IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2762 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 136 DB 2019
	:	
v.	:	Attorney Registration No. 35990
	:	
ALLAN K. MARSHALL,	:	(Philadelphia)
	:	
Respondent	:	
	:	

ORDER

PER CURIAM

AND NOW this 12th day of February, 2021, Respondent's request for oral argument is **DENIED**. Upon consideration of the Report and Recommendations of the Disciplinary Board, Allan K. Marshall is suspended from the Bar of the Commonwealth for thirty months. Respondent shall comply with all of the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. *See* Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 02/12/2021

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 136 DB 2019
v.	:	Attorney Registration No. 35990
ALLAN K. MARSHALL, Respondent	:	(Philadelphia)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on July 22, 2019, Petitioner, Office of Disciplinary Counsel, charged Respondent, Allan K. Marshall with violating the Rules of Professional Conduct in three client matters. Respondent filed an Answer on August 14, 2019. Following a prehearing conference on September 20, 2019, a District I Hearing Committee ("Committee") conducted a disciplinary hearing on October 30, 2019 and November 25, 2019. Petitioner presented the testimony of five witnesses: Joseph

Diamond, Carrie Diamond, Kariann Betancourt, Christine Liskowicz, and Joshua Thomas, Esquire. Respondent appeared pro se and testified on his own behalf.

On January 27, 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 thirty months. Respondent filed a Brief to the Committee on March 9, 2020, wherein he requested that the Committee recommend a public reprimand as sufficient discipline.

By Report filed on May 28, 2020, the Committee concluded that Respondent violated the rules charged in the Petition for Discipline and recommended to the Board that he be suspended for a period of thirty months.

On June 23, 2020, Respondent filed a Brief on Exceptions to the Committee's Report and requested oral argument before the Board. He contends that the totality of the circumstances in this matter warrant no more than a three month period of suspension. Petitioner filed a Brief Opposing Exceptions on July 9, 2020 and requested that the Board reject Respondent's exceptions.

A three-member Board panel held oral argument on July 17, 2020.

The Board adjudicated this matter at the meeting on July 23, 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 Pa.R.D.E. 207, with the power and 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.

2. Respondent is Allan K. Marshall, born in 1947 and admitted to practice law in the Commonwealth in 1982. Respondent maintains an office for the practice of law at 1900 JFK Boulevard, #1412, Philadelphia, PA 19103-1720. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of discipline in the Commonwealth consisting of a private reprimand administered on December 23, 2014. Therein, Respondent filed misleading lawsuits against former clients seeking payment of his legal fees and failed to properly handle an appeal for oral argument on an ejectment action. P-1.

The Diamond Matter

4. Mr. Joseph and Mrs. Carrie Diamond owned residential property situated at 101 Gerald Drive, Aston, Pennsylvania and had a mortgage on the home with PNC Bank. The Diamonds failed to timely make the payments. On June 22, 2017, PNC filed a mortgage foreclosure complaint against the Diamonds identified as ***PNC Bank v.***

Diamond et al., No. CV-2017-005620 (Delaware County Court of Common Pleas). ODC-1; 10/30/19 N.T. at pp. 80, 128.

5. On September 12, 2017, judgment was entered against the Diamonds and in favor of PNC Bank in the amount of $251,185.29. ODC-1.

6. On December 13, 2017, Mr. Diamond filed a Petition to Postpone Sheriff's Sale and on December 19, 2017, the court granted Mr. Diamond's Petition and rescheduled the sale for February 16, 2018. ODC-1; ODC-2.

7. Mr. Diamond did not receive notice of a new date. 10/30/19 N.T. at p. 109.

8. On February 3, 2018, or thereabouts, the Diamonds received a letter in the mail from Respondent that stated, "I can file a Chapter 13 Bankruptcy in about 24 Hours and Stop the Sherriff Sale Scheduled for 2/16/18. I Can Take Steps to Save your Home. Guaranteed." R-110.

9. Following receipt of the letter, in February 2018, Mr. Diamond called Respondent. In that telephone discussion, Mr. Diamond told Respondent that his house had been scheduled for a Sheriff's Sale, he had already filed the Emergency Petition to Reschedule the Sheriff's Sale, but he did not know the new date. 10/30/19 N.T. at pp. 104 -108.

10. Respondent advised Mr. Diamond that the Sheriff's Sale was continued until March 2018, and further advised Mr. Diamond that he should file for Chapter 13 Bankruptcy in order to save his home. 10/30/19 N.T. at pp. 100, 109; ODC-6.

11. The February 16, 2018 Sheriff Sale of the Diamond property took place, and when there were no bidders, PNC Bank became the owner of the property.

ODC-2.

12. The Diamonds did not know that their home had been sold at Sheriff's Sale and PNC was the new owner. 10/30/19 N.T. at pp. 88-89, 137-138.

13. On March 8, 2018, Mr. Diamond called Respondent during which time:

a. Mr. Diamond stated that he thought his home was scheduled for a Sheriff's Sale in March 2018 (ODC-3);

b. Respondent advised Mr. Diamond that the only way to save his home was to file for bankruptcy and that Mr. Diamond had until March 16, 2018 to do so (*id*.);

c. Respondent informed Mr. Diamond that his legal fee for filing a Chapter 13 bankruptcy petition would be $3,800 (10/30/19 at p. 83); and

d. Mr. Diamond paid Respondent $2,500 in partial payment of the legal fee. (ODC-4; ODC-6).

