

IN THE SUPREME COURT OF PENNSYLVANIA

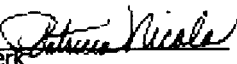
OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2418 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 174 DB 2015
	:	
v.	:	Attorney Registration No. 48114
	:	
BLAKE LOUIS BERENBAUM,	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 13th day of December, 2017, upon consideration of the Report and Recommendations of the Disciplinary Board, Blake Louis Berenbaum is suspended from the Bar of this Commonwealth for a period of one year and one day, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 12/13/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 174 DB 2015
Petitioner	:	
	:	
v.	:	Attorney Registration No. 48114
	:	
BLAKE LOUIS BERENBAUM	:	
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") 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 December 9, 2015, Office of Disciplinary Counsel charged Blake Louis Berenbaum, Respondent, with violations of the Rules of Professional Conduct ("RPC") arising out of his representation of two separate clients. Respondent filed an Answer to Petition for Discipline on February 22, 2016.

Following a prehearing conference on April 6, 2016, a disciplinary hearing was held on September 20, 2016 and November 15, 2016, before a District I Hearing Committee comprised of Chair Alexander B. Giacobetti, Esquire, and Members Cynthia

M. Certo, Esquire, and Tammi Markowitz, Esquire. Alan B. Epstein, Esquire, represented Respondent. At the September 20 hearing, Petitioner introduced into evidence Joint Stipulations of Fact, Law and Exhibits, and amended Nos. 11 and 13, without objection. At the same hearing, Petitioner introduced Exhibits ODC-1 through ODC-24. Petitioner presented the testimony of four witnesses. Respondent testified on his own behalf. Respondent introduced into evidence Exhibits R-3 and R-4. Respondent did not present any witnesses.

Following the submission of Petitioner's brief, the Hearing Committee filed a Report on April 27, 2017, concluding that Respondent violated the Rules of Professional Conduct and recommending his suspension for a period of one year and one day.

The parties did not take exception to the Hearing Committee's recommendation.

The Board adjudicated this matter at its 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, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of 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 said Rules of Disciplinary Enforcement.

2. Respondent is Blake Louis Berenbaum. He was born in 1959 and was admitted to practice law in the Commonwealth in 1986. His attorney registration address is P.O. Box 679, Richboro, PA 18954. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of prior discipline in Pennsylvania.

The Holst Matter

4. On September 6, 2007, Lawrence J. Holst was severely injured in an automobile accident involving the Philadelphia Police Department. As a result of his injuries, Mr. Holst was in a coma and hospitalized. Joint Stip. 7.

5. While Mr. Holst was in the hospital, Respondent's agent, Dexter Hucks,¹ visited his room, at which time:

a. Mr. Hucks spoke with Mr. Holst's wife, Tamara Aksungur, who was present; and

b. Ms. Aksungur agreed to have Respondent represent Mr. Holst.

N.T., 9/20/16, at 28-30, 44.

6. On that day Ms. Aksungur, on behalf of Mr. Holst, signed a fee agreement. Amended Joint Stip. 11; *Id.* at 21, 30.

7. Mr. Hucks also had Ms. Aksungur sign a general Power of Attorney (POA) giving Mr. Hucks power over all of Mr. Holst's finances and assets. Amended Joint Stip. 13; ODC-2; *Id.* at 22-3, 32.

¹ The September 20 and November 15, 2016 transcripts misspell Mr. Hucks' name.

8. Mr. Hucks then gave Ms. Aksungur \$1,000 and told her that the money was from Respondent. *Id.* at 32-33.

9. On or about September 8, 2009, Respondent commenced a civil action by filing a praecipe to issue writ of summons on behalf of Mr. Holst against the City of Philadelphia, the Philadelphia Police Department and other parties in the Court of Common Pleas of Philadelphia County in a case captioned *Holst, et al. v. City of Philadelphia, et al.*, September Term 2009, No. 0154. Joint Stip. 15.

a. In October 2009, the case was removed to the United States District Court for the Eastern District of Pennsylvania. *Id.*; ODC-3.

10. In or around October of 2010, Mr. Holst's matter settled in the amount of \$333,333.34, at which time Mr. Holst signed a General Release. Joint Stip. 17; ODC-4.

