

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2267 Disciplinary Docket No. 3
: :
Petitioner : No. 178 DB 2014
: :
: Attorney Registration No. 82674
v. : :
: (Delaware County)
EDWARD CHARLES MALLOY, III : :
: :
Respondent : :
: :

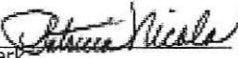
ORDER

PER CURIAM

AND NOW, this 30th day of June, 2016, upon consideration of the Report and Recommendations of the Disciplinary Board, the Petition for Review, and the Office of Disciplinary Counsel's answer, Respondent Edward Charles Malloy, III, is suspended from the Bar of this Commonwealth for a period of five years, and he is directed to 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).

Justices Donohue and Wecht did not participate in the consideration or decision of this matter.

A True Copy Patricia Nicola
As Of 6/30/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 178 DB 2014
Petitioner	:	
	:	
v.	:	Attorney Registration No. 82674
	:	
EDWARD CHARLES MALLOY, III	:	
Respondent	:	(Delaware County)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on November 10, 2014, Office of Disciplinary Counsel charged Edward Charles Malloy, III with violations of thirteen Rules of Professional Conduct concerning allegations that Respondent failed to provide competent client representation and abused the court system. Respondent filed an Answer to Petition for Discipline on December 10, 2014.

A disciplinary hearing was held on March 11, April 20 and April 27, 2015, before a District II Hearing Committee comprised of Chair Philip M. Hof, Esquire, and

Members James C. Higgins, Esquire and Kyle M. Elliott, Esquire. Respondent appeared *pro se*. Petitioner presented the testimony of Paul Toner, Esquire and Frank Kovalcheck and moved into evidence Exhibits ODC-1 - 75, ODC-76 – 82, ODC-83 - 86 and ODC A, 2A - 2G, 3-5. Respondent presented the testimony of Deborah Malloy and moved into evidence Exhibits R-1 – 56 and RM-3–13.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on September 29, 2015, concluding that Respondent violated Rules of Professional Conduct 1.1, 3.1, 3.2, 3.4(c), 4.1(a), 8.2(a) and 8.4(c). The Committee recommended that Respondent be suspended for a period of five years.

Respondent filed a Brief on Exceptions on October 20, 2015 and requested oral argument before the Disciplinary Board.

Petitioner filed a Brief Opposing Exceptions on November 18, 2015.

Oral argument was held before a three-member panel of the Disciplinary Board on December 14, 2015.

This matter was adjudicated by the Disciplinary Board at the meeting on January 21, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania, 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 Edward Charles Malloy, III. He was born in 1964 and was admitted to practice law in the Commonwealth of Pennsylvania in 1998. His attorney registration address is Generations Law P.C., P.O. Box 1946, Boothwyn, Delaware County, PA 19061. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

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

4. Respondent represented Deborah Hargy in various legal matters at least as early as 2007 related to an Agreement of Sale (“AOS”) for real property located at 43 Hoag Lane, Aston, PA (the “Property”). ODC-6 Ex. D.

5. The Property was developed by J & V Developers, Inc. (“Seller” or “Developer”). *Id.*

6. On or about October 1, 2011, Respondent married his client, Deborah Hargy Malloy (“Mrs. Malloy”). ODC-6 Ex. D.

7. Respondent represented Mrs. Malloy in every action identified in the Petition for Discipline and counseled her about filings when she was *pro se*. ODC-3, ODC-4.

8. The March 22, 2007 AOS scheduled a June 30, 2007 closing date, which was extended to August 1, 2007 by Mrs. Malloy, the Seller and Dominic Bucci, who was the dual-agent and broker for the Property. ODC-3; ODC-4; ODC-6; ODC-19; April 20, 2015, N.T. 144.

9. The AOS required Mrs. Malloy to apply for and obtain a mortgage for the Property, and give notice to the Seller that she had so applied. Mrs. Malloy failed to properly apply for the mortgage and also failed to give the requisite notice. *Id.* Mrs. Malloy was counseled by Respondent and advised that various pre-approval letters satisfied her legal obligations under the AOS to complete the mortgage application in compliance with the terms of the AOS, and specifically required by paragraph 4 of the AOS. ODC-19.

10. The AOS provided for a \$10,000 security deposit which was submitted on or about March 26, 2007. ODC-6.

11. In addition to the requirements in the AOS related to a mortgage, the Property could not be settled upon until the local township granted a Certificate of Occupancy ("C & O"). On or about July 27, 2007, the Seller received the C & O and notified Mrs. Malloy. The only pre-settlement walk-through took place on July 27, 2007, in anticipation of the noticed real estate settlement of the Property by the title company, Horizon Abstract (owned by Mr. Bucci's wife, Mrs. Bucci), to be held on August 1, 2007 at 3:00 p.m. ODC-3; ODC-4; ODC-19.

12. According to Mrs. Malloy, prior to the August 1, 2007 settlement, during the pre-settlement walk-through there was some dispute among Respondent, Mr. Bucci, and the owners of the Developer, John and Vincent D'Annunzio. ODC-19.

13. At the pre-inspection walk-through several days thereafter, Mrs. Malloy admitted to Vincent D'Annunzio that Respondent "would never be happy [living] there" and that she no longer intended to ever live at the Property. ODC-19; ODC-51.

14. Subsequently, Respondent and Mrs. Malloy failed to appear at the August 1, 2007 settlement. ODC-3; ODC-4.

15. At no time thereafter did Respondent or Mrs. Malloy notify anyone that Mrs. Malloy still wanted to buy the Property. ODC-19.

16. Mr. Bucci informed Mrs. Malloy that the Seller would return the \$10,000 deposit to her in exchange for the execution of the AOS Release, which was sent via facsimile to Mrs. Malloy on or about September 6, 2007, approximately one month after the non-consummated closing and settlement date. ODC-7; March 11, 2015, N.T. 68-69.

17. After consulting with Respondent and learning from Mr. Bucci that another person was interested in purchasing the Property, on or about September 7, 2007, Mrs. Malloy wrote to Mr. Bucci and explained that she was pleased that another buyer had been found so quickly, rejected the Seller's offer and made a counteroffer for the return of the deposit, legal interest on the deposit, and \$1,414.00 that she had paid to a third-party vendor for carpeting. ODC-3; ODC-4; ODC-7; March 11, 2015, N.T. 69.

