

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2853 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 190 DB 2020
	:	
v.	:	Attorney Registration No. 49104
	:	
CLARENCE E. ALLEN,	:	(York County)
	:	
Respondent	:	
	:	

**ORDER**

**PER CURIAM**

**AND NOW**, this 14<sup>th</sup> day of April, 2022, upon consideration of the Report and Recommendations of the Disciplinary Board, Clarence E. Allen is suspended from the Bar of this Commonwealth for a period of two years. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Nicole Traini  
As Of 04/14/2022

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 190 DB 2020
Petitioner	:	
	:	
v.	:	Attorney Registration No. 49104
	:	
CLARENCE E. ALLEN,	:	
Respondent	:	(York 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 December 14, 2020, Petitioner, Office of Disciplinary Counsel, charged Respondent, Clarence E. Allen, with misconduct in five separate client matters. Respondent filed an Answer to Petition on February 19, 2021.

On March 30, 2021, Hearing Committee Chair Vincent Cimino convened a prehearing conference. Respondent failed to appear for the conference. A District III Hearing Committee ("Committee") held a disciplinary hearing on May 3, 2021. Petitioner

presented four witnesses and offered 19 exhibits. Respondent appeared pro se. He testified on his own behalf, called no other witnesses, and did not offer any exhibits.

On June 9, 2021, Petitioner filed a post-hearing brief to the Committee and requested that the Committee recommend to the Board that Respondent be suspended for a period of at least one year and one day. Respondent did not file a post-hearing brief.

By Report filed on August 11, 2021, the Committee concluded that Respondent violated the rules as charged in the Petition for Discipline and recommended to the Board that Respondent be suspended for a period of at least one year and one day. The parties did not take exception to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on October 25, 2021.

## II. FINDINGS OF FACT

The Board makes the following findings:

1. ODC, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "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 Clarence E. Allen, born in 1952 and admitted to practice law in the Commonwealth of Pennsylvania in 1987. (Pet. for Disc., ¶ 2; Stipulations, ¶¶ 2-3)

3. Respondent's registered address is P.O. Box 510, York, Pennsylvania 17405. (Pet. for Disc., ¶ 3; Stipulations, ¶ 3)

4. Pursuant to Pa.R.D.E. 201(a)(1), Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

**The Henry Matter**

5. In or around June 2018, Albert Henry retained Respondent for purposes of obtaining a divorce and drafting a will. (Pet. for Disc., ¶ 5; Stipulations, ¶ 5; ODC-3 at 1, 5; N.T. at 95-96)

6. Respondent had not previously represented Mr. Henry with regard to any legal matter. (N.T. at 95)

7. At that time, Mr. Henry informed Respondent that he had previously filed for divorce in Dauphin County in 2015 ("2015 Divorce"), but had been unsuccessful because Mr. Henry's wife refused to sign the necessary paperwork. (Pet. for Disc., 6; Stipulations, ¶ 6; ODC-3 at 4; N.T. at 95-96, 120)

8. Mr. Henry further provided Respondent with the docket information and name of his counsel for the 2015 divorce. (Pet. for Disc., 7; Stipulations, ¶ 7; ODC-3 at 4)

9. Respondent advised Mr. Henry that his fee for the divorce would be \$800.00, which included the filing fee, and that he would charge \$150.00 for the will. (Pet. for Disc., ¶ 8; ODC-3 at 5-6; N.T. at 96)

10. Mr. Henry thereafter paid Respondent \$750.00 in cash for the divorce matter. (Pet. for Disc., ¶ 9; Stipulations, ¶ 8; ODC-3 at 19)

11. Respondent failed to deposit and maintain Mr. Henry's funds in an IOLTA account. (Pet. for Disc., ¶ 10; N.T. at 128-129)

12. Mr. Henry did not provide Respondent with informed consent, confirmed in writing, permitting Respondent to maintain Mr. Henry's funds outside of an IOLTA account. (Pet. for Disc., ¶ 11; N.T. at 99, 128-129)

13. Over the ensuing months, Respondent failed to undertake any meaningful action to advance Mr. Henry's divorce. (Pet. for Disc., ¶ 12; ODC-1; N.T. at 131-134)

14. During that time, Mr. Henry contacted Respondent numerous times for updates concerning his divorce. (Pet. for Disc., ¶ 13; Stipulations, ¶ 9; ODC-3; N.T. at 101, 131)

15. In his responses to Mr. Henry, Respondent consistently told Mr. Henry that the divorce was underway, but that Respondent was having difficulty serving Mr. Henry's wife with the necessary paperwork because Respondent could not locate her. (Pet. for Disc., ¶ 15; Stipulations, ¶ 10; N.T. at 101, 131)

16. Respondent's statements were false and misleading, in that he had not filed anything relative to Mr. Henry's divorce and, therefore, there was nothing for Respondent to serve upon Mr. Henry's wife. (Pet. for Disc., ¶ 16; ODC-1)

17. On October 15, 2018, Respondent told Mr. Henry that Respondent needed an additional \$450.00 for "alternative service" of the divorce complaint. (Pet. for Disc., ¶ 17; Stipulations, ¶ 11; ODC-3 at 20; N.T. at 99-100)

18. At that time, Respondent had not filed anything relative to Mr. Henry's divorce with any court. (Pet. for Disc., ¶ 18; Stipulations, ¶ 12; N.T. at 133)

19. Mr. Henry promptly paid Respondent \$450.00, and provided his wife's phone number, social security number, and state of residence. (Pet. for Disc., ¶ 19; Stipulations, ¶ 13; N.T. at 100)

20. Respondent failed to deposit and maintain the funds he received for “alternative service” into an IOLTA account. (N.T. at 130-131)

21. Respondent did not thereafter serve the divorce complaint upon Mr. Henry’s wife. (Stipulations, ¶ 14)

22. On October 22, 2018, Mr. Henry asked Respondent to begin providing weekly updates on his divorce. (Pet. for Disc., ¶ 21; ODC-3 at 20; N.T. at 102-103)

23. From October 22, 2018, to November 23, 2018, Respondent failed to communicate with Mr. Henry or otherwise keep him apprised as to the status of his divorce. (Pet. for Disc., ¶ 22; ODC-3 at 20-21; N.T. at 103)

24. On January 2, 2019, Respondent informed Mr. Henry that he had filed a new divorce complaint on Mr. Henry’s behalf in Cameron County, and that the matter was docketed at 2018-1815. (Pet. for Disc., ¶ 23; Stipulations, ¶ 15; ODC-3 at 24; N.T. at 104-106)

25. Respondent’s statements were false and misleading, in that he still had not filed anything relative to Mr. Henry’s divorce with any court. (Pet. for Disc., ¶ 24; N.T. at 133-134)

26. The Cameron County docket number Respondent provided Mr. Henry was for a matter wholly unrelated to Mr. Henry. (Pet. for Disc., ¶ 25; Stipulations, ¶ 16; N.T. at 133-134)

