

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2531 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 123 DB 2017
	:	
v.	:	Attorney Registration No. 24591
	:	
THOMAS PETER GANNON,	:	(Delaware County)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 21st day of December, 2018, upon consideration of the Report and Recommendations of the Disciplinary Board, Respondent Thomas Peter Gannon is suspended from the Bar of this Commonwealth for a period of two years, 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).

The Petition to File Petition for Review *Nunc Pro Tunc* is denied.

A True Copy Patricia Nicola
As Of 12/21/2018

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 123 DB 2017
Petitioner	:	
	:	
v.	:	Attorney Registration No. 24591
	:	
THOMAS PETER GANNON	:	
Respondent	:	(Delaware 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 August 15, 2017, Petitioner, Office of Disciplinary Counsel, charged Respondent, Thomas Peter Gannon, with violation of Rules of Professional Conduct ("RPC") 1.1, 1.16(a)(1), 3.1, 3.3(a)(1), 3.4(a), 4.4(a), 8.4(c), and 8.4(d), arising out of allegations that Respondent abused the court system over a period of eight years by filing multiple meritless and frivolous appeals. On September 26, 2017, Respondent filed an Answer to Petition for Discipline, in which he denied engaging in misconduct.

Following a prehearing conference on November 1, 2017, a disciplinary hearing was held on December 6 and December 8, 2017, before a District II Hearing Committee. Petitioner presented the testimony of the Honorable Charles B. Burr, II and the videotaped trial deposition of Robert C. Ewing, Esquire, taken on October 27, 2017. Petitioner moved into evidence Exhibits ODC-1 through ODC-54, as well as the transcript of the videotaped trial deposition and Exhibits marked as Ewing 1-91, excluding Ewing-59, Ewing-60, Ewing-62, Ewing-63, and Ewing-77, which were withdrawn at the deposition. Respondent appeared *pro se*, offered the testimony of Daniel King, testified on his own behalf, and offered Exhibits ODC-55 and ODC-56, which were admitted into evidence. The Hearing Committee accepted the parties' Stipulation pertaining to docket entries.

Petitioner filed a Brief to the Hearing Committee on January 26, 2018. Thereafter, Respondent retained counsel and filed a Brief to the Hearing Committee on February 26, 2018. The Hearing Committee filed a Report on April 27, 2018, concluding that Respondent violated RPC 1.1, 1.16(a)(1), 3.1 and 8.4(d). The Hearing Committee recommended that Respondent be suspended for a period of two years.¹

On May 30, 2018, Petitioner filed a Brief on Exceptions to the Report of the Hearing Committee and requested that the Board recommend a suspension for five years as appropriate discipline.

On May 31, 2018, Respondent filed a Brief on Exceptions to the Report of the Hearing Committee and contended that no discipline is warranted, as he did not

¹ The Report mistakenly states "disbarred for a period of two years" (Report at pp.1 and 2); it is clear that the Committee recommended a suspension for two years. (Report at p. 40).

violate the Rules of Professional Conduct. Respondent requested oral argument before the Board.

On June 19, 2018, Respondent filed a Brief Opposing Exceptions of Petitioner.

Oral argument was held before a three-member Board panel on July 16, 2018.

The Board adjudicated this matter at the meeting on July 20, 2018.

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

2. Respondent is Thomas Peter Gannon, born in 1943 and admitted to practice law in the Commonwealth in 1976. His attorney registration address is 552 Kelly Avenue, Woodlyn, Delaware County, Pennsylvania 19094. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior record of discipline and is on active status.

The Riverwatch Matter

4. Beginning in 2008 and continuing through 2018, Respondent represented Daniel King against Riverwatch Condominium Owners Association (“Riverwatch”), a non-profit condominium association. Petition for Discipline (“Petition”) ¶¶4; Answer ¶¶4; ODC-5.

5. Mr. King retained Respondent to recover King’s out-of-pocket costs of \$3,577.93 to repair a defective horizontal steel I-beam in the roof of his garage located at the lowest level of King’s townhouse. Mr. King was aware that Riverwatch had hired Robert C. Ewing, Esquire, to sue the architect in order to recover funds to make structural repairs to each owner’s garage. Mr. King made the repairs and converted his garage into additional living space before a settlement was reached in the architectural malpractice action. N.T. 135-137.

6. After Riverwatch obtained the settlement funds, Mr. King refused to allow Riverwatch’s contractor to enter his home unless the converted garage was restored and he was reimbursed for the cost of his repairs. Ewing Deposition Transcript (“Ewing”) N.T. 20-23.

7. When Riverwatch refused to reimburse Mr. King, King sued Riverwatch in Magisterial District Court. After King prevailed, Riverwatch, represented by Mr. Ewing, filed an appeal to the Delaware County Court of Common Pleas. Ewing Exhibit-2.

8. In response to Riverwatch’s Praecipe and Rule to File a Complaint, Respondent filed Mr. King’s Complaint on February 11, 2008. *Id.*

9. On February 26, 2008, Respondent filed an Amended Complaint containing counts for Unjust Enrichment, Equitable Estoppel and violation of the Uniform Condominium Act. The Amended Complaint did not set forth a claim that Riverwatch

breached an agreement with the owners in the development or to pay to King a portion of the settlement from the architectural malpractice action. Ewing Exhibit-2.

10. On February 28, 2008, Riverwatch filed an Answer to the Amended Complaint with New Matter and Counterclaim ("Counterclaim") that included a request for legal fees under the Condominium Act and a *per diem* fine of \$100.00 for each day Mr. King refused to allow Riverwatch's contractor access to King's home in order to make necessary repairs to the I-beam. Ewing Exhibit-2.

11. On March 27, 2008, Respondent filed King's Answer to the Counterclaim with New Matter. Ewing Exhibit-2.

12. The parties' claims were subject to mandatory arbitration. On October 21, 2008, an Arbitration Panel entered an award in favor of King for the sum of \$3,577.93. N.T. 94; Ewing N.T. 113. The Arbitrators' Award did not address the Counterclaim. N.T. 96.

13. On October 23, 2008, Riverwatch filed a Notice of Appeal of the Arbitrators' Award and a separate Petition for Injunction regarding the repairs. Ewing Exhibit-2.

14. On October 27, 2009, the Honorable Charles B. Burr, II held a conference with Mr. Ewing and Respondent about Riverwatch's Petition for Injunction. During the conference, Respondent and Mr. Ewing agreed upon procedures for repairing King's garage and agreed that the issue of damages would be determined by the court if the parties could not reach an agreement on that issues. Judge Burr accepted the agreed-upon procedures by Order dated November 16, 2009. N.T. 22.

15. The parties did not resolve their dispute on the issue of damages.

16. On June 3, 2010, the parties and counsel appeared before Judge Burr for a one-day bench trial. As it was an arbitration appeal, the trial was *de novo*. The claims presented to Judge Burr were based on the pleadings. N.T. 94, 97, 99, 198-199.

17. Respondent did not understand that pursuant to the Pennsylvania Rules of Civil Procedure, the Counterclaim was included in the appeal from the Arbitrators' Award. N.T. 94, 97, 99, 198-199; Ewing N.T. 114-121. Respondent continued to assert that the appeal dealt only with issues expressly described in the award. N.T. 97, 140, 141, 198-199; Ewing N.T. 132-138.

18. By Order dated June 21, 2010, Judge Burr entered a verdict against Mr. King on his claims in the Amended Complaint, entered a verdict in favor of Riverwatch on its counterclaim in the amount of \$8,500.17 for attorney's fees, and directed a judgment be entered consistent with the verdict ("Verdict/Judgment"). Ewing Exhibit-2. Riverwatch agreed to forego its *per diem* fine of \$70,000.00. Ewing N.T. 22.

19. On June 21, 2010, the Delaware County Office of Judicial Support ("OJS") entered the Verdict/Judgment on the court's docket. ODC-11.

20. Although Respondent had filed a Complaint on King's behalf on February 11, 2008, OJS sent the Rule 236 Notice regarding the Verdict/Judgment to Mr. Ewing and to Mr. King, and mistakenly listed King as *pro se*. ODC-11; Ewing Exhibit-2. OJS did not send the Rule 236 Notice to Respondent. ODC-11.

21. On June 22, 2010, a member of Judge Burr's staff transmitted a courtesy copy of the Order on the Verdict/Judgment to Respondent. N.T. 78.