18. On September 12, 2007, counsel for the Seller, Paul J. Toner, Esquire, informed Respondent that Mrs. Malloy had materially breached the AOS and specifically identified each breach. Mr. Toner also explained that Mrs. Malloy's refusal to apply for a mortgage and failure to attend settlement obviated her ability to terminate the AOS under §4 of the AOS, and that Seller would advise when it would elect to retain the \$10,000 deposit as liquidated damages. ODC-6, Ex. H; March 11, 2015, N.T. 64-65.

19. By email dated September 13, 2007, Respondent wrote to Mr. Toner blaming the Seller for breaching the contract, stating that "the contract (the AOS) no longer applies." Respondent threatened to sue the Seller if Mrs. Malloy's counteroffer or a store credit in lieu of the \$1,414.00 was not paid by October 31, 2007. (ODC-6, Ex.

G; ODC-3; ODC-4; N.T. 65) Mrs. Malloy agreed with the content of Respondent's email. ODC-19; April 20, 2015 N.T. 133.

20. On September 27, 2007, after Respondent and Mrs. Malloy refused to release the escrow deposit despite agreeing that the AOS did not apply, the Seller sold the Property to Frank and Bernadette Kovalcheck. ODC-3; ODC-4; April 20, 2015 N.T. 10.

21. Between September 13, 2007 and May 8, 2008, Mr. Toner attempted to resolve the escrow issue with Respondent, but Respondent and Mrs. Malloy refused to release the escrow. They continued to insist on the seller paying \$1,414.00 plus interest for carpeting that Mrs. Malloy had paid to be installed at the Property. ODC-3; ODC-4; March 11, 2015, N.T. 66-67.

Litigation I: The Breach of Contract Action

22. On May 8, 2008, Mr. Toner filed a one-count complaint for release of the \$10,000 escrow deposit in the matter, *J & V Developers, Inc. v. Deborah R. Hargy*, in the Delaware County Court of Common Pleas (the "Breach of Contract Action"). The court assigned a mandatory arbitration hearing date of February 5, 2009. ODC-6; March 11, 2015, N.T. 66.

23. After the commencement of the action, Respondent sent Mr. Toner an email with the subject line "Hargy Settlement." The email states:

The current position you have created for yourself in military terms is called Vietnam. You cannot win...I will relay any offer you want to make to Ms. Hargy...Here is my suggestion, go home and ask your wife how much it would take her to go thru [sic] all the shit you have put Ms. Hargy thru [sic]. Then, triple the number. That would be a god [sic] start.

ODC-75 at 0044.

24. On July 2, 2008, ten months after Respondent informed Mr. Toner that the AOS was inapplicable, and with knowledge that the Property had been sold to the Kovalchecks, Respondent filed Preliminary Objections. The Preliminary Objections, verified by Respondent, claimed that the Seller had “a full, complete and adequate non-statutory remedy at law, its specific performance of the contract – that moots [the Seller’s] instant lawsuit.” The Preliminary Objections further stated that Mrs. Malloy “still awaits delivery of her home, [the Property].” ODC-7; March 11, 2015, N.T. 70.

25. Mrs. Malloy cooperated with Respondent in the filing of the Preliminary Objections, yet she did not know what specific performance meant, and Respondent never explained the concept to her. April 20, 2015, N.T. 177.

26. While the Preliminary Objections were pending, on August 11, 2008, Respondent sent the Kovalchecks a letter at their home, the Property. ODC-75 at 0005.

27. Respondent informed the Kovalchecks that he had asked the Court to “award specific performance” which would force the current owners to “relocate” and leave the Property. ODC-75; April 20, 2015, N.T. 13, 15.

28. Even after Mr. Kovalcheck spoke with Mr. Bucci and Mr. Toner, who were copied on the letter, as the current home occupant and purported owner, Mr. Kovalcheck was unnecessarily and extremely upset for years, thinking that his family “could lose their home.” April 20, 2015; N.T. 24.

29. Since August 2008, Respondent and Mrs. Malloy have significantly interfered with the Kovalchecks’ ability to enjoy the Property. (April 20, 2015, N.T. 15). Mr. and Mrs. Kovalcheck were concerned for their safety and their children’s safety. There was an incident at the February 5, 2009 Arbitration where Respondent acted

inappropriately and aggressively. (April 20, 2015, N.T. 21-21, 23). Respondent appeared at the Property on March 7, 2011, to serve trial subpoenas for the Kovalchecks to appear in court the next day. Additionally, Mr. Kovalcheck believes that Respondent, lacking any legitimate reason to do so, drove past the Property after one of the hearings in which Mr. Kovalcheck was involved. Respondent's actions and lawsuits caused Mr. Kovalcheck to "lose sleep over the matter." April 20, 2015, N.T. 24.

30. Respondent continues to interfere with the Kovalchecks by mailing them information about the Malloys' bankruptcy proceeding, which is wholly irrelevant to the Kovalchecks. April 20, 2015, N.T. 23-26.

31. By Order dated August 26, 2008, the Hon. Charles B. Burr, II overruled Respondent's Preliminary Objections. On September 16, 2008, Respondent filed a verified Answer with New Matter and Counterclaim seeking an illegal real estate commission. (ODC-3; ODC-4; ODC-8, March 11, 2015, N.T. 69). The Counterclaim contained allegations prosecuted in Mrs. Malloy's name seeking \$7,225.00, the amount allegedly owed to Respondent for half of a real estate commission he claimed resulted from his involvement with the AOS, and that such a commission was in lieu of Mrs. Malloy having to pay for "Extras" (other than the carpeting) at the settlement. Mrs. Malloy has denied that the Counterclaim is for an illegal commission, claiming it is for Respondent's legal and financial advice. (ODC-8; April 20, 2015, N.T. 136-137) In fact, Mrs. Malloy was unaware that Respondent was not a licensed realtor in March 2007. ODC-3; ODC-4; ODC-19; April 20, 2015, N.T. 144.