11. On November 3, 2010, Mr. Holst revoked the POA. Joint Stip. 19; ODC-5.

12. On or about January 4, 2011, Respondent:

a. Met with Mr. Holst;

b. Presented Mr. Holst with a Statement of Distribution, which indicated the following:

i. Respondent's fee: \$133,333.36;

ii. Costs: \$27,896.11;

iii. Lien to Department of Public Welfare: \$56,519.65; and

iv. G.W. Property Management, Inc.: \$12,389.30.

c. Presented to Mr. Holst a check in the amount of \$103,194.00.

Joint Stip. 21; ODC-6.; ODC-7.

13. By letter dated August 1, 2011, to Respondent, Mr. Holst, *inter alia*:

a. Stated that the purpose of his letter was to get a “clearer understanding” of his settlement;

b. Stated that he believed that the percentage of the settlement Respondent took as his legal fee was increased by ten percent;

c. Requested a meeting with Respondent to discuss the matter;
and

d. Requested that Respondent provide the original fee agreement to compare with his copy.

Joint Stip. 25; ODC-8.

14. Respondent received Mr. Holst’s letter. Joint Stip. 27.

15. Respondent failed to respond to the August 1, 2011 letter. N.T.
9/20/2016, at 116-117.

16. At the hearing, Mr. Holst confirmed that his objection to Respondent’s legal fee was that he charged a 40 percent contingent fee instead of a 30 percent fee. N.T. at 163.

17. During Respondent’s representation of Mr. Holst, Respondent advanced on behalf of Mr. Holst a total of \$15,975.18 for living expenses. Joint Stip. 29; ODC-9.

The Cantie Matter

18. On or about January 10, 2014, Latoya Cantie sustained injuries as a result of slipping and falling on black ice while walking into her place of employment as a veteran representative for the State of New Jersey.

a. Ms. Cantie is a New Jersey resident.

b. The accident occurred in Salem, New Jersey.

c. Ms. Cantie informed Respondent that her accident happened on her way into her New Jersey job.

Joint Stip. 32; N.T., 9/20/2016, at 169-170, 174.

19. Ms. Cantie, who was employed by the State of New Jersey as a representative for veterans, was six months pregnant when she fell. N.T., 9/20/2016, at 169.

20. On or about January 17, 2014, Ms. Cantie and her husband, Cornelius, retained Respondent to represent Ms. Cantie in pursuing personal injury claims. Joint Stip. 33.

21. Respondent was not licensed to practice law in New Jersey. N.T. at 179, 231.

22. When Ms. Cantie agreed to Respondent's representation, and throughout the representation, Respondent failed to inform Ms. Cantie that he was not licensed to practice law in New Jersey. Respondent told Ms. Cantie that he would be handling her case. *Id.* at N.T. 179-80, 231-2.

23. On January 17, 2014, Ms. Cantie signed a document titled "New Jersey Contingent Fee Agreement" appointing Respondent as her attorney "to prosecute a claim for personal injuries against **All responsible parties**. The cause of action and/or date of injury covered by this Agreement arose on **January 10, 2014**." Joint Stip. 34; ODC-10 (emphasis in original).

24. Ms. Cantie's legal claims that arose from her January 10, 2014 fall also included New Jersey disability and workers' compensation claims. N.T. at 190-92.

25. From February 2014 through April 2014, Ms. Cantie telephoned Respondent's office on multiple occasions and, when he did not answer his telephone, she researched and emailed him the information he needed to file her claims. Respondent assured Ms. Cantie that he was going to take care of it. *Id.* at 190-5.

26. For the workers' compensation matter, Respondent ultimately referred Ms. Cantie to another lawyer, Howard Batt, Esquire, but Respondent continued to handle her personal injury claims. *Id.* at 197-8.

27. On or about April 2, 2014 (approximately 82 days after Ms. Cantie's accident), Respondent telephoned Ms. Cantie, at which time he, *inter alia*:

a. Requested information about her employer; and

b. In response to Ms. Cantie's questions, informed her that he needed the information because he was required to file a tort claim on her behalf within 90 days from the date of her injury.