14. On Sunday, March 11, 2018, Respondent spoke with Mr. Diamond and completed a client intake form for Mr. Diamond. ODC-5.

15. On or about Monday, March 12, 2018, Respondent called the Sheriff's Office, called the lawyer for PNC Bank, and confirmed from at least one source that the Diamonds' home had been sold at a Sheriff's Sale in February 2018. R-107; 10/30/19 N.T. at pp. 18, 219, 227; 11/25/19 N.T. at pp. 7, 12-13, 16.

16. On March 12, 2018, Respondent spoke to the Diamonds about the foreclosure of their home, during which time:

a. Mr. Diamond requested that Respondent explain the

bankruptcy proceeding to Mrs. Diamond because she was an "anxious wreck" (10/30/19 N.T. at p. 134);

b. Respondent advised Mrs. Diamond that her husband's filing for bankruptcy would save her home (ODC-6; 10/30/19 N.T. at pp. 101; 135);

c. Mrs. Diamond asked whether the bankruptcy would stop the foreclosure because she had three young children and was afraid their home would be sold (10/30/19 N.T. at p.135); and

d. Respondent assured Mrs. Diamond that her home would not be sold and promised that the Chapter 13 petition would "stop" everything. (10/30/19 N.T. at p. 135).

17. Respondent failed to advise the Diamonds that he had received information that their home had already been sold at Sheriff's Sale in February, 2018.

18. On March 13, 2018, Mr. Diamond notified Respondent that he completed his pre-bankruptcy credit counseling and faxed the documents to Respondent for completion by March 16, 2018. 10/30/19 N.T. at p. 85; ODC-7. At that time, a written fee agreement for a Chapter 13 Bankruptcy was completed. 10/30/19 N.T. at p.86; 11/25/19 at pp. 14-15.

19. The fee agreement provided for a minimum legal fee of $3,800, filing fee of $310 and $40 credit report cost for the client to pay. There was confirmation that Respondent had already received $2,500 from the Diamonds. 10/30/19 N.T. at p. 86; 11/25/19 at pp. 14-15.

20. As part of the agreement, Respondent noted the balance of $1650 to be paid in $500 installments. ODC-8.

21. Respondent gave Mr. Diamond a fee agreement for a Chapter 13 bankruptcy after Respondent learned that the Diamonds' home had been sold.

22. Despite knowing the property was sold already, Respondent continued to make assurances that a bankruptcy filing would save the property and collected a $2,500 retainer fee from the Diamonds.

23. On March 15, 2018, the deed to the Diamonds' home was transferred to PNC Bank by issuance of a Sheriff's Deed. ODC-10.

24. Pa R.C.P. 3132 provides a mechanism whereby "the court may, upon proper cause shown, set aside the sale and order a resale or enter any other order." Respondent failed to act with competence and diligence as he did not file any petition in an effort to set aside the sale.

25. Pa.R.C.P. 3135 allows that where no petition to set aside the sale is filed, "the sheriff, at the expiration of twenty days but no later than 40 after… the execution sale… shall execute and acknowledge before the prothonotary a deed to the property sold."

26. Since no petition was filed, the Diamonds lost the opportunity to stay delivery of the deed on March 15, 2018 and also lost the chance to set aside the sale altogether. 10/30/19 N.T. at pp. 42-43.

27. On March 16, 2018, the Diamonds contacted Respondent to discuss the status of the Chapter 13 bankruptcy and were told by Respondent that the petition was "filed" and "no news is good news." 10/30/19 N.T. pp. 88; 136.

28. Respondent's statement to the Diamonds that he had filed Mr. Diamond's Chapter 13 bankruptcy petition was false and Respondent knew it was false when Respondent made the statement.

29. At no time did Respondent communicate to his clients that he had not filed the Chapter 13 bankruptcy petition. 11/25/19 N.T. at p. 19.

30. While Respondent testified that, on March 14, 2018, he informed the Diamonds that their home had been sold, his testimony in this regard is unsupported by any telephone records or correspondence and is not credible. 10/30/19 N.T. at pp. 88-89; 135-136; 211; 223-224.

31. On March 28, 2018, Mrs. Diamond received a telephone call from Don Weiss of Chaddsford Renovations, LLC that the residential property situated at 101 Gerald Drive, Aston, PA had been purchased by his company from PNC Bank. 10/30/19 N.T. at pp. 88; 137.

32. The Diamonds, upon learning of the news from Mr. Weiss, made attempts to reach Respondent, but he would not take their calls. 10/30/19 N.T. at pp. 91, 142. At one point, Respondent's legal assistant told the Diamonds that the bankruptcy petition was never filed as it was too late to file it. 10/30/19 N.T. at pp 89-90; 139-140.

33. Subsequent to March 16, 20178, there was no written communication from Respondent indicating any steps to be taken in the future, including representation for a future ejectment action.

34. After the Diamonds learned that Respondent had failed to file the Chapter 13 bankruptcy petition for which Respondent had been retained, Mr. and Mrs. Diamond repeatedly requested a refund from Respondent of their monies. In response to the repeated requests, Respondent refused to refund the $2,500 fee. 10/30/19 N.T. at pp. 91-92, 141-142; ODC-6; ODC-12.

