbestos matters, which he estimated took up twenty percent of his time, and cutting out almost all of his advertisement. N.T. 56.

163. As of November 2019, Respondent had stopped accepting new clients, and estimated that he had 110 clients on his active list. N.T. 57, 59.

164. Respondent testified that he is "working like crazy. I can't believe how much work is there that I'm still trying to complete" and indicated he is hoping to retire soon. N.T. 59-60.

165. Respondent has obtained a part-time position in an unspecified, nonlegal industry that he plans to pursue. Respondent did not offer details about his part-time work. N.T. 60.

166. Respondent did not present any character witnesses on his behalf.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct ("RPC"):

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client. (McCullough Estate, Englert Estate)
2. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter. (McCullough Estate, Englert Estate, Butler Matter)

3. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information. (McCullough Estate, Englert Estate, Butler Matter)

4. RPC 1.5(b) – When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation. (Englert Estate, Butler Matter)

5. RPC 1.15(b) – 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. (Butler Matter)

6. RPC 1.15(i) – A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner. (Butler Matter)

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

IV. DISCUSSION

In this matter, the Board considers the Committee's unanimous recommendation to suspend Respondent for one year for his misconduct in three client matters, which involved lack of diligence, failure to communicate, failure to provide a written fee agreement, failure to hold a fee separate from his own funds and deposit the fee into a trust account until earned, and actions prejudicial to the administration of justice. Petitioner takes exception to the Committee's recommendation. In advocating for a one year and one day suspension to address Respondent's misconduct, Petitioner emphasizes Respondent's persistent inaction, delay, and non-responsiveness to his clients and the court, which establishes the necessity for Respondent to prove his fitness through a reinstatement proceeding.

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 review, the Board concludes that Petitioner met its burden of proof. Petitioner's evidence, in the nature of the joint stipulations of fact and law, documentary evidence and testimony from Petitioner's witnesses, establishes Respondent's rule violations and demonstrates Respondent's troubling pattern of negligence and failure to communicate, which prejudiced the administration of justice. Respondent's violation of multiple Rules of Professional Conduct subjects him to the imposition of discipline. For the following reasons, the Board recommends that Respondent be suspended for a period of one year and one day.

In the most serious of the three matters, Respondent severely neglected the McCullough Estate, and by his dilatory actions protracted its administration over more

than eight years from when he first was retained in 2011, delaying disbursement of estate funds to rightful beneficiaries, including charities. Throughout the representation, Respondent failed to communicate reasonably with the executrix, and on the occasions that he did communicate, he often represented to her that he would finalize the estate, but did not do so for many years. Respondent's failure to file timely tax returns resulted in certain refunds being forfeited because the statute of limitations had expired.

Moreover, Respondent's inaction in finalizing the estate after almost five years prompted Judge O'Toole of the Orphans' Court of Allegheny County, to direct Respondent to file an account in February 2017. Inexplicably, Respondent failed to do so, forcing the Commonwealth of Pennsylvania by and through the Attorney General and the Charitable Trust and Organizations Section, to file a contempt motion. Although Respondent filed a Petition for Adjudication and an account in April 2017, the Commonwealth objected. The matter continued to languish, as despite Judge O'Toole urging Respondent to work out a settlement with the Commonwealth, Respondent did not take action of record.

In December 2018, Judge O'Toole scheduled a contempt hearing for January 11, 2019. Unfortunately, Respondent did not appear and later explained that he was out of town when the notice was issued. At a rescheduled contempt hearing on January 22, 2019, Judge O'Toole held Respondent in contempt and directed that he be fined \$100 per day until the estate was completed and directed that all documents to close the estate be filed by February 4, 2019. Judge O'Toole entered a subsequent order on February 12, 2019, directing Respondent to pay the estate balance of \$100,682.80 to the Clerk of the Orphans' Court and to pay a \$1,400 fine as a result of the court's finding of contempt against Respondent. Respondent finally paid in the estate funds on February

26, 2019, thus ending the eight year representation. Ultimately, Judge O'Toole waived the sanction because Respondent fulfilled the directives of the court's order.

The record demonstrates that Respondent was dilatory and unresponsive to his client and the court and failed to handle the estate in a timely and reasonable manner. Despite the involvement of the Attorney General's Office and the Orphans' Court, Respondent continued to be remiss in the duties owed to his client. Troublingly, even Petitioner's involvement, which began in January 2016 after Mrs. Olson expressed her dissatisfaction with Respondent's representation by filing a complaint, did not spur Respondent to action. Respondent's neglect and inaction wasted time and resources and prejudiced the administration of justice.

In the Englert Estate, which overlapped Respondent's representation of the McCullough Estate, Ms. Gonzalez experienced similar issues of delay and lack of communication from Respondent after he was retained in 2015. Respondent's first error was that he did not have a written fee agreement with his client. While the record shows that he took initial steps in the matter through 2015 and into 2016, Respondent failed to communicate meaningfully with Ms. Gonzalez from May 2016 into 2017, despite her multitude of attempts to ascertain the status of the estate. When Respondent did communicate, he made promises to take action on the estate that he did not keep, similar to his empty promises to Mrs. Olson in the McCullough Estate. Respondent eventually completed the Englert estate in December 2017.