Joint Stip. 42; ODC-11.

28. Respondent failed to file a tort claim notice within 90 days from the date of Ms. Cantie's incident, as required by the New Jersey Tort Claims Act, N.J.S.A. 59:1-1, 59:8-8. N.T. at 233, 286; ODC-11.

29. For months, Ms. Cantie repeatedly requested status updates from Respondent. N.T. at 204. Most of Ms. Cantie's contacts were with Respondent's secretary/paralegal, who first told Ms. Cantie that her paperwork was taken care of, and later that she couldn't find her paperwork. N.T. 212-3, 218. Ms. Cantie also spoke to an intern, who told her all the files were locked in Respondent's office, and Respondent's son, a student, who told her his Father "was going to be taking care of everything". N.T. 212, 214-6, 222.

30. When Ms. Cantie was able to speak with Respondent at the end of June or in July, he promised her that he was “working on” her case and was “going to get to it.” *Id.* at 213.

31. On or about September 8, 2014, Ms. Cantie discovered that Respondent was not licensed to practice law in New Jersey. *Id.* at 229, 231.

32. Ms. Cantie also discovered that Respondent had failed to file any tort claim notices within 90 days from the date of her fall on the ice. *Id.* at 233; 246-7.

33. Respondent was the person who had advised Ms. Cantie that he knew he had “to get this tort claim filed because with municipalities and government you only have 90 days.” *Id.* at 246-7; Joint Stip. 42.

34. By letter dated September 15, 2014, to Respondent, Ms. Cantie terminated Respondent’s representation. Joint Stip. 59; ODC-12.

35. Thereafter, Ms. Cantie retained Benjamin Folkman, Esquire, to represent her in her personal injury matter. Joint Stip. 61.

36. On November 3, 2014, Paul C. Jensen, Jr. Esquire, of Mr. Folkman’s office, filed a Notice of Motion for Leave to File Late Notice of Claim Against Public Entities, in the Superior Court of New Jersey Law Division, Camden County. Joint Stip. 62; ODC-13.

37. By Order dated January 2, 2015, the Honorable Darrell M. Fineman denied Mr. Jensen’s motion. Joint Stip. 64.

38. On January 2, 2015, Judge Fineman also filed a letter opinion wherein Judge Fineman stated, *inter alia* that:

a. Ms. Cantie’s claim did not meet the “extraordinary circumstances” burden as required pursuant to N.J.S.A. 59:8-9; and

b. Ineffective counseling as to the filing dates required under the Torts Claim Act, ignorance of the filing date and even attorney malpractice have been held not to constitute “extraordinary circumstances.”

Joint Stip. 65; ODC-14.

39. Lawrence Holst, his wife Tamara Aksungur, Latoya Cantie and Paul C. Jensen, Jr., Esquire, testified on behalf of Petitioner at the September 20, 2016 disciplinary hearing. The testimony of these witnesses was credible.

40. Respondent testified on his own behalf at the continued disciplinary hearing on November 15, 2016.

41. By Order dated October 5, 2016, effective November 4, 2016, the Supreme Court of Pennsylvania placed Respondent on administrative suspension because he had failed to pay his annual attorney registration fee. N.T. 11/15/16, at 108; ODC-22.

42. Respondent claimed he had just learned about the suspension from a client; however, Respondent did not know why he was suspended and assumed it was because he was not yet CLE complaint. He still had not taken care of his unpaid registration fee before his November 15, 2016 hearing began. N.T. 113-4, 116.

43. At the November 15 hearing, Respondent offered testimony about his conduct in the Cantie matter; however, he did not offer testimony in regard to the Holst case other than admitting, through counsel, that he gave financial assistance to Mr. Holst in violation of Rule 1.8(e). N.T. 101.

44. Concerning Ms. Cantie, Respondent said on the first night he met with Ms. Cantie, he made his opinion “very clear” to her that she did not have a viable tort claim. Her concern and his then became whether her baby would be born with a birth

defect. “[O]nce it was determined that the baby was fine,” all Ms. Cantie had was a workers’ compensation case. N.T., 11/15/16, at 43, 66, 86-7.