22. Respondent knew or should have known that Pa.R.C.P. 227(c)(2) required motions for post-trial relief in cases decided without a jury to be filed within ten days of the docketed decision. N.T. 216.

23. The ten-day filing deadline for filing King's Motion for Post-Trial Relief ("PTM") was July 1, 2010. N.T. 39.

24. Respondent did not file King's PTM until July 2, 2010. Respondent erroneously believed he had 10 days from the date OJS served him with the Rule 236 Notice. N.T. 215-216I ODC-9; ODC-11.

25. On July 6, 2010, Riverwatch filed Preliminary Objections to King's PTM on the basis that they were filed more than 10 days after the docketed decision. Ewing Exhibit-2.

26. On July 12, 2010, Respondent filed Mr. King's appeal from the Verdict/Judgment in the Superior Court captioned ***Daniel King v. Riverwatch Condominium Owners Association***, Number 1924 EDA 2010 ("First Appeal"). The First Appeal had been filed prematurely because Judge Burr had not yet issued a ruling on the PTM. N.T. 44. The First Appeal was discontinued on August 11, 2010. Ewing Exhibit-3.

27. By Order dated July 28, 2010, Judge Burr sustained Riverwatch's Preliminary Objections to the PTM, striking and dismissing with prejudice King's PTM as they were untimely filed "as evidenced by the (attached) docket entries." As a result, Respondent had until August 30, 2010, in which to file Mr. King's appeal of the PTM Order. Respondent did not file an appeal. Ewing Exhibit-2.

28. On July 29, 2010, OJS sent a Rule 236 Notice of the docketed PTM Order to King, as an unrepresented party, and to Mr. Ewing. ODC-11; Ewing Exhibit-2.

29. Respondent did not take any steps to find out why he had not received the Rule 236 Notice until he contacted OJS on July 30, 2001. ODC-11.

30. On August 2, 2010, Respondent filed King's PTM Reconsideration seeking permission to file the PTM, *nunc pro tunc*. In the PTM Reconsideration, Respondent claimed that a breakdown in the court's operation occurred when OJS sent the Rule 236 Notice to Mr. King instead of to him. ODC-11. He did not request a stay of the 30-day appeal period. N.T. 46, 47.

31. By Order dated September 3, 2001, Judge Burr denied King's PTM Reconsideration ("Reconsideration Order"). Petition ¶45.

32. On September 7, 2010, Respondent filed an appeal of the Reconsideration Order in the Superior Court in the matter captioned ***Daniel King v. Riverwatch Condominium Owners Association***, Docket Number 2579 EDA 2010 ("Second Appeal"). Petition ¶46.

33. The appeal was filed one day late. ODC-13c.

34. The appeal was filed in the Superior Court but was transferred to the Commonwealth Court. ODC-13c.

35. Neither the Superior Court nor the Commonwealth Court had jurisdiction because an order denying a motion for reconsideration is not an appealable order. ODC-26.

36. On September 14, 2010, Riverwatch filed a Praecipe to Reduce the Verdict to Judgment. Ewing Exhibit-64. On September 21, 2010, OJS entered a Judgment on the Verdict against King in the amount of \$8,500.17. Ewing Exhibit-2.

37. On October 26, 2010, the Superior Court transferred the Second Appeal to the Commonwealth Court. The matter was captioned ***Daniel King v. Riverwatch Condominium Owners Association***, Docket Number 2457 CD 2010 ("Third Appeal"). Ewing Exhibits - 4, 5.

38. In the Third Appeal, Respondent asserted that: King had never been an unrepresented party; OJS erred in sending the Rule 236 Notice to King and not to his attorney; the 10-day time period for filing King's post-trial motions did not begin until OJS provided the Rule 236 Notice to Respondent; the courtesy copy of the order faxed to him by Judge Burr's chambers was not proper notice under Rule 236; and, Respondent mailed King's PTM to OJS and to Judge Burr before July 1, 2010. ODC-13a.

39. By Order and Opinion dated July 21, 2011, Commonwealth Court President Judge Bonnie Brigance Leadbetter affirmed the Order (Verdict/Judgment) dated June 21, 2010, and remanded to the trial court for an assessment of attorney's fees against Mr. King. In that Opinion, the Court rejected Mr. King's arguments, holding that:

- a. King had waived any further challenge to the dismissal of his post-trial motions because he had failed to appeal the PTM Order;
- b. Respondent had misinterpreted the requirements of Rule 236 to mean that the start of the 10-day period for filing post-trial motions did not begin until notice had been given to him as King's attorney; and
- c. The only proper issue before the Commonwealth Court was the denial of King's PTM Reconsideration. ODC-13b, 13c.

40. Although the trial court received the remanded record in 2011, the hearing on the issue of attorney's fees was not held until February 21, 2014.

Pre-Attorney's Fees Hearing Appeals

41. After receiving the Commonwealth Court's Order dated July 21, 2011, and prior to the remand hearing before Judge Burr on February 21, 2014, Respondent continued to challenge the judicially reviewed and rejected positions. He filed

four appeals in the Commonwealth Court and two Petitions for Review in the Supreme Court of Pennsylvania. N.T. 187-199; ODC-13d; Petition ¶¶63–93.

42. On September 14, 2011, Respondent filed a Petition for Review in the Nature of an Action in Mandamus against Angela Martinez, Esquire, Director of OJS (“Fifth Appeal”) requiring OJS to send Respondent notice under Rule 236. After receiving the Rule 236 Notice on November 1, 2011, Respondent filed and argued post-trial motions. Ewing Exhibit-66; ODC-10. Respondent also tried to strike the Counterclaim and the PTM Order. Ewing Exhibit-73.

43. The first time Respondent claimed the trial court lacked authority or jurisdiction to enter the Order dated June 21, 2010 was when he filed King’s Petition to Vacate and Strike the PTM Order on January 13, 2012. Ewing Exhibit -69; Ewing N.T. 69. Since January 13, 2012, Respondent has continued to assert that same position in nearly every document he filed, including his Answer to Petition for Discipline in the instant disciplinary proceedings. Ewing N.T. 36; Petition ¶¶81-325; Answer ¶¶81-325; ODC-11.

44. For twenty-nine months, the trial court was unable to hold a hearing on remand for attorney’s fees because it was waiting for King’s multiple appeals in the Commonwealth Court and his Petition for Allowance of Appeal of the Commonwealth Court’s Order dated July 21, 2011 to be decided. ODC-34.

45. On January 28, 2014, the Supreme Court of Pennsylvania denied King’s Petition for Allowance of Appeal. Petition ¶93.

The February 21, 2014 Hearing to Assess Attorney’s Fees

46. On February 21, 2014, in accordance with the Commonwealth Court's Order dated July 21, 2011, Judge Burr presided at a hearing to assess attorney's fees ("Fee Petition hearing"). ODC-12.

47. During the Fee Petition hearing, Respondent took positions on Mr. King's behalf that had no basis in fact or law and which were contrary to opinions from Judge Burr and Judge Leadbetter. Respondent represented to Judge Burr that:

a. The court should not waste its time and resources regarding Riverwatch's request for attorney's fees because neither the trial court nor the Commonwealth Court had subject matter jurisdiction;

b. There had never been a valid or final judgment from which an appeal could be taken;

c. All trial court orders were interlocutory until King's version of a valid judgment was entered against King;

d. The Verdict/Judgment was a nullity because it was void *ab initio*;

e. King had never been served with the Counterclaim;

f. Respondent had no duty to check the docket;

g. King's PTM Reconsideration was proper because a party is not required to file an appeal of a void judgment; and

h. Respondent had no notice regarding Riverwatch's expert witness. ODC-12.

48. Riverwatch's expert witness opined that Riverwatch's legal fees of \$30,179.54, for the period June 22, 2010 until February 21, 2014, were reasonable. ODC-

12. Respondent argued against the amount of attorney's fees Riverwatch had incurred without offering any evidence. Petition ¶¶97-100.

49. By Orders dated February 21, 2014, Judge Burr:

a. Overruled King's Preliminary Objections to Riverwatch's Petition to Assess Attorney's Fees;

b. Granted Riverwatch's Petition to Assess Attorney's Fees in the amount of \$30,171.54;

c. Entered judgment in favor of Riverwatch for \$30,171.54;

d. Directed OJS to release King's appeal bond in the amount of \$10,200.21 to Riverwatch;

e. Denied King's Petition to Strike Riverwatch's Counterclaim and the Order dated June 21, 2010 for Lack of Jurisdiction; and

f. Denied King's Application to Set Aside a Writ of Execution for levy upon King's truck. Ewing Exhibits-76, 77, 78, 79, 80.