27. On February 5, 2019, Respondent told Mr. Henry that a private detective had obtained the address for Mr. Henry’s wife, and that Respondent needed to refile the divorce and serve the papers therefor. (Pet. for Disc., ¶ 26; Stipulations, ¶ 17; ODC-3 at 29; N.T. at 106)

28. Respondent failed to explain to Mr. Henry why Respondent needed to “refile” the divorce. (N.T. at 106-107)

29. At that time, Mr. Henry did not know what was going on with his divorce and took Respondent at his word. (N.T. at 106-107)

30. On February 6, 2019, Respondent advised Mr. Henry that he was preparing to refile Mr. Henry’s divorce. (Pet. for Disc., ¶ 27; Stipulations, ¶ 18; ODC-3 at 29; N.T. at 106, 134)

31. Respondent’s statements were false and misleading, in that there was nothing for Respondent to “refile” because Respondent had not yet filed anything relative to Mr. Henry’s divorce with any court. (Pet. for Disc., ¶ 28; N.T. at 134)

32. In April 2019, Mr. Henry contacted Respondent to express his frustration over the lack of progress in his divorce, and to request a refund of his fee. (Pet. for Disc., ¶ 29; Stipulations, ¶ 19; ODC-3 at 30, 32)

33. On or around April 9, 2019, Respondent told Mr. Henry that he would complete Mr. Henry’s divorce and will free of charge. (Pet. for Disc., ¶ 30; Stipulations, ¶ 20; ODC-3 at 33; N.T. at 108)

34. At or around that same time, Respondent and Mr. Henry agreed that Respondent would provide Mr. Henry with a \$1,500.00 refund following the entry of a divorce decree. (Pet. for Disc., ¶ 31; Stipulations, ¶ 21)

35. On May 1, 2019, Respondent filed a divorce complaint on Mr. Henry’s behalf in Cameron County, docketed at CV-2019-00665-DV. (Pet. for Disc., ¶ 32; Stipulations, ¶ 22; ODC-1; N.T. at 136)

36. By letter dated July 11, 2019 (“DB-7 letter”), ODC advised Respondent of Mr. Henry’s complaint and, *inter alia*, directed Respondent to provide ODC with certain documentation and information. (Pet. for Disc., ¶ 34; Stipulations, ¶ 23; N.T. at 136)

37. Specifically, Respondent was to provide a copy of Mr. Henry’s fee agreement; a complete accounting of his representation of Mr. Henry; identity of the account into which Respondent deposited Mr. Henry’s fees; and periodic statements for that account for the period of June 2018 to the present (collectively, “Additional Information”). (Pet. for Disc., ¶ 35; Stipulations, ¶ 24)

38. After he received the DB-7 letter, Respondent began to communicate more with Mr. Henry and started to advance his divorce more diligently. (N.T. at 103-104, 107, 111-112)

39. On an unknown date, Respondent provided Mr. Henry with a partial refund of his fee by giving him \$750.00 in cash. (Pet. for Disc., ¶ 36; Stipulations, ¶ 25; N.T. at 108, 118, 129)

40. On September 16, 2019, Respondent submitted an untimely response to the DB-7 letter but failed to include any of the Additional Information therewith. (Pet. for Disc., ¶ 37; Stipulations, ¶ 26)

41. On October 31, 2019, ODC sent a subpoena duces tecum (“First Subpoena”) to Respondent via certified mail, return receipt requested. (Pet. for Disc., ¶ 38; N.T. at 136-137)

42. The First Subpoena instructed Respondent to appear at ODC’s Harrisburg office at 10:00 a.m. on November 14, 2019, and provide the Additional Information. (Pet. for Disc., ¶ 39; N.T. at 136-137)



43. Respondent did not thereafter contact ODC to advise that he was unable to appear at the place and time set forth in the First Subpoena, or that he would not do so. (Pet. for Disc., ¶ 40; Stipulations, ¶ 27; N.T. at 136-137)

44. Respondent failed to appear pursuant to the First Subpoena. (Pet. for Disc., ¶ 41; Stipulations, ¶ 28; N.T. at 136-137)

45. On December 9, 2019, ODC sent an email to Respondent, wherein it noted that Respondent had not communicated with ODC relative to the First Subpoena, and asked Respondent to contact ODC to schedule a time that was convenient for him to appear and provide the Additional Information. (Pet. for Disc., ¶ 42; Stipulations, ¶ 29)

46. Respondent subsequently corresponded with ODC, but failed to provide a date and time in response to ODC's request therefor. (Pet. for Disc., ¶ 43; Stipulations, ¶ 30)

47. On December 13, 2019, ODC sent another subpoena duces tecum ("Second Subpoena") to Respondent *via* certified mail, return receipt requested and regular mail. (Pet. for Disc., ¶ 44; Stipulations, ¶ 31)

48. The Second Subpoena directed Respondent to appear at ODC's Harrisburg office at 10:00 a.m. on January 6, 2020, and provide the Additional Information. (Pet. for Disc., ¶ 45; Stipulations, ¶ 32)

49. By email dated December 16, 2019, Respondent advised ODC that he had discovered some of the Additional Information in storage, and that he would be able to honor the First Subpoena by December 20, 2019. (Pet. for Disc., ¶ 46; Stipulations, ¶ 33)

50. Later that same day, ODC sent an electronic copy of the Second Subpoena to Respondent *via* email. (Pet. for Disc., ¶ 47; Stipulations, ¶ 34)

51. Respondent did not thereafter contact ODC to advise that he was unable to appear at the place and time set forth in the Second Subpoena, or that he would not do so. (Pet. for Disc., ¶ 48; Stipulations, ¶ 35)

52. Respondent failed to provide ODC with the Additional Information by December 19, 2019, as he had stated. (Pet. for Disc., ¶ 49; Stipulations, ¶ 36)

53. Respondent further failed to appear pursuant to the Second Subpoena. (Pet. for Disc., ¶ 50; Stipulations, ¶ 37; N.T. at 136-137)

54. On January 6, 2020, Respondent called ODC to advise that he would drop off the Additional Information the following day, January 7, 2020. (Pet. for Disc., ¶ 51; Stipulations, ¶ 38)

55. Respondent thereafter failed to hand-deliver the Additional Information. (Pet. for Disc., ¶ 52; Stipulations, ¶ 39)

56. By email dated January 13, 2020, Respondent purported to provide the Additional Information to ODC. (Pet. for Disc., ¶ 53; Stipulations, ¶ 40)

57. Respondent sent his January 13, 2020, email as a reply to ODC's prior correspondence providing Respondent with a copy of the Second Subpoena. (Pet. for Disc., ¶ 54; Stipulations, ¶ 41)

58. Respondent's January 13, 2020, email did not include all of the requested Additional Information. (Pet. for Disc., ¶ 55; Stipulations, ¶ 42)