45. Respondent said “no lawyer in the world” would “have gotten over” Ms. Cantie’s “assumption of risk” for her fall under “how Jersey treats liability.” Ms. Cantie, he testified, understood when she left his office a week after her accident that she could not establish liability. *Id.* at 55, 57-8, 62, 64-5.

46. According to Respondent, Ms. Cantie knew from the first time they met that any tort claim would be for her unborn child. *Id.* at 53, 58.

47. The “notice letter” he sent to a New Jersey entity on Ms. Cantie’s behalf was “to preserve the right if anything was wrong with the baby”. When Ms. Cantie called him to say the baby was fine, he told her “you’re blessed that everything worked out well.” *Id.* at 51, 53-4.

48. Respondent conceded that once he learned the baby was fine, he should have sent Ms. Cantie a letter that he was not going to pursue a tort claim. He did not treat this “like a normal situation,” because Ms. Cantie’s father and he “were very close”. *Id.* at 51, 58-9, 61.

49. Other than this one concession, Respondent failed to accept responsibility for his actions and did not express any remorse.

50. Respondent’s testimony was not credible.

51. Respondent did not present character testimony.

52. Respondent neither filed a post-hearing brief with the Hearing Committee nor took exception to the Hearing Committee’s recommendation.

III. CONCLUSIONS OF LAW

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

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.

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

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 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

6. RPC 1.8(e) - A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that: (1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter; and (2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client.

7. RPC 8.4(a) – It is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another.

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

IV. DISCUSSION

Petitioner bears 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). Petitioner's evidence consisting of the testimony of four witnesses, the Joint Stipulations, and the exhibits proved the essential facts and circumstances needed to substantiate that Respondent violated Rules of Professional Conduct 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), 1.8(e), 8.4(a) and 8.4(c).

In the Holst matter, Respondent violated RPC 1.8(e) and RPC 8.4(a) by advancing money to Mr. Holst. Pennsylvania's prohibition on lending living expenses to clients exists because such assistance gives lawyers too great a financial stake in the litigation. Respondent admitted that he advanced funds on behalf of Mr. Holst in the amount of \$15,975.18 between February 22, 2008 and March 12, 2009. Joint Stip. 29; ODC-9. Ms. Aksungur believably stated that while Mr. Holst was in the hospital recovering from serious injuries, Dexter Hucks, Respondent's agent, came to the hospital. gave her \$1,000, and said it was from Respondent. N.T., 9/20/2016, at 27-8, 32-3. In his Answer to Petition for Discipline at ¶16, Respondent denied instructing Mr. Hucks to give any money to Ms. Aksungur; yet simultaneously admitted reimbursing Mr. Hucks for "loaning" Ms. Aksungur \$1,000.00 in or around September 2007. Respondent's ¶16 Answer added he "now recognizes that this may have been an error," and potentially a violation of Rules of Professional Conduct at 1.8(e). By the time he reached ¶18 of his Answer, Respondent admitted "it was a violation of the Rules of Professional Conduct," to advance funds to Mr. Holst "for his and his family's needs," although he believed at the time that "providing the funds was simply the right thing to do." As the Hearing Committee's April 27, 2017 Report aptly noted, it is not credible that as a practicing lawyer in Pennsylvania since

1986, Respondent “only ‘now’ realized it was a violation of the Rules” to advance living expenses to Mr. Holst. Report at 14.

Following the settlement of Mr. Holst’s civil action, Mr. Holst sent Respondent a certified letter on August 1, 2011, where Mr. Holst asked for a “clearer understanding” of the settlement funds Respondent had distributed to him. Mr. Holst asked to meet with Respondent to discuss the distribution, including Respondent’s increasing his legal fees by ten percent. Joint Stip. 25. At the September 20, 2016 hearing, Mr. Holst persuasively testified that Respondent never responded to this August 1, 2011 letter. *Id.* at 116-117. While Respondent admitted that he received Mr. Holst’s letter, he failed to offer any evidence that he answered Mr. Holst’s request. Joint Stip. 27. Respondent’s failure to comply with Mr. Holst’s reasonable request for information constitutes a violation of RPC 1.4(a)(4).