50. On March 3, 2014, Respondent filed King's Motion for Post-Trial Relief for Judgment Notwithstanding the Verdict of February 21, 2014 ("JNOV Motion") and requested a new trial. In the JNOV Motion, Respondent asserted positions he had previously raised unsuccessfully at the Fee Petition hearing including that the judgment entered on the Praecipe to Reduce the Verdict to Judgment was not a final order because it did not dispose of all claims of all parties and *res judicata* does not apply to a void judgment. Ewing Exhibits - 64, 75.

51. By Order dated March 5, 2014, Judge Burr denied King's JNOV Motion. Petition ¶106.

52. On March 10, 2014, Respondent filed King's Motion to Correct the Record to Reflect the Entry of a Verdict on February 21, 2014, and to Strike the Judgment for Attorney's Fees in order to start another 10-day period in which to file King's post-trial motions. Petition ¶¶108.

53. On March 14, 2014, OJS released King's appeal bond to Riverwatch. Respondent did not oppose the release of King's appeal bond until March 20, 2014. ODC-12.

54. From March 31, 2014 through December 31, 2014, the trial court denied each of King's requests for relief. Ewing Exhibit -2.

55. Respondent filed separate appeals to the Commonwealth Court of Judge Burr's Orders dated February 21, 2014 and March 5, 2014 ("Tenth Appeal", "Eleventh Appeal", "Thirteenth Appeal" and "Fourteenth Appeal"). Petition ¶¶111-128, 132-147.

56. While King's Tenth through Fourteenth Appeals were pending, on April 7, 2014, Respondent attempted to file King's third Petition for Allowance of Appeal in the Supreme Court of Pennsylvania. ("Twelfth Appeal"). ODC-21.

57. The Twelfth Appeal was the result of Respondent's refusal to accept the Commonwealth Court's Order dated March 4, 2014, denying King's Motion to Strike the Court's Opinion and Order dated July 21, 2011. Petition ¶¶129-130.

58. By letter to Respondent dated April 9, 2014, the Prothonotary of the Supreme Court of Pennsylvania returned King's unfiled Petition for Allowance of Appeal because '[a] Petition for Allowance of Appeals was filed from the final order dated July 21, 2011 at No. 2457 CD 2010 (Third Appeal) and was denied on August 22, 2012 at No. 795 MAL 2011 (Sixth Appeal). The Motion to Strike [and Vacate the Commonwealth

Court's Order dated July 21, 2011, claiming no appellate jurisdiction exists] at No. 2457 CD 2010 was denied on March 4, 2014...was not a final order, see Pa.R.A.P. 1112(b), and under Chapter 11 of the Pennsylvania Rules of Appellate Procedure does not vest this Court with Jurisdiction." ODC-21.

59. In disregard of the Prothonotary's letter dated April 9, 2014, Respondent filed King's Petition for Allowance of Appeal in the Supreme Court of Pennsylvania in the matter under docket number 75 MM 2014 ("Sixteenth Appeal"). ODC-25. The order at issue was the trial court's Order dated September 3, 2010, denying King's Petition for Reconsideration, which was the subject of King's Twelfth Appeal. Petition ¶157.

60. On May 23, 2014, Respondent filed the Seventeenth Appeal under Commonwealth Court docket number 1846 CD 2014, pertaining to Judge Burr's Order dated May 1, 2014, compelling Mr. King to make his truck available to the Sheriff for levy. Petition ¶¶161-162. The Commonwealth Court consolidated six appeals (Tenth, Eleventh, Thirteenth, Fourteenth, Fifteenth and Seventeenth Appeals) involving the same or related issues on appeal.

61. Judge Burr issued separate Opinions dated June 4, 2014. He provided detailed explanations of his reasons for denying Mr. King's claims. N.T. 26, 27.

62. The Opinions stated that Mr. King's appeals were frivolous and that Respondent refused to accept the Court's determinations. Judge Burr intentionally included portions of President Judge Leadbetter's Opinion of July 21, 2011, explaining that King had waived his ability to appeal the Verdict/Judgment and that the Order had become final when the Supreme Court denied allocatur on August 22, 2012. N.T. 26, 27.

63. In response to Judge Burr's June 4, 2014 Opinions, Respondent filed a twenty-page Statement of Matters Complained of on Appeal. Petition ¶¶113.

64. By Order dated July 10, 2014, the Commonwealth Court stayed the consolidated appeals because they involved the remand proceedings and might become moot if King prevailed in the pending Petitions for Review in the Supreme Court. ("Twenty-Third" through "Twenty-Eighth" Appeals). Petition ¶¶199-228.

65. After receiving the Commonwealth Court Order dated July 10, 2014, and before the end of 2014, Respondent filed more appeals in an attempt to block Riverwatch from executing against Mr. King's truck. On October 8, 2014, Respondent filed an appeal under docket number 1846 CD 2014 ("Eighteenth Appeal") from Judge Burr's Order dated November 4, 2014 (denying King's application to set aside a Writ of Execution). ODC-27a.

66. On December 5, 2014, Respondent filed an appeal in the Commonwealth Court at docket number 2228 CD 2014 ("Nineteenth Appeal"). The order at issue was Judge Burr's Order dated September 5, 2014, requiring that Mr. King make his truck available to the Sheriff. ODC-28a. By Order dated May 12, 2015, the Commonwealth Court quashed the Appeal. ODC-28b.

67. The Commonwealth Court denied King's Application for Reconsideration on December 30, 2014. ODC-28a. Respondent filed a Petition for Allowance of Appeal in the Supreme Court on January 15, 2015 under docket number 60 MAL 2015 ("Twentieth Appeal"), which the Court denied on April 28, 2015. ODC-29a and 29b.

68. While waiting for the Commonwealth Court to rule on King's pending appeals filed in 2014, the trial court, by Order of December 15, 2014, overruled King's

Preliminary Objections to Riverwatch's Motion to Compel Deposition in Aid of Execution. On January 16, 2015, Respondent appealed to the Supreme Court under docket number 74 CD 2015 ("Twenty-First Appeal"), Judge Burr's Order of December 15, 2014. The Twenty-First Appeal was dismissed on May 12, 2015. Petition ¶¶187-193.

69. By Order and Opinion dated April 24, 2015, President Judge Leadbetter affirmed all of the trial court's orders at issue in the consolidated appeals and remanded to the trial court for another assessment of attorney's fees against King and in favor of Riverwatch. The Commonwealth Court denied King's Motion for Protective Order which sought to prevent Riverwatch from obtaining discovery in aid of execution under Pa.R.C.P. 3117. Petition ¶118.

70. Despite another remand hearing to assess attorney's fees against King and having lost all previous applications for re-argument, Respondent again requested re-argument. The Commonwealth Court denied his request. Petition ¶¶125-127.

71. Throughout 2015, 2016 and 2017, Respondent continued to file appeals.

72. On June 27, 2015, Respondent filed a Petition for Allowance of Appeal in the Supreme Court under docket number 489 MAL 2015, appealing the Commonwealth Court's Order dated May 12, 2015, denying King's Application to Set Aside Writ of Execution and Dismissing the Appeal ("Twenty-Second Appeal") ODC-31a.

73. By Order dated December 29, 2015, the Supreme Court denied the Petition for Allowance of Appeal, stating that a litigant cannot continue to challenge a judgment in perpetuity where the courts have already addressed the issues. Petition ¶¶194-198.

74. Respondent ignored the Supreme Court's admonition by filing a Petition for Reconsideration on January 12, 2016. The Supreme Court denied reconsideration on February 10, 2016. Petition ¶¶194-198.

75. On November 12, 2015, in docket number 2288 CD 2015 ("Twenty-Ninth Appeal"), Respondent challenged Judge Burr's Order dated October 23, 2015, denying King's Motion to Dismiss the Order dated July 15, 2015, and compelling King to attend a deposition in aid of execution, due to lack of jurisdiction. ODC-33a-f; Petition ¶¶237-246.

