

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1769 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 138 DB 2010
v.	:	
	:	Attorney Registration No. 33277
JESSE LOUIS KATZ,	:	
Respondent	:	(Allegheny County)

ORDER

PER CURIAM:

AND NOW, this 18<sup>th</sup> day of January, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 16, 2011, it is hereby

ORDERED that Jesse Louis Katz is suspended from the Bar of this Commonwealth for a period of two years and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola  
As Of 1/18/2012

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 138 DB 2010
Petitioner	:	
	:	
v.	:	Attorney Registration No. 33277
	:	
JESSE LOUIS KATZ	:	
Respondent	:	(Allegheny County)

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

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

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

I. HISTORY OF PROCEEDINGS

On July 28, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Jesse Louis Katz. The Petition charged Respondent with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of his representation of two clients and his failure to comply with the Supreme Court Order placing him on administrative suspension. Respondent did not file an Answer.

A disciplinary hearing was held on January 24, 2011, before a District IV Hearing Committee comprised of Chair Thomas Farrell, Esquire, and Member Susan S. Shin, Esquire. Member Laura Cohen, Esquire, participated in the decision but was not at the hearing. Respondent did not appear at the hearing.

The Hearing Committee filed a Report on June 3, 2011, concluding that Respondent violated the Rules as contained in the Petition for Discipline, and recommending that he be suspended for a period of two years.

This matter was adjudicated by the Disciplinary Board at the meeting on July 23, 2011.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Jesse Louis Katz. He was born in 1955 and was admitted to practice law in the Commonwealth in 1980. Respondent's attorney registration mailing address is 1004 Manor Complex, 564 Forbes Avenue, Pittsburgh PA 15219.

Respondent is also known to reside and receive mail at 2985 S.E. Glasgow Drive, Stuart, FL 34997. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent is currently on inactive status, having been transferred by Order of the Supreme Court dated November 12, 2008, for non-compliance with Continuing Legal Education.

4. Respondent has a history of professional discipline in Pennsylvania consisting of an Informal Admonition in 2005 and an Informal Admonition in 2003.

5. In late August of 2007, while hospitalized, Frederick Bernardi met with Respondent to discuss Respondent's representation of him in a divorce case he wanted to file against Theresa Bernardi.

6. Mr. Bernardi granted power of attorney to his daughter, Betty Ward, and requested that Respondent send any mailings or information to him in care of Ms. Ward, and gave permission to Respondent to communicate directly with Ms. Ward concerning his case.

7. Mr. Bernardi paid Respondent \$500 as the agreed upon retainer for the representation of the divorce, to be filed in the Allegheny County Court of Common Pleas.

8. Although Mr. Bernardi was a new client, Respondent did not either at the time of the August 2007 meeting or within a reasonable time thereafter, provide Mr. Bernardi or Ms. Ward with a written document evidencing the basis or rate of his fee.

9. On September 27, 2007, Respondent filed on behalf of Mr. Bernardi a divorce complaint in Allegheny County.

10. Respondent sent a letter dated October 3, 2007 to Ms. Ward in which he enclosed two copies of the divorce complaint the filed, a form Affidavit of Service and an explanation of the process regarding the service of the complaint on Mrs. Bernardi. In his letter, Respondent instructed that the person making service on Mrs. Bernardi was to complete the signed and notarized Affidavit of Service and mail it back to him.

11. Sometime in late October 2007, Ms. Ward's husband served Mrs. Bernardi with a copy of the divorce complaint.

12. The Affidavit of Service was completed and returned to Respondent by first class mail addressed to Respondent at his office address, 1004 Manor Complex, 564 Forbes Ave., Pittsburgh PA 15219, that being the same address as on Respondent's October 3, 2007 letter.

13. After the Affidavit of Service was completed and returned to Respondent in October of 2007, both Mr. Bernardi and Ms. Ward made frequent attempts to communicate with Respondent by telephone.

14. Because Respondent did not speak with them, they left messages with Respondent's secretary, in which they requested that Respondent return their call or otherwise communicate with them.