35. Respondent's testimony that the Diamonds never asked for a refund and Mr. Diamond agreed that Respondent could hold his unearned fee for a future

ejectment action was not credible. 10/30/19 N.T. at pp. 19, 212; 11/25/19 N.T. at pp. 21-22, 25, 29; Petition for Discipline Answer at ¶12.

36. In late March 2018, the Diamonds retained Joshua Thomas, Esquire who informed them that an ejectment action would be the next step taken by the new owner of the property. Mr. Thomas reported to the Diamonds that the time period had passed to stay the deed transfer, file bankruptcy, or file a petition to set aside per the above noted Rules of Civil Procedure. 10/30/19 N.T. at pp. 39-43; 93.

37. In April 2018, the Diamonds retained Mr. Thomas to represent them in the ejectment action. ODC-13; 10/29/19 N.T. at pp. 35, 44, 93,141.

38. The Diamonds, by and through Mr. Thomas, made efforts to fight the proceedings against them but ran out of funds and in June 2019, decided to terminate the litigation and move to a rental property. 10/30/19 N.T. at pp. 44-45,48-50,56-57, 49-50, 94-95, 142, 192.

39. Respondent's testimony that the Diamonds "didn't want to live in the house" was false. 10/30/19 N.T. at p. 213.

40. Mr. Diamond testified as to the stress he experienced because of Respondent's misconduct. 10/30/19 N.T. at pp. 94-95.

41. Mrs. Diamond explained that she filed a complaint against Respondent with Office of Disciplinary Counsel to ensure that what Respondent had done to them "doesn't happen to anybody else because this is awful." 10/30/2019 N.T. at p. 144.

42. On November 1, 2018, Petitioner served Respondent with a DB-7 Request for Statement of Respondent's Position. ODC-14.

43. Respondent filed a DB-7 Answer on December 28, 2018 and

enclosed a $2,500 check made payable to Carrie Diamond with the notation “Client Refund.” ODC-15; ODC-16, 10/30/19 N.T. at p. 155.

44. During the hearing, Respondent did not express acknowledgment of wrongdoing or remorse for his mishandling of the Diamonds’ legal matter. Respondent denied causing any harm to the Diamonds, indicating that it was the clients who “failed to make the mortgage payments.” Further, Respondent explained that now that he made a refund, he got “zero” for all the efforts taken by him. 10/30/19 N.T. at pp. 221, 224.

45. Respondent’s testimony at the disciplinary hearing regarding his handling of the Diamond matter was inconsistent and was not credible.

The Betancourt Matter

46. Kariann J. Betancourt leased an apartment in Philadelphia, PA, and failed to pay timely rent from August 2017 until January 2018. 10/30/19 N.T. at p. 157.

47. On January 14, 2018, Grant Meadows Associates, LLP, the landlord, filed a landlord-tenant complaint against Ms. Betancourt in the Municipal Court of Philadelphia County, seeking $5,733.75 for unpaid rents, fees, and costs. ODC -17.

48. The Municipal Court scheduled trial in Ms. Betancourt’s landlord-tenant case for February 14, 2018. ODC-17.

49. Respondent sent Ms. Betancourt an advertisement offering his legal services after Grant Meadows filed its complaint. ODC-18; 10/30/19 N.T. at p. 158.

50. On February 12, 2018, Ms. Betancourt contacted Respondent about her legal matter and asked Respondent to appear in court without her as she was unable to free herself from work. Ms. Betancourt’s goal was to lower the balance owed, or otherwise make a payment plan, which she communicated to Respondent. 10/30/19 N.T.

at pp. 159-161.

51. On February 12, 2018, Respondent sent a fee agreement to Ms. Betancourt defining terms including a minimum fee of $450, of which $150 had already been charged to her debit card. The remainder of $300 was to be charged at the February 14, 2018 hearing. The fee agreement noted "minimum fee covered the preparation of client, one court appearance and negotiating a payment plan or going to Trial before a Judge." The fee agreement noted that Ms. Betancourt's goal was a payment plan. ODC-19.

52. On February 12, 2018, Ms. Betancourt signed the agreement and returned it. 10/30/19 N.T. at p. 161.

53. On February 13, 2018, Respondent entered his appearance in the Betancourt matter and filed a request for a continuance. On February 14, 2018, the Court granted the request for a continuance. The hearing was rescheduled for March 6, 2018. ODC-20.

54. Respondent did not have to appear in court to obtain the continuance of the February 14, 2018 hearing date. 11/25/19 N.T. at pp. 37-38.

55. By letter dated February 14, 2018, Respondent advised Ms. Betancourt that her case was continued until March 6, 2018. ODC-23, p. 7; 10/30/19 N.T. at pp. 161-162.

56. On March 5, 2018, Respondent called Ms. Betancourt and requested another $350.00 to represent her at the hearing scheduled for the next day. Ms. Betancourt inquired as to the status of Respondent's negotiations for a payment plan with the landlord, but Respondent refused to answer the question and hung up the telephone. 10/30/19 N.T. at pp. 163-167

57. Ms. Betancourt testified to a severe breakdown of communication with Respondent. Respondent repeatedly hung-up the telephone on Ms. Betancourt each time she called him to obtain information regarding Respondent's efforts to obtain a payment plan. ODC-21; 10/30/19 N.T. at p. 166.