76. In light of issues having been determined no later than August 2012, Mr. Ewing filed a Motion to Quash King's (Twenty-Ninth) Appeal. On December 23, 2015, the Commonwealth Court granted Riverwatch's Motion to Quash the Appeal and remanded to the trial court for an assessment of attorney's fees. ODC-33c.

77. Just one week after the Supreme Court's Order dated December 29, 2015, and despite the Court's admonition that a litigant cannot continue to challenge a judgment in perpetuity, Respondent filed an Application for Reargument in the Twenty-Ninth Appeal followed by a Petition for Allowance of Appeal with the Supreme Court filed on February 11, 2016 ("Thirty-First Appeal"). ODC-35a; Petition ¶¶229-236. The Supreme Court denied King's Petition and Application for Reconsideration on June 2, 2016 and July 1, 2016, respectively. Ewing Exhibit-30.

First Disqualification Order

78. On March 31, 2016, Respondent continued his pattern of disregarding the Supreme Court's admonition and filed in the Commonwealth Court

King's Motion to Strike the September 14, 2010 Unauthorized Judgment on the Verdict ("Thirtieth Appeal"). ODC-34d.

79. By Order and Opinion dated April 11, 2016, President Judge Leadbetter quashed King's Thirtieth Appeal because the issues were barred by *res judicata* and collateral estoppel and denied King's Motion to Strike the September 14, 2010 Unauthorized Judgement. Petition ¶¶214.

80. By that same Order and Opinion, President Judge Leadbetter granted Riverwatch's Motion to Disqualify Respondent for violating RPC 3.1 ("First Disqualification Order"). President Judge Leadbetter explained that King was not entitled to continue challenging the Order "at any time." In granting Riverwatch's Motion to Disqualify based on Respondent's violation of RPC 3.1, President Judge Leadbetter explained that the Court was granting the motion because attorney's fees had not curtailed Respondent from filing appeals. President Judge Leadbetter ordered Mr. Ewing to file a Bill of Costs for an award of attorney's fees pursuant to Pa.R.A.P. 2744 because "there was no reasonable cause to initiate appeal as [Mr.] King has no legal or factual bases upon which to again challenge the June 10, 2010 judgment/verdict." ODC-36d; Petition ¶¶257.

81. While the Thirtieth Appeal was pending, Mr. Ewing filed a Petition for King's Bench Relief in the Supreme Court under Docket Number 56 MM 2016. Ewing Exhibit-86. On August 11, 2016, the Court denied Riverwatch's King's Bench Petition and directed that Riverwatch could seek redress with the Disciplinary Board. Petition ¶¶243.

82. By Order dated May 11, 2016, President Judge Leadbetter denied King's Motion to Reconsider the Commonwealth Court's Order dated April 11, 2016.

Petition ¶245. By separate Order dated May 11, 2016, Judge Leadbetter directed the Chief Clerk to enter Judgment on Riverwatch's Bill of Costs in the amount of \$3,825.00, against Respondent and King, jointly and severally. Petition 245. The judgment was entered on May 26, 2016, and has not been paid. ODC-36k; Ewing N.T. 32.

83. On June 11, 2016, Respondent filed a direct appeal of the First Disqualification Order in the Supreme Court of Pennsylvania under docket number 409 MM 2016 ("Thirty-Third Appeal"). By Order dated October 19, 2016, the Supreme Court denied King's Petition for Allowance of Appeal. Petition ¶267.

84. On June 11, 2016, Respondent filed a separate action in the Supreme Court of Pennsylvania under docket number 410 MM 2016 ("Thirty-Fourth Appeal") appealing the Commonwealth Court's Order dated May 26, 2016 entering Judgment on the Bill of Costs. ODC-39a. The Supreme Court denied allocator on October 19, 2016, after denying King's impermissible filing of a Reply to Riverwatch's Answer. ODC-39b.

The Second Remand Hearing

85. On May 9, 2016, Respondent and Mr. Ewing appeared before Judge Burr for the second remand hearing. During the hearing, Respondent represented to Judge Burr and Mr. Ewing that Mr. King had been involved in a serious truck accident two weeks earlier and could not leave his house other than to receive medical treatment. For those reasons, Respondent represented that Mr. King would not be in court even through Mr. Ewing had served Mr. King with a Notice to Attend. Ewing Exhibit-87, pp 25-27.

86. Respondent asked Judge Burr to adjourn the second remand hearing until the appellate courts resolved King's Thirty-First Appeal and Riverwatch's

Petition for King's Bench Relief, claiming the Supreme Court "could come back and say, you know, Mr. Gannon, you're right. This Court...did not have jurisdiction...to enter judgment." Ewing Exhibit-87, pp 5-6.

87. In response, Judge Burr described Mr. King's chances of winning on appeal as "slim to non-existent" given King's unsuccessful, countless appeals. Ewing Exhibit 87, p.8. Respondent explained that he would be making new arguments in his Answer to Riverwatch's King's Bench Petition on the issues of *res judicata* and collateral estoppel. Ewing Exhibit-87, p. 11. When Judge Burr questioned Respondent, he admitted that he had "briefly raised" the issues in one of the appeals which had been dismissed. Ewing Exhibit-87, p. 12. Respondent stated that he would continue to challenge the court's jurisdiction to enter any judgment because he did not receive the Rule 236 Notice, rendering void the Judgment on the Verdict. Ewing Exhibit-87, pp. 15-17. Respondent continued to assert new arguments before Judge Burr, claiming it was illegal for Riverwatch to have been paid any amount on the \$8,500.17 judgment by way of King's appeal bond. Ewing Exhibit -87, p.18.

88. After trying to explain to Judge Burr and Mr. Ewing what he wanted to achieve for Mr. King, Respondent stated he is doing his best to protect Mr. King. Respondent wants justice, to "win" by following the law and a new trial even if it means Riverwatch will no longer waive its per diem fines (which exceeded \$70,000.00) against King. Ewing Exhibit-87 pp. 8, 23, 24. Respondent explained that he must protect King even when the appellate courts have not. Ewing N.T. pp. 229-231.

89. On May 10, 2016, Judge Burr entered a judgment for attorney's fees in the amount of \$29,194.88 against King. Ewing N.T. 28; Ewing Exhibit-2. On May 27,

2016, Respondent filed the Thirty-Second Appeal in the Commonwealth Court under docket number 878 CD 2016. ODC-36a.

The Second Disqualification Order

90. On June 9, 2016, in the Commonwealth Court, Riverwatch filed a Motion to Disqualify Respondent from representing King in all matters involving Riverwatch and to Award Counsel Fees ("Second Motion to Disqualify") in the Thirty-Second Appeal. ODC-36b.

91. On June 16, 2016, Respondent filed King's Answer to the Second Motion to Disqualify, claiming the Verdict and Judgment on the Verdict were void. ODC-36c.

92. By Order dated June 20, 2016, President Judge Leadbetter granted the Second Motion to Disqualify and directed Mr. Ewing to submit a Bill of Costs for dilatory, obdurate or vexatious conduct and for initiating the Thirty-Second Appeal in bad faith. The Order stated in pertinent part: "[i]t further appearing that the above appeal is the twenty-eighth...all appeals have unsuccessfully challenged the June 21, 2010 verdict and judgment in this matter and that the award of costs has not deterred appellant or his counsel from filing frivolous appeals, the Court will entertain no further appeals or other actions from appellant in matters previously decided on the merits by this Court related to the action for damages for the steel beam repair to appellant's condominium unit. In the future, the Court will dismiss administratively any such filings of record." ("Second Disqualification Order"). ODC-36d.

93. The Second Disqualification Order was docketed in the Commonwealth Court and sent to OJS where it was docketed. Ewing Exhibit-2.

94. On August 3, 2016, the Commonwealth Court entered judgment on the Bill of Costs in the amount of \$1,375.00 against Respondent and King, jointly and severally. ODC-36k.

95. Following receipt of the Second Disqualification Order, on August 17, 2016, the trial court entered an Order granting Riverwatch's Petition to Prohibit Respondent and King from filing any additional pleadings in the trial court action and directing OJS to administratively dismiss any further pleadings. Petition ¶¶285.

96. On August 27, 2016, Respondent filed a direct appeal of the Second Disqualification Order in the Supreme Court ("Thirty-Sixth Appeal"), which the Court denied on December 28, 2016. ODC-41a and 41b.