32. A June 13, 2008 facsimile from Mrs. Malloy to Mr. Bucci contradicts Mrs. Malloy's testimony at the disciplinary hearing, as she stated "I need to pay Ed his commission out of that deposit. If I do not receive the full deposit Ed intends to sue you

for his lost commission.” Mrs. Malloy further stated that “[a]ll future correspondence must be in writing or through my attorney” meaning Respondent. ODC-21

33. The Breach of Contract Action was scheduled for arbitration on February 5, 2009. Nevertheless, Respondent continuously and needlessly thwarted without any founded justification, Mr. Toner’s reasonable and entirely proper attempt to take Mrs. Malloy’s deposition. ODC-9; ODC-14.

34. Mr. Toner retained a court reporter for the arbitration. (N.T. 71) At the arbitration, Respondent became visibly upset, and the situation further deteriorated when Respondent threatened Mr. Toner’s clients while in the arbitration assembly room. March 11, 2015, N.T. 76.

35. During the arbitration, Respondent told the panel that the case was solely about the \$1,414.00 in carpet money Mrs. Malloy had expended as an upgrade to the Property and stated that whether or not Mrs. Malloy was going to testify was up to Mrs. Malloy if the court reporter was only present to transcribe select testimony. ODC-9a.

36. The arbitration panel awarded a complete verdict for \$10,000 in favor of Seller and against Mrs. Malloy. ODC-9a.

37. On or about February 23, 2009, Respondent appealed and obtained Court approval to file an Amended Answer. ODC-9a; ODC-15.

38. The Amended Answer filed on July 2, 2009 is another pleading lacking factual or legal merit to support Mrs. Malloy’s defense that she never breached the AOS and that the AOS had not been terminated. The Counterclaim sought damages in the amount of \$66,061.50 (the \$10,000 escrowed deposit, \$1,414.00 for “conversion” of the carpet money, legal fees and Mrs. Malloy’s monthly rent to date).

Respondent never produced a fee agreement or bills for services rendered because Mrs. Malloy never paid any legal fees. Respondent also never explained to Mrs. Malloy that there was no viable theory that would potentially allow her to recover legal fees. N.T. 80-81; April 20, 2015, N.T. 142-143, 172.

39. During the course of the Breach of Contract Action, Respondent misled Mr. Toner into believing Mrs. Malloy would appear voluntarily for her deposition. Respondent continued to obstruct Mr. Toner's properly noticed depositions until Mr. Toner was required to file a Motion to Compel the deposition and two Motions for Sanctions. These motions were granted by Orders dated February 3, May 26, and July 23, 2009, respectively. ODC-12; ODC-14; ODC-18, March 11, 2015, N.T. 83-86.

40. The July 23, 2009 Order was the result in part, of the July 22, 2009 oral argument before the Hon. Kathrynann W. Durham, who presided over Mr. Toner's discovery motion and Respondent's Motion for Summary Judgment. Respondent refused to withdraw the obsolete Motion for Summary Judgment based on moot pleadings. (ODC-17; March 11, 2015, N.T. 88.) Respondent was unable to explain to Judge Durham why Mrs. Malloy was entitled to receive the \$10,000 deposit money, but was clear that the case was about carpet money. Respondent blamed Mr. Toner for filing extensive motions and bogging down the court system. Judge Durham informed Respondent that Mr. Toner filed the motions because Mrs. Malloy refused to appear for a deposition. Judge Durham also explained to Respondent that the Court wanted to grant summary judgment in order to get a very simple case completed but that Respondent had not supplied any completed mortgage loan applications, thus necessitating a trial. Judge Durham further explained that she was inclined to grant attorney's fees to Mr. Toner's clients due to Respondent's actions related to discovery

(about which he was instructed to tell Mrs. Malloy) and asked why Respondent did not think the AOS had been terminated. In response, Respondent simply blamed the Seller. Judge Durham informed Respondent that she was concerned that Respondent steadfastly believed his client did not breach the AOS or that it had not been terminated. ODC-17; March 11, 2015, N.T. 88-95.

41. Following the hearing, it was agreed that Mrs. Malloy's deposition would be held in Judge Durham's courtroom on July 28, 2009. N.T. 100-101.

42. On July 28, 2009, Respondent represented Mrs. Malloy at her deposition. Mrs. Malloy testified: about an "under the table" deal between Respondent and Mr. Bucci to share half of the real estate commission; that Respondent's role in the AOS was that of attorney; that Mr. Bucci told her to apply for a mortgage; that she dealt with Mr. Bucci to schedule the pre-inspection walk-through; that she knew about the C&O; that she did not make a request for a second walk-through of the Property; and that she did to want to go forward with the sale. ODC-19; March 11, 2015, N.T. 101-102; April 20, 2015 N.T. 135-136.

43. Prior to trial, Respondent filed additional pleadings, including: (a) the July 31, 2009 Motion for Reconsideration of the Order denying his Motion for Summary Judgment; and (b) the September 11, 2009 Motion to Dismiss Seller's Objections to Interrogatories.

44. On July 13, 2010, Respondent issued a trial subpoena and document demand to Mr. Toner, Seller's trial counsel, to testify as a fact witness for Mrs. Malloy. Respondent demanded: "[a]ny statute, case law, rule or regulation that permits you to conduct this case and not violate the Dragonetti Act, including but not

limited to 'Notice of Termination of Agreement of Sale' documentation." March 11, 2015, N.T. 104-105.

45. The Breach of Contract Action was re-assigned from Judge Durham to President Judge Chad F. Kenney prior to trial, as Judge Durham was re-assigned out of the civil division. President Judge Kenney presided over the protracted bench trial on July 19, October 29, November 5, 2010, March 7 and March 8, 2011. ODC-3; ODC-4; ODC-22 through ODC-25; ODC-32 through ODC-33.

46. Throughout the trial, President Judge Kenney regularly observed that Respondent was not familiar with litigation practice and was unprepared for trial, including using tactics to obstruct or delay the proceeding. On October 29, 2010, President Judge Kenney stopped the trial due to Respondent's inappropriate behavior toward Mr. Toner, including: finger pointing; interrupting questions propounded by Mr. Toner; chastising witness' responses during Mr. Toner's questioning; lodging accusations of hiding evidence; and other misconduct. ODC-24.