In Ms. Cantie’s matter, Petitioner proved that Respondent failed to file any notices on her behalf within 90 days of her January 10, 2014 slip and fall on black ice, as required by the New Jersey Tort Claims Act. Joint Stip. 32, 42. Given this short time frame, of which Respondent was well aware, he should have promptly investigated whether one or more public entities were within the ambit of the New Jersey Act. He also should have promptly referred Ms. Cantie to a competent attorney, rather than continually assuring her “he was going to take care of it”. *Id.* at 201. Instead, he deliberately held on to the civil claim. When an Atlantic City practitioner offered to take Ms. Cantie’s workers’ compensation case as well as her civil case, Respondent informed Ms. Cantie that the practitioner “could not take the whole case,” just the workers’ compensation petition. *Id.* at 197. Although Respondent finally “set up” Ms. Cantie with a workers’ compensation

attorney, that attorney also told Ms. Cantie that Respondent “was going to still take care” of her civil action. *Id.* at 198.

Unfortunately, Respondent induced Ms. Cantie to believe he was working on her case, and then began to purposefully avoid her calls. By evading Ms. Cantie, Respondent limited her contacts to his intern, secretary/paralegal, or son, who made the same hollow promise that Respondent would take care of everything. In the end, Respondent failed to provide Ms. Cantie with competent and diligent representation, in violation of RPC 1.1 and 1.3. Any claims Ms. Cantie could have asserted were effectively time-barred by the Superior Court of New Jersey, who denied her Motion for Leave to File Late Notice of Claim Against Public Entities. Joint Stip. 62-65.

Petitioner also proved that Respondent failed to disclose to Ms. Cantie that he was not licensed to practice in New Jersey. Under these circumstances, where Respondent agreed to represent a New Jersey resident, employed by New Jersey, who fell in New Jersey on a property owned or used by a New Jersey entity, and used a New Jersey Contingent Fee Agreement, ODC 10, Respondent’s omission constituted misrepresentation. Based upon the record, Respondent deliberately withheld from Ms. Cantie the information she needed to make an informed decision about whether she wished to be represented by an unlicensed New Jersey attorney, or whether he could competently advise her about any legal claims that should be preserved as a result of her January 2014 fall.

Respondent’s assertions that Ms. Cantie knew he was not admitted to the New Jersey bar and he had an of counsel agreement for all New Jersey matters, are not supported by the evidence, either. Respondent claimed that a New Jersey-licensed attorney, Carl E. Watts, would have been involved had he not died, unexpectedly, in

November of 2014. Answer to Petition for Discipline at ¶23(a); N.T., 11/15/2016, at 39, 94. The omission of Mr. Watts' name or that of another New Jersey licensed attorney from Ms. Cantie's New Jersey Contingent Fee Agreement was, Respondent asserted, inadvertent. Respondent excused the omission by blaming his "newly employed" assistant who had prepared the Agreement. Respondent's claim that the assistant did not know to insert the name of a licensed New Jersey attorney, was neither believable, nor acceptable. Answer to Petition at ¶22. During cross-examination, Respondent flippantly suggested that Ms. Cantie did not meet Attorney Watts, when she came to the law firm, because "she came at 7:30". N.T., 11/15/2016, at 40-1. Respondent then declared he had "no reason to call [Ms. Cantie] a liar," for testifying that she had never met Mr. Watts. *Id.* at 41.

Ms. Cantie, by contrast, credibly testified that she had never met or heard of Mr. Watts before, including when she spoke with Respondent. N.T., 9/20/2016 at 210; ODC-10. Based upon Respondent's statements, Ms. Cantie would not have suspected she needed an attorney other than Respondent. When Ms. Cantie spoke to an Atlantic City attorney about taking her workers compensation action, and he wanted to take both cases, Respondent told her "hell no . . . he can't take the civil part". N.T. 197. Even the attorney Respondent arranged to assume Ms. Cantie's workers compensation claim said Respondent was keeping her civil claim. N.T. 198.