59. Respondent did, however, provide a fee agreement for Mr. Henry's matter, dated July 17, 2018. (Pet. for Disc., ¶ 56; Stipulations, ¶ 43)

60. While the fee agreement stated that the fee was “nonrefundable,” it failed to advise that Respondent would not maintain Mr. Henry’s fee in a trust account, to be drawn upon only as services were rendered or fees incurred. (Pet. for Disc., ¶ 57; ODC-14)

61. The date shown on the fee agreement was false and misleading, in that Respondent had not had Mr. Henry sign anything at the beginning of the representation. (Pet. for Disc., ¶ 58; N.T. at 98)

62. Respondent had Mr. Henry sign the fee agreement on December 21, 2019 - seventeen months after the date on the fee agreement. (Pet. for Disc., ¶ 59; Stipulations, ¶ 45; N.T. at 99, 109)

63. At the same time Respondent had Mr. Henry sign the antedated fee agreement, Respondent paid the remainder of Mr. Henry’s refund by providing him with \$750.00 in cash. (Pet. for Disc., ¶ 60; Stipulations, ¶ 46; N.T. at 114)

64. Respondent neither explained the fee agreement to Mr. Henry, nor told him why the agreement was necessary. (N.T. at 110-111)

65. Respondent did not advise Mr. Henry that he could refuse to sign the fee agreement if he felt uncomfortable doing so. (N.T. at 111, 114-115)

66. While Mr. Henry’s wife had initially agreed to consent to the divorce, she has since asserted economic claims such as spousal support. (N.T. at 112-114, 117).

67. As of May 3, 2021, Mr. Henry’s divorce matter remained unresolved. (N.T. at 113).

### **The Wright Matter**

68. On or around October 20, 2015, Michelle Wright suffered injuries while dining at a restaurant operated by Red Lobster LLC (“Red Lobster”) in York, Pennsylvania. (Pet. for Disc., ¶ 118; Stipulations, ¶ 101; ODC-65)

69. Ms. Wright thereafter retained Respondent to file a lawsuit against Red Lobster. (Pet. for Disc., ¶ 119; Stipulations, ¶ 102)

70. Pursuant to 42 Pa.C.S. § 5524, actions to recover damages for injuries caused by another’s negligence must be commenced within two years. (Stipulations, ¶ 103)

71. Respondent filed a Praecipe for a Writ of Summons on Ms. Wright’s behalf on October 23, 2017, by which point the statute of limitations had expired. (Pet. for Disc., ¶ 121; N.T. at 77-78)

72. On or around January 23, 2018, Red Lobster filed a Rule to File a Complaint (“Complaint Rule”) within 20 days. (Pet. for Disc., ¶ 122; N.T. at 78)

73. Ms. Wright’s Complaint was due in February 2018. (Pet. for Disc., ¶ 123; N.T. at 78-79)

74. On April 13, 2018, Respondent untimely filed Ms. Wright’s Complaint with the Court. (Pet. for Disc., ¶ 124; N.T. at 79)

75. Ms. Wright’s Complaint alleged that the food she had eaten at Red Lobster made her sick. (N.T. at 78)

76. Respondent failed to serve a copy of Ms. Wright’s Complaint upon Red Lobster. (Pet. for Disc., ¶ 125; N.T. at 79)

77. On April 20, 2018, Red Lobster sent Respondent a 10-day Notice of Intent to Enter Default Judgment (“Default Notice”) against Ms. Wright for failure to file a Complaint. (Pet. for Disc., ¶ 126; Stipulations, ¶ 104; N.T. at 79-80)

78. Respondent thereafter failed to inform Red Lobster that he had filed a Complaint on Ms. Wright’s behalf. (Pet. for Disc., ¶ 127; N.T. at 80, 88)

79. Eventually, the Court advised Red Lobster that Respondent had filed the Complaint on April 13, 2018. (Pet. for Disc., ¶ 128; Stipulations, ¶ 105; N.T. at 80, 88)

80. Red Lobster then attempted to contact Respondent to request a copy of the Complaint. (Pet. for Disc., ¶ 129; Stipulations, ¶ 106; N.T. at 80)

81. Respondent failed to respond to Red Lobster’s communications. (Pet. for Disc., ¶ 130; N.T. at 80).

82. Red Lobster obtained a copy of the Complaint directly from the Court. (Pet. for Disc., ¶ 131; Stipulations, ¶ 107; N.T. at 80, 88)

83. By letter dated May 24, 2018, Red Lobster served Respondent with Interrogatories and a Request for Production of Documents (“Discovery Requests”). (Pet. for Disc., ¶ 132; Stipulations, ¶ 108)

84. The Discovery Requests included standard requests and questions, some of which pertained to premises liability. (N.T. at 81)

85. Ms. Wright’s responses to the Discovery Requests were due on or before Monday, June 25, 2018. (Pet. for Disc., ¶ 133; Stipulations, ¶ 109; N.T. at 82)

86. By letter dated June 25, 2018, Red Lobster noted that it had not yet received any answers to the Discovery Requests, and provided Respondent an

additional 10 days to submit Ms. Wright's responses thereto. (Pet. for Disc., ¶ 134; Stipulations, ¶ 110; N.T. at 82)

87. On June 26, 2018, Respondent sent Red Lobster an email, in which he requested a 30-day extension to respond to the Discovery Requests. (Pet. for Disc., ¶ 135; Stipulations, ¶ 111; N.T. at 82)

88. Red Lobster agreed to Respondent's request, thereby making Ms. Wright's responses to the Discovery Requests due on or before July 26, 2018. (Pet. for Disc., ¶ 136; Stipulations, ¶ 112; N.T. at 82)

89. Respondent failed to submit any response to the Discovery Requests by the deadline. (Pet. for Disc., ¶ 137; N.T. at 82)

90. Red Lobster attempted to contact Respondent regarding the Discovery Requests on six or seven occasions. (N.T. at 83)

91. Ultimately, Red Lobster filed a Motion to Compel Discovery, which the Court denied due to the omission of a specific Praecipe. (N.T. at 83, 86).