47. On the third trial day, November 5, 2010, Respondent informed President Judge Kenney that he did not know the difference between a Motion for Non-Suit and a Motion for Directed Verdict. Instead, he asked for both at the close of Seller's case. The Motions were denied. (ODC-3; ODC-4). It became evident that Respondent was unfamiliar with Mrs. Malloy's defense and Counterclaim resulting in President Judge Kenney helping Respondent identify available witnesses, and suggesting that discovery from fact witnesses should have been done before, not during, the trial. In addition, Respondent required constant explanations from President Judge Kenney about: the Pennsylvania Rules of Evidence; Pennsylvania law supporting Mrs. Malloy's Counterclaim; basic concepts such as which party had the burden of

proof; the concept of mitigation of damages; and RPC 3.7 relating to preventing Respondent from being trial counsel and a fact witness in the same case when the factual issues are disputed. ODC-3; ODC-4.

48. On December 6, 2010, Respondent, without the requisite court permission filed an interlocutory appeal from the denial of non-suit or a directed verdict. This delayed the trial until the Superior Court quashed the appeal and remanded the case on March 4, 2011. ODC-3; ODC-4; ODC-27 through ODC-30.

49. On March 1, 2011, Respondent filed a Motion for the Admission of S. Marc Flannery, Esquire, *pro hac vice*, without knowing the rules or that a filing fee would be required. After this was explained to him, Respondent refused to pay the fee and withdrew the motion. ODC-3; ODC-4; ODC-51; March 11, 2015, N.T. 115.

50. When the trial resumed on March 7, 2011, Respondent called a witness during his case-in-chief who had testified previously. President Judge Kenney refused to permit Respondent to conduct a line of questioning that had been asked and answered during Respondent's initial cross-examination. ODC-32.

51. On March 8, 2011, Respondent testified at the trial, to the effect that he represented Mrs. Malloy because the legal fees would have far exceeded the amount at risk, \$1,414.00 (the money spent on the carpeting at the Property), and another attorney would want to charge Mrs. Malloy on an hourly basis instead of waiting until the end of the case to be paid. ODC-3; ODC-4.

52. On March 15, 2011, President Judge Kenney entered a verdict in favor of the Seller and ordered that the Seller was to receive: (a) the \$10,000.00 escrow deposit together with 6% statutory interest beginning on August 2, 2007; (b) retain the \$9,988.00 of "Extras" installed at the Property at Mrs. Malloy's request; and (c) retain

the carpeting that cost Mrs. Malloy \$1,414.00. (ODC-34; ODC-3). By separate addendum, President Judge Kenney entered a verdict against Mrs. Malloy on the Counterclaim. ODC-35.

53. Respondent failed to file post-trial motions in order to preserve issues for appeal by the March 27, 2011 deadline. Nonetheless, Respondent filed a direct appeal with the Superior Court on April 14, 2011. Respondent never explained to Mrs. Malloy that the Pennsylvania rules require post-trial motions to be filed in order to preserve issues for appeal and properly appeal the verdicts. April 20, 2015, N.T 153.

54. By Per Curiam Order dated May 23, 2011, the Superior Court granted Seller's Application to Dismiss the Untimely Appeal. (ODC-43) On June 9, 2011, Respondent filed for Reconsideration, which the Superior Court also denied by Per Curiam Order dated June 23, 2011. ODC-3; ODC-4.

55. Mr. Toner filed a Praecipe to Enter Judgement on the verdict for \$12,150.00. ODC-3; ODC-4; ODC-36.

56. Despite the May 23, 2011 Superior Court Order, Respondent filed a discovery motion against the Seller in the Breach of Contract Action. It was denied on June 13, 2011. ODC -37; ODC-38.

57. All judges involved in the Breach of Contract Action rejected Respondent and Mrs. Malloy's interpretation of the AOS and so-called real estate broker's exception that permits attorneys to share a brokerage commission with their client broker if that arrangement is made in writing. Respondent never explained to his client, Mrs. Malloy, the requirements for the real estate broker's exception to apply to an attorney. (April 20, 2015, N.T. 77-79, 146; ODC-51). There is no evidence of any written contact entered into between Mr. Bucci, the broker, and Respondent.

58. On April 7, 2011, Seller's counsel filed a Fee Petition against Respondent and Mrs. Malloy for their dilatory, obdurate, vexatious and bad faith acts pursuant to 42 Pa.C.S.A. §2503(7). ODC-3; ODC-4; ODC-49.

59. During the pending Fee Petition, Respondent and Mrs. Malloy continued to file unwarranted motions, responses, and "combined" or "consolidated" motions as *pro se* defendants, even though Respondent was not a named defendant in the Breach of Contract Action. ODC-3; ODC-4.

60. With the Fee Petition pending, on or about January 6, 2012, Respondent filed Defendants' Combined Recusal Motion verified by Mrs. Malloy, followed by two supporting briefs. ODC-3; ODC-4; ODC-39; ODC-41.

61. The Combined Recusal Motion and briefs questioned President Judge Kenney's fitness and character as a jurist. These filings accused President Judge Kenney of, among other things: *ex parte* communications with Seller's counsel, prejudging the Seller's case before the conclusion of the trial, making inconsistent rulings, entering a verdict contrary to the evidence and not knowing Pennsylvania law regarding mortgages. ODC-39 through ODC-41.

62. On February 14, 2012, President Judge Kenney granted the recusal motion based upon a "review of Defendant's [sic] Combined Recusal Motion...and upon review of communications to this Court and Court Staff by Mr. Malloy." ODC-3; ODC-4; ODC-42.

63. The Fee Petition was re-assigned to Judge Burr. Judge Burr presided over the hearing on March 26, 2012, received exhibits into evidence, and heard testimony from Mr. Toner, Vincent D'Annunzio, John D'Annunzio, Mrs. Malloy and Respondent. Respondent repeatedly told Judge Burr how President Judge Kenney

had wronged the Malloys, that President Judge Kenney did not know the law, and that “somebody needs to wake up Judge Kenney!” ODC-3; ODC-4; ODC-47; ODC-48; ODC-49a.

