IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2649 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 206 DB 2016
	:	
v.	:	Attorney Registration No. 15555
	:	
ROBERT J. MURPHY,	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 19th day of December, 2019, upon consideration of the Report and Recommendations of the Disciplinary Board, Respondent's Petition for Review, and the further responses, the petition for review is denied. Robert J. Murphy is suspended from the Bar of this Commonwealth for a period of five years, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 12/19/2019

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 206 DB 2016
v.	:	Attorney Registration No. 15555
ROBERT J. MURPHY Respondent	:	(Philadelphia)

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

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

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

I. HISTORY OF PROCEEDINGS

By Amended Petition for Discipline filed on July 27, 2017, Petitioner, Office of Disciplinary Counsel, charged Respondent, Robert J. Murphy, with violation of Rules of Professional Conduct ("RPC") 3.1, 3.3(a)(1), 8.2(a), 8.4(c), and 8.4(d). The Amended Petition contains one Charge against Respondent, divided into four headings as follows:

A. Respondent's Accusations against the Honorable Patricia Bachman;

B. Respondent's Accusations Against Neil Dombrowski, Esquire;

C. Respondent's Accusations Against the Honorable Joseph Hagan;

D. Further Accusations Against Neil Dombrowski, Esquire before Judge Hagan.

Respondent filed an Answer to Petition on August 11, 2017, wherein he denied the allegations of misconduct.

By Order dated July 27, 2018, the Board appointed Special Master Stewart L. Cohen, Esquire to preside over a hearing.[1] On August 2, 2018, the Special Master held a prehearing conference. Subsequently, the parties exchanged exhibits and witness lists. The Special Master conducted a disciplinary hearing on October 22 through October 26, 2018.[2] After both parties had presented their evidence, the Special Master, pursuant to Disciplinary Board Rule 89.151(a), found that the evidence established a prima facie violation of at least one Rule of Professional Conduct by a preponderance of the evidence that was clear and satisfactory. The Special Master then conducted a hearing pursuant to D. Bd. Rule 89.151(b) relating to the type of discipline to be imposed. After the close of the record, the Special Master set the briefing schedule.

Petitioner filed a Brief to the Special Master on December 31, 2018 and requested that the Special Master recommend to the Board that Respondent be disciplined by not less than a suspension of five years.

On February 13, 2019, Respondent filed a motion to stay the proceedings and reopen the record. Respondent filed a Brief to the Special Master on February 14, 2019 and contended that as Petitioner did not sustain its burden to establish violations of the Rules of Professional Conduct, no disciplinary action should be taken.

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[1] Procedural events after the filing of the Amended Petition for Discipline up to the appointment of the Special Master are omitted from the history of this matter as unnecessary.

[2] Respondent appeared on his own behalf with his co-counsel, Joseph McHale, Esquire.

By Order dated March 12, 2019, the Special Master directed that the record be reopened to allow Respondent to offer Michael Ruggieri, Esquire as an expert witness. On March 29, 2019 and April 2, 2019, subject to Petitioner's objections, the Special Master heard the testimony of Respondent's proposed expert witness. By Order and accompanying Memorandum dated April 10, 2019, the Special Master excluded the expert witness's testimony, finding that such testimony would not help the Special Master to understand the evidence or determine a fact in issue.

On April 25, 2019, the Special Master filed a Report and concluded that Respondent violated the Rules of Professional Conduct as charged in the Amended Petition for Discipline. The Special Master recommended that Respondent be suspended from the practice of law for a period of five years.

On May 31, 2019, Respondent filed a Brief on Exceptions to the Special Master's Report and requested oral argument before the Board. Respondent requested that the Board dismiss the matter against him.

On June 18, 2019, Petitioner filed a Brief Opposing Respondent's Exceptions and requested oral argument. Petitioner requested that the Board reject Respondent's exceptions, adopt the Special Master's Report, and recommend to the Court that Respondent be disciplined by not less than a suspension of five years.

A three-member Board panel held oral argument on July 12, 2019.