92. On September 30, 2018, Respondent asked Red Lobster for another copy of the Discovery Requests. (N.T. at 83)

93. Red Lobster thereafter tried to follow-up with Respondent concerning the Discovery Requests on multiple occasions, but Respondent failed to return Red Lobster's communications. (N.T. at 83)

94. On February 8, 2019, Red Lobster filed a second Motion to Compel Discovery. (N.T. at 83)

95. Later that same month, Respondent advised Red Lobster for the first time that the Discovery Requests pertained to a different cause of action than that asserted by Ms. Wright. (N.T. at 83-84, 86-87)

96. In response, Red Lobster instructed Respondent to answer the requests that were relevant to Ms. Wright's legal matter. (N.T. at 84)

97. On or around February 25, 2019, Red Lobster served Respondent with supplemental discovery, which Red Lobster tailored to the allegations in Ms. Wright's complaint. (N.T. at 83-84, 87)

98. Red Lobster provided Respondent with additional time to respond to the supplemental discovery. (N.T. at 84)

99. By the end of March 2019, Respondent had given Red Lobster copies of emergency room records, but had otherwise failed to provide a full and complete response to the Discovery Requests. (N.T. at 84)

100. Respondent provided Red Lobster a full response to the Discovery Requests on April 16, 2019 – nearly one year after Red Lobster had initially served the same. (N.T. at 84, 87)

101. Ms. Wright's case has become more protracted than other cases of a similar nature because of Respondent's unresponsiveness. (N.T. at 85- 86)

102. Red Lobster and Ms. Wright are currently waiting for the Court to list the case for trial. (N.T. at 90)

### **The Hernandez Matter**

103. Respondent represented John and Veronica Hernandez (collectively, "the Hernandezes") in a civil matter docketed as *John and Veronica Hernandez v. Yale Investments LLC*, MJ-19105-CV-33-2017 (York County). (Pet. for Disc., ¶ 138; Stipulations, ¶ 113)

104. On April 3, 2017, Magisterial District Judge Joel N. Toluba awarded the Hernandezes \$1,650.00 (“MDJ Judgment”). (Pet. for Disc., ¶ 139; Stipulations, ¶ 114)

105. On May 2, 2017, Yale Investments LLC (“Yale”), appealed Judge Toluba’s decision (“MDJ Appeal”) to the York County Court of Common Pleas (“Court”). (Pet. for Disc., ¶ 140; Stipulations, ¶ 115)

106. Respondent did not represent the Hernandezes with regard to the MDJ Appeal. (Pet. for Disc., ¶ 141; Stipulations, ¶ 116)

107. On May 8, 2017, the Hernandezes personally filed a certified copy of the MDJ Judgment (“First Certified Judgment”) and a Petition to proceed *in forma pauperis* (“IFP Petition”) with the Court, at docket number 2017-NO-002770. (Pet. for Disc., ¶ 142; Stipulations, ¶ 117; N.T. at 139)

108. In response, Yale filed a Motion to Strike the First Certified Judgment on the grounds that the appeal filed on May 2, 2017, deprived Judge Toluba of any jurisdiction to certify the MDJ Judgment. (Pet. for Disc., ¶ 143; Stipulations, ¶ 118)

109. Eventually, the Court denied the IFP Petition and struck the case at 2017-NO-002770 after the Hernandezes failed to pay the appropriate filing fees. (Pet. for Disc., ¶ 144; Stipulations, ¶ 119)

110. On July 12, 2017, the Court entered a judgment of *non pros* against the Hernandezes in the MDJ Appeal after they failed to file a Complaint in response to a Rule directing that they do so. (Pet. for Disc., ¶ 145; Stipulations, ¶ 120)

111. On July 14, 2017, Respondent filed a certified copy of the MDJ Judgment (“Second Certified Judgment”) with the Court, at docket number 2017-NO-004354. (Pet. for Disc., ¶ 146; Stipulations, ¶ 121; N.T. at 140)



112. Respondent did not undertake any action to open or strike the judgment of *non pros* entered in the MDJ Appeal before filing the Second Certified Judgment. (Pet. for Disc., ¶ 148; Stipulations, ¶ 123)

113. In response, Yale filed a Petition asking the Court to strike the Second Certified Judgment and award \$500.00 in attorney's fees ("Strike Petition"). (Pet. for Disc., ¶ 147; Stipulations, ¶ 122)

114. In the Hernandezes' Answer to the Strike Petition ("Strike Answer"), Respondent argued that no action to open or strike the judgment of *non pros* was necessary because Judge Toluba certified the MDJ Judgment on May 8, 2017. (Pet. for Disc., ¶ 151; Stipulations, ¶ 124)

115. By Order dated September 3, 2019, the Court struck the Second Certified Judgment, and awarded Yale \$500.00 in attorney's fees. (Pet. for Disc., ¶ 152; Stipulations, ¶ 125; N.T. at 140)

116. In its Opinion dated that same day, the Court, *inter alia*, noted that the Strike Answer failed to provide any legal or factual basis to justify and support the act of filing the Second Certified Judgment. (Pet. for Disc., ¶ 153; Stipulations, ¶ 126)

117. The Court further stated that the award of attorney's fees was appropriate because the filing of the Second Certified Judgment was arbitrary and vexatious and was made in bad faith. (Pet. for Disc., ¶ 154; Stipulations, ¶ 127; N.T. at 140)

118. Respondent did not thereafter appeal the Court's decision. (Pet. for Disc., ¶ 155; Stipulations, ¶ 128)

**The Walker Matter**

119. On or around October 17, 2016, Ruth Walker sustained injuries after she slipped and fell while shopping at a grocery store operated by Giant Food Stores, LLC (“Giant”) in York, Pennsylvania. (Pet. for Disc., ¶ 85; Stipulations, ¶ 71; ODC-33 at 2; N.T. at 60-61)

120. Ms. Walker thereafter retained Respondent to file a lawsuit against Giant. (Pet. for Disc., ¶ 86; Stipulations, ¶ 72)

121. Pursuant to 42 Pa.C.S. § 5524, actions to recover damages for injuries caused by another’s negligence must be commenced within two years. (Stipulations, ¶ 73)

122. The last day to timely file Ms. Walker’s lawsuit was Wednesday, October 17, 2018. (Pet. for Disc., ¶ 86; N.T. at 61-64)

123. Respondent filed a Praecipe for a Writ of Summons on Ms. Walker’s behalf on October 22, 2018, by which point the statute of limitations had expired. (Pet. for Disc., ¶ 88; Stipulations, ¶ 74; ODC-25; ODC-31; N.T. at 61-64)

124. On November 15, 2018, Giant filed a Rule to File a Complaint (“Complaint Rule”) within 20 days. (Pet. for Disc., ¶ 89; Stipulations, ¶ 75; ODC-25; ODC-32; N.T. at 57-58)

125. Pursuant to Pa. R.C.P. 440(b), service of legal papers other than original process is complete upon mailing. (Pet. for Disc., ¶ 90; Stipulations, ¶ 76)

126. The York County Prothonotary mailed Respondent a copy of the Complaint Rule on November 15, 2018. (Pet. for Disc., ¶ 91; Stipulations, ¶ 77)

127. Ms. Walker’s Complaint was due on or before December 5, 2018. (Pet. for Disc., ¶ 92)

128. On December 31, 2018, Respondent filed Ms. Walker's Complaint with the Court. (Pet. for Disc., ¶ 93; Stipulations, ¶ 78)

129. On January 22, 2019, Giant filed an Answer to Ms. Walker's Complaint with New Matter. (Pet. for Disc., ¶ 94; Stipulations, ¶ 79; ODC- 34; N.T. at 61)