64. After Mrs. Malloy’s testimony, Judge Burr determined that his evaluation of the evidence in support of the Fee Petition would begin with the “bright line” date of Mrs. Malloy’s July 28, 2009 deposition, during which she admitted that the AOS was not enforceable as to the sale of the Property. During a hearing break, Respondent and Mr. Toner reviewed and redacted all of the line items in the invoices in order to provide to Judge Burr a “clean” invoice starting from the “bright line” date. Based on the review conducted by Mr. Toner and Respondent of the legal invoices, as well as his own assessment, Judge Burr awarded \$60,762.00 for reasonable attorneys’ fees and \$2,724.95 in costs for a total award of \$63,486.05. (ODC-51; ODC-53; N.T. 113-114, 123, 128). Mrs. Malloy was present at the Fee Petition hearing when Respondent stipulated to the reasonable hourly rates in the invoices, thereby eliminating the need for Seller’s expert witness testimony. (N.T. 124, 125, April 20, 2015, N.T. 147-148) Judge Burr directed counsel to submit a status report with deadlines for filing proposed findings of fact and conclusions of law. ODC-3; ODC-4.

65. Respondent and Mrs. Malloy filed a Contempt Motion and brief under 42 Pa.C.S.A. § 4132, against Mr. Toner and Brian C. LeGrow, Esquire. These filings included the same accusations, lacking any evidence, later presented at the disciplinary hearing: (a) Mr. Toner lied about the real estate commission exception for attorneys; (b) Mr. Toner and Mr. LeGrow made misrepresentations during the Fee Petition hearing; and (c) Mr. Toner and Mr. LeGrow should be disciplined for

misrepresenting to various courts that Mrs. Malloy breached the AOS. ODC-55, March 11, 2015, N.T. 112.

66. On May 14, 2012, Judge Burr entered an Order denying the Contempt Motion and sanctioning Respondent and Mrs. Malloy, jointly and severally, \$1,000 in legal fees under 42 Pa.C.S.A. §2503(7). (ODC-3; ODC-4; ODC-56; March 11, 2015, N.T. 113. Respondent's frivolous appeal of this Order was quashed by the Superior Court *sua sponte* on August 16, 2012. ODC-53, ODC-56.

67. On July 13, 2012, Judge Burr issued an Order, Findings of Fact and Conclusions of Law. The Order detailed actions undertaken in the Breach of Contract Action, the Malloys' conduct in the Ejectment Action (described below), orders and appeals taken by Respondent, the trial and Respondent's behavior during the Breach of Contract Action. (ODC-51). Judge Burr analyzed Respondent and Mrs. Malloy's emails and writings, spanning from 2008 through 2011, threatening Seller's counsel, and others, with endless litigation and disciplinary actions. As mentioned above, Judge Burr awarded Seller \$60,762.00 in attorney fees and \$2,724.05 in costs, for a total award of \$63,486.05. By Order dated August 13, 2012, the award was reduced to a joint and several judgment against the Malloys. ODC-3; ODC-4; ODC-49a; ODC-51; March 11, 2015, N.T. 129.

68. Respondent and Mrs. Malloy appealed Judge Burr's fee award Order and the Judgment on the Breach of Contract award. The consolidated appeals resulted in the affirmance of Judge Burr's decision. In the October 24, 2013 opinion, the Superior Court specifically rejected Respondent's claim that the fee award was overstated by approximately \$25,000.00; recognized Respondent's attempt to impermissibly re-litigate the trial on the merits of the Breach of Contract Action (which

was final as Respondent failed to preserve any appellate issues because he did not file the requisite post-trial motions); Respondent sought an illegal commission in the underlying action; and that Respondent waived issues by failing to cite to the record of supporting case law and by failing to raise issue in his post-petition hearing proposed findings of fact and conclusions of law. ODC-53.

69. After losing the appeals, the Malloys filed a Petition for Allowance of Appeal with the Supreme Court, which denied the Petition on June 24, 2014. ODC-54.

70. The Malloys have not made any payment to Seller based on the Fee Petition award. N.T. 110-111.

71. Following a sheriff serving a Writ of Execution, Respondent filed for bankruptcy.

Litigation II: The Ejectment Action

72. On September 16, 2008, while litigating the Breach of Contract Action, Respondent filed an Ejectment Action against Mr. and Mrs. Kovalcheck and a Praecipe for Lis Pendens. On August 26, 2009, when filing his Fifth Amended Complaint in response to Preliminary Objections, Respondent added additional defendants, including the Seller, Horizon Abstract (the title company for the Property) and Mrs. Bucci – all people or entities involved as parties or witnesses to the Breach of Contract Action. ODC-2A through ODC-2G; March 11, 2015, N.T. 140.

73. On or about March 11, 2010, Judge George A. Pagano entered an Order striking the lis pendens and sustaining the Preliminary Objections with prejudice to all counts against the Kovalchecks, and all counts against the Seller except the

conversion count. By Order dated April 10, 2012, the court granted Seller's Motion for Summary Judgment on the conversion count. ODC-69.

74. Respondent continued to prosecute the Ejectment Action against Mrs. Bucci and Horizon Abstract, represented by Robert Firkser, Esquire, until September 18, 2014, when Respondent filed a praecipe to settle, discontinue and end. ODC-69.

75. Throughout that action, similar to his conduct displayed during the Breach of Contract Action, Respondent sent a number of emails lacking any factual or legal merit based on the record presented. ODC-75.

76. For example, in a May 13, 2010 email from Respondent to Mr. Firkser with a copy to Mr. Toner, Respondent wrote that Mrs. Bucci "is the victim of her husband's idiocy." He further stated: "Pigs get fed, hogs get slaughtered. Just ask that piece of sausage Toner." ODC-75.

Litigation III: The Mandamus Action

77. Unsatisfied with the outcome of the trial in the Breach of Contract Action, on December 28, 2011, Respondent filed *Deborah R. Hargy v. Gerald Montella*, a mandamus action requesting that the Delaware County Court of Common Pleas Court Administrator, Gerald C. Montella, remove President Judge Kenney from presiding over the Fee Petition stemming from the Breach of Contract Action. ODC-39; ODC-72.

78. Respondent also did not want Judge Durham assigned to the matter, erroneously claiming that she would not be a "good candidate" since the underlying Breach of Contract Action was taken away from her on the eve of trial. In fact, Judge Durham had been transferred out of the civil division prior to trial. The counsel for the Administrative Office of Pennsylvania Courts informed Respondent

about the court administrator's assignment of cases, and that the mandamus action was improperly filed. R-12.