In January 2017, Mr. Butler retained Respondent to represent him regarding his corporate tax matter and paid Respondent \$500.00. Similar to his misconduct in the Englert Estate, Respondent failed to provide the required written fee agreement for new clients. Although the fee was non-refundable, absent a writing providing otherwise,

Respondent was required to hold the fee separate from his own funds and deposit the fee into a trust account until earned, which he failed to do, instead depositing the funds into his business operating account. Mr. Butler experienced a severe lack of communication on Respondent's part. In the end, it was Respondent who informed Mr. Butler he no longer wished to represent him and promised a refund of the \$500.00, but procrastinated for ten months before reimbursing Mr. Butler.

Respondent, who was approximately 77 years of age at the time of the disciplinary hearing, has practiced law in Pennsylvania since 1972, and has one incident of prior discipline consisting of a public censure ordered by the Court in 2002 for his misappropriation of client funds in the amount of \$6,000 from an estate. In the instant matter, Respondent credibly acknowledged his misconduct in the three client matters and accepted full responsibility for his unprofessional actions. Respondent cooperated by stipulating to many of the facts and rule violations. He expressed genuine remorse for the manner in which he handled his clients' matters and apologized to the profession.

Respondent explained that during the time frame of the misconduct he was overwhelmed with work, and poor personnel choices to staff his office contributed to his problems, particularly with client communication. In order to remediate these problems, Respondent hired a part-time paralegal three or four years ago, who he claimed has helped him address his inability to be responsive and complete matters. However, we note that some of Respondent's misconduct consisting of communication problems and inaction falls within the time frame of the paralegal's presence in the office, presumably when he was able to use this employee's services. It is not clear how the part-time paralegal helped to improve Respondent's office issues.

Respondent further offered that he stopped handling asbestos work, which accounted for twenty percent of his time, stopped advertising his services, and ceased accepting new clients in November 2019. As far as remaining clients, Respondent estimated that he has 110 active clients and is “working like crazy” to complete matters. Somewhat mystifyingly, despite acknowledging how extremely busy he is, Respondent testified that in addition to his law practice, he is working part-time in a nonlegal industry. It is difficult to reconcile this fact with Respondent’s testimony relative to his busy case load, considering his troubling issues with client communication and lack of diligence. Respondent provided no explanation for obtaining a part-time job, and it is unclear how accepting additional employment will help cure Respondent’s sense of being “overwhelmed” and ameliorate Respondent’s ethical deficiencies.

Disciplinary sanctions serve the dual role of protecting the interests of the public while maintaining the integrity of the bar. ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872, 875 (Pa. 1986). 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). Herein, after reviewing prior similar matters, and recognizing that there is a range of sanctions for misconduct, we conclude that a one year and one day suspension is commensurate with the totality of the facts and circumstances in this matter.

Case precedent supports a one year and one day suspension in disciplinary matters involving serious, chronic inaction and lack of communication, and conduct prejudicing the administration of justice. In ***Office of Disciplinary Counsel v. Peter Jude Caroff***, 42 DB 2019 (D. Bd. Rpt. 2/25/2020) (S. Ct. Order 6/5/2020), the Court suspended Caroff for one year and one day for his lack of diligence and lack of communication in one

client matter, which included failing to refund his client's money for more than one year, as well as his failure to respond to Petitioner's inquiries and the Petition for Discipline. In aggravation, Caroff had a history of discipline consisting of an informal admonition for similar misconduct, and he failed to apologize for his actions. In **Office of Disciplinary Counsel v. Tangie Marie Boston**, No. 99 DB 2018 (D. Bd. Rpt. 12/10/2019) (S. Ct. Order 2/12/2020), the Court suspended Boston for a period of one year and one day. Therein, Boston committed misconduct in four matters, including an estate where she failed to communicate with her client and failed to abide by court orders. The misconduct comprised incompetence, neglect, lack of communication, failure to refund unearned fees, and conduct prejudicial to the administration of justice. Although Boston stipulated to many of the facts and rule violations, subsequently admitted her derelictions, accepted responsibility for her misconduct, and had no prior discipline, the Court imposed a one year and one day sanction that required Boston to establish her fitness through a reinstatement proceeding.

The totality of the factors in the instant matter militate against a suspension for less than one year and one day. Like the respondent-attorney in **Boston**, Respondent engaged in misconduct in multiple matters warranting a one year and one day suspension, despite demonstrating mitigation by stipulating to many facts and rule violations, accepting responsibility, and expressing remorse, as respondent Boston did. Respondent's misconduct is more serious than that in **Caroff**, as it involved three client matters as opposed to one client matter, rendering the imposition of a one year and one day suspension appropriate and consistent, especially considering that similar to respondent Caroff, the instant Respondent has a history of discipline. Additionally, while Respondent's testimony indicated that he has identified problems that led to his

misconduct, based on the record before us we are not satisfied that the steps Respondent has taken will alleviate these problems to the degree that will allow him to focus properly on his clients. A reinstatement proceeding is required in this matter to ensure that Respondent is fit to practice and will not harm the public.

Upon this record, after a thorough review of the totality of the facts and circumstances and the determinations made in prior similar disciplinary matters, we conclude that a suspension for one year and one day is necessary. This sanction removes Respondent from practice, requires him to undergo a rigorous reinstatement process, and protects the public, thereby fulfilling the predominant mission of the disciplinary system.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Robert G. Young, 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: 
MDJ Robert L. Repard, Member

Date: 11/30/2020

Vice-Chair Cordisco and Member Goodrich recused.