130. In its Answer with New Matter, Giant argued that the Court should dismiss Ms. Walker's lawsuit because Respondent had failed to file the Praecipe for Writ of Summons within the statute of limitations. (Pet. for Disc., ¶ 95; Stipulations, ¶ 80; ODC-34 at 2-3; N.T. at 61-62)

131. The Answer with New Matter included a Certificate of Service, which stated that Giant had served a copy of the Answer with New Matter upon Respondent by depositing it in the United States mail on January 17, 2019. (Pet. for Disc., ¶ 96; Stipulations, ¶ 81; ODC-34 at 11; N.T. at 64)

132. Pursuant to Pa. R.C.P. 1026(a), pleadings subsequent to the complaint must be filed within 20 days after service of the preceding pleading. (Pet. for Disc., ¶ 97; Stipulations, ¶ 82)

133. Ms. Walker's response to the Answer with New Matter was due on or before Wednesday, February 6, 2019. (Pet. for Disc., ¶ 98; Stipulations, ¶ 83)

134. Respondent failed to file a timely response to the Answer with New Matter. (Pet. for Disc., ¶ 99; ODC-38 at 4; N.T. at 64-65)

135. As a result of Respondent's failure to file a timely response to the Answer with New Matter, Giant's assertions concerning the statute of limitations were deemed admitted. (Pet. for Disc., ¶ 100; ODC-38 at 4)

136. On April 24, 2019, Giant filed a Motion for Judgment on the Pleadings (“Judgment Motion”). (Pet. for Disc., ¶ 101; Stipulations, ¶ 84; ODC-35; N.T. at 66-67)

137. Respondent filed a timely Answer to the Judgment Motion (“Motion Answer”). (Pet. for Disc., ¶ 102; Stipulations, ¶ 85; ODC-36)

138. In the Motion Answer, Respondent argued that Giant had failed to “file or certify that [it] gave notice of [its] intent to file a ten (10) day notice of [its] intention to file Motion For [*sic*] Judgment on the Pleadings as required by [Pa. R.C.P.] 237.5” and *Wells Fargo Bank, N.A. v. Vanmeter*, 67 A.3d 14 (Pa. Super. 2013). (Pet. for Disc., ¶ 103; Stipulations, ¶ 86; ODC-36; N.T. at 68-69)

139. The citations Respondent included in the Motion Answer were irrelevant to a judgment on the pleadings, in that both pertained to the procedures for obtaining a default judgment, which Giant was not seeking. (Pet. for Disc., ¶ 104; Stipulations, ¶ 87; N.T. at 69, 72)

140. Respondent thereafter filed Ms. Walker’s Answer to Giant’s Answer with New Matter (“New Matter Answer”) on June 7, 2019 – nearly four months after the deadline to do so. (Pet. for Disc., ¶ 105; Stipulations, ¶ 88; ODC-37; N.T. at 66)

141. By Order and Opinion dated June 20, 2019, the Court:

- a. noted that the New Matter Answer was untimely;
- b. concluded that the pertinent statute of limitations barred Ms. Walker’s claim;
- c. granted the Judgment Motion; and

d. dismissed Ms. Walker's lawsuit with prejudice. (Pet. for Disc., ¶ 106; Stipulations, ¶ 89; ODC-38; N.T. at 70-71, 74)

142. On July 22, 2019, Respondent filed a timely Notice of Appeal to the Superior Court. (Pet. for Disc., ¶ 107; Stipulations, ¶ 90; ODC-25 at 2)

143. By Order dated July 23, 2019, the Court directed Respondent to file a concise statement of errors complained of on appeal pursuant to Pa.R.A.P. 1925(b) ("1925(b) Statement") within 21 days. (Pet. for Disc., ¶ 108; Stipulations, ¶ 91; ODC-25 at 2)

144. The 1925(b) Statement was due on or before Tuesday, August 13, 2019. (Pet. for Disc., ¶ 109; Stipulations, ¶ 92)

145. Respondent failed to file the 1925(b) Statement on Ms. Walker's behalf. (Pet. for Disc., ¶ 110; Stipulations, ¶ 93)

146. On July 25, 2019, the Superior Court Prothonotary sent Respondent a docketing statement for Ms. Walker's appeal, docketed at 1218 MDA 2019. (Pet. for Disc., ¶ 111; Stipulations, ¶ 94)

147. Respondent was to return the docketing statement on or before Monday, August 5, 2019. (Pet. for Disc., ¶ 112; Stipulations, ¶ 95)

148. Pursuant to Pa.R.A.P. 3517, failure to timely file a docketing statement may result in dismissal of the appeal. (Pet. for Disc., ¶ 113; Stipulations, ¶ 96)

149. Respondent failed to file the docketing statement by the prescribed date. (Pet. for Disc., ¶ 114; Stipulations, ¶ 97)

150. By Order dated August 28, 2019, the Superior Court directed Respondent to file the docketing statement by Monday, September 9, 2019, and

noted that failure to do so would result in an Order dismissing Ms. Walker's appeal. (Pet. for Disc., ¶ 115; Stipulations, ¶ 98)

151. Respondent filed the docketing statement on September 13, 2019, four days after the deadline set forth in the Superior Court's August 28, 2019, Order. (Pet. for Disc., ¶ 116; Stipulations, ¶ 99)

152. By Opinion dated April 22, 2020, the Superior Court affirmed the dismissal of Ms. Walker's case on the grounds that Respondent had waived all issues for review by failing to file a 1925(b) Statement. (Pet. for Disc., ¶ 117; Stipulations, ¶ 100)

### **The Carollo Matter**

153. The mother of John Michael Carollo retained Respondent sometime in 2019 in connection with two criminal matters, docketed at CP-67-CR- 5526-2019 and CP-67-CR-5689-2019 (York C.P.). (Pet. for Disc., ¶ 61; Stipulations, ¶ 47; ODC-21 at 4)

154. At CP-67-CR-5526-2019, Mr. Carollo was charged with one count of Aggravated Assault, a First-Degree Felony, and one count of Strangulation, a Second-Degree Misdemeanor. (ODC-17; N.T at 26)

155. At CP-67-CR-5689-2019, Mr. Carollo was charged with one count of Simple Assault, a Second Degree Misdemeanor, and one count of Harassment, a Summary Offense. (ODC-18; N.T at 26)

156. Mr. Carollo is an intellectually and developmentally disabled individual. (Pet. for Disc., ¶ 62; Stipulations, ¶ 48; N.T. at 26)

157. Mr. Carollo was not capable of representing himself with regard to the charges against him. (N.T. at 26)

158. On October 4, 2019, Respondent entered his appearance as Mr. Carollo's counsel for the matter docketed at CP-67-CR-5526-2019. (Pet. for Disc., ¶ 63; Stipulations, ¶ 49; ODC-20; N.T. at 27)