58. After Respondent refused to speak with Ms. Betancourt, she sent an email to Respondent:

a. Complaining about Respondent's hanging up the telephone;

b. Explaining that she had a right as his client to ask Respondent about the work he had done on her behalf;

c. Reiterating that she had retained Respondent to negotiate a payment plan, wanted a plan, and did not want to go to trial;

d. Advising Respondent that he was not authorized to charge any additional funds to her debit card; and

e. Terminating the representation. ODC-21; 10/30/19 at pp. 166-167.

59. Respondent failed to negotiate a payment plan with the landlord. 10/30/19 N.T. at pp. 168, 173, 178, 184; 11/25/19 N.T. at pp. 51-53.

60. Respondent told Ms. Betancourt that his request for a continuance amounted to an appearance in court. Ms. Betancourt testified that she would not have signed the agreement had she known there would be additional charges for the subsequent appearance in court. 10/30/19 N.T. at pp.164-165.

61. Respondent engaged in a course of deceitful conduct when he failed to state in his February 12, 2018 fee agreement and/or February 14, 2018 letter that his request for a continuance would be his one court appearance (even though the request

was merely filed with the court and he did not have to appear in person) and that he would be charging Ms. Betancourt an additional $350 fee for any additional court appearance.

62. On March 5, 2018, following Ms. Betancourt's unsuccessful attempt to obtain information about her case from Respondent, Ms. Betancourt filed a complaint with Petitioner. ODC-18.

63. Ms. Betancourt testified that she filed the complaint because she felt Respondent "was trying to take advantage, and I felt like I didn't want him to take advantage of other people, and wanted to report it." 10/30/19 N.T. at p.169.

64. On April 5, 2018, Ms. Betancourt appeared in court pro se and entered into a Judgment by Agreement with Grant Meadows where she agreed to relinquish her apartment and have judgment entered against her in the amount of $4,783.75. ODC-22; 10/30/19 N.T. at pp.168-169; 186.

65. Ms. Betancourt described her stress and anxiety from her experience in having retained Respondent. 10/30/19 N.T. at p. 93.

66. On November 1, 2018, Petitioner served Respondent with a DB-7 Request for Statement of Position. ODC-14.

67. On December 28, 2018, Respondent filed a DB-7 Answer with Petitioner and enclosed a $450 refund check made payable to Kariann Betancourt. Ultimately, this check was not received by Ms. Betancourt. However, Respondent presented Ms. Betancourt with a new refund check at the October 30, 2019 disciplinary hearing. ODC-23; 10/30/19 N.T. at p.189.

68. Respondent testified that he did not have to discuss payment plan negotiations with Ms. Betancourt and believed that Petitioner was "making much ado about nothing." 11/25/19 N.T. at p. 48.

69. Respondent failed to show any remorse for his handling of the Betancourt matter. He blamed Ms. Betancourt, who he claims may have forced him to hang up on her and insinuated that he was harmed in the Betancourt matter because he ultimately refunded her money. 11/25/19 N.T. at p. 99.

The Liskowicz Matter

70. Christine Liskowicz had a mortgage on her primary residence at 534-536 Titan Street, Philadelphia, PA 19147.

71. Ms. Liskowicz defaulted on her mortgage on August 1, 2008. The mortgagor foreclosed on her property and it was sold on March 3, 2015 to True Street Holdings, LLC, who filed an action in ejectment against Ms. Liskowicz in the Court of Common Pleas of Philadelphia County. ODC-24.

72. When Ms. Liskowicz received an advertisement in the mail from Respondent, she set up an appointment at his office for December 21, 2015. An agreement was made that required Ms. Liskowicz to provide a minimum retainer of $1,500, and Ms. Liskowicz paid $500 on the same day. She was also to pay an additional $950 per month for every month she was allowed to stay in the house, and if Ms. Liskowicz agreed in the future to accept a settlement proposal, 50% would be owed as an attorney fee. Ms. Liskowicz testified that she was aware of the $1,500 retainer but was not aware that she had to pay an additional $950 per month or any other portion of the contingency fee. 10/30/19 N.T. at pp. 239-240; 240-241.

73. Respondent testified that he was entitled to receive $950 a month because he was "taking care of [Ms. Liskowicz's] due process rights." 10/30/19 N.T. at p.

296.

74. On January 11, 2016, Respondent entered his appearance and filed Preliminary Objections, which were overruled by February 4, 2016 Order. Respondent filed an Answer on behalf of his client on March 2, 2016. ODC-24.

75. Respondent failed to send his client copies of any pleadings he had filed on her behalf. 10/30/19 N.T. at p. 242.

76. On September 2, 2016, Plaintiff filed a Motion for Summary Judgment. ODC-24.

77. By letter dated September 9, 2016, Respondent informed Ms. Liskowicz that she had accrued $5,250 owed to Respondent. In that same letter, Respondent told his client that she should meet with him on September 22, 2016 to "sign the Answer" and bring at least $1,500 toward the unpaid balance of his fee. ODC-30.

78. When Ms. Liskowicz did not appear for the meeting, Respondent did not communicate with her to explain the summary judgment motion and the importance of filing an answer, nor did he apprise his client of the consequences of failing to file an answer to the motion. 10/30/19 N.T. at pp. 249-252; 11/25/19 N.T. at pp. 59-61.

79. Respondent testified that it was not necessary to inform the client of such information as it relates to legal matters like summary judgment. 11/25/19 N.T. at pp. 59, 61.