97. On September 6, 2016, Respondent filed a direct appeal to the Supreme Court in his Thirty-Seventh and Thirty-Eighth Appeals from the trial court's Order of August 17, 2016, granting Riverwatch's Petition to Prohibit Respondent and Mr. King from filing any additional pleadings in the trial court action and directing OJS to administratively dismiss any further pleadings. By Order of February 28, 2017, the Court dismissed King's appeals. ODC-42a, 42b, 42d.

98. Respondent continued to file pleadings and motions on Mr. King's behalf in state court even though he had been disqualified and Judge Burr had entered a similar order on August 17, 2016. Petition ¶¶291-351.

99. Six years after the Verdict and Judgment on the Verdict were entered against King, Respondent continued to challenge the Verdict, the Judgment on the Verdict and the first Judgment for attorney's fees of \$30,171.54. Respondent filed Writs of Prohibition and Requests for Stay of Proceedings in the Supreme Court ("Thirty-Ninth

Appeal,” “Forty-First Appeal,” “Forty-Second Appeal,” “Forty-Third Appeal,” “Forty-Fourth Appeal,” and the “Forty-Fifth Appeal”). ODC-43a, 45a, 45b, 46a, 46b, 47a, 48a, 49a.

100. In these appeals, Respondent asked the Supreme Court of Pennsylvania to prevent Judge Burr and President Judge Leadbetter from issuing any orders arising from the purported void and unenforceable orders. Respondent asked the Court to remand the matter to the trial court in order to purge the record of all orders and proceedings having anything to do with the Judgment dated April 1, 2014.

101. Respondent filed the Forty-Fourth Appeal on January 1, 2017, still challenging the trial court’s jurisdiction, without waiting for a ruling on pending appeals. Three weeks later, on January 23, 2017, Respondent filed the Forty-Fifth Appeal despite the pending Forty-Fourth Appeal. Petition ¶¶318, 326.

102. By Order dated February 28, 2017, the Supreme Court denied the Forty-Fourth Appeal and issued a Rule to Show Cause why Respondent and King should not be barred from submitting any further filings in the Supreme Court regarding the civil action against Riverwatch, including directives barring Respondent from representing King (“Rule to Show Cause”). The Rule was returnable on March 14, 2017. ODC-45c, 47c, 48b; Petition ¶¶323.

103. Respondent did not stop filing documents after the Supreme Court issued the Rule to Show Cause.

104. On March 3, 2017, Respondent filed a Petition for Review in the Supreme Court in the Nature of a Direct Appeal From a Lower Court Order Drawing into Question the Right to Practice Law and the Validity of a Statute, in the matter captioned ***Daniel King v. Riverwatch Condominium Owners Association***, docket number 115

MT 2017 (“Forth-Sixth Appeal”). Respondent sought review of the trial court’s Orders dated January 30, 2017 and February 3, 2017. Petition ¶¶348-351.

105. By Order dated June 1, 2017, the Rule was made absolute and the Supreme Court stated it would not entertain further filings from Respondent and King involving Riverwatch “including any related orders concerning the awards of costs, as well as directives barring Thomas P. Gannon, Esquire, from representing Daniel King. Any such pending filings shall be administratively dismissed, and the Prothonotary is **DIRECTED** to decline to docket any other such filings that may be submitted in the future.” (emphasis in the original) ODC-48d.

106. King’s appeals were administratively dismissed. ODC-49b.

Contempt Orders and Sanctions

107. Judge Burr issued twelve orders awarding attorney’s fees in favor of Riverwatch and against Respondent pursuant to 42 Pa.C.S.A. §2503(7), 42 Pa.C.S.A. §2503(9), and Pa.R.C.P. 1023.2. Ewing Exhibit -91.

108. Some of those sanctions orders arose due to Respondent’s obstruction of Riverwatch’s legitimate interest in obtaining discovery in aid of execution, including failing to appear for his own court-ordered deposition and filing Writs of Prohibitions seeking to block all discovery efforts. N.T. 22.

109. The twelve orders were issued during the period from October 23, 2015, through October 7, 2016, with attorney’s fees totaling \$9,155.00, and fines totaling \$10,500.00 Ewing Exhibit-91, Exhibit N.

110. On January 30, 2017, Judge Burr granted Riverwatch’s Petition for Contempt due to Respondent’s “willful failure to comply with its Orders (as identified in

the order) assessing counsel fees and fines” and directing Respondent to pay the full amount of counsel fees totaling \$9,155.00, and fines totaling \$10,500.00 within 10 days of the order or Respondent would suffer further sanctions upon application to the Court, including incarceration. Ewing Exhibit-91, Exhibit N.

111. Respondent failed to comply. N.T. 20.

112. Two days after the court’s 10-day deadline, Respondent filed King’s Motion for Summary Judgment in the Trial Court Action. Ewing Exhibit-2.

113. By filing King’s Motion for Summary Judgment, Respondent violated Judge Burr’s Order dated August 17, 2016, the Commonwealth Court’s Order dated June 20, 2016, and the Supreme Court’s Order dated December 28, 2016 (“Disqualification Orders”).

114. By Order dated February 3, 2017, Judge Burr directed OJS to administratively dismiss the Motion for Summary Judgment per the Disqualification Orders. Ewing Exhibit-89.

115. On February 24, 2017, Riverwatch filed a Petition for Contempt. Petition ¶¶336.

116. On March 16, 2017, Respondent filed an Answer to Riverwatch’s Petition for Contempt, claiming among other things, that the trial court’s judgments and orders were void on their face. Petition ¶¶337.

117. By Order dated March 28, 2017, Judge Burr granted Riverwatch’s Petition for Contempt, stating that Respondent “is found in contempt due to his willful failure to comply with all assessing counsel fees and fines.” Petition ¶¶339.

118. The Order dated March 28, 2017, directs that Respondent “may purge himself of this CONTEMPT by paying all of the foregoing attorneys [sic] fees and

finer within ten (10) days" and issuing a Rule to Show Cause "to allow Thomas P. Gannon, Esquire, to explain why he should not be conditionally imprisoned for his failure and refusal to comply with this Court's directives." Petition ¶340.

119. Respondent did not purge himself of contempt. Petition ¶341.

120. On April 12, 2017, Judge Burr issued a Rule to Show Cause, scheduled a contempt hearing, continued to hold Respondent in contempt, and directed that a bench warrant be issued for Respondent's immediate imprisonment if he failed to appear for the hearing. Petition ¶341.

121. On April 25, 2017, Respondent and Mr. Ewing appeared for the contempt hearing before Judge Burr. Petition ¶342.

122. By Order dated April 25, 2017, Judge Burr approved a Stipulation and Agreement, requiring Respondent to pay \$9,155.00 in attorney's fees by delivering a certified or cashier's check to Mr. Ewing's office and payable to Riverwatch by April 25, 2017. The Court also accepted Respondent's request to pay the fines he owed to OJS in the amount of \$10,500.00, by way of a monthly payment of \$100.00 due on the first of each month beginning May 1, 2017. Petition ¶344.

123. Judge Burr stayed the previous contempt finding pending Respondent's complete and timely payment of the fines. Petition ¶345.

124. Respondent did not timely pay the \$9,155.00 in attorney's fees to Mr. Ewing on April 25, 2017, but paid one day later on April 26, 2017. Ewing N.T. 32, 33.

125. Respondent has never remitted any payment under the plan he requested towards the fines he owes to OJS. Ewing N.T. 36.

The Federal Court Action

126. After Respondent and Mr. King were prohibited from filing further documents in state court, they discussed filing an action in federal court. N.T. 168-169, 235.

127. Mr. King understood from his discussions with Respondent that Respondent was trying to get King's monies for the costs of his repairs and his portion of the settlement monies. He sued Judge Burr "out of principle," blaming Judge Burr. N.T. 170-172.

128. On May 22, 2017, Respondent filed a Federal Civil Rights Action against Judge Burr and Riverwatch, seeking a permanent injunction and declaratory relief that, *inter alia*, the PTM Order was void and unenforceable and King's rights to due process and equal protection were violated. ODC-53.

129. On May 30, 2017, Riverwatch filed a Motion to Dismiss the Complaint that included a ground that the Court lacked subject matter jurisdiction under the *Rooker-Feldman* doctrine. Petition ¶357.

130. On June 12, 2017, Administrative Office of Pennsylvania Courts ("AOPC") Counsel Martha Gale, Esquire, filed a Motion to Dismiss the Complaint on behalf of Judge Burr. Ewing N.T. 41- 46.