Ms. Cantie also plausibly explained why she believed Respondent was licensed in New Jersey. Respondent, she said, had "reached out to [represent] her Father," when her Father was in a New Jersey hospital. *Id.* at 226-7. Because someone told Respondent about her Father's case, her Father "thought [Respondent] could handle New Jersey cases". Her Father then referred other New Jersey cases to Respondent. *Id.*

Ms. Cantie only learned the truth when she became so concerned about Respondent's status, that she researched him and discovered he was not licensed to practice in New Jersey. *Id.* at 229-31. She then visited the Salem County courthouse, and learned she did not have anything filed on her behalf there. *Id.* at 233. Relying upon Ms. Cantie's convincing narrative of what she discovered and when, Respondent never advised Ms. Cantie that he was not licensed in New Jersey. Worse yet, by the time she discovered his true status, the 90-day time period to file a Tort Claims Act Notice had expired. *Id.* at 233-4.

Petitioner also met its burden of proving that Respondent failed to communicate with Ms. Cantie during the course of his representation. Once again, Ms. Cantie credibly testified about her prolonged efforts to obtain her case's status from June 2014 through September 2014. *Id.* at 212-18. The last time Ms. Cantie spoke with Respondent, "at the end of June or in July," he still claimed he was working on her case. *Id.* at 213. During the entire time Respondent represented her he never sent her "anything in the mail," or anything by email. *Id.* at 223. Clearly, Respondent failed to keep Ms. Cantie informed of the status of her case or promptly comply with her reasonable requests for information.

Respondent lost more credibility when he declared Ms. Cantie understood, when she left his office a week after her January 10, 2014 fall, that she could not establish liability. *Id.* at 55, 57-8, 62, 64-5. If Respondent had truthfully decided, in January, that Ms. Cantie did not have a viable claim, he should have promptly advised her then of his determination, and followed his "normal" practice of sending her a letter so she could consult another attorney. Instead, Respondent took no action at all with regard to any personal injury or Tort Claims Act claims Ms. Cantie may have had; moreover, he told her

and an attorney to whom he referred her workers compensation claim that he wanted to keep her civil action. Respondent's failure to communicate with Ms. Cantie and advise her of the true status of her civil case violated RPC 1.4(a)(3) and RPC 1.4 (a)(4).

Turning to an appropriate level of discipline, Respondent's strongest position is that he practiced law in Pennsylvania from December of 1986 through 2016, with no record of discipline. The Court has recognized the absence of a disciplinary record as a mitigating factor. *Office of Disciplinary Counsel v. John Christie*, 639 A.2d 782, 786 (Pa. 1994). Throughout these proceedings, Respondent produced no other evidence in mitigation. At the November 15 hearing, for example, he did not offer any witnesses or exhibits regarding his character or reputation in the legal community; moreover, he offered no testimony about Mr. Holst's case other than what is contained in the Joint Stipulations of Fact, Law and Exhibits. Aggravating factors present are Respondent's lack of candor during his November 15 testimony, his failure to accept responsibility for his misconduct and his lack of remorse. *Office of Disciplinary Counsel v. John J. Koresko, V*, 119 DB 2013 (D. Bd. Rpt. 6/1/2015) (S. Ct. Order 9/4/2015). Respondent has not apologized to Mr. Holst or Ms. Cantie, or otherwise shown remorse for the harm he caused them. In addition, while involved with his disciplinary proceedings, Respondent neglected to pay attention to or immediately correct his October 6, 2016 administrative suspension. His neglect of his responsibility to pay his annual registration fee is, as the Hearing Committee suggested, an additional aggravating factor. Report at 16.

After reviewing the record and considering the nature and gravity of Respondent's misconduct, as well as assessing his sole mitigating factor in light of his multiple aggravating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 15 DB

2003, 72 Pa. D. & C. 4th 115 (2004), the Board recommends that Respondent be suspended for a period of one year and one day.