80. Respondent failed to file an Answer to the Motion for Summary Judgment. ODC-24.

81. To the extent that Respondent did not file an Answer to the Motion for Summary Judgment because his client did not appear at his office for the September 22, 2016 meeting, Respondent failed to file a motion seeking an extension of time to file

an Answer, nor did he seek permission to withdraw from the representation.

82. By October 2016, the Motion for Summary Judgment was assigned for disposition, and an order was signed by the Honorable Abbe F. Fletman entering summary judgment in favor of the plaintiff and against Ms. Liskowicz, which was docketed on November 8, 2016. ODC-24.

83. Despite the unfavorable result, Respondent wrote a letter to Ms. Liskowicz on November 10, 2016, claiming that she so far had received the benefit of at least $29,000 and that she owed him at least $6,150, and sought a payment of $500 by November 15, 2016. The letter did not contain any information concerning the granting of the summary judgment motion, nor was Ms. Liskowicz informed of her eviction. ODC-31; 11/25/19 N.T. at pp. 67-68.

84. Ms. Liskowicz found the notice of eviction posted to her neighbor's wall, and she sought Respondent's assistance. She paid him a total of $450 in January 2017 to stay the eviction but no action was taken by Respondent, who continued to represent her. 10/30/19 N.T. at p. 253.

85. On February 2, 2017, Ms. Liskowicz filed a pro se emergency Petition to Stay Eviction and the court assigned the Petition to the Honorable Daniel J. Anders, who entered a Rule upon Plaintiff to show cause why Ms. Liskowicz should not be granted relief. Judge Anders scheduled a hearing on the petition for February 3, 2017 while staying all matters. ODC-24.

86. At the February 3, 2017 hearing:

a. Ms. Liskowicz explained that she spoke to Respondent on February 2, 2017, at which time he requested payment of an additional $950 to "keep her in her house" (ODC-35, p. 5);

b. Judge Anders stated that "in the Court's view, [Ms. Liskowicz has] been abandoned by" Respondent (ODC-35 p. 7);

c. Judge Anders explained that because there was no appeal of the foreclosure and Sheriff's Sale, the Plaintiff's right to possession was "clear" (*Id*.); and

d. Judge Anders delayed the scheduled eviction and lockout for 60 days and ordered that no further postponement of the eviction would be granted. (ODC- 24).

87. On April 5, 2017, the Plaintiff re-filed a Praecipe for Writ of possession. Respondent took no action.

88. As the summer months of 2016 passed, and leading up to the Summary Judgment Order dated November 8, 2016, and well into 2017, Respondent sent repetitive notice of nonpayment letters to Ms. Liskowicz dated May 13, 2016, June 8, 2016, November 16, 2016, November 28, 2016, January 3, 2017, January 31, 2017, and May 8, 2017, claiming that the benefit given to Ms. Liskowicz was at least $29,000 and that she owed an increased amount of fees. ODC-28 through ODC-34; ODC- 42.

89. Ms. Liskowicz credibly testified that she felt harassed by Respondent and paid him thousands of dollars to handle her matter. Respondent appeared at the restaurant owned by Ms. Liskowicz and insisted on seeing her, and at one point she gave Respondent money out of the cash register. Ms. Liskowicz testified that she had her employee dropping envelopes of cash to Respondent's apartment on Sundays. On one occasion, Respondent told Ms. Liskowicz to wear a skirt when she came to his office. 10/30/19 N.T. at pp. 247-248, 254-255, 257, 270-271.

90. Ms. Liskowicz testified that Respondent would taunt her over the

telephone claiming “where’s the money, where’s the money. No money, no honey” while hanging up intermittently. 10/30/19 N.T. at pp. 242-246.

91. None of the legal services were itemized nor were receipts given to the client. Ms. Liskowicz did not appear to have a true understanding of the accounting for Respondent’s fees, nor did she understand why Respondent was sending the letters requesting money. 10/30/19 N.T. at pp. 247-248; 257-258; 11/25/19 N.T. at pp. 74-75.

92. Ms. Liskowicz testified that she gave the Respondent money “so he would help me save my house and not harass me, not show up and embarrass me, and my employees and customers.” 10/30/19 N.T. at p. 247.

93. Respondent did not provide an accurate accounting or itemization of the legal work done for Ms. Liskowicz. 11/25/19 N.T. at pp. 74, 76-77.

94. Ms. Liskowicz testified that she paid Respondent an estimated $7,000 to $8,000 between December 2015 to November 2016. 10/30/19 N.T. at p. 257.

95. On May 9, 2017, Respondent filed a Small Claims complaint against Ms. Liskowicz in Philadelphia Municipal Court seeking payment in the amount of $4,650 in attorney fees for his handling of Ms. Liskowicz’s ejectment case. ODC-37; ODC-38.

96. The Small Claims complaint averred, in part, that Respondent’s “efforts and strategy including opposition to Summary Judgment… protected the interest of” Ms. Liskowicz. ODC-37.

97. Respondent’s averment that his efforts on behalf of Ms. Liskowicz included opposition to the Motion for Summary Judgment was false and misleading as Respondent had abandoned his client and failed to file any opposition to the Motion for Summary Judgment.

98. Respondent withdrew his complaint when Ms. Liskowicz entered

into a Judgment by Agreement on June 22, 2017, agreeing to pay Respondent $4,650 in fees and $149 in costs, at the rate of $300 per month. ODC-39.