131. On June 30, 2017, Respondent filed an Amended Complaint which he believed removed any issues not allowed under the *Rooker-Feldman* doctrine. N.T. 243; Ewing Exhibit-48. Motions to Dismiss the Amended Complaint were filed. Respondent filed King's Answer to Riverwatch's Motion to Dismiss the Amended Complaint and a Motion to Dismiss the Motion to Dismiss. Ewing Exhibit-51.

132. On August 24, 2017, the Honorable Michael M. Baylson granted the Motions to Dismiss the Amended Complaint on the grounds that the *Rooker-Feldman* doctrine deprived the federal court of subject matter jurisdiction over Mr. King's claims. Judge Baylson retained jurisdiction to rule upon Riverwatch's Motion for Counsel Fees while noting King's appeal on the merits to the United States Court of Appeals for the Third Circuit. Ewing Exhibit -51.

133. On August 31, 2017, Mr. Ewing filed Riverwatch's Motion for Counsel Fees seeking attorney's fees in the amount of \$3,985.00, as the prevailing party and due to Respondent's unreasonable and vexatious conduct. Ewing Exhibit-46.

134. On December 7, 2017, (one day before King and Respondent testified at the disciplinary hearing) Judge Baylson issued an Order granting Riverwatch's Motion for Counsel Fees and Memorandum. ODC-55, 56.

135. In the Memorandum, Judge Baylson explained that King "abused the privilege of open filing in this court, and in the Pennsylvania state courts, on a straightforward issue...[King's] response [to the Motion for Attorney's Fees] states a number of conclusory arguments that do not have any connection to the facts of the case and the underlying litigation procedures. The Plaintiff's Memoranda contains a number of concessions and Plaintiff's legal citations do not meet the issues and are without any merit." ODC-56, p. 5.

136. Respondent continued to misinterpret the federal rules, by opposing Judge Burr's motion requesting permission to be excused from filing a brief in the Third Circuit. N.T. 25, 26.

137. Subsequent to the disciplinary hearing, on March 14, 2018, the United States Court of Appeals for the Third Circuit affirmed the United States District

Court for the Eastern District of Pennsylvania Decision dismissing King's Complaint against Judge Burr and Riverwatch Condominium Owners Association for lack of subject matter jurisdiction pursuant to the *Rooker-Feldman* doctrine. See Joint letter to the Hearing Committee dated March 28, 2018 with attached Opinion of the United States Court of Appeals for the Third Circuit, in the matter of ***Daniel King v. Judge Charles B. Burr, II, Individually, et al.***, and docket number 17-3045.

138. As a result, on March 20, 2018, Judge Baylson entered an Amended Order, modifying the Order issued on December 7, 2017, and entered a judgment in favor of Riverwatch against Respondent in the amount of \$3,985.00. The Court noted that Respondent "has multiplied the proceedings unreasonably and vexatiously, in willful bad faith, in violation of 28 U.S.C. 1927. ...None of these cases has had any merit, and the case in this Court is no exception. ...[Respondent]...[has] transcended the bounds of zealous advocacy on behalf of [his] client. ...In doing so, he improperly imposed costs of defense on Riverwatch..." See joint letter to the Hearing Committee dated March 28, 2018 with attached Amended Order dated March 20, 2018 from the District Court in the matter of ***King v. Charles B. Burr, II et al.***, Civil Action No. 17-cv-02315 (E.D. Pa.)

The Disciplinary Hearing

139. Judge Burr testified credibly at the disciplinary hearing.

140. Judge Burr described Respondent's courtroom demeanor as "exemplary" and "professional," but testified that Respondent has been "stubbornly disobedient to most court orders" and "won't take no for an answer." N.T. 19-20, 26.

141. Judge Burr testified that it took a lot of court time to dispose of Respondent's many motions. N.T. 22.

142. Respondent testified that “if I knew then what I know now, we wouldn’t be here.” N.T. 234. Respondent testified that as the case evolved and he reviewed the law and the rules, he realized that “jurisdiction is an extremely sensitive issue for judges in Pennsylvania.” N.T. 234.

143. Respondent testified that his goal in general is to win and give Mr. King justice. N.T. 263.

144. Respondent testified that his goal in filing an appeal to the United States Court of Appeals for the Third Circuit Court was to remand the federal action so that he would be able to file another amended complaint. N.T. 264.

145. Respondent testified that he sends relevant documents to King and has told King everything, including the consequences and the benefits of litigation, and that Respondent has a duty to pursue the claim when the courts disregard the law, even if that means financial harm to King. N.T. 143-146, 150-160, 174, 211, 253-254.

146. Respondent never advised his client to stop filing appeals. N.T. 224-225.

147. Respondent’s testimony is credible.

148. Mr. King testified credibly at the disciplinary hearing. He is 70 years old and a mechanic who lives on a fixed income. He has filed for bankruptcy. N.T. 146, 147, 172.

149. Mr. King testified that Respondent has sent him a lot of documents and has kept him apprised of every step in the litigation process. N.T. 162-163. Mr. King was aware that he could stop the litigation at any time, and testified that he was continuing the litigation for the “principle” of the matter. N.T. 133, 172, 176-177.

150. When questioned about his understanding of the litigation, Mr. King testified that “I have no clue about all of this justice system” and “I don’t know nothing about this law situation.” N.T. 137, 169. Mr. King testified that “this is over my head” and repeatedly explained that he fixed truck tires for a living and Respondent was the lawyer. N.T. 160-161, 168-169.

151. Mr. King testified that he authorized Respondent to run his claims “up the ladder” and “shoot for the stars.” He fully supports Respondent and would never terminate the representation regardless of the Disqualification Orders. N.T. 163-168, 174.

152. Mr. King testified that he will do anything to stop Judge Burr as “no one will break down [King’s] door to his home.” N.T. 134-135, 147. Mr. King testified that he believes Judge Burr is “in cahoots” with Mr. Ewing. N.T. 135.

153. Mr. King testified that he believes the trial court action should have been settled at least five years ago. N.T. 163. On several occasions, Mr. King testified that the situation was “crazy.” N.T. 142, 169.

154. Mr. King is still waiting to receive his reimbursement from the settlement Mr. Ewing secured against the architect. N.T. 136, 142-143, 160-169.

155. Mr. King was questioned concerning the truck accident in which he was involved, and he testified that he has not been involved in any motor vehicle accidents since 2014. N.T. 178.

156. Shortly before testifying at the disciplinary hearing on December 8, 2017, Mr. King learned that Riverwatch’s Motion for Attorney’s fees in the federal action had been granted. N.T. 173.

157. Riverwatch has incurred at least \$87,054.78 for legal fees due to Respondent’s court filings after the Verdict. Ewing Exhibit-90.

158. Respondent has not paid the fines owed to OJS as it is his position that he has no obligation to pay because the fines are based upon a void order. N.T. 266-267.

159. Respondent has not satisfied the judgments entered against him by the Commonwealth Court. Ewing Exhibit-90; Ewing N.T. 32.

160. After being personally served with the Petition for Discipline on August 17, 2017, Respondent continued to file petitions and appeals on Mr. King's behalf.

161. Respondent was elected to the Pennsylvania House of Representatives in 1978 and served 13 consecutive terms. He served as Chairman of the House Judiciary Committee and Chairman of the House of Professional Licensure Committee. N.T. 279.

162. Respondent had very little appellate practice experience prior to Respondent's representation of Mr. King in his matter. N.T. 286-289.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 – A lawyer shall provide competent representation to a client.
2. RPC 1.16(a)(1) – A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.
3. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is

not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

4. RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

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

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

IV. DISCUSSION

Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). Petitioner's evidence consisting of the testimony of the Honorable Charles B. Burr, II and the videotaped trial deposition of Robert C. Ewing, Esquire, and Petitioner's comprehensive exhibits proved the essential facts and circumstances needed to substantiate that Respondent violated Rules of Professional Conduct 1.1, 1.16(a)(1), 3.1, 3.3(a)(1), 8.4(c), and 8.4(d).

The facts demonstrate that Respondent abused the court system for the last eight years in connection with his representation of Daniel King against Riverwatch, in litigation concerning reimbursement of monies King expended to repair a structural defect in his townhouse.