Final discipline is evaluated on a case-by-case basis on the totality of facts presented. Nevertheless, despite the fact-intensive nature of the endeavor, the Board must strive for consistency “so that similar misconduct is not punished in radically different ways.” *Office of Disciplinary Counsel v. Robert Lucarini*, 472 A.2d 186, 190 (Pa. 1983). Turning to the ultimate question to be resolved, which is the recommendation of discipline, the Board is guided by decisional law and finds that a suspension of one year and one day is appropriate in matters where attorneys engage in neglect, failure to communicate and misrepresentation in several client matters, and show no remorse for their misconduct. As is often the situation with attorney disciplinary matters, there is no case precedent that is identical to Respondent’s; however, a suspension of one year and one day fits within the range of discipline imposed in prior cases.

In the matter of *Office of Disciplinary Counsel v. Paula M. Lappe*, No. 38 DB 2004 (D. Bd. Rpt. 2/22/2005) (S. Ct. Order 5/11/2005), the respondent-attorney similarly had no history of discipline yet engaged in neglect in two client matters. Unlike Respondent Berenbaum, Ms. Lappe failed to answer the Petition for Discipline and failed to appear at the disciplinary hearing. The Court suspended Ms. Lappe for a period of two years. The respondent-attorney in *Office of Disciplinary Counsel v. Sterling Artist*, No. 153 DB 2005 (D. Bd. Rpt. 4/27/2007) (S. Ct. Order 7/18/2007), engaged in misconduct involving neglect and incompetence in three matters, misrepresentation, lack of communication, failure to return files, and failure to provide bank records sought by Office of Disciplinary Counsel. Although this misconduct may be considered more serious than that found in the instant matter, Mr. Artist’s misconduct was mitigated by the fact that he

eventually cooperated with Office of Disciplinary Counsel and admitted his wrongdoing. In addition, he had no prior record of discipline. The Court imposed a suspension of one year and one day on Mr. Artist.

In two recent proceedings that are similar to Respondent's situation, the Court also suspended attorneys for a period of one year and one day. In the matter of *Office of Disciplinary Counsel v. Perry Lynn Flaugh*, 112 DB 2015 (D. Bd. Rpt. 6/15/2016) (S. Ct. Order 8/12/2016), the respondent-attorney failed to act with diligence and failed to communicate with his client in regard to her personal injury matter over a period of eight years, culminating in the respondent-attorney's abandonment of his client's claims. Additionally, Mr. Flaugh mishandled \$1,000 in funds entrusted to him on behalf of another client. Mr. Flaugh did not demonstrate that he understood the seriousness of the disciplinary proceeding and the harm he caused his clients, and he did not express genuine remorse for his actions. Although he had no record of discipline, his acts were serious enough to warrant a one year and one day suspension.

In the matter of *Office of Disciplinary Counsel v. Michael Elias Stosic*, 65 DB 2015 (D. Bd. Rpt. 6/23/2016) (S. Ct. Order 9/14/2016), the respondent-attorney failed to communicate and failed to provide competent and diligent representation in five client matters. Mr. Stosic was held in contempt of court on three occasions for failing to appear at court hearings. Additionally, Mr. Stosic provided misleading information on his annual attorney registration statement. Similar to Respondent Berenbaum, Mr. Stosic's case was aggravated by his failure to take full responsibility for his actions and failure to exhibit any genuine remorse, then mitigated by his lack of a prior disciplinary record.

In summary, a one year and one day suspension for Respondent would appropriately fulfill the primary purpose of the disciplinary system by protecting the public

from unfit attorneys, preserving public confidence in the legal system, and deterring unethical conduct. *Office of Disciplinary Counsel v. Akin Czmus*, 889 A.2d 117 (Pa. 2005). Respondent's removal from the practice of law will require him to petition the Supreme Court for reinstatement, and place the burden on him to prove his fitness with clear and convincing evidence.

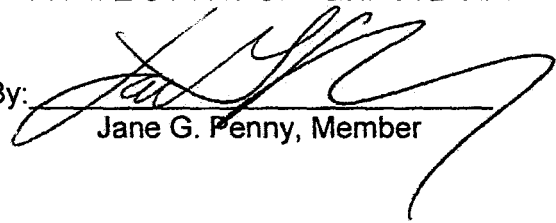
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that Respondent, Blake Louis Berenbaum, be Suspended for a period of one year and one day from the practice of law in this Commonwealth.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

Jane G. Penny, Member

Date: October 13, 2017