99. Ms. Liskowicz testified that she did not receive advice concerning seeking an independent lawyer nor did Respondent identify his role in the Small Claims Court transaction, and she entered into the agreement because she felt pressured and had believed she had no choice in the matter. 10/30/19 N.T. at pp. 272-273; 259-260.

100. Ms. Liskowicz testified that she did not know that she could have hired another lawyer to represent her against Respondent in Small Claims Court and "thought that [Respondent was] her lawyer." 10/30/19 N.T. at pp. 272-273.

101. On September 7, 2017, Petitioner served Respondent with a DB-7 Request for Statement of Respondent's Position based on a complaint received from Judge Anders. ODC-40.

102. On November 13, 2017, Respondent filed his answer to the DB-7 Request. ODC-41.

103. On March 8, 2019, Petitioner served Respondent with a supplemental request, to which Respondent filed an Answer on April 4, 2019. ODC 42; ODC-43.

104. Respondent testified that he represented Ms. Liskowicz, protected her due process rights, and she did not suffer any damage from his abandonment since Judge Anders had given Ms. Liskowicz a 60-day extension of time to remain in her home. Respondent testified that Ms. Liskowicz was dishonest as she could not afford to pay his $950 monthly retainer, and that she never so much as thanked him as it "cost 50 cents from a dollar store to get a thank you card."10/30/19 N.T. at pp. 24, 26.

Additional Findings

105. The testimony of Joseph Diamond and Carrie Diamond was credible.

106. The testimony of Kariann Betancourt was credible.

107. The testimony of Christine Liskowicz was credible.

108. The testimony of Joshua Thomas was credible.

109. The testimony of Respondent was not credible.

110. Respondent did not recognize the harm he caused his three clients. 10/30/19 N.T. at p. 16; 28; 11/25/19 N.T. at pp. 93-94, 97, 99, 100.

111. Respondent did not express remorse for his misconduct. 11/25/19 N.T. at pp. 96-101; 221-222. At times during the hearing, Respondent expressed his view that the claims against him were nonsense. 10/30/19 N.T. at pp. 16, 21, 27, 28, 222, 299, 325.

112. The Committee found that at times Respondent was irascible and yelled during the hearing. HC Report Fact No. 94.

113. Respondent did not call any witnesses nor present any evidence to mitigate the measure of discipline.

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. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. (Diamond and Liskowicz)

2. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client. (Diamond and Liskowicz)

3. RPC 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter. (Diamond)

4. RPC 1.4(a)(4) - A lawyer shall promptly comply with reasonable requests for information. (Diamond and Betancourt)

5. RPC 1.4(b) - A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. (Diamond and Liskowicz)

6. RPC 1.5(a) - A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. (Betancourt and Liskowicz)

7. RPC 1.8(a) – A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless: (1) the transactionand terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing in a manner that can be reasonably understood by the client; (2) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and (3) the client gives informed consent in a writing signed by the client, to the essential terms of the transaction and the lawyer's role in the transaction, including whether the lawyer is representing the client in the transaction. (Liskowicz)

8. RPC1.16(c) – A lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation. When

ordered to do so by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation. (Liskowicz)

9. RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned of incurred. The lawyer may retain papers relating to the client to the extent permitted by other law. (Diamond, Betancourt, Liskowicz)

10. 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. (Liskowicz)

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

12. RPC 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. (Diamond, Betancourt, Liskowicz)

IV. DISCUSSION

Herein, the Board considers charges against Respondent that he engaged in repeated professional misconduct in the matters of three separate clients by neglecting their matters, failing to communicate with his clients and inform them of the status of their matters, and engaging in misrepresentations and deceit. Petitioner has the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v. John Grigsby***, 425 A.2d 730, 732 (Pa. 1981).

The Committee, considering the facts of this matter, issued a Report and concluded that Respondent violated Rules of Professional Conduct 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), 1.5(a), 1.8(a), 1.16(c), 1.16(d), 3.3(a)(1), 8.4(c),and 8.4(d) and recommended that Respondent be suspended for thirty months. The Committee determined that Respondent's pattern of misconduct in the context of his prior discipline and lack of mitigation warranted a lengthy suspension. The Committee was troubled by Respondent's lack of remorse and the appearance that Respondent took advantage of his clients during particularly pressing times of financial difficulty. Respondent took exception to the Committee's Report and recommendation, contending that the recommended discipline is too harsh and asserting that his actions warrant at most a three month period of suspension. Petitioner opposes Respondent's exceptions, contending that the Committee did not err in recommending that Respondent be suspended for thirty months.

Based on the evidentiary record consisting of Petitioner's witness testimony and exhibits and Respondent's testimony and exhibits, we conclude that

Petitioner met its burden of proving that Respondent violated the Rules of Professional Conduct charged in the Petition for Discipline.

The record demonstrates that each client in the Diamond, Betancourt and Liskowicz matters contacted Respondent following receipt of a mailing advertising Respondent's legal services. Each client credibly testified that he or she retained Respondent for representation in a matter of great urgency: the Diamonds in a mortgage foreclosure, Ms. Betancourt in a landlord-tenant matter, and Ms. Liskowicz in an ejectment lawsuit. Each client credibly testified that Respondent failed to diligently handle the matter and reasonably communicate with them about the case, and each testified to the harm caused by Respondent's misconduct.