159. On that same date, Respondent signed a Waiver of Arraignment ("Waiver"). (Pet. for Disc., ¶ 64; Stipulations, ¶ 50; ODC-20; N.T. at 28)

160. The bottom of the Waiver expressly scheduled a pre-trial conference for December 20, 2019, at 1:30 p.m. (Pet. for Disc., ¶ 65; Stipulations, ¶ 51; ODC-20; N.T. at 28-29)

161. On October 16, 2019, Respondent entered his appearance as Mr. Carollo's counsel for the matter docketed at CP-67-CR-5689-2019. (Pet. for Disc., ¶ 66; Stipulations, ¶ 52)

162. On December 20, 2019, Mr. Carollo appeared for his pre-trial conference before Judge Craig Trebilcock. (Pet. for Disc., ¶ 67; Stipulations, ¶ 53; ODC-21 at 2; N.T. at 30)

163. Respondent, however, failed to appear, and gave no prior notice or explanation to the Court or Mr. Carollo. (Pet. for Disc., ¶ 68; Stipulations, ¶ 54; ODC-21 at 2, 4-5; N.T. at 30-31)

164. Respondent's absence caused Mr. Carollo to become anxious, fearful, and agitated because he believed he was going to jail. (ODC-21 at 7-8; N.T. at 31-32)

165. The Court proceeded with the pre-trial conference despite Respondent's absence, and ordered a mental health evaluation for Mr. Carollo. (Pet. for Disc., ¶ 69; Stipulations, ¶ 55; ODC-21; N.T. at 32-33)

166. The Court also issued an Order directing Respondent to appear on December 30, 2019, at 1:15 p.m. to explain his failure to attend the pretrial conference ("Abandonment Hearing"). (Pet. for Disc., ¶ 70; Stipulations, ¶ 56; ODC-21 at 4; N.T. at 33)

167. On December 21, 2019, the Court sent notice of the Abandonment Hearing to Respondent *via* regular mail and by electronic mail. (Pet. for Disc., ¶ 71; Stipulations, ¶ 57; ODC-23 at 4-5; N.T. at 38)

168. Respondent failed to appear for the Abandonment Hearing. (Pet. for Disc., ¶ 72; Stipulations, ¶ 58; ODC-22 at 2; N.T. at 33-34)

169. In response to Respondent's absence, the Court issued a Rule for Respondent to appear on January 13, 2020, at 9:00 a.m. and show cause why he should not be held in contempt ("Contempt Hearing"). (Pet. for Disc., ¶ 73; Stipulations, ¶ 59; ODC-22 at 2-3; N.T. at 35)

170. The Court sent notice of the Contempt Hearing to Respondent *via* regular mail and by electronic mail. (N.T. at 35-36).

171. At the Contempt Hearing, Respondent acknowledged that he had been aware of the pre-trial conference but claimed that he did not attend because he was awaiting a decision concerning Mr. Carollo's admission to Wellness Court. (Pet. for Disc., ¶ 74; Stipulations, ¶ 60; ODC-23 at 2-3; N.T. at 37)



172. Respondent also asserted that he had not appeared for the Abandonment Hearing because he had not received any notice therefor. (Pet. for Disc., ¶ 75; Stipulations, ¶ 61; ODC-23 at 3, 8; N.T. at 37)

173. Respondent did not file Mr. Carollo's Wellness Court application until December 31, 2019 – eleven days after the pre-trial conference. (Pet. for Disc., ¶ 76; Stipulations, ¶ 62; ODC-24 at 4-5; N.T. at 39)

174. As a result, Respondent's purported explanation for his absence at Mr. Carollo's pre-trial conference was false and misleading. (Pet. for Disc., ¶ 76; N.T. at 39-40)

175. In response, the Court noted that Respondent had a history of failing to appear at scheduled court appearances on behalf of other clients. (Pet. for Disc., ¶ 77; Stipulations, ¶ 63; ODC-23 at 6-7, 10, 13)

176. The Court also characterized Respondent's practice of law as chaotic, undisciplined, haphazard, and inconsistent with professional standards. (Pet. for Disc., ¶ 78; Stipulations, ¶ 64; ODC-23 at 10-11)

177. The Court found Respondent in direct criminal contempt and ordered Respondent to file financial documents relative to his representation of Mr. Carollo ("Financial Records") on or before January 17, 2020. (Pet. for Disc., ¶ 79; Stipulations, ¶ 65; ODC-23 at 11-13; N.T. at 40-41)

178. Respondent thereafter timely filed the Financial Records and a letter with the Court. (Pet. for Disc., ¶ 80; Stipulations, ¶ 66; ODC-24 at 3)

179. On January 24, 2020, the Court convened a hearing to determine the proper sanction for Respondent's criminal contempt ("Sanction Hearing"). (Pet. for Disc., ¶ 81; Stipulations, ¶ 67; ODC-24)

180. At the Sanction Hearing, the Court rejected Respondent's claims as to why he had failed to appear for the pre-trial conference and Abandonment Hearing. (Pet. for Disc., ¶ 82; Stipulations, ¶ 68; ODC-24 at 5-6)

181. The Court further directed Respondent to pay a fine of \$1,500.00, plus court costs, on or before May 26, 2020. (Pet. for Disc., ¶ 83; Stipulations, ¶ 69; ODC-24 at 8-10; N.T. at 42)

182. The Court also issued an oral reprimand to Respondent for having missed Mr. Carollo's pre-trial conference and the Abandonment Hearing. (ODC-24 at 8-9; N.T. at 41)

183. To date, Respondent has not paid any portion of the fine. (Pet. for Disc., ¶ 84; Stipulations, ¶ 70; N.T. at 42, 50)

184. Respondent has not requested an extension of time to pay the fine, nor has he offered any explanation to the Court as to why he has not yet paid the fine. (N.T. at 42)

185. Judge Trebilcock filed a disciplinary complaint against Respondent due to his pattern of failing to appear for hearings and other proceedings. (N.T. at 44, 46-47)

186. Petitioner presented four witnesses at the disciplinary hearing held on May 3, 2021. The testimony of the witnesses was credible. (N.T. at 22-47, 54-71, 76-86, 92-114, 119-120)

187. Respondent testified on his own behalf.

188. Respondent testified that despite Judge Trebilcock's testimony, no judge has complained about him being in contempt for his representation of clients. (N.T. at 125-126)

189. Respondent admitted he was not as responsive to Mr. Henry as he should have been, and claimed that he did eventually respond to Mr. Henry's texts and telephone messages. (*Id*).

