IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2138 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 160 DB 2014
	:	
v.	:	Attorney Registration No. 30215
	:	
THOMAS ALLEN CRAWFORD, JR.	:	(Allegheny County)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 14th day of November, 2017, upon consideration of the Report and Recommendations of the Disciplinary Board, Thomas Allen Crawford, Jr. is disbarred from the Bar of the Commonwealth of Pennsylvania, and he shall comply with provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 160 DB 2014
v.	:	Attorney Registration No. 30215
THOMAS ALLEN CRAWFORD, JR. Respondent	:	(Allegheny County)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on May 29, 2015, Office of Disciplinary Counsel charged Thomas Allen Crawford, Jr., Respondent, with violations of the Rules of Professional Conduct ("RPC") arising out of allegations that he engaged in misconduct in four separate matters. Respondent failed to file an Answer to Petition; the averments contained in the Petition are deemed admitted, pursuant to Pennsylvania Rule of Disciplinary Enforcement ("Pa.R.D.E.") 208(b)(2).

A prehearing conference was held on December 14, 2016. A disciplinary hearing was held on January 17, 2017, before a District IV Hearing Committee comprised of Chair James R. Burn, Esquire, and Members Laura Cohen, Esquire, and Charles W. Garbett, Esquire. Petitioner presented the in-person testimony of one witness and the testimony of one witness by telephone. Petitioner moved into evidence fourteen (14) exhibits. Respondent appeared *pro se*, testified on his own behalf and moved one exhibit into evidence. The Hearing Committee held open the record until January 31, 2017, to allow Respondent to submit a financial net worth statement, pursuant to §89.151(b)(6). Respondent failed to do so and failed to submit a post-hearing brief.

Following Petitioner's submission of a post-hearing brief, the Hearing Committee filed a Report on May 23, 2017, concluding that Respondent violated the rules as charged in the Petition for Discipline, and recommending that he be suspended for a period of three years.

The parties did not file exceptions to the Hearing Committee's recommendation.

The Disciplinary Board adjudicated this matter at the meeting on July 21, 2017.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."), 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 Thomas Allen Crawford, Jr. He was born in 1942 and was admitted to practice law in the Commonwealth in 1979. Respondent's attorney registration mailing address is Crawford & Weiss, 1306 Penn Avenue, Pittsburgh, PA 15221. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a record of prior attorney discipline in Pennsylvania.

a. Respondent received an Informal Admonition in 1993 for violation of RPC 1.4(a), 1.4(b) and 1.16(d), arising out of his neglect of one client matter and his failure to return the client's file after his client terminated the representation.

b. Respondent received an Informal Admonition in 1997 for violation of RPC 1.3 and 1.16(d), arising out of his neglect of one client matter and his failure to return the file or refund the unearned portion of the retainer fee after the client discharged Respondent's representation.

c. By Order of February 27, 2006, the Supreme Court suspended Respondent for a period of three months for misconduct arising out of multiple violations of the rules relating to incompetence, neglect, lack of communication with clients and failure to refund unearned fees and return documents after clients in numerous matters terminated his representation. The Court ordered Respondent to make restitution totaling $15,017.85 to 27 clients in one matter, and $4,500 to a single client in another matter. Respondent satisfied the restitution requirement. Petitioner's Exhibit ("PE") 17.

The Chew Matter

4. On March 14, 2013, in Bedford County, Travis Chew was charged with a variety of criminal charges. Trina Chew, Mr. Chew's sister, contacted Respondent on or about June 12, 2013, regarding representation of Mr. Chew and sent Respondent a $7,050.00 retainer on the same day. P1.

5. Later that month, Respondent met with Mr. Chew and informed him that his estimated fee would be $14,100.00. Respondent followed up with an itemized estimate in that amount. P1.

6. In August of 2013, after filing several motions on behalf of Mr. Chew, Respondent asked for additional monies to cover his estimated fees and costs for representation. Ms. Chew complied and sent payments totaling $16,350.00. P1.

7. The total amount of payments made to Respondent by Mr. Chew and his sister for representation in Mr. Chew's criminal case totaled $23,400.00 by the end of August 2013. P1.

8. On August 24, 2013, Ms. Chew sent Respondent an email regarding the criminal matter in question. Ms. Chew advised Respondent that Mr. Chew did not want the Respondent to do anything with the money that had been sent to him. P1.

9. In that email, Ms. Chew advised Respondent that she and her brother did not want Respondent to pay expert witnesses or travel until after discussing an offer from the district attorney. Ms. Chew advised Respondent that her brother did not want her having to put out so much money as she was living on disability. Mr. Chew was concerned that the expenses in his case were climbing and that his sister had to borrow against her house. P1.

10. In October 2013, Mr. Chew entered a plea of nolo contendere to the charge of unlawful restraint/serious bodily injury in exchange for receiving an 8 to 16 month sentence. Upon payment of costs and fines associated with the prosecution, the other charges were nolle prossed. P1.