The Diamonds paid Respondent $2,500 to file a Chapter 13 bankruptcy petition to stop their home from being sold at Sheriff's Sale. Unbeknownst to the Diamonds, at the time they retained Respondent and received his written fee agreement, their house had already been sold the previous month. Moreover, once Respondent ascertained that the house had been sold, he failed to tell his clients this critical piece of information, choosing instead to mislead the Diamonds, advising them that he had filed the Chapter 13 petition and that their home would be saved, in what clearly was an effort to take their money. It was not until the Diamonds received a telephone call from the buyer of their home that the upsetting truth was finally revealed and at that point they realized that Respondent had taken their money while misrepresenting the status of their matter to them.

In the face of this information, the Diamonds fruitlessly attempted to obtain a refund of their $2,500 from Respondent. The Diamonds subsequently retained Joshua Thomas, Esquire, who credibly testified at the disciplinary hearing that at the time the

Diamonds retained Respondent, they still had viable legal options to stop the Sheriff's Sale, including filing a stay of the transfer of the deed. However, these options were never explored or undertaken by Respondent. Mr. Thomas attempted to pursue these options, but by then the Diamonds did not have the financial resources to do so and voluntarily left their home. Following Respondent's receipt of a DB-7 Request for Statement of Position, Respondent filed a response and enclosed a refund check for $2,500.

Kariann Betancourt contacted Respondent after she was sued by her former landlord for nonpayment of rent. Ms. Betancourt's clear goal in retaining Respondent was to negotiate a payment plan with her former landlord. Ms. Betancourt entered into a fee agreement for $450, which covered one court appearance and the negotiation of a payment plan. Respondent entered his appearance and immediately filed a request for a continuance, which was granted and the hearing rescheduled. Respondent advised Ms. Betancourt that her hearing was rescheduled and requested another $350 to represent her, deceitfully explaining that his request for a continuance constituted an appearance in court and therefore she owed him more money. Given that Ms. Betancourt had paid for one court appearance per the fee agreement, Respondent's demand for more money was an attempt to collect an excessive fee.

Ms. Betancourt attempted to question Respondent about the negotiations for a payment plan. At that time, communications broke down between Respondent and Ms. Betancourt, as Respondent refused to answer her inquiries and according to Ms. Betancourt, repeatedly hung up the telephone on their conversations. Respondent also refused to answer Ms. Betancourt's email relative to the status of the payment plan negotiations. Ms. Betancourt thereafter terminated Respondent's legal services.

Following Petitioner's involvement in the matter, Respondent eventually refunded Ms. Betancourt's monies on October 30, 2019, at the disciplinary hearing.

Facing an ejectment action, Christine Liskowicz retained Respondent to represent her for a minimum fee of $1,500 plus $950 for each month she remained in her home. Although Respondent entered his appearance, filed preliminary objections, and filed an answer to the ejectment complaint, he failed to file an answer to a summary judgment motion, resulting in the entry of a judgment against Ms. Liskowicz. After receiving a notice to schedule eviction, Ms. Liskowicz contacted Respondent, who took no action on her behalf. Forced to represent herself, Ms. Liskowicz filed a pro se Emergency Petition to Stay Eviction, appeared in court on her own behalf, and received a 60-day reprieve from Judge Daniel Anders, who found that she had been abandoned in the representation, thus prompting Judge Anders to file a disciplinary complaint.

The record demonstrates that notwithstanding his abandonment of Ms. Liskowicz, Respondent aggressively sought to collect money from her, including sending unsupported monthly bills for services which did not bear any relation to the initial work performed, appearing at her business to demand money, collecting envelopes of cash from Ms. Liskowicz's employees, and filing a Small Claims Court complaint against her for his purported unearned fees. That complaint falsely averred, in part, that Respondent's "efforts and strategy including opposition to Summary Judgment protected the interests of" Ms. Liskowicz. In fact, Respondent had abandoned his client and failed to file any opposition to the summary judgment motion. Respondent withdrew his complaint when Ms. Liskowicz entered into a Judgment by Agreement. Ms. Liskowicz's credible testimony reveals that she did not understand that she could have hired another lawyer to represent her against Respondent because she "thought that [Respondent was] her lawyer" and

she entered into the agreement because she felt pressured and believed she had no choice.

The record reveals weighty aggravating factors. Respondent demonstrated no comprehension of the extent of his wrongdoing and expressed no remorse. Rather, Respondent's position is rooted in his certainty that he did no harm to his clients, that his clients did not appreciate his efforts on their behalf, and that he suffered more harm than they did. Respondent exhibited disdain for his clients, believing that they were to blame for their legal woes and maintaining that the law was "too complicated" to explain to them. Respondent demonstrated a similar disdain for the disciplinary system, as he asserted the hearing was "much ado about nothing," the disciplinary charges were "preposterous," "disgusting," and "disgraceful," and accused Disciplinary Counsel of "unprofessional conduct." 10/30/19 N.T. at pp. 16, 29. The Committee found that Respondent's hearing testimony was inconsistent, contradictory and not credible; we give great weight to the Committee's assessments in this regard.

Disturbingly, this is not the first time that Respondent has engaged in professional misconduct. Respondent has a record of discipline that constitutes an additional aggravating factor in this matter. In 2014, a private reprimand was administered for Respondent's filing misleading lawsuits against former clients seeking payment of his legal fees and failing to properly handle and appear for oral argument on an ejectment matter. The prior misconduct is similar to the instant misconduct and evidences a troubling failure by Respondent to conform his legal practice to ethical standards.