The Board adjudicated this matter at the meeting on July 19, 2019.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 Robert J. Murphy, born in 1944 and admitted to practice law in the Commonwealth of Pennsylvania in 1969. Respondent maintains his office for the practice of law at 7 Cooperstown Road, P.O. Box 39, Haverford, PA 19041.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

4. Respondent has no history of professional misconduct in the Commonwealth.

5. Respondent represented claimant Anne Wilson in a workers' compensation proceeding before Workers' Compensation Judge Patricia Bachman, captioned *Wilson v. Honeywell, Inc. (formerly Allied Signal), Travelers Insurance Company, and Commonwealth Department of Labor and Industry, Bureau Claim No. 3240923* ("the *Wilson* matter"). (N.T. II 160:4-14 (Bachman)).

6. Neil T. Dombrowski, Esquire, represented Honeywell, Inc. ("Honeywell") and Travelers Insurance Company ("Travelers"). (N.T. I 38:6-13 (Dombr.); N.T. II 160:15-17 (Bachman)).

7. Judge Bachman scheduled a hearing in the *Wilson* matter for February 18, 2010. (N.T. I 44:18-23; 47:17 – 48:18 (Dombr.); N.T. II 160:18-22 (Bachman); ODC-14).

8. The hearing was for the parties to present argument on a suspension petition that had been filed by Mr. Dombrowski. (N.T. II 161:12 – 163:2 (Bachman)). Respondent had also filed a penalty petition of which mention was made at the February 18, 2010 hearing. (N.T. II 165:11-18 (Bachman); ODC-14 at 5:25 – 6:1).

9. Prior to the hearing, Respondent had requested the court to allow him to serve subpoenas on five witnesses and to take the deposition of Anne Wilson. (N.T. II 166:21 – 167:3; 168:14-17 (Bachman)).

10. Also prior to the hearing, Mr. Dombrowski had requested that the court require Respondent to provide discovery regarding a third party recovery as to Honeywell, which had asserted a subrogation claim. (N.T. II 172:16 – 173:8 (Bachman))

11. Approximately one week prior to the scheduled hearing, Judge Bachman ruled on certain outstanding requests in the matter. (N.T. II 171:4-10; 172:2-173:17 (Bachman)).

12. On February 12, 2010, Judge Bachman instructed her secretary, Lana Meehan, to place telephone calls to Respondent and his opposing counsel, Mr. Dombrowski, and to report her rulings to them so that they could adequately prepare for the February 18, 2010 hearing. (N.T. II 175:23 – 176:19; 177:19 – 178:20 (Bachman); N.T. I 42:2-18 (Dombr.)). These communications followed Judge Bachman's procedure to have a secretary call the attorneys for all parties to inform them of rulings that she had made, in advance of hearings. (N.T. II 179:14 – 180:10; 183:6 – 184:13 (Bachman)). (N.T. II 185:4-17 (Bachman)). No party could gain any procedural or tactical advantage

by reason of such communication. These communications by Judge Bachman's secretary were administrative (for the purpose of efficiency and case management) and did not address any substantive matters or the merits of the claim.

13. Ms. Meehan first called Mr. Dombrowski. (N.T. I 43:21 – 44:4 (Dombr.)). She conveyed to him the fact that Judge Bachman had ruled on the requests and what the rulings were. (N.T. I 42:2 – 42:18 (Dombr.); N.T. II 199:21 - 201:15 (Bachman)). There was no discussion of the merits or of facts of the case. (N.T. I 42:22 – 43:3 (Dombr.); N.T. III 522:16-24 (by inference)(Bachman)).

14. Ms. Meehan next called Respondent. (R-5 at 2; N.T. I 43:21 – 44:4 (Dombr.)). She did not reach Respondent (R-5 at 2), but she left a message on his answering machine conveying the same information that she had conveyed to Mr. Dombrowski. (N.T. V 95:2-7; 113:2 – 115:14 (McHale); N.T. III 125:2–6; 127:22 – 128:6 (Meehan)(by inference)).