11. Subsequent to the August 2013 email asking the Respondent to take no further action and to spend no further money and subsequent to the plea of nolo contendere, Mr. Chew received a "fee estimate" which was dated "June 2013". Respondent's quote in this correspondence/communication had increased to $32,500.00 and contained additional estimates of $7,000.00 for expert witness fees, $4,000.00 in new charges for research totaling approximately 40 hours, and an increase from a prior estimate of $3,000.00 to serve subpoenas for three days in Virginia and Pennsylvania to $10,000.00 allegedly for having to spend 10 days to serve subpoenas in Virginia Beach, Philadelphia and State College. P1.

12. On October 18, 2013, the day after Mr. Chew entered his plea, Ms. Chew sent an email to the Respondent, posing questions and expressing concerns about

Respondent's accounting and advised she would have to discuss this matter with her brother. P1.

13. In an email that same day, Respondent advised Ms. Chew as to Respondent's position with respect to the justification for expenditures. He also advised that he needed to find out how much he would be getting back from the expert witnesses and if there needed to be a hearing on an expungement motion once parole was terminated. P1.

14. On October 18, 2013, Ms. Chew sent an additional email to Respondent asking for specificity from Respondent when he calculated his final billing. Ms. Chew asked Respondent to be prepared to answer questions and provide detailed breakdowns on the hours he had spent regarding investigation, research, and trips across Pennsylvania; what portion of expert witness fees were withheld and why; and, details on a forensic psychiatrist's report. Ms. Chew demanded an accounting of the remaining portions of the funds which had been entrusted to Respondent based on prior estimates. P1.

15. On October 24, 2013, Mr. Chew sent an email to Respondent and advised Respondent that he did not believe he needed to pay for a report from a psychiatrist which had not been prepared. Mr. Chew asked for return of advanced costs as they related to a laboratory tech expert witness, as no report had been ordered and the witness did not miss time from work. Ms. Chew had advanced $6,300.00 for witnesses that were not used, and Mr. Chew believed most of that money should be returned. Mr. Chew questioned why 40 hours of research and investigation were required in his case. Mr. Chew brought to Respondent's attention the fact that his sister did most of the legwork regarding witnesses and others who were subpoenaed. Mr. Chew questioned

Respondent's estimate of $6,100.00 for jury selection, trial, and sentencing. He pointed out that only sentencing had occurred as a plea deal was reached. There was no jury selection and there was no trial. P1.

16. Although $1,050.00 had been paid for fines and costs in addition to the filing of a Motion to Terminate Parole, Mr. Chew pointed out that the Motion was essentially a "fill in the blank" form and therefore should not have cost as much as was being charged. P1.

17. On October 25, 2013, Respondent replied to Mr. Chew's email. His position was that he had paid the lab and the psychiatrist $3,500.00 each and that the psychiatrist reviewed voluminous reports and records in addition to preparing a report, which he asked the psychiatrist to stop writing due to the plea. Respondent also alleged that the lab had appointed a new supervisor to testify, who had to review all the work done and prepare for testimony. Respondent claimed that he had received no refund from either the lab or the psychiatrist and that he had traveled to serve subpoenas in this case because he believed there was going to be a trial and that the victim's employer was an essential witness and needed to be served timely. P1.

18. On November 1, 2013, Mr. Chew sent Respondent an email in which he dismissed Respondent of his services as counsel of record. Mr. Chew advised that he would be handling the remaining proceedings *pro se*. In that email, Mr. Chew demanded Respondent send him all original records. He also asked that his sister receive a refund of all remaining monies advanced for witness costs. Mr. Chew believed his sister was entitled to a refund of $6,100.00, as there was no jury selection, trial, or filing of post sentence motions. P1.

19. In this discharge email, Mr. Chew disputed expenses associated with the toxicologist and forensic psychiatrist. Mr. Chew stated that the forensic psychiatrist might be entitled to compensation for preparing a report, but only for report preparation as the psychiatrist never testified. P1.

20. In this discharge email, Mr. Chew reiterated that he and his sister had asked Respondent in August 2013 not to go to Virginia until he had heard from the district attorney about a plea agreement. Respondent disregarded those instructions and went to Virginia, despite directives by his client to the contrary. P1.

21. In his November 2013 email, Mr. Chew requested an itemization with hotel receipts. P1.

22. Mr. Chew believed a total refund due to his sister was $12,000.00, specifically itemized as a $6,100.00 refund for jury selection, trial, and post sentencing motions and $5,900.00 for expert witness fees and research. P1.

23. Mr. Chew and his sister expected that the unearned fees and unexpended costs that had advanced to Respondent would be refunded to Ms. Chew within 14 days and expected a reply by November 3, 2013. P1.

24. Respondent failed to reply to Mr. Chew's email. P1.

25. Mr. Chew sent Respondent a certified letter on or about November 16, 2013, which served as a final demand for a refund of money to Ms. Chew, and advised that other action would be taken if the refund was not received by November 26, 2013. P1.

26. Mr. Chew acknowledged that Respondent had performed legal work for him and he believed the amount of services was $5,400.00. Based on the total amount of monies sent to the Respondent by his sister, Mr. Chew requested a refund of

$18,000.00. He indicated to Respondent that he was, however, willing to negotiate that amount if Respondent would respond to him in a timely fashion. P1.