A close examination of the record reveals no evidence in mitigation to temper the seriousness of Respondent's misconduct.

Having concluded that Respondent engaged in professional misconduct, this matter is ripe for the determination of discipline. It is well-established that in evaluating professional discipline, each case must be decided individually on its own unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186 (Pa. 1983). In order to "strive for consistency so that similar misconduct is not punished in radically different ways," ***Office of Disciplinary Counsel v Anthony Cappuccio***, 48 A.3d 1231, 1238 (Pa. 2012) (quoting ***Lucarini***, 472 A.2d at 190), the Board is guided by precedent for the purpose of measuring "the respondent's conduct against other similar transgressions."

An examination of prior similar matters reveals that attorneys with a record of discipline who subsequently engage in similar misconduct often receive a suspension of at least one year and one day in recognition that the attorney has not learned from the prior discipline. *See*, ***Office of Disciplinary Counsel v. Frank C. Arcuri***, No. 147 DB 2019 (D. Bd. Rpt. 8/20/20) (S. Ct. Order 10/6/2020) (suspension for one year and one day imposed for repeated neglect in six client matters, aggravated by prior discipline of a similar nature); ***Office of Disciplinary Counsel v. Peter Jude Caroff***, No. 42 DB 2019 (Bd. Rpt. 2/25/20) (S. Ct. Order 6/5/20) (suspension for one year and one day imposed for neglect and failing to promptly refund unearned fees, aggravated by prior discipline of a similar nature).

Matters that involve more serious patterns of misconduct require more discipline. In the recent matter of ***Office of Disciplinary Counsel v. Matthew Gerald Porsch***, No. 248 DB 2018 (D. Bd. Rpt. 2/20/20) (S. Ct. Order 5/29/20), the Court suspended Porsch for two years for repeated neglect in three matters, misrepresenting the status of a matter, and failing to refund unearned fees and return documents.

Porsch's misconduct was aggravated by a prior public reprimand imposed for neglecting a client matter and failing to appear for an informal admonition. The Board found that Porsch did not take his clients' matters seriously and did not display sympathy for their predicaments.

In the matter of ***Office of Disciplinary Counsel v. Donna Marie Albright-Smith***, 225 DB 2010 (D. Bd. Rpt. 12/30/11) (S. Ct. Order 5/30/12), the Court suspended Albright-Smith for two years for her pattern of neglect and lack of communication in eight client matters. In addition to general neglect, Albright-Smith also engaged in misrepresentation and failed to refund unearned fees until Office of Disciplinary Counsel became involved in the matters. Unlike Respondent, Albright-Smith expressed contrition for her actions. While Albright-Smith had no history of discipline, the Board discounted this fact, as her misconduct started almost immediately after her admission to the bar.

The Court suspended an attorney for two years for severe neglect in six client matters, which included failing to refund unearned fees. ***Office of Disciplinary Counsel v. F. Lee Lewis***, 117 DB 2005 (D. Bd. Rpt. 1/26/07) (S. Ct. Order 4/13/07). Therein, the Board noted the seriousness of the widespread misconduct, which it considered in the context of Lewis' prior record of private discipline. In mitigation, the Board recognized Lewis' sincere remorse and recognition of wrongdoing.

Respondent's matter involves many of the same types of misconduct as in ***Porsch***, ***Albright-Smith***, and ***Lewis***, and warrants at least a suspension of two years to address the misconduct. Starting from that baseline sanction, the facts and circumstances of the instant matter compel the conclusion that a suspension for more than two years is appropriate. Herein, Respondent engaged in misconduct that was similar in nature across the three client matters charged in the instant proceeding, and

similar to the misconduct involving two client matters that was the subject of the prior private reprimand. A review of these matters leads to the inevitable conclusion that Respondent lacks competence, neglects his client's legal affairs, refuses to reasonably communicate with his clients or promptly refund unearned fees, and resorts to deceit and dishonesty without compunction. Indeed, the conclusion may be drawn from the facts of these matters that Respondent's dogged pursuit of the monies he believed he was entitled to surpassed his ethical duties to his clients. Respondent's lack of remorse and scorn for his clients and the disciplinary system support a lengthy suspension.

It is clear from the credible and at times emotional testimony of Respondent's clients that they sought his assistance at a time of great personal stress and anxiety and he failed them through his unethical actions. It is equally clear that the public must be protected from Respondent, as his inability to acknowledge wrongdoing heightens the risk that he will engage in future conduct. A lengthy suspension will require Respondent to demonstrate that he has the requisite qualifications should he seek reinstatement to practice law in the future.

Application of the precedent to the totality of the facts and circumstances leads the Board to conclude that a thirty month period of suspension, as recommended by the Committee, is consistent and appropriate.

It is well-established that the primary purpose of the system of lawyer discipline in Pennsylvania is to protect the public, preserve the integrity of the courts and deter unethical conduct. ***Office of Disciplinary Counsel v. Akim Czmus*****,** 889 A.2d 1197 (Pa. 2005). Upon this record, the Board concludes that Respondent is unfit to practice law. Respondent's pervasive misconduct, both past and present, his lack of credibility,

and his failure to accept responsibility and show remorse, warrant a suspension from the practice of law for thirty months.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Allan K. Marshall, be Suspended for 30 months from the practice of law in this Commonwealth.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
David S. Senoff, Member

Date: 10/16/2020