190. Respondent referenced various physical ailments he suffered, but he did not provide any other evidence of such problems. (N.T. at 127)

191. Respondent testified that he has "had enough" and he "just wants to get this over with." (N.T. at 136). He further testified "If you suspend my license, fine. If I go to jail, fine. I've had enough. It's 33 years and I'm just tired. I have no more fight left in me." (N.T. at 137)

192. Respondent's testimony lacked any remorse concerning his violations of the Rules of Professional Conduct. (N.T. at 124-128)

193. Respondent failed to accept responsibility for his actions.

194. Respondent has a record of prior discipline consisting of an Informal Admonition imposed on May 17, 2019 for violations of RPC 1.1, 1.3, 1.5(b), 1.16(d), 8.1(b), and Pa..R.D.E. 203(b)(7). Respondent's misconduct involved his neglect of two client matters, failure to appear for four scheduled court proceedings in three other client matters, failure to provide a written fee agreement, failure to return an unearned fee to the client and failure to respond to Office of Disciplinary Counsel in one matter. ODC-A.

### 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. Competent representation requires the legal knowledge, skill, thoroughness, and preparation reasonably necessary for the representation. (Henry, Wright, Hernandez, Walker, and Carollo)

2. RPC 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client. (Henry, Wright, Hernandez, Walker, and Carollo)

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

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

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

6. 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. (Henry)

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

8. RPC 1.15(m) - All Qualified Funds which are not Fiduciary Funds

shall be placed in an IOLTA Account. (Henry)

9. 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 for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. (Hernandez)

10. RPC 3.2 - A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. (Henry, Wright, Walker, and Carollo)

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. (Carollo)

12. RPC 8.1(b) - An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not... fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6. (Henry)

13. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. (Henry and Carollo)

14. RPC 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice. (Henry, Wright, Hernandez, Walker, and Carollo)

#### IV. DISCUSSION

In this matter, the Board considers the Committee's unanimous recommendation to suspend Respondent for a period of at least one year and one day for his misconduct in five separate client matters, which misconduct included incompetence, neglect, failure to communicate, misrepresentation, pursuing frivolous litigation, conduct prejudicial to the administration of justice, and failure to respond to disciplinary authorities. The parties did not take exception to the Committee's recommendation.

Petitioner bears the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). Upon review, the Board concludes that Petitioner met its burden of proof. Petitioner's evidence, in the nature of the joint stipulations, the testimony of Petitioner's witnesses, and Petitioner's exhibits, proves the facts and circumstances of the ethical violations and demonstrates Respondent's disturbing pattern of client neglect. For the following reasons, the Board recommends that Respondent be suspended for a period of two years.

The record established Respondent's egregious pattern of neglect and incompetence, which often times prejudiced the administration of justice. For example, in the Carollo matter, Respondent initially failed to appear for the pre-trial conference and later failed to appear for a hearing scheduled for him to explain his nonappearance. When Respondent finally appeared before Judge Trebilcock at the contempt hearing, he offered a false and misleading explanation for his nonappearance at the pre-trial conference. Judge Trebilcock found Respondent in direct criminal contempt, noting that Respondent

had a history of failing to appear at scheduled court proceedings on behalf of other clients. The judge ordered Respondent to pay a fine of \$1,500 by May 20, 2020, but as of the date of the disciplinary hearing on May 3, 2021, Respondent had yet to pay the fine and had not offered any explanation for his failure to do so. Judge Trebilcock was so troubled by Respondent's behavior and concerned for potential harm to the public that he filed a disciplinary complaint against Respondent.

In the Wright matter, Respondent exhibited a lack of professional responsibility when he took approximately one year to answer discovery requests and waited nearly nine months before informing opposing counsel that the discovery requests did not appear to relate to his client's cause of action. In the Walker matter, Respondent failed to commence his client's lawsuit against Giant within the applicable limitations period. He then exacerbated the problem by filing an untimely response to Giant's Answer with New Matter, which asserted that the statute of limitations barred Ms. Walker's claim. Respondent's delay proved fatal to his client's case, as the court deemed Giant's New Matter admitted, and dismissed the suit with prejudice. After appealing the dismissal to the Superior Court, Respondent neglected to file the mandatory 1925(b) statement, thereby waiving all issues for appellate review. Respondent mishandled the Hernandez matter when he acted incompetently by filing a frivolous pleading, which the court struck as arbitrary, vexatious, and made in bad faith, and awarded the opposing party attorney's fees.

The Henry matter further exemplifies Respondent's unprofessional conduct, both toward his client and Office of Disciplinary Counsel. Respondent failed to expeditiously pursue and complete his client's divorce matter and at the time of the disciplinary hearing, had yet to complete Mr. Henry's divorce despite the passage of more

than two and a half years. Respondent made numerous misrepresentations to his client, dishonestly conveying to Mr. Henry that the divorce was underway and proceeding, when in fact Respondent had not filed anything on his client's behalf for approximately one year after being retained for the representation.

Mr. Henry's dissatisfaction with Respondent's representation caused him to file a complaint with Petitioner. Thereafter, Respondent failed to cooperate with Petitioner's investigation by failing to provide all of the information Petitioner requested. In order to obtain the information, Petitioner was forced to issue two separate subpoenas and hold two corresponding subpoena return hearings. Inexplicably, Respondent failed to appear for either return hearing. His absence at the second subpoena return hearing was particularly inexcusable given that Petitioner had communicated with Respondent in an effort to schedule the hearing.

Respondent was admitted to practice law in the Commonwealth in 1987 and was 68 years of age at the time of the disciplinary hearing. The instant matter marks the second time since 2019 that Respondent has faced discipline for his unprofessional conduct, which prior disciplinary record constitutes an aggravating factor. On May 17, 2019, Respondent received an Informal Admonition for neglect of two client matters, failure to appear for four scheduled court proceedings in three other client matters, failure to provide two clients with a fee writing, and failure to return unearned fees to one client. The prior misconduct of missing court appearances, neglect, and failure to have a written fee agreement is identical to the misconduct that precipitated the current disciplinary matter. With regard to his failure to appear on behalf of his clients, notably, Respondent's failure to appear for two subpoena returns and the scheduled prehearing conference in his own disciplinary matter is an extension of his poor professionalism toward his clients.



The fairly recent prior discipline imposed in 2019 for nearly identical misconduct afforded Respondent the opportunity to remediate his practice habits and conform his conduct to the ethical standards required of the legal profession in this Commonwealth. Considering the timing of these events, Respondent should have been attuned to the problems in his practice and more conscious of the importance of cooperation with the disciplinary authorities. Notwithstanding this opportunity, Respondent is before this Board once again, the prior discipline having had no appreciable beneficial impact on his conduct. Respondent's failure to remediate his practice procedures after his prior disciplinary encounter signifies the need for a lengthy suspension, as the instant matter demonstrates that Respondent has not heeded the warning of the private discipline and his continued practice poses a danger to the public.