27. Respondent never replied to Mr. Chew's certified letter. Respondent never provided an accounting to Mr. Chew or Ms. Chew. Respondent never refunded to Ms. Chew the unearned fees and unexpended costs that she entrusted to him on behalf of her brother. P1.

28. Mr. Chew received a letter dated November 21, 2013, from Denise Williams. Ms. Williams was a potential witness for Mr. Chew. She advised Mr. Chew that although Respondent had spoken to her on several occasions by telephone, she had never met him in person in Virginia Beach or anywhere else. She advised Mr. Chew that Respondent never served her with a subpoena. P1.

29. Robert M. Wettstein, M.D. sent a letter to Mr. Chew on December 14, 2013. Dr. Wettstein advised Mr. Chew that Respondent had informed him that Mr. Chew's case had been concluded and that the psychiatrist's services were no longer needed. Dr. Wettstein advised Mr. Chew that he never prepared a report and contrary to Respondent's assertions, had never sent and never received any payment from Respondent. P1.

30. NMS Labs, located in Willow Grove, Pennsylvania, never prepared a report and never received payment from Respondent. Respondent had contacted NMS Labs on behalf of Mr. Chew, but contrary to Respondent's assertions as indicated above, NMS never received any monies. P1.

31. Despite objective evidence from Dr. Wettstein and NMS Labs, Respondent maintained that he had paid these individuals/entities but was not sure how much he had paid for each expert report. Respondent made these statements to Office

of Disciplinary Counsel's Auditor/Investigator, Brian J. Kline in a telephone conversation on January 10, 2014. P1.

32. On February 18, 2014, Petitioner asked Respondent for a statement of position in the Chew matter, to which Respondent submitted a reply on June 12, 2014. In his response, Respondent indicated that pursuant to Ms. Chew's request, he did not send checks to the lab or psychiatrist and did not make an unnecessary trip to Virginia Beach to serve witnesses, which would have been necessary had there been a trial. P1.

33. The June 12, 2014 statement of position provided by Respondent to Petitioner is contrary to statements made in October 18 and October 25, 2013 emails to Mr. and Ms. Chew. In those emails, Respondent indicated that he had "paid the lab and psychiatrist each $3,500.00" and "I must find out how much I shall get back from the expert witnesses." P1.

34. The June 12, 2014 statement of position submitted by Respondent to Petitioner is also contrary to the statement given to Auditor/Investigator Kline on January 10, 2014, when Respondent advised Mr. Kline that he already paid the experts. P1.

35. On June 6, 2014, Respondent replied to a subpoena for his bank records. At that time, Respondent stated to Mr. Klein that the money he had requested and received for Mr. Chew was not a flat fee and that he did not deposit the advance payments of fees and costs into an IOLTA or other trust account. Furthermore, Respondent indicated that he earned the funds upon receipt because he had already done sufficient work prior to receiving the payments for his fees and costs. P1.

36. On June 13, 2014, Respondent submitted an accounting to Petitioner. This accounting was captioned "final fee accounting Travis Chew." The

accounting listed expenses and fees of $33,550.00 and $23,100.00 respectively, and total payments received. P1.

37. The accounting submitted to Petitioner by Respondent on June 13, 2014, is inconsistent in the following respects:

a. The research hours expanded from 40 to 67;

b. Respondent alleged that he spent 174 hours investigating the case and billed those hours at $100 per hour including 30 hours for "materials and discussion with psychiatrist." Respondent indicated that of these 174 hours of investigation, most were done by phone;

c. Respondent's claim with respect to the time spent serving subpoenas was reduced by a day;

d. The estimated charge for expert witness fees, trial time, and appearance for a sentencing hearing, none of which occurred, were no longer itemized; and,

e. Although a jury selection did not occur, Respondent billed $700.00 for 1½ days of jury selection. P1.

38. Mr. Chew testified by telephone at the disciplinary hearing.

39. Mr. Chew credibly testified about the correspondence he received from Respondent in June 2013 which laid out the initial fee arrangement between himself and Respondent. The initial estimates totaled $14,100.00. N.T. 37.

40. Mr. Chew corroborated the documentary evidence which reflected that his sister paid Respondent the sum of $23,400.00. N.T. 38.

41. Mr. Chew testified that Respondent made representations regarding expenses and travel in order to speak to witnesses, experts and prepare reports.

Respondent told Mr. Chew that he had spent money for experts in this case which, as reflected in the documentary evidence, never happened. N.T. 40–42.

42. Mr. Chew testified that he attempted to get money back from Respondent on several occasions but was unsuccessful. N.T. 45.

The Miller Matter

43. In approximately August of 2011, Attorney Wendell Freeland contacted Respondent in regard to assuming representation of a plaintiff, William Miller, as it pertained to a civil personal injury action. P1.

44. As the attorney for Mr. Miller, Mr. Freeland had filed a Complaint in Civil Action on March 3, 2010. Mr. Miller had a 40% fee agreement with Mr. Freeland. P1.

45. Respondent agreed to represent Mr. Miller and advised him that he would work under the same fee agreement that had been arranged with Mr. Freeland. P1.