15. After receiving Ms. Meehan's phone call on February 12, 2010, Mr. Dombrowski sent a letter to Judge Bachman the same day, confirming the information that Ms. Meehan had conveyed to him. (ODC-8) Specifically, Mr. Dombrowski stated:

> Please allow this correspondence to confirm telephonic message we received from your chambers from your administrative assistant, Lana, on February 12, 2010. We understand that Claimant's request for reconsideration of Your Honor's former ruling is denied, no subpoenas as requested by Claimant shall be issued, and that Claimant and Claimant's counsel are to comply and supply the requested discovery to the Defendant.
> ... A copy of this correspondence has been served upon Claimant's counsel by regular and certified mail.
> ODC-8.

16. Respondent was shown as a carbon copy recipient on the letter, which indicated: "cc: Robert J. Murphy, Esquire (via regular and certified mail)[.]" (ODC-8).

17. On January 29, 2010, approximately two weeks prior to the foregoing telephone call and confirming letter, Respondent himself sent a similar confirmation letter to Judge Bachman in the *Wilson* matter, stating that "[o]n or about January 26, 2010 Your Honor's secretary advised via phone that Your Honor had sustained the alleged attorney-client privilege objection by Travelers raised on or about January 19, 2010 to the subpoena *duces tecum* previously issued by Your Honor ...." (ODC-31 (beginning of letter); ODC-12 at 13:25 – 14:19). Respondent's January 29, 2010 letter showed Neil T. Dombrowski, Esquire as a carbon copy recipient of the letter. *Id.* at 2. Based upon ODC-31, it is evident that Respondent was familiar with and had previously participated in and followed Judge Bachman's administrative practice.

18. At the February 18, 2010 hearing, Mr. Dombrowski stated that he had received the February 12, 2010 telephone call from Ms. Meehan, as well as the information she had conveyed to him on the call. (ODC-14 at 26:5-24).

19. After Mr. Dombrowski made his statement, argument continued regarding the suspension petition. (ODC-14 at 26:25 – 32:23).

20. Respondent did not respond, until later in the hearing, to the statements Mr. Dombrowski made on the record about Ms. Meehan's phone call. (ODC-14 at 26:5 – 32:23; N.T. II 229:3-5; 232:22 - 233:13 (Bachman)). To put Respondent's recusal request in context, it is important to know that it was made later in the hearing, and that in the interim Mr. Dombrowski requested that Judge Bachman consider entering

a "supersedeas" order which, if granted, would suspend or even eliminate Mrs. Wilson's benefits and the Respondent's ongoing legal fees.

21. Prior to the February 18, 2010 hearing, Judge Bachman made a ruling that resulted in the continuing payment of workers compensation benefits to the widow (Anne Wilson) as well as the continuing payment of attorney's fees to Respondent. (N.T. II 232:8-14 (Bachman)). Accordingly, Mr. Dombrowski's request that the Judge consider a "supersedeas" order at the February 18, 2010 hearing threatened serious consequences.

22. At the February 18, 2010 hearing, after Mr. Dombrowski requested that Judge Bachman consider entering a "supersedeas" order with regard to continuing benefits and Respondent's attorney's fees (N.T. II 232:22 – 233:2 (Bachman)), Respondent, for the first time, raised the issue of ex parte communications and requested that Judge Bachman recuse herself (N.T. II 233:3-13 (Bachman) ODC-14 at 32:24 – 33:6).

23. In support of this recusal request, Respondent stated: "[W]e've learned for the first time today, apparently counsel indicates numerous ex-parte communications with this Court. ... And therefore, we're going to have to request that the Court has to recuse itself, because he says that he's just had numerous communications with the Court as to various alleged oral orders." (ODC-14 at 32:24 – 33:6).

24. In response, Judge Bachman stated: "Mr. Murphy, that is out of line. I want you to go back and recheck your telephone and recheck with your secretary. ... Those were orders that were given to my secretary, and she relayed both of those orders to both of your offices. Your motion for recusal is denied." (ODC-14 at 33:7-14).