Respondent's brief testimony expressed little understanding of the scope and nature of his misconduct and was devoid of acceptance of responsibility but for the Henry matter, in which he admitted that he had not been responsive to his client, but then qualified that admission by testifying that he eventually responded to his client's inquiries. His continued failure to pay the court-imposed sanction for contempt in the Carollo matter is another example of his failure to accept responsibility for his actions. Although he stipulated to many of the factual allegations, Respondent disputed certain statements made by Petitioner's witnesses and emphasized that "no judge has ever complained" about the manner in which he represented his clients, conveniently disregarding the fact that Judge Trebilcock filed a complaint against him. Troublingly, Respondent failed to express any remorse for his actions or apologize to his clients. Respondent's cumulative testimony raises a red flag that he will continue his unprofessional practice if his license

is not removed, as there is no evidence to establish that he has evaluated his actions and understands the harm he inflicted upon his clients.

Respondent alluded to physical health problems that impacted his law practice, but presented no evidence on that issue. His testimony demonstrated a marked lack of interest toward the practice of law and his license to do so, as he testified he is ready to have his license suspended, he is “tired” and “has had enough.” N.T. 136-137.

Having concluded that Respondent engaged in professional misconduct, this matter is ripe for the determination of discipline. There is no *per se* discipline in Pennsylvania; it is well-established that in evaluating professional discipline, each case must be decided individually on its own unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***, 427 A.2d 186 (Pa. 1983). In order to “strive for consistency so that similar misconduct is not punished in radically different ways,” ***Office of Disciplinary Counsel v. Anthony Cappuccio***, 48 A.3d 1231, 1238 (Pa. 2012) (quoting ***Lucarini***, 473 A.2d at 190), the Board is guided by precedent for the purpose of measuring “the respondent’s conduct against other similar transgressions.” ***In re Anonymous No. 56 DB 94***, 28 Pa. D. & C. 4<sup>th</sup> 398 (1995).

We have carefully considered the Committee’s recommendation for a suspension of at least one year and one day and agree with their analysis that a suspension requiring Respondent to undergo a reinstatement proceeding before resuming practice is warranted in this matter. After review of the decisional law, we conclude that a two year suspension is commensurate with the totality of the facts and circumstances of record in this matter and consistent with sanctions imposed for similar misconduct.

The Court has frequently imposed a minimum suspension of one year and one day on attorneys who engage in multiple, repeated instances of client neglect. See, ***Office of Disciplinary Counsel v. Valerie Andrine Hibbert***, No. 215 DB 2019 (D. Bd. Rpt. 2/17/2021) (S. Ct. Order 4/27/2021) (multiple acts of neglect in three client matters consisting of incompetence, lack of diligence, lack of communication, recordkeeping violation, and failure to respond to disciplinary authorities; no prior discipline, personal circumstances, and some character evidence in mitigation); ***Office of Disciplinary Counsel v. Robert G. Young***, No. 115 DB 2019 (D. Bd. Rpt. 11/30/2020) (S. Ct. Order 3/16/2021) (neglect in three client matters consisting of lack of diligence, failure to communicate, and failure to have a written fee agreement; prior public censure in aggravation; remorse and cooperation with disciplinary authorities in mitigation); ***Office of Disciplinary Counsel v. Tangie Marie Boston***, No. 99 DB 2018 (D. Bd. Rpt. 12/10/2019) (S. Ct. Order 2/12/2020) (misconduct in four client matters comprising incompetence, neglect, lack of communication, failure to refund unearned fees, and conduct prejudicial to the administration of justice; acceptance of responsibility and no prior discipline in mitigation).

In matters that resulted in suspension for two years, either the scope and nature of the misconduct was more serious than those matters where a one year and one day suspension was imposed, or the balance of aggravating and mitigating factors required a more severe sanction. See, ***Office of Disciplinary Counsel v. Matthew Gerald Porsch***, No. 248 DB 2018 (D. Bd. Rpt. 2/20/2020) (S. Ct. Order 5/29/2020) (repeated acts of misconduct in three separate matters consisting of neglect, misrepresentation, and failure to refund unearned fees and return documents; failure to respond to disciplinary authorities and prior discipline consisting of a public reprimand in

aggravation; failure to apologize and lack of sympathy for clients' situations in further aggravation); **Office of Disciplinary Counsel v. Donna Marie Albright-Smith**, No. 225 DB 2010 (D. Bd. Rpt. 12/20/2011) (S. Ct. Order 5/30/2012) (misconduct in eight client matters over a period of four years whereby Albright-Smith agreed to represent the clients, accepted retainer fees, which often were not deposited into a trust account, failed to pursue the cases, made misrepresentations in three of the matters to either the court or clients, failed to notify clients of an office move to a different county, failed to promptly refund unearned fees, but later made reimbursement in all but one case after Office of Disciplinary Counsel's involvement; expressed contrition in mitigation; no prior history of discipline but the Board discounted this fact because Albright-Smith's misconduct started soon after she was admitted to the bar); **Office of Disciplinary Counsel v. Michael Mayro**, No. 144 DB 2001 (D. Bd. Rpt. 10/27/2003) (S. Ct. Order 2/3/2004) (neglect of four client matters, failure to communicate, failure to expedite litigation, failure to respond to motions, misrepresentations to clients; history of prior private discipline for similar misconduct in aggravation; no mitigating factors).

The totality of the facts of the instant matter support a two year suspension. There are parallels between the facts of Respondent's matter and those of the respondent-attorneys who received two year suspensions. Like the respondent-attorneys in **Mayro** and **Porsch**, Respondent has a history of discipline. In Respondent's case, the prior acts of misconduct and the instant misconduct are identical in the neglect of clients and nonappearance at scheduled court proceedings, demonstrating Respondent's continued inability to practice within the confines of the ethical rules. Similar to **Porsch**, Respondent did not respond to disciplinary authorities in that he failed to appear at two subpoena returns and later failed to appear at the prehearing conference. As far as the

substance of Respondent's misconduct, his repeated neglect in five matters is serious in scope and duration and is comparable to the facts in **Mayro** and **Albright-Smith**. Respondent's failure to accept responsibility and express remorse is also similar to the lack of apology and lack of sympathy for clients in **Porsch**. In our view, the facts and circumstances here elevate the seriousness of this matter to a sanction greater than a one year and one day suspension.

The goals of the attorney disciplinary system include protecting the public from unfit attorneys, maintaining the integrity of the bar, and upholding respect for the legal system. **Office of Disciplinary Counsel v. John Keller**, 506 A.2d 872, 875 (Pa. 1986). Upon this record, we conclude that Respondent's multiple breaches of his obligations to his clients coupled with his prior disciplinary history, his lack of remorse, and his failure to accept responsibility demonstrate that he is unfit to practice law and is a threat to the public. A suspension for two years fulfills the predominant mission of the disciplinary system to protect the public by removing Respondent from practice for a lengthy period of time and requiring him to undergo a rigorous reinstatement process to prove he is fit to represent clients in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Clarence E. Allen, be Suspended for two years 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: 

MDJ Robert L. Repard, Member

Date: 1/31/2022