46. Respondent failed to inform Mr. Miller in writing that Respondent did not maintain professional liability insurance. P1.

47. In the Motion to Withdraw as Counsel, Mr. Freeland advised that a jury trial was set for November 9, 2011. The motion indicated that Mr. Miller consented to the withdrawal, that Respondent had agreed to take the case, and that the case file had been turned over to Mr. Miller. P1.

48. The court granted the Motion to Withdraw on October 31, 2011, and continued the case until January 23, 2012. The Order mandated that new counsel was to enter an appearance within 30 days of the Order. P1.

49. Respondent failed to enter his appearance within 30 days as directed

by the October 31, 2011 Order of Court. Respondent also failed to file a Pre-Trial Statement on behalf of Mr. Miller. P1.

50. A pre-trial conference was held on January 5, 2012; however, Respondent did not attend and did not notify his client, defense counsel, or the judge that he would not be in attendance. P1.

51. On January 14, 2012, Respondent filed a motion for a 90-day continuance and indicated that he was new to the case and not prepared to try the matter. Respondent alleged that medical reports needed to be obtained and that depositions needed to be scheduled prior to trial. P1.

52. It was not until January 18, 2012, that Respondent entered his appearance on behalf of Mr. Miller, despite the court's Order of October 31, 2011 directing that such entry to be made within 30 days. P1.

53. The court denied Respondent's motion for a continuance. On January 24, 2012, the court granted defendant's oral motion for summary judgment. P1.

54. Respondent advised Mr. Miller that he would charge a $5,000.00 fee to appeal the decision dismissing his case to the Superior Court. Mr. Miller paid Respondent this amount as a fee despite the fact that Respondent failed to communicate with Mr. Miller in writing, the basis or rate of the fee either before or within a reasonable period of time after the representation commenced. P1.

55. Respondent negotiated the $5,000.00 fee check but did not deposit the proceeds into a trust account or an IOLTA account. P1.

56. Respondent filed an appeal on behalf of Mr. Miller on February 27, 2012. On May 3, 2012, the court ordered Mr. Miller to file a concise statement of rulings or errors complained of on appeal within 21 days. Any issues not properly included and

timely filed and served would be deemed waived. P1.

57. By letter of June 22, 2012, the Superior Court informed Respondent that briefs were due on or before August 1, 2012. Respondent failed to file a brief on his client's behalf on or before August 1, 2012. By letter dated August 9, 2012, the deputy prothonotary for the Superior Court sent Respondent a copy of an order dismissing Mr. Miller's appeal due to Respondent's failure to file a brief. P1.

58. Respondent filed a motion for an extension on August 29, 2012, twenty days after the order dismissing the appeal. On September 11, 2012, the Superior Court granted an extension giving the Respondent thirty days from the date of the order and further ruling that no further extensions would be granted. P1.

59. On October 10, 2012, Respondent filed on behalf of his client an application for extension of time to file a brief and reproduced record, despite the prior ruling from Superior Court that no further extensions would be granted. On October 16, 2012, the deputy prothonotary for the Superior Court sent Respondent a copy of an order with the same date indicating the application had been denied. On October 29, 2012, Respondent filed on behalf of his client the appellant's brief and a motion to file out of time. P1.

60. By Order of October 29, 2012, the Superior Court granted Mr. Miller's motion only to the extent that the prothonotary was to docket the brief and reproduced record tendered to the court as filed untimely on October 29, 2012, and that the appellees/defendants' briefs were due thirty days from the date of that order. P1.

61. On February 15, 2013, the Superior Court issued a memorandum and found in part that Mr. Miller's lateness was evidence of ongoing recalcitrance and that the appellees had been prejudiced by Mr. Miller's continued delay. The Court further

noted that the appellate procedure rules were mandatory and that the court was within its discretion to dismiss an appeal where these rules were violated. The Court granted the motion to strike Mr. Miller's brief and reproduce record. P1.

62. By letter dated February 19, 2013, Respondent informed Mr. Miller that the Superior Court had ruled against him, but Respondent failed to tell Mr. Miller the reasons for the dismissal, including that Respondent was at fault. Respondent advised Mr. Miller of options moving forward on how to address the dismissal, including a motion to reconsider for which Respondent would require a $2,500.00 fee plus approximately $300.00 in printing costs and a filing fee, totaling $2,850.00. Respondent advised Mr. Miller that a fee for a Petition for Allowance of Appeal would be $4,500.00 plus printing of $500.00 and filing fee of $50.00. He further advised Mr. Miller that he had 14 days to file. Mr. Miller did not take any further appellate action. P1.

63. Mr. Miller credibly testified at the disciplinary hearing. He confirmed that he had a 60/40 fee agreement arrangement with Respondent. Mr. Miller testified that Respondent took no depositions nor did he hire expert witnesses for the case. Mr. Miller had trouble communicating with Respondent. N.T. 20.

64. Mr. Miller credibly testified that Respondent told him that it looked like he had a good chance with his case. Respondent did not tell Mr. Miller how the case was proceeding at trial level, other than sending Mr. Miller a letter stating that it was denied. Mr. Miller described Respondent's representation "terrible". N.T. 21. Mr. Miller testified that Respondent never told Mr. Miller why he lost the case, and only discussed with Mr. Miller how much it would cost to take the appeal. Mr. Miller testified that he had some extra money after his mother passed away and that he had to use that money to pay Respondent to file an appeal from the order dismissing the underlying case. N.T. 22.