Following Riverwatch's appeal from the Arbitrator's Award, Judge Burr presided at the trial and by Order dated June 21, 2010, he rendered his Verdict/Judgment on Riverwatch's counterclaim in the amount of \$8,500.17. On June 21, 2010, the OJS entered the Order and Verdict/Judgment on the court's docket. Respondent was aware of the Rule 236 Notice and Order, and also was aware that pursuant to the procedural rules, a motion for post-trial relief had to be filed within ten days of the docketed decision. Respondent filed Mr. King's Motion for Post-Trial Relief (PTM) one day late.

By Order dated July 28, 2010, the trial court struck and dismissed Mr. King's untimely PTM with prejudice. Respondent failed to appeal the court's order. Instead, he filed for Reconsideration of the PTM Order without including a request to stay the 30-day appeal period. On September 3, 2010, Judge Burr denied Mr. King's Reconsideration. Respondent appealed the Reconsideration to the Commonwealth Court and by Order and Opinion dated July 21, 2011, Commonwealth Court President Judge Leadbetter affirmed the PTM Order and remanded the matter for an assessment of attorney's fees against Mr. King. On August 22, 2012, the Supreme Court of Pennsylvania denied allocator.

Thereafter, Respondent refused to accept that he failed to file timely post-trial motions. This stance occasioned Respondent's further refusal to accept judicial authority by re-litigating barred claims over the course of at least 49 appeals in the state courts and in the federal court action. Respondent has made clear that his goal in Mr. King's representation was to win and obtain justice for his client, and he had a duty to pursue his client's claim when the courts disregarded the law, despite financial harm to his client.

The record is replete with multiple instances to sustain Respondent's violations of the Rules of Professional Conduct.

Respondent lacked the requisite knowledge and competence to conduct litigation generally, and filed numerous appeals both improperly and on baseless grounds in violation of RPC 1.1. Respondent was unfamiliar with the local, state and appellate rules of civil procedure, of which he had a duty to know. Respondent's misapplication of the law and the rules, and his incompetence prevailed throughout his representation of Mr. King. By way of example, Respondent failed to understand that the Counterclaim was included in the *de novo* appeal from the Arbitrators' Award; failed to file timely post-trial motions; and, failed to file an appeal of the Order dismissing post-trial motions, (the only significant trial court order that Respondent did not appeal), but instead waited for Judge Burr to make a decision on the Reconsideration. Respondent then filed an appeal from the Order denying the Motion for Reconsideration, even though this was an interlocutory Order. The Commonwealth Court held that Respondent failed to preserve Mr. King's issues for appeal or had waived them. Once the Supreme Court denied allocatur and Mr. King's arguments were barred, a competent attorney should have known that a client had no legitimate basis to continue to litigate those issues; however, Respondent continued his barrage of filings.

Despite Respondent's lack of competent knowledge, he continued to represent Mr. King and failed to withdraw his representation, in violation of RPC 1.16(a)(1). Respondent was sanctioned with attorney's fees twice by the Commonwealth Court and numerous times by the trial court, yet Respondent continued to barrage the courts with meritless claims and failed to comply with contempt orders. Respondent was disqualified by the Commonwealth Court because Judge Leadbetter noted that attorney's

fees were not a deterrent to Respondent's multiple appeals. The Supreme Court of Pennsylvania also barred Respondent from representing Mr. King because of his continued vexatious conduct. Nevertheless, Respondent continued his pattern and practice of frivolous filings and appeals on behalf of Mr. King, despite the fact that doing so was in contravention of court orders.

Respondent's multiple baseless and frivolous filings despite numerous warnings from judges at all levels in Pennsylvania violated RPC 3.1. Respondent's actions showcased his strategy of re-litigating issues that had already been determined during prior litigation. His inability to grasp the concept of *res judicata* caused needless work and expense for opposing counsel and judges. On August 22, 2012, when the Supreme Court of Pennsylvania denied allocatur, Respondent knew or should have known that Judge Burr's Order (Judgment/Verdict) was a valid, final and enforceable Order, and that Respondent was barred from seeking redress from that Order. Even if he did not understand at that point, he should have known the issue was moot once he received Judge Leadbetter's Order and Opinion of May 8, 2013, explaining that Mr. King had waived his right to appeal the Verdict/Judgment and all issues arising from it.

Instead, the profusion of appeals that followed were meritless and frivolous. On December 29, 2015, the Supreme Court denied Respondent's Petition for Allowance of Appeal, stating a litigant cannot challenge a judgment in perpetuity where the courts have already addressed the issues. The Supreme Court's admonition did not persuade Respondent to reconsider his conduct. By Order dated February 28, 2017, the Supreme Court issued a Rule to Show Cause why Respondent and Mr. King should not be barred from submitting any further filings in the Supreme Court regarding Mr. King's matter. On March 3, 2017, Respondent filed a Petition for Review in the nature of a direct appeal

from a lower court order, seeking review of two orders of the trial court. By Order of June 1, 2017, the Rule was made absolute and the Supreme Court stated it would not entertain further filings from Respondent and Mr. King regarding Riverwatch “including any related Orders concerning the awards of costs, as well as directives barring Thomas P. Gannon, Esquire, from representing Daniel King.” The Court directed the Prothonotary to decline to docket any such filings.

Undeterred, on May 22, 2017, Respondent filed a civil rights action in federal court against Judge Burr and Riverwatch seeking a permanent injunction and declaratory relief that, among other things, the PTM Order was void and unenforceable and Mr. King’s rights to due process and equal protection were violated. In his amended Order dated March 20, 2018, United States District Court Judge Baylson stated in part, that [Respondent] “has multiplied the proceedings unreasonably and vexatiously in willful bad faith,. ...None of the cases has had any merit. ... [Respondent]...[has] transcended the bounds of zealous advocacy on behalf of [his] client. ... In doing so he improperly imposed costs of defense on Riverwatch....”

Respondent violated RPC 3.3(a)(1) when he appeared in court before Judge Burr on May 9, 2016, and informed Judge Burr that Mr. King could not attend the remand hearing that day because he had been injured in a serious truck accident two weeks earlier. Respondent went on to explain to Judge Burr that he only learned about Mr. King’s serious accident during a telephone call with Mr. King the previous Friday. In fact, Mr. King credibly testified that he had not been involved in any motor vehicle accidents since 2014, some two years prior to the remand hearing in 2016. Respondent misrepresented to the court the reason why Mr. King did not attend the remand hearing, and he failed to correct the misrepresentation.

After being disqualified as Mr. King's attorney, Respondent continued to hold himself out as being Mr. King's attorney in the many pleadings and motions he filed in state court. His behavior was undeterred even after the Supreme Court issued a Rule to Show Cause why he should not be barred from submitting any further filings on Mr. King's behalf. Respondent continued to misrepresent his role as Mr. King's attorney on each court filing after these directives, in violation of RPC 8.4(c).

Respondent's violation of 8.4(d) is supported by his multiple, meritless filings and appeals, which demonstrate his excessive and misplaced zeal and his complete inability to accept the rulings of the Pennsylvania courts. The court orders awarding attorney's fees against him and the orders disqualifying him as Mr. King's attorney failed to stop Respondent's multitude of meritless filings, and required the courts limited time and resources, thus negatively impacting the administration of justice. Respondent was the subject of a contempt hearing before Judge Burr in 2017, and has failed to remit any payment to OJS pursuant to the plan agreed to by the parties by Order dated April 25, 2017. Respondent has not satisfied the judgment in the amount of \$3,825.00 entered against him on May 26, 2016, by the Commonwealth Court. Therefore, Respondent's recalcitrant behavior towards the administration of justice violated RPC 8.4(d).

In examining the record before us, we find multiple aggravating factors. Respondent's actions were not isolated nor relegated to a short period of time. Rather, his misconduct has spanned years. Respondent continued his barrage of filings even though no court agreed with his interpretation of the law and facts. These filings continued even after Petitioner filed the Petition for Discipline against Respondent. The record is devoid of evidence that Respondent ever advised his client to accept any of the courts'

rulings. Respondent's tepid assessment that he would have done something different "if [he] knew then what [he] know[s] now" is hollow and not indicative of sincere remorse. We further find that Respondent's failure to pay a judgment and monies owed to OJS that resulted from his barrage of filings is evidence that he does not accept responsibility for his actions.