15. For the remainder of the calendar year 2007, Respondent did not communicate with Mr. Bernardi or Ms. Ward.

16. As they had done in 2007, Mr. Bernardi and Ms. Ward continued their regular and repeated attempts by telephone to communicate with Respondent throughout 2008.

17. Throughout calendar year 2008, neither Mr. Bernardi nor Ms. Ward received any communication from Respondent.

18. Despite the telephone calls and messages from Mr. Bernardi and Ms. Ward advising that Ms. Bernardi had been served with the divorce complaint, Respondent took no action of record in the Allegheny County Court of Common Pleas to proceed with the divorce complaint.

19. By Order of the Supreme Court of Pennsylvania dated November 12, 2008, and effective 30 days thereafter, Respondent was transferred to inactive status for noncompliance with Rule 111(b), Pa.R.C.L.E.

20. The Court's Order directed Respondent to comply with the provisions of Rule 217, Pa.R.D.E.

21. By letter to Respondent dated November 12, 2008 sent by certified mail, return receipt requested, the Secretary of the Disciplinary Board informed Respondent of his transfer to inactive status and provided him with copies of Rule 217, Pa.R.D.E. and Section 91.91 through 91.99 of the Disciplinary Board Rules as they pertained to attorneys transferred to inactive status. The Secretary also provided Respondent with a Form DB-25(i) Statement of Compliance which, pursuant to the provisions of Rule 217, Pa.R.D.E., Respondent was to complete and return to the Office of the Secretary within ten days of the effective date of the Order transferring him to inactive status.

22. The correspondence from the Secretary and its enclosures were received and signed for on November 24, 2008, at Respondent's law office in Pittsburgh.

23. On December 12, 2008, the Order transferring Respondent to inactive status became effective and Respondent became a formerly admitted attorney in Pennsylvania.

24. Respondent's Statement of Compliance was due to be received by the office of the Secretary no later than December 23, 2008.

25. Respondent has never returned a Statement of Compliance to the Office of the Secretary.

26. At no time did Respondent notify Mr. Bernardi or Ms. Ward that he had been transferred to inactive status and was no longer permitted to engage in the practice of law in Pennsylvania.

27. On July 27, 2009, Mr. Bernardi died with his marriage still intact.

28. As of the date of Mr. Bernardi's death, Respondent had not withdrawn as counsel of record, as he was required to do as an inactive attorney.

29. On March 9, 2009, while on inactive status, Respondent accepted a \$1,500 retainer from Eugene and April Gracyk to represent them in an adoption proceeding to be filed in the Court of Common Pleas of Allegheny County Orphan's Court.

30. On September 15, 2009, Petitioner sent Respondent a Form DB-7 Request for Statement of Respondent's Position addressed to him at his Pittsburgh and Florida addresses.

31. After receiving this DB-7 Request, Respondent returned the \$1,500 retainer to the Gracyks under cover of a letter dated September 16, 2009.

32. Although he returned the \$1,500 retainer, Respondent's letter to the Gracyks was sent on letterhead on which he identified himself as an attorney, which he was prohibited from doing because of his inactive status.

33. Respondent was personally served with the Petition for Discipline and Notice to Plead by the Sheriff's Department of Marin County, Florida, on October 26, 2010.

34. Respondent received notice of both the prehearing conference and disciplinary hearing.

35. Respondent did not appear or participate in either the December 13, 2010 prehearing conference or the January 24, 2011 disciplinary hearing.

36. Respondent has a history of failing to comply with Rules of Disciplinary Enforcement and Rules of Continuing Legal Education. On three separate occasions, Respondent's nonpayment of annual fees or noncompliance with CLE has resulted in his transfer to inactive status. This occurred in November 2002, November 2006, and November 2007. (Pet. Ex. 6, 7, 10)

### III. CONCLUSIONS OF LAW

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement:

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

2. RPC 1.4(a)(2) - A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.



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

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

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

6. RPC 1.16(a)(1) - Except as stated in paragraph (c), 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.

7. Rule 217(b), Pa.R.D.E. - A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings, and the attorney or attorneys for each adverse party in such matter or proceeding, of the disbarment, suspension, administrative suspension or transfer to inactive status and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney. In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the

proceeding is pending for leave to withdraw. The notice to be given to the attorney or attorneys for an adverse party shall state the place of residence of the client of the formerly admitted attorney.