The Megginson Matter

65. On October 18, 2013, Respondent entered his appearance on behalf of Lena Sue Carpenter in a criminal matter in Bedford County. P1.

66. In February 2014, Carolyn Megginson retained Respondent to represent her in a criminal matter in Bedford County arising out of the same criminal matter as that of Ms. Carpenter. It was the Commonwealth's intent to call Ms. Megginson as a witness at the Carpenter trial. P1.

67. Based on these facts, on March 13, 2014, the Bedford County District Attorney filed a motion to disqualify Respondent as counsel for Ms. Megginson, which motion was granted. Respondent continued to represent Ms. Carpenter. P1.

68. On June 18, 2014, the date Ms. Carpenter was convicted of one count of theft by unlawful taking, the court held Respondent in contempt of court based on Respondent's evidentiary objection made during the trial within the hearing of the jury, as opposed to making the objection at a sidebar conference. Respondent was fined $250.00. P1.

69. Based on information obtained in Ms. Carpenter's pre-sentence investigation report, the court issued a rule to show cause why Respondent should not be held in contempt of the court's March 26, 2014 order removing Respondent as counsel for Ms. Megginson. P1.

70. On August 25, 2014, during the contempt hearing and in response to the judge's questions, Respondent acknowledged that he provided Ms. Megginson with pre-trial motions after he had been removed by the court as her counsel. Respondent argued to the court that providing motions did not amount to legal representation. P1.

71. The court held Respondent in contempt and fined him $1000.00. P1.

72. On September 25, 2014, Respondent filed with the Superior Court a notice of appeal of the contempt order. The Court dismissed Respondent's appeal based upon his failure to file a brief. The court later denied Respondent's application for reconsideration. P1.

73. While Respondent was appealing the contempt orders against him, on October 1, 2014, he appeared at a Magisterial District Judge's office for the preliminary hearing of two defendants, Kimberlee Forbes and Nicholas Forbes, a mother and son. Respondent advised the district attorney that he planned to represent both defendants. The Commonwealth requested a continuance of the preliminary hearings because of a potential conflict of interest if Respondent represented both defendants. In addition to the continuance motion, the Commonwealth filed a Motion for Disqualification of Respondent as counsel and appointment of new counsel in the criminal matters of both defendants. P1.

74. Respondent replied to the motion and argued, in part, that the contempt filing in the Megginson case discussed above had been vacated by Respondent's appeal to the Superior Court. In fact, when Respondent filed this response, he knew that the Superior Court had not rendered a decision in the contempt matter, making this statement a falsehood. P1.

75. On October 10, 2014, the court held a hearing on the Commonwealth's motion to disqualify the Respondent in the cases of defendants Kimberlee and Nicholas Forbes. Respondent appeared on behalf of defendant Kimberlee Forbes and other counsel appeared on behalf of defendant Nicholas Forbes. P1.

76. At this hearing, Respondent testified that when he appeared to represent both Kimberlee and Nicholas Forbes at the October 1, 2014 preliminary

hearings, he had not consulted with either of the defendants about whether a conflict might exist, whether any such conflict was waivable, and whether or not both were willing to waive the conflict. P1.

77. The court denied the Commonwealth's motion based on the fact that Nicholas Forbes had obtained other counsel; however, the court ordered that Respondent have no further contact with any of Kimberlee Forbes' co-defendants outside of the presence of their counsel. P1.

The Kerestesy Matter

78. On September 9, 2012, Joseph Kerestesy contacted Respondent to inquire as to Respondent's fee for filing a second PCRA Petition in a criminal matter. The Superior Court denied Mr. Kerestesy's first PCRA Petition and the Supreme Court denied his Petition for Allowance of Appeal. P1.

79. Respondent replied to Mr. Kerestesy by questioning whether or not a second PCRA Petition could be filed based on the time that had lapsed. Respondent provided an estimated fee for the preparation of such a petition and corresponding work totaling $4,500.00. The total fee for work "up to a panel decision" was $7,200.00. P1.

80. Respondent requested that monies be paid upfront by check before he could begin work and asked Mr. Kerestesy for all file materials and a statement of issues that he wanted Respondent to address. Mr. Kerestesy replied to Respondent by enclosing trial exhibits and indicating that he would send a check, which Respondent received on or about November 1, 2012. Respondent negotiated the check on November 2, 2012. Respondent did not deposit the check into an IOLTA account or other trust account. P1.

81. A month after the $4,500.00 check was deposited, Mr. Kerestesy

wrote to Respondent asking why he had not heard from him in over a month. Mr. Kerestesy expressed numerous concerns about Respondent's representation. Respondent replied on December 8, 2012, acknowledging receipt of this letter and responding to the concerns contained therein and indicating that Respondent planned to visit Mr. Kerestesy as soon as he had completed a trial. Respondent followed up with a second letter in late December 2012, inquiring as to when Respondent would be placed on the visitor list and what documents he needed in order to represent him. By letter of January 7, 2013, Mr. Kerestesy advised Respondent that he was placed on the visitor list and the case file was waiting for him. P1.