In mitigation, Respondent's strongest position is that he has practiced law in Pennsylvania since 1976 and has no record of discipline. The Supreme Court has recognized the absence of a disciplinary record as a mitigating factor. ***Office of Disciplinary Counsel v. John Christie***, 639 A.2d 782, 786 (Pa. 1994). However, we find that Respondent's overarching incompetence and persistent disruption of the court system in the instant matter render his years of experience somewhat less compelling as a mitigating factor. In other mitigation, we note that Respondent served his community as an elected member of the Pennsylvania House of Representatives, commencing in 1978 and for 13 consecutive terms, serving as chair of several committees and on government councils.

The Hearing Committee found mitigation based on Judge Burr's testimony at the disciplinary hearing that "Respondent's...courtroom demeanor was exemplary...he was always civil to the court and he was civil to his opponent, Mr. Ewing. He acted in a professional manner in the way he conducted the trial." N.T. 19. We conclude that the Committee erred in its finding. Respondent is obligated to practice law consistent with the Rules of Professional Conduct, which require that a lawyer conduct his or her practice in a professional manner. Respondent is not entitled to mitigation for his acts that fell within the required conduct of the ethical rules.

The Hearing Committee found mitigation in each of Respondent's bar memberships. We conclude that the Committee erred in this finding, as there is no precedent for considering bar memberships as mitigating factors. Respondent's bar memberships are proper for consideration under Disciplinary Board Rule §89.151(4), but are relevant only as context describing an attorney's professional background, employment and years the attorney has been a member of the bar.

We have reviewed the Hearing Committee's Report and recommendation for a two-year period of suspension, and have weighed the parties' recommendations for discipline. After reviewing the record and considering the nature and gravity of Respondent's misconduct, as well as assessing the aggravating and mitigating factors, ***Office of Disciplinary Counsel v. Gwendolyn Harmon***, 15 DB 2003, 72 Pa. D. & C. 4th 115 (2004), the Board recommends that Respondent be suspended for a period of five years.

Final discipline is evaluated on a case-by-case basis on the totality of facts presented. Nevertheless, despite the fact-intensive nature of the endeavor, the Board must strive for consistency "so that similar misconduct is not punished in radically different ways." ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186, 190 (Pa. 1983). Turning to the recommendation of discipline, the Board is guided by decisional law and finds that a suspension of five years is appropriate in this matter, where Respondent's pattern and course of conduct in filing meritless and frivolous appeals on behalf of his client, based on his incompetence and lack of understanding of the procedural rules, continued unabated, despite specific directives of multiple courts, and where he showed no genuine remorse for his misconduct.

Attorneys who have engaged in a course of conduct designed to prejudice and obstruct the judicial process by instigating baseless filings have received discipline ranging from suspension of one year and one day to disbarment.

In the matter of ***Office of Disciplinary Counsel v. John J. Koresko, V***, No. 119 DB 2013 (D. Bd. Rpt.6/1/2015) (S. Ct. Order 9/4/2015) , the disciplinary case arose from the numerous false and baseless claims Mr. Koresko filed in a real estate transaction matter against the parties, their attorneys individually, and their respective law firms. Mr. Koresko filed numerous pleadings, motions and interlocutory appeals based on improper and meritless grounds. In addition, Mr. Koresko intentionally interfered with opposing counsels' lawful efforts to conduct discovery depositions and delayed the case for one year. All of Mr. Koresko's claims were dismissed on substantive and procedural grounds. The Board found that Mr. Koresko demonstrated a significant lack of remorse, and remained intractable in his positions, despite overwhelming evidence to the contrary. The Board concluded that Mr. Koresko violated RPC 1.1, 1.3, 1.7(a), 1.7(b), 3.1, 3.2, 3.3(a)(1), 3.3(a)(3), 3.4(b), 4.1(a), 4.3(b), 4.4(a), 5.3(b), 8.4(c), 8.4(d) and recommended a suspension for a period of five years. The Supreme Court disbarred Mr. Koresko subsequent to his failure to respond to a Rule to Show Cause why he should not be disbarred.

The Supreme Court imposed a suspension of five years in the matter of ***Office of Disciplinary Counsel v. Edward Charles Malloy, III***, No. 178 DB 2014 (D. Bd. Rpt.4/26/2016) (S. Ct. Order 6/30/2016). The misconduct and aggravating factors in ***Malloy*** are strikingly similar to that of the instant Respondent. The disciplinary case against Mr. Malloy arose out of an aborted residential real estate transaction by Mr. Malloy's client. Mr. Malloy lacked the competence to properly advise his client of her

responsibility to complete a mortgage loan application in order to prevent a default under the agreement of sale and the forfeiture of \$10,000 to the seller as liquidated damages. The seller offered to settle the dispute with Mr. Malloy's client with the exchange of a release of the agreement of sale for the release of the \$10,000 to Mr. Malloy's client. Mr. Malloy counseled his client to reject the offer and demand an additional \$1,414.00 his client had spent on carpeting. The seller refused and filed a breach of contract action. Due to Mr. Malloy's actions, his client lost the property, the \$10,000 deposit, the monies she paid for carpeting, and the breach of contract action. Mr. Malloy failed to timely file post-trial motions and his client became a party to eight lawsuits. Mr. Malloy and his client became jointly and severally liable for legal fees and costs, totaling \$64,486.05. Mr. Malloy did not counsel his client to accept the decisions of the appellate courts and was unfamiliar with appellate practice. The Board found that Mr. Malloy did not accept responsibility and was not remorseful for abusing the court system through a continuing pattern of filing baseless litigation for eight years. The Board concluded that Mr. Malloy violated RPC 1.1, 1.3, 3.2, 3.4(c), 4.1(a), 8.2(a), and 8.4(d) and recommended a five-year suspension, which the Court accepted.

As in **Malloy** and **Koresko**, Respondent's representation on behalf of his client exceeded the bounds of zealous advocacy and became abusive over a lengthy period of time, and similarly, Respondent failed to accept full responsibility and demonstrate sincere remorse for his actions.

In the matter of **Office of Disciplinary Counsel v. Paul J. McArdle**, 39 DB 2015 (D. Bd. Rpt. 9/21/2016) (S. Ct. Order 11/22/2016), the Supreme Court suspended Mr. McArdle for a period of one year and one day for his misconduct involving his initiation and maintenance of six separate *pro se* court actions over the course of more than five

years, each regarding the same or related causes of action against 34 defendants. Mr. McArdle's misconduct violated RPC 3.1, 4.4(a), and 8.4(d), as he continued to file actions against the same defendants raising the same or similar allegations as contained in the previously dismissed actions, in defiance of court orders. Mr. McArdle refused to cease and desist from forcing the defendants to defend against his frivolous actions, and he displayed little remorse.

Similar to Mr. McArdle, Respondent has practiced law in the Commonwealth for decades with no prior discipline. However, we conclude there are several distinguishing factors in the instant matter that compel a different result. Significantly, unlike Respondent, Mr. McArdle represented himself in the lawsuits and did not burden a client with his misconduct. Herein, the record is clear that Mr. King had no understanding of the legal process, did not understand the complexity and severity of his matter, and fully relied on Respondent's guidance and counsel. Respondent abused his client's trust by counseling Mr. King to pursue a non-existent claim for years. Respondent continued to advise Mr. King that everything was going well, despite losing at every level.

Additionally, Respondent committed more rules violations than Mr. McArdle, warranting an increased level of discipline. In addition to RPC 3.1 and 8.4(d), Respondent violated RPC 1.1, 1.16(a), 3.3(a)(1) and 8.4(c). Respondent was incompetent, failed to withdraw from the representation, even after court direction, misrepresented facts concerning his client to Judge Burr, and continued to represent himself as Mr. King's attorney after he had been disqualified. Respondent owes monies pursuant to a judgment and to OJS as a result of contempt proceedings.

The primary purpose of the disciplinary system in Pennsylvania is to protect the public from unfit attorneys and to preserve public confidence in the legal system.

Office of Disciplinary Counsel v. Suber Lewis, 426 A.2d 1138, 1142 (Pa. 1981).

Respondent's undeterred abuse of the court system and his clear disregard for the authority of the courts for a span of eight years demonstrates that he is unfit to practice law. A suspension of five years is warranted to comply with the guiding decisions reviewed above.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Respondent, Thomas Peter Gannon, be Suspended for a period of Five Years 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: _____

Jerry M. Lehecky, Member

Date: _____

9/21/18

Board Member Cordisco recused.