79. The Administrative Office of Pennsylvania Courts was required to defend the court administrator and filed Preliminary Objections on the lack of jurisdiction. On February 24, 2012, two weeks after President Judge Kenney granted the Recusal Motion in the Breach of Contract Action, Respondent discontinued the Mandamus Action. ODC-3; ODC-4; ODC-72.

Litigation IV: The Disciplinary Actions

80. On or about November 15, 2012, Respondent instituted a professional misconduct complaint with Office of Disciplinary Counsel against Mr. Toner and Mr. LeGrow, counsel for Seller in the Breach of Contract Action, for purported unprofessional conduct during that action. March 11, 2015, N.T. 53-54.

81. On or about December 11, 2012, finding that the complaint lacked merit, Office of Disciplinary Counsel dismissed the complaint filed against Mr. Toner and Mr. LeGrow.

Litigation V: The Abuse of Process Action

82. On December 17, 2012, after Seller had prevailed in the Breach of Contract Action and the Fee Petition based on the Breach of Contract Action, both of which were eventually affirmed by the Superior Court, Respondent filed a legal action for abuse of process, *Deborah R. Hargy v. Paul J. Toner, Esquire, et al.* against defendants Mr. Toner, Mr. LeGrow, Vincent B. Mancini & Associates, LLC (the law firm at which Toner and LeGrow worked), John D'Annunzio, Vincent D'Annunzio, and their company, the Developer. ODC-3; ODC-4; ODC-60.

83. The Complaint and Amended Complaint, verified by Mrs. Malloy, accused the defendants of trying to “execute on a money judgment when they know or reasonably should know they have supplied the court with material misstatements related to the Fee Petition litigation.” ODC-62.

84. This action was filed in an effort to hinder the prevailing party in the Breach of Contract Action, the Seller, from using lawful means to collect the Fee Petition judgment. Respondent also alleged that Seller’s attorney’s committed serious violations of the Rules of Professional Misconduct by making misrepresentations of fact and law during the Breach of Contract Action. ODC-3; ODC-4; ODC-62; March 11, 2015, N.T. 155, 222.

85. In response to Preliminary Objections, on January 30, 2013, Respondent filed an Amended Complaint, adding himself and his law firm as plaintiff. ODC-3; ODC-4; ODC-62.

86. When Respondent refused to withdraw the Amended Complaint, the defendants jointly filed Preliminary Objections on March 4, 2013. At oral argument on July 13, 2013, Respondent explained to Judge James F. Proud that the action might be moot depending upon the Superior Court’s ruling on the then-pending appeal from Judge Burr’s Order granting the Fee Petition. By Order dated July 23, 2013, Judge Proud sustained the Preliminary Objections and dismissed the abuse of process action with prejudice. On July 29, 2013, the Malloys filed an appeal. On June 4, 2014, the Superior Court issued an opinion affirming Judge Proud’s Order of July 23, 2013. ODC-3; ODC-4; ODC-67.

87. Respondent filed a Petition for Allocator, which was denied on February 24, 2015. ODC-68.

Litigation VI: Professional Broker's Malpractice Action

88. On March 11, 2013, Respondent filed a professional malpractice action in the Delaware County Court of Common Pleas, *Deborah B. Hargy v. Dom Bucci, individually and as an agent for Century 21 Crest Real Estate, Ltd, et al.* and filed an Amended Complaint on or about June 10, 2013. ODC-3; ODC-4.

89. By Order dated October 17, 2014, Judge Spiros E. Angelos granted summary judgment against Mrs. Malloy and dismissed the action. On October 21, 2014, Respondent appealed. Judge Angelos' December 16, 2014 Opinion concluded that the action was time-barred, and reviewed Judge Burr's previous decision in the Breach of Contract Action. (ODC-74). The Superior Court heard argument on April 8, 2015 and affirmed the trial court on July 14, 2015.

Litigation VII: United States Bankruptcy Court Actions

90. On July 8, 2014, Respondent filed a Suggestion of Bankruptcy in the Breach of Contract Action under his bankruptcy case. (ODC-45) Although Mrs. Malloy was not a party to Respondent's bankruptcy, on September 23, 2014, Respondent filed a Joint Suggestion of Bankruptcy. Mrs. Malloy's bankruptcy is separately docketed. ODC-76; March 11, 2015, N.T. 138; April 20, 2015, N.T. 126.

91. On or about January 8, 2015, Respondent communicated by email with, among others, Seller's bankruptcy attorney, Kenneth E. West, Esquire, suggesting that he was counsel for Mrs. Malloy. This email is dated prior to Respondent's January 14, 2015 admission to Federal Bankruptcy Court, and his entry of appearance in Mrs. Malloy's bankruptcy. ODC-82; April 27, 2015 N.T. 167, 172.

92. On January 16, 2015, Respondent sent a Safe Harbor Notice under Rule 9011 of the Federal Rules of Bankruptcy Procedure to Mr. West for, *inter alia*,

merely filing a claim against Respondent for money owed due to the Fee Petition. ODC-79.

Litigation VIII: Writ of Summons Action

93. On or about March 31, 2014, Respondent filed a Writ of Summons Action in the Delaware County Court of Common Pleas, *Deborah R. Hargy v. Deborah Bucci, Horizon Abstract Company, Dom Bucci, Century 21 Crest Real Estate Ltd. and J & V Developers, Inc.* The case cover sheet indicated the action was purportedly for fraud, deceit, civil conspiracy, estoppel by deed, and other claims. No complaint had been filed as of the date of the disciplinary hearing.

94. Respondent hoped to obtain a settlement with the parties, who have been found repeatedly to have committed no wrongdoing, prior to filing a complaint. April 27, 2015, N.T. 34-35.

95. Respondent and Mrs. Malloy voluntarily had the action marked settled, discontinued and ended on July 27, 2015, at D.C.C.C.P., 2014-002573.

Additional Findings of Fact

96. Mr. Toner was credible and provided reliable testimony.

97. Mr. Kovalcheck was credible and provided reliable testimony.

98. Mrs. Malloy was the sole witness Respondent produced at the disciplinary hearing.

99. Respondent submitted a letter discussing his kidney transplant, but he did not explain how his kidney issues affected his conduct. RM-3.