82. On February 26, 2013, Respondent advised Mr. Kerestesy that he was told by a correctional facility representative that he would not be permitted to receive documents during visits due to security rules and therefore the documents should be mailed to Respondent. Once Respondent received the documents, he would visit Mr. Kerestesy to discuss issues and options. On February 27, 2013, Mr. Kerestesy sent the materials to Respondent. P1.

83. By letter of May 6, 2013 to Respondent, Mr. Kerestesy indicated that Respondent had not acknowledged receiving the file materials and had not planned a visit to the correctional facility. Respondent's letter of May 16, 2013 indicated that he was reviewing the file and indicated that he was trying to arrange a meeting with Mr. Kerestesy but was having difficulty getting some materials for the meeting. P1.

84. Mr. Kerestesy wrote again on July 15, 2013, and expressed his concerns that a visit had not been scheduled and that he had paid Respondent eight months prior in November 2012. Mr. Kerestesy expressed disappointment that so much time had been wasted, as he hoped that the second PCRA petition would have already

been filed. Mr. Kerestesy asked Respondent to reply to his letter. Respondent failed to reply.P1.

85. On October 9, 2013, Mr. Kerestesy sent Respondent a letter reemphasizing and reiterating his concerns about Respondent's lack of attention to his case. Mr. Kerestesy requested a return of the $4,500.00 check and his documents and papers. P1.

86. Mr. Kerestesy wrote to Respondent on October 17, 2013, requesting return of the materials and of the fee that had been paid in November 2012. He indicated he would take other action within 10 days if no response was received. P1.

87. Respondent did not file a PCRA Petition on behalf of Mr. Kerestesy nor did he return the file or the $4,500.00 fee that had been paid by Mr. Kerestesy for his services. P1.

88. In response to Petitioner's request for a statement of his position, Respondent indicated that he had spent 75 hours on research, after which he concluded that the PCRA petition would be frivolous and based on this research, he owed no refund to Mr. Kerestesy. Respondent also alleged that he earned the fee prior to receiving the monies and therefore there was no need to escrow the fees. This is despite Respondent having warned Mr. Kerestesy on October 19, 2012, that he could not begin work until the $4,500.00 fee advance had been received. P1.

89. Respondent claimed to have sent Petitioner an accounting of work performed along with his statement of position regarding this matter. However, Respondent's statement of position to Petitioner did not include an accounting of work he claimed to have performed in this matter. P1.

90. After Petitioner made a follow-up request to the Respondent for an accounting in regard to this Kerestesy situation, Respondent issued a one page uncorroborated assertion, in which he alleged he had spent "roughly 85 hours total" on the case for which he was only paid for 45 hours at $100 an hour. P1.

Miscellaneous Findings

91. Respondent was a co-defendant in a mortgage foreclosure action wherein a summary judgment was entered against him in August 2010 for approximately $44,000.00. He is also the defendant in a tax claim municipal lien filed in March 2010 for failure to pay 2007 municipal service fees in an amount of $571.82. (PE 9) (PE 10).

92. Respondent is the defendant in tax municipal claim liens filed on January 6, 2011 and October 28, 2011 respectively. He failed to pay 2009 municipal service fees in the amount of $562.00 and failed to pay municipal service fees and real estate taxes in 2010 in the amount of $1,515.26. PE 11, 12.

93. In May 2013, a Writ was filed against Respondent for nonpayment of taxes in the amount of $1,370.59. Respondent is the defendant in a tax claim/municipal claim filed in October 2013 for failure to pay municipal service fees and real estate taxes in the amount of $1,515.26. PE 13, 14.

94. In April 2014, a tax lien was filed against the Respondent for unpaid real estate taxes owed to the school district in the amount of $2,742.07. PE 15.

95. Respondent was the defendant in a mortgage foreclosure action wherein a summary judgment was entered against him in August 2016, in the amount of $87,941.98 plus interest. PE 16.

96. Respondent testified at the disciplinary hearing.

97. Respondent failed to acknowledge his misconduct, explain his

actions or express any remorse. During his examination of witnesses Miller and Chew, Respondent became argumentative and attempted to shift blame for any wrongdoing to his former clients.

III. CONCLUSIONS OF LAW

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

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

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

3. RPC 1.4(c) - A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least $100,000 per occurrence and $300,000 in the aggregate per year.

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

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 1.7(a)(2) – Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

7. RPC 1.15(b) - A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

8. RPC 1.15(e) - Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property.

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

10. 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 or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

11. 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.

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

13. 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

Office of Disciplinary Counsel instituted disciplinary proceedings against Respondent by way of a Petition for Discipline filed on September 19, 2016. The Petition charged Respondent with violating multiple Rules of Professional Conduct arising out of allegations that he engaged in misconduct in four separate client matters. Respondent failed to file a response. The factual allegations of the Petition for Discipline are deemed admitted where a respondent-attorney fails to timely answer the Petition. Pa.R.D.E. 208(b)(3). At the prehearing conference, Respondent acknowledged that he had neither filed an answer, nor made a written request for an extension of the time limit to respond to the Petition. Thereafter, following the parties' submission of memoranda of law on the issue, the Hearing Committee ruled that the only issue for consideration at the disciplinary hearing was the level of discipline.