8. Rule 217(e), Pa.R.D.E. - Within ten days after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status order the formerly admitted attorney shall file with the Board a verified statement.

#### IV. DISCUSSION

This matter is before the Board for consideration of the charges of professional misconduct filed against Respondent. Petitioner contends that Respondent violated Rules 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.5(b), and 1.16(a)(1) of the Rules of Professional Conduct and Rules 217(b) and 217(e) of the Rules of Disciplinary Enforcement. Respondent did not deny the allegations contained in the Petition; therefore, the factual allegations are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E. In addition, the evidence put forth by Petitioner at the hearing supports the conclusion that Respondent violated the Rules as charged in the Petition for Discipline. Respondent did not appear at the hearing.

The record demonstrates that Respondent was retained to represent Mr. Bernardi in a divorce action. While Respondent did take initial steps in representing his client, he failed to follow through with the divorce action and failed to communicate with his client. Mr. Bernardi died on July 27, 2009 and was still married to his spouse.

Respondent was notified by certified mail that he was transferred to inactive status by the Supreme Court due to his failure to comply with the Pennsylvania Rules of

Continuing Legal Education. Respondent was required to file a Statement of Compliance with the Office of the Secretary and notify his clients that he was not permitted to practice law in Pennsylvania. Respondent failed to file this Statement. Despite notice which explained that he was not permitted to practice law, Respondent accepted a fee to handle an adoption. He did refund the fee after receiving correspondence from Petitioner, but unfortunately he sent it on letterhead which held himself out to be an attorney able to practice law.

The purpose of the disciplinary system is to protect the public and maintain the integrity of the legal profession and judicial process by assessing the fitness of lawyers. Office of Disciplinary Counsel v. Duffield, 644 A.2d 1186 (Pa. 1994). In considering the appropriate discipline, Respondent's failure to participate in the disciplinary process and failure to appear at the disciplinary hearing are aggravating factors. He was notified of each step in the process and chose not to explain himself or resolve the issues. The Board also notes Respondent's past nonpayment of annual fees and noncompliance with CLE credit requirements on three occasions. This conduct evidences an ongoing lack of concern by Respondent as to his professional obligations.

Respondent's history of professional discipline in Pennsylvania is an aggravating factor. He has two prior Informal Admonitions, which were administered to address his failure to communicate with clients and failure to pursue the representation for which he had been retained.

Prior discipline cases with similar misconduct provide guidance to the Board when considering the appropriate sanction to address the instant misconduct. In Office of Disciplinary Counsel v. Paula M. Lappe, 76 Pa. D. & C. 4<sup>th</sup> 115 (2005), Ms. Lappe failed to

diligently represent her client, failed to communicate, and failed to provide a written fee agreement. She was transferred to inactive status which required her to notify clients and file a Statement of Compliance with the Board, but she failed to do so. She failed to participate in the disciplinary process and did not appear at her disciplinary hearing. The Court suspended Ms. Lappe for a period of two years.

The attorney in Office of Disciplinary Counsel v. William Emanuel Papas, 78 Pa.D. & C. 4<sup>th</sup> 89 (2005), engaged in client neglect, lack of communication and misrepresentation. After his transfer to inactive status, Mr. Papas continued to engage in the practice of law and failed to notify existing clients of his inability to represent them. Mr. Papas had a history of discipline. Although the Board recommended a suspension of one year and one day, the Court ultimately imposed a two year suspension.

Clear and convincing evidence has established that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This misconduct, compounded by the aggravating factors present in this matter, requires a suspension for a period of two years.

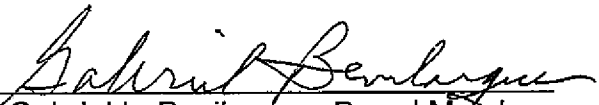
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Jesse Louis Katz, be Suspended from the practice of law for a period of two years.

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:   
Gabriel L. Bevilacqua, Board Member

Date: September 16, 2011

Mr. Momjian did not participate in the adjudication.