100. Respondent did not present any expert testimony concerning his kidney failure.

101. According to Respondent, he has been involved in litigation since 2008: “So we’re now into year eight of all of this, *and it’s over \$1,414, ...carpet money.* Nobody wants the carpet, but it’s about the carpet money.” (emphasis added). April 27, 2015, N.T. 38-39.

102. Respondent has not taken seriously any of the discovery orders, the verdict or the final adjudications of Judge Burr’s Orders awarding statutory attorneys' fees and costs.

103. Respondent has not taken seriously any jurist in the Delaware County Court of Common Pleas who has given him the opportunity to correct his behavior.

104. There is no evidence of record that Respondent counseled his client, who is his wife, to accept the decisions of the Pennsylvania Superior Court and Pennsylvania Supreme Court.

105. Respondent has not accepted responsibility for his misconduct and does not appreciate the impact of his actions upon the court system and the legal profession.

106. The only violation Respondent admitted was RPC 1.1, stating that he “blew these procedural rules. It was to my wife’s detriment.” April 20, 2015, N.T. 267.

107. Respondent did not demonstrate genuine remorse for his misconduct, other than admitting that he was incompetent for failing to file post-trial motions.

108. Respondent testified to his community involvement and introduced exhibits from individuals endorsing such involvement. RM-7, RM-9.

III. CONCLUSIONS OF LAW

By his conduct 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.

2. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

3. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

4. RPC 3.4(c) – A lawyer shall not appear before a tribunal and assert the lawyer's personal opinion as to the justness of a cause, the credibility of a witness, or the culpability of a civil litigant, or as to the guilt or innocence of an accused, but the lawyer may argue, on the lawyer's analysis of the evidence, for any position or conclusion with respect to the matters stated herein.

5. RPC 4.1(a) – In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

6. RPC 8.2(a) – A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer or of a candidate for election or appointment to judicial or legal office.

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

8. Respondent did not produce evidence to establish that he suffered from an impaired mental state stemming from a kidney condition or the medication prescribed for him. *Office of Disciplinary Counsel v. Braun*, 553 A.2d 894 (Pa. 1989).

IV. DISCUSSION

Disciplinary proceedings against Respondent were instituted by Office of Disciplinary Counsel by way of a Petition for Discipline filed on November 10, 2014. The Petition charged Respondent with violating multiple Rules of Professional Conduct. Respondent filed an Answer on December 10, 2014, in which he denied engaging in any misconduct. Petitioner must establish by a preponderance of clear and satisfactory evidence, that Respondent's actions constitute professional misconduct. *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441 (Pa. 2000).

Respondent denies that he has violated the Rules of Professional Conduct, except for his stipulation to violation of RPC 1.1, to the extent that he failed to file post-trial motions after the verdict in the Breach of Contract Action before filing an appeal with the Superior Court. Petitioner produced a comprehensive set of exhibits and produced two witnesses in its case-in-chief. Respondent produced one witness and exhibits. Respondent waived his opportunity to testify.

The background of this matter is the aborted August 1, 2007 real estate closing and the ensuing Breach of Contract Action brought by the Seller against Mrs. Malloy, Respondent's client. The filing of that Action unleashed a cavalcade of new

actions initiated by Respondent against the parties, their attorneys and non-parties, which were false and frivolous.

Our review of the extensive record leads the Board to conclude that Respondent violated Rules of Professional Conduct 1.1, 3.1, 3.2, 3.4(c), 4.1(a), 8.2(a) and 8.4(d). The record is replete with multiple instances to sustain each of the alleged violations.

Respondent's ignorance of the law and incompetence are common threads throughout his representation of Mrs. Malloy. Respondent did not properly represent his client's interests from the time she signed the Agreement of Sale ("AOS") on March 22, 2007, to present. Respondent was responsible for explaining to his client her obligations under the AOS. He failed to explain to Mrs. Malloy that the AOS required her to complete a mortgage loan application, and did not explain that she would be in default of the AOS if she did not meet this contract term. In addition, Respondent did not explain to Mrs. Malloy that she would be in default of the AOS if she or her appointed representative did not attend a noticed settlement. At no time did Respondent explain that these defaults could result in the Seller electing, under the AOS, to retain her \$10,000 deposit as liquidated damages.

After the aborted August 1, 2007 settlement, the Property was relisted for sale and the Seller had an offer from the Kovalchecks. The Seller authorized the return of Mrs. Malloy's \$10,000 deposit in exchange for a release of the AOS. Respondent counseled his client to reject the offer and demand an additional \$1,414.00 that she had spent on carpeting. The Seller rejected Mrs. Malloy's counteroffer and filed the Breach of Contract Action. Because of Respondent's actions, Mrs. Malloy lost the opportunity to purchase the property, lost her \$10,000 deposit, became a party to eight lawsuits

beginning in 2009, all arising from the AOS, and became jointly and severally liable with Respondent for two awards for legal fees and/or costs of \$63,486.05 and \$1,000.00 pursuant to 42 Pa.C.S.A. §2403(7).

It is evident that Respondent lacked the requisite knowledge and competence to conduct litigation generally, and filed numerous pleadings, motions and interlocutory appeals both improperly and on baseless grounds, in violation of RPC 1.1. The most blatant example is Respondent's failure to file post-trial motions after the Breach of Contract trial. His many frivolous filings and bad faith efforts violated RPC 3.1, 3.2 and 3.4(c) by relentlessly abusing the judicial system during and following the Breach of Contract Action. His actions demonstrated his penchant for re-litigating issues that had already been determined during the prior litigations. Respondent's failure to comply with the Civil and Appellate Rules of Procedure and his inability to appreciate legal precedent have caused needless hours and expenses for lawyers, adverse parties and judges. All of the actions initiated by Respondent have been rejected by the Pennsylvania courts, including the Pennsylvania Supreme Court.

Respondent needlessly and baselessly impugned the integrity of two judges during the course of the multiple proceedings, in violation of RPC 8.2(a). He questioned President Judge Kenney's competency in the law: "somebody needs to wake up Judge Kenney!" Respondent also made allusions that Judge Durham was removed prior to the Breach of Contract Action because of improper conduct. In addition to suggesting that these judges were not competent, Respondent sued the Court Administrator of Delaware County in the wrong forum, for merely doing his job.