Evidence is sufficient to prove professional misconduct if a preponderance of the evidence establishes the conduct and the proof of such conduct is clear and satisfactory. ***Office of Disciplinary Counsel v. Robert Surrick***, 749 A.2d 441, 444 (Pa. 2000). Upon review of the record, the Board concludes that Petitioner met its burden of proof. The witness testimony, pleadings and documentary evidence demonstrate Respondent's troubling pattern of misconduct.

With respect to the matter of Travis Chew, Respondent charged an excessive amount of fees and did not deposit these fees into a separate trust account or IOLTA account. Additionally, Respondent misrepresented his efforts to his client and Trina Chew, his client's sister, who paid Respondent's legal fees. Respondent made direct and blatant misrepresentations to his client about expenditures for expert witnesses. No such monies were spent. Respondent made misrepresentations to Petitioner's investigator. Respondent's treatment of his client and his response to the investigation showed a disregard for his obligations to his client and to disciplinary authorities.

Respondent's representation of William Miller was inadequate and unprofessional. Respondent did not file his appearance in a timely fashion, failed to file a pre-trial statement, failed to attend the pre-trial conference and failed to make any effort to obtain reports or depose witnesses for trial. Respondent's conduct resulted in the dismissal of the case by summary judgment.

Respondent filed a Notice of Appeal on behalf of Mr. Miller, but did not file a concise statement of matters complained of on appeal. He failed to file a brief and reproduced record on behalf of his client, which resulted in the appeal being dismissed. The court granted Respondent's request to reinstate the appeal, but Respondent again failed to comply with the filing schedule ordered by the court.

At the disciplinary hearing, Mr. Miller credibly testified that Respondent never made Mr. Miller aware of the reason why the case was dismissed, only that Respondent needed more money to take an appeal. Mr. Miller testified that he had to use money that he received after his mother's death to pay Respondent to file an appeal that was caused and necessitated by Respondent's own failures. This appeal was also

unsuccessful.

Similar to the Travis Chew matter, Respondent failed to place monies paid to him by Mr. Miller in a separate trust or IOLTA account. Respondent also failed to refund unearned fees to Mr. Miller.

In the Megginson matter, a court order disqualified Respondent from representing Carolyn Megginson in a criminal matter, as Respondent represented another defendant in the criminal transaction. However, Respondent continued to advise Ms. Megginson despite the court order to the contrary, and was held in contempt for his actions. Respondent appealed the contempt order to the Superior Court, which dismissed the appeal for Respondent's failure to file a brief. Simultaneous to the time frame of the contempt matter, Respondent attempted to represent both Kimberlee Forbes and Nicholas Forbes in pending criminal charges. When the Commonwealth filed a motion to disqualify Respondent in the Forbes cases, Respondent made a material misrepresentation to the Court regarding the status of the contempt finding in the Megginson case. Respondent claimed that the contempt finding had been vacated based on his appeal to Superior Court. At the time he made the assertion, the Superior Court had not ruled on the matter.

Joseph Kerestesy retained Respondent in regard to filing a second PCRA Petition after Mr. Kerestesy had been unsuccessful in an initial PCRA Petition. Respondent failed to take any discernible action for purposes of consulting with his client about the viability of pursuing such an action. Respondent did not keep Mr. Kerestesy informed about the status of his legal matter and failed to reply to multiple letters sent to him by his client. Respondent charged and collected a fee of $4,500.00 from Mr. Kerestesy and then treated this as an advanced payment of the fee that was earned,

despite failing to perform services for which he was hired. Respondent failed to deposit the monies into an IOLTA or separate trust account and failed to refund the unearned portion of the fee to Mr. Kerestesy.

Respondent's violations of the Rules of Professional Conduct constitute serious misconduct, which makes him subject to the imposition of discipline. In weighing the appropriate discipline, the Board considers the parties' recommendations, the Committee's Report and recommendation, the nature and gravity of the misconduct, and the presence of aggravating or mitigating factors. ***Office of Disciplinary Counsel v. Gwendolyn Harmon***, 72 Pa. D. & C. 4th 115 (2004).

Respondent's misconduct spanned four years in four separate matters, and involved a pattern of misconduct wherein Respondent requested and accepted an advance payment of fee, and in one instance charged an excessive fee, failed to safeguard the entrusted funds, failed to earn the legal fee by neglecting the clients' matters, and failed to refund the unearned or unused portion of the entrustment to the clients. Respondent engaged in misrepresentations to clients, the court, and Petitioner's investigator. This egregious misconduct is aggravated by Respondent's prior record of discipline, his failure to recognize that his actions violated the ethical rules, his lack of remorse for his actions, and his personal financial mismanagement relating to his failure to pay local taxes and his involvement in foreclosure actions against him.