25. On February 18, 2010, following the hearing, Respondent sent a letter to Judge Bachman, via certified mail/return receipt requested and facsimile, reiterating his request that she recuse herself, stating: "[i]n accordance with Mr. Dombrowski's repeated representations at today's hearing that he repeatedly communicated with the court ex parte in the captioned matter, we are constrained to respectfully renew our prior motion that the court recuse itself which the court initially denied at the hearing." (ODC-9). Mr. Dombrowski was copied on the letter via first class U.S. mail. (*Id.*)

26. By letter to Judge Bachman dated March 2, 2010, Respondent reiterated his request that Judge Bachman recuse herself, and also requested that she recuse herself from the hearing to address the recusal motion that she had scheduled to take place on March 23, 2010. (ODC-10) Respondent further demanded that Judge Bachman issue subpoenas to herself, Ms. Meehan, and Mr. Dombrowski. (ODC-10 at 2).

27. A hearing was held in the *Wilson* matter before Judge Bachman on March 23, 2010. (ODC-12) At that hearing, Respondent accused Mr. Dombrowski of having had improper, ex parte communications with Judge Bachman or members of her staff. (ODC-12 at 6, 11, 12, 15-16).

28. In a subsequent letter to Judge Bachman, dated April 1, 2010, Respondent again requested that Judge Bachman recuse herself from the recusal proceedings. (ODC-11 at 1) Respondent asserted, *inter alia,* that "it is undisputed [that] opposing counsel [Mr. Dombrowski] has repeatedly admitted that he has had repeated and numerous ex parte contacts with the court including staff involving the captioned matter pending before the court without notice to claimant or her counsel including but not limited to the hearings on 3/23/10 and 2/18/10 ..." (ODC-11 at 4). In two additional

instances on the same page (p. 4) of the April 1, 2018 letter, Respondent asserted that the court and Mr. Dombrowski had engaged in "admitted unrecorded prohibited ex parte contacts" and "repeated, multiple unrecorded prohibited ex parte contacts." (ODC-11 at 4). Respondent renewed his demand that Judge Bachman issue subpoenas to herself, Ms. Meehan, Mr. Dombrowski, and Garrett Brindle, Esquire of Mr. Dombrowski's firm. (ODC-11 at 4-5).

29. In all three of his letters to Judge Bachman, dated February 18, March 2, and April 1, 2010, Respondent reiterated his accusations of improper, ex parte communications on the part of Judge Bachman and Mr. Dombrowski, made at the hearings before Judge Bachman on February 18, 2010 and March 23, 2010. (ODC-9; ODC-10; and ODC-11).

30. Subsequently, Judge Bachman rescheduled the hearing on Respondent's recusal motion for May 4, 2010. (ODC-11).

31. On April 16, 2010, Respondent filed a petition for review in the Commonwealth Court of Pennsylvania naming Judge Bachman as a respondent (among others). (ODC-15). In that petition for review, Respondent repeated his allegations that Judge Bachman had engaged in improper, ex parte communications with defense counsel Mr. Dombrowski, as well as his assertion that Judge Bachman and her staff had ***admitted*** to engaging in improper, ex parte communications. (ODC-15 at 10A-11A; 14A-21A (handwritten numbering)).

32. On April 28, 2010, Respondent filed an Emergency Petition for a stay in the Commonwealth Court, again naming Judge Bachman as a respondent, and reiterating his allegations that Judge Bachman and her staff, including Ms. Meehan, had

admitted to engaging in improper, ex parte communications. (ODC-16 at 136A-140A; 142A-145A (handwritten numbering)).

33. On or about September 7, 2010, Mr. Dombrowski, on behalf of Honeywell and Travelers, filed an answer to Respondent's petition for review, denying Respondent's allegations regarding ex parte communications. (ODC-17; ODC-21 at 887A-888A). The answer did not contain a verification, but Mr. Dombrowski subsequently filed a verification, which the court accepted. (N.T. I 354:20 - 355:1).

34. On September 3, 2010, Thomas P. Howell, Esquire, attorney for the Pennsylvania Department of Labor, representing Judge Bachman, filed an answer to Respondent's petition for review, denying Respondent's allegations of ex parte communications. (ODC-18; ODC-21 at 887A). The answer filed on behalf of Judge Bachman stated, "[i]t is specifically denied that WCJ Bachman has engaged in *any* prohibited ex parte contacts relating to the proceedings before her." (ODC-18 at 1 ¶3(c)). The answer did not contain a verification.

35. On October 1, 2010, Respondent filed preliminary objections to those answers, alleging that the lack of verifications constituted an admission of the Respondent's allegations of judicial misconduct. (ODC-19 at 702A). In those preliminary objections, despite Judge Bachman's express denial, Respondent asserted that "respondents including WCJ Bachman ***admitted*** that she conducted multiple, prohibited ex parte telephone communications with respondent's counsel off the record in the proceedings before WCJ Bachman ...." (ODC-19 at 702A-703A (emphasis added)).

36. Despite the denials contained in the answers to the petition for review, on October 18, 2010 Respondent filed in the Commonwealth Court an "Application for Special Equitable Relief and/or Temporary and/or Permanent Stay from

the Workers' Compensation Proceedings Pending Before WCJ Bachman Pending Disposition of the Pending Petition for Review in the Nature of Prohibition Pursuant to Pa.R.A.P. 123 and Applicable Law and Appellate Decisions," again asserting that Judge Bachman had admitted the alleged judicial misconduct consisting of ex parte communications between Judge Bachman and opposing counsel, and that Messrs. Dombrowski and Howell had also admitted to the misconduct by failing to include verifications in the original answers. (ODC-21 at 882A-884A; 886A-887A).

37. Respondent's assertions of improper ex parte communications, referred to in paragraphs 22, 23, 25, 27-29, 31, 32, 35 and 36 above, were frivolous, false and unsupported by the record in the workers' compensation proceeding, and made by Respondent knowing such assertions to be false.

38. At a minimum, Respondent's assertions of improper ex parte communications, referred to in paragraphs 22, 23, 25, 27-29, 31, 32, 35 and 36 above were unsupported by the record in the workers' compensation proceeding and were made by Respondent with reckless disregard as to their truth or falsity.

39. By Order dated October 20, 2010, on her own motion, Judge Bachman recused herself from the *Wilson* matter. (ODC-23; N.T. II 264:16-19 (Bachman)). Judge Bachman's recusal was unrelated to Respondent Murphy's allegations. Judge Bachman testified at the disciplinary hearing that she became aware that Respondent had sued her in the Commonwealth Court and the Supreme Court and that she therefore had to obtain counsel to represent her. (N.T. II 264: 5-15). Judge Bachman testified that she had done nothing wrong, and there was no basis for recusal on the alleged ground that she had, but that she recused herself after discussing the matter with Judge Hagan, because "I just felt that I could no longer stay on the case when

these petitions and these claims were being filed against me in these other jurisdictions." (N.T. II 266:21 – 267:17).

40. After Judge Bachman recused herself from the *Wilson* matter, the matter was reassigned to Judge Joseph Hagan. (N.T. III 308:19-21 (Hagan)). On November 23, 2010, Judge Hagan held a hearing at which Respondent repeated his false accusations against Judge Bachman and Mr. Dombrowski, stating:

a. "I will subpoena Mr. Dombrowski or have him testify. I'm calling him to the witness stand, so that we can get on the record the fraudulent ex parte communication between Mr. Dombrowski and the Court involving the merits of the case." (ODC-24 at 99:9-14).

b. "Fraud, yes. That's what judicial misconduct is, it's fraudulence." (ODC-24 at 100:1-2).

c. "I said Mr. Dombrowski has conducted himself with Judge Bachman in a fraudulent, unethical, and null and void way involving among other things, ex parte communications, order, hearings, arguments, decisions throughout the whole case, all of which he recounted to Your Honor before." (ODC-24 at 100:6-11).

41. Respondent's assertions contained in the preceding paragraph and subparagraphs, were frivolous, false and unsupported by the record in the *Wilson* matter, and made by Respondent knowing such assertions to be false. At a minimum, Respondent made such