Respondent's violation of RPC 8.4(d) is substantiated by his multiple, meritless litigations that are emblematic of both his excessive and misplaced zeal and

his inability to accept the rulings of the Pennsylvania courts. His actions have prejudiced the administration of justice.

In examining the record before us, we find multiple aggravating factors. Respondent's actions were not isolated nor relegated to a short period of time. Rather, his misconduct has spanned years. Respondent has continued to display an unrepentant attitude even though no court has yet to agree with his interpretation of the law and facts. The record is devoid of evidence that Respondent has advised his client to accept the court's appellate decisions. His unwavering belief that his version of events is correct has propelled the baseless lawsuits, motions, pleadings and other claims over what Respondent has admitted is his quest to recover his client's \$1,414.00 expenditure for carpeting. Our analysis of Respondent's behavior leads us to conclude that his ultimate interest is to frustrate the Seller's ability to be granted appropriate relief through the legal system. The record contains no assurance that Respondent intends to cease his relentless, overzealous prosecution of his claims.

During the course of the disciplinary proceedings, Respondent referenced his kidney condition in general terms. He did not present any evidence or factual testimony concerning the effect, if any, his kidney problems and medications had on him. Respondent has not shown that he is entitled to mitigation for his kidney issues. *Office of Disciplinary Counsel v. Braun*, 553 A.2d 894 (Pa. 1989). We do, however, find mitigation in Respondent's lack of previous discipline and his community service.

Having concluded that Respondent violated the Rules, this matter is ripe for the determination of discipline. The Hearing Committee recommended a suspension of five years following its analysis of the evidence and its observations of Respondent during the hearing. Petitioner likewise recommended a suspension of five years, based

on Respondent's egregious misconduct. In yet another example of Respondent's incompetence, instead of taking the opportunity to consider the evidence and recommend a sanction, Respondent's post-hearing brief, Brief on Exceptions and oral argument comprised both an attack on Office of Disciplinary Counsel and a misplaced attempt to re-litigate the previous rulings and remedy the purported wrongs brought upon him and his client.

After reviewing the recommendations of the Hearing Committee and the parties, and after considering the nature and gravity of the misconduct as well as the presence of aggravating and mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4th 115 (2004), we recommend that Respondent be suspended for a period of five years.

Respondent's actions constitute serious misconduct. While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and are suggestive of a lengthy sanction, when, as here, an attorney's pattern of filing multiple frivolous pleadings and motions, abusing the judicial system and making spurious allegations against jurists, would likely pose a danger to the public if he continued to practice law. *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186 (Pa. 1983).

Attorneys who have engaged in a course of conduct designed to obstruct the judicial process by instigating baseless filings have received disbarment or lengthy suspensions. Particularly persuasive is the recent case of *Office of Disciplinary Counsel v. John J. Koresko V*, 2175 D.D. 3 (Pa. 2015). The facts and misconduct in *Koresko* are strikingly similar to this matter. In both cases, meritless filings stemmed from a real estate transaction. The disciplinary case against Koresko arose solely from the numerous false and baseless claims, including lawsuits, that he filed against the

parties, their attorneys individually and their respective law firms. Koresko also filed numerous pleadings, motions and interlocutory appeals based on improper and meritless grounds. In addition, Koresko intentionally interfered with opposing counsel's lawful efforts to conduct discovery depositions and delayed the case for one year. Koresko's claims were dismissed on substantive and procedural grounds. Koresko demonstrated a significant lack of remorse, analogous to Respondent, as he remained intractable in his positions, despite overwhelming evidence to the contrary. The Board recommended a suspension for a period of five years. The Supreme Court disbarred Koresko when he did not respond to a Rule to Show Cause.

A three year period of suspension was imposed in *Office of Disciplinary Counsel v. Allen L. Feingold*, 1093 D.D.3 (Pa. 2006), where Feingold engaged in misrepresentation to the court and engaged in a pattern of frivolous lawsuits against opposing counsel and other non-parties.

Five year suspensions were imposed in the cases of *Office of Disciplinary Counsel v. Price*, 732 A.2d 599 (Pa. 1999) and *Office of Disciplinary Counsel v. Donald A. Bailey*, 1760 D.D. 3 (Pa. 2013). Mr. Price engaged in the filing of false accusations against two district justices and a district attorney and made misrepresentations on Department of Public Welfare medical evaluation forms. The Court imposed a suspension of five years, emphasizing Price's failure to recognize the harm he caused to his victims' reputations and his callous disregard for the truth. *732 at 607*. Mr. Bailey engaged in abuse of the legal system by making false accusations against federal judges. The Board found that Bailey refused to accept any ruling adverse to his client and his response to any ruling against him was to file more pleadings vilifying the

judges who ruled against him. The Board found Bailey deserved some mitigation based upon public service as Auditor General and his military service in Viet Nam.

The decisions in the above cases offer persuasive precedent for the imposition of a five year suspension in the instant matter. Although the facts in Respondent's matter and *Koresko* are similar, it is our conclusion that disbarment is not warranted, for the following reasons. Respondent's misconduct was not the result of dishonesty, but rather stemmed from his consistent demonstration of ignorance of the law, incompetence and poor judgment, coupled with an excessive zeal to pursue groundless litigation. Koresko's misconduct went beyond overzealous representation as he leveled a barrage of threats and abusive behavior at multiple targets to influence the course of the litigation and engaged in acts of dishonesty, including making false allegations in pleadings and filing false, misleading and contradictory affidavits from a third party.

The primary purpose of the disciplinary system in Pennsylvania is to protect the public from unfit attorneys and to preserve public confidence in the legal system. *Office of Disciplinary Counsel v. Stern*, 526 A.2d 1180 (1987). Petitioner convincingly proved that Respondent poses a danger to the public and the profession itself. A suspension of five years is consistent with precedent and is warranted to call attention to Respondent's undeterred pattern of baseless litigation and abuse of the judicial system.

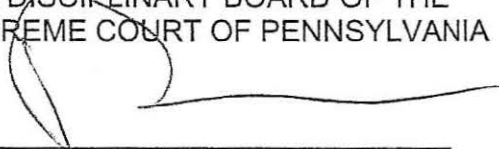
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Edward Charles Malloy, III, be Suspended from the practice of law for a period of five 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: 
Brian John Cali, Board Member

Date: 4/26/16

Board Member Lewis did not participate in the adjudication.