The instant proceedings mark the fourth time Respondent has faced professional discipline since his admission to practice law in 1979. Respondent's informal admonitions in 1993 and 1997 involved client neglect and failure to communicate. In 2006, Respondent received substantial discipline in the form of a suspension for three months, with an attendant order for restitution totaling $15,017.85 to 27 clients in one

matter, and $4,500 to a single client in another matter. Respondent satisfied the restitution requirements. The underlying misconduct in that disciplinary matter involved incompetence, neglect, lack of communication with clients and failure to refund unearned fees and documents after being discharged in numerous client matters, and is similar to Respondent's misconduct in the instant matter, which began in approximately 2012 and underscores his untrustworthiness, dishonesty and disregard for his duties to clients.

In addition to Respondent's failure to express remorse for his misconduct, he maintains that he did nothing wrong. The Hearing Committee found that Respondent failed to acknowledge any of the charges that were filed against him. Further, the Committee found that Respondent's demeanor at the hearing and his argumentative cross-examination of witnesses Chew and Miller reflected this disturbing disposition. The Committee concluded that in all instances and interactions, Respondent attempted to shift blame on others and make excuses. Upon this record, the Committee recommended a suspension for three years. Petitioner did not take exception to the recommended discipline. Respondent did not submit a post-hearing brief to the Committee, nor did he file exceptions to the recommended discipline.

While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and are suggestive of the imposition of a severe sanction. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186, 189-91 (Pa. 1983). Upon this record, we conclude that the totality of the circumstances in this matter warrant disbarment.

Disbarment is an extreme sanction that is to be imposed for only the most egregious ethical violations, as it represents a termination of the license to practice law

without a promise of its restoration at any future time. ***Office of Disciplinary Counsel v. Harry Jackson***, 637 A.2d 615 (Pa.1994); ***Office of Disciplinary Counsel v. John Keller***, 506 A.2d 872 (Pa. 1986). While many disbarment cases have occurred for theft of client funds or criminal activity, there have been occasions when the Court has disbarred lawyers for client neglect when found in conjunction with a history of discipline and other aggravating factors.

In the matter of ***Office of Disciplinary Counsel v. James W. Knepp, Jr.***, 441 A.2d 1197 (Pa. 1982), Mr. Knepp engaged in a four-year pattern of misconduct, including neglecting legal matters, converting clients' money, charging excessive legal fees, making misrepresentations, and failing to maintain proper records of client funds. Although Mr. Knepp argued that his lack of prior discipline served as a mitigating factor, the Court held that the pattern of misconduct and the number of rules violations minimized any mitigating effect of Mr. Knepp's prior blamelessness. The Court disbarred Mr. Knepp.

Two other matters having similar fact patterns to the instant matter resulted in disbarment. In the matter of ***Office of Disciplinary Counsel v. Stephen K. Urbanski***, No. 30 DB 2009 (D. Bd. Rpt. 12/4/2009) (S. Ct. Order 3/3/2010), the respondent-attorney neglected three clients by accepting retainer payments, failing to perform services, and failing to refund monies. The Board recommended disbarment to the Court, based on the underlying misconduct and aggravating factors consisting of the respondent-attorney's history of private discipline and a one year suspension, and his failure to appear at the disciplinary hearing. The Court imposed disbarment. In the matter of ***Office of Disciplinary Counsel v. Robert S. Fisher***, 52 DB 2005 (D. Bd. Rpt. 5/18/2006) (S. Ct. Order 9/19/2006), the Court disbarred the respondent-attorney after he violated multiple

Rules of Professional Conduct in twelve client matters. The record involved client neglect; missed appointments; clients left to wait for hours; lack of communication consisting of many unreturned telephone calls and letters; deception regarding the status of cases; misrepresentation about work done; failing to withdraw from representation or allow the transfer of a case to a new attorney. This misconduct lasted approximately four years. The respondent-attorney's failure to appear at the disciplinary hearing and his history of discipline consisting of a one year and one day suspension and a suspension for three months, served as serious aggravating factors.

Herein, although Respondent appeared for the disciplinary hearing and testified on his own behalf, he failed to answer the charges in the Petition for Discipline, failed to submit information on his financial net worth after the Committee held open the record to permit him to do so, and failed to submit a post-hearing brief to the Committee. Notable in this matter is the Committee's assessment of Respondent's attitude at the hearing, which demonstrated his unwillingness to acknowledge his misconduct.

The purpose of the disciplinary system is "to protect the public from unfit attorneys and to maintain the integrity of the legal system." ***Office of Disciplinary Counsel v. Robert Costigan***, 584 A.2d 296, 300 (Pa. 1990). Although each disciplinary matter is decided on the totality of the facts present, precedent is considered due to "the need for consistency in the results reached in disciplinary cases." ***Lucarini***, 472 A.2d at 190.

In the instant matter, the facts weigh heavily against Respondent's continued privilege to practice law. At present, Respondent is a threat to the public. There is no evidence that Respondent has gained insight from his past interactions with the

disciplinary system. Respondent's unrepentant attitude underscores the reality that he has little concern for his clients.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Thomas Allen Crawford, Jr., be Disbarred 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: _____
John F. Cordisco, Member

Date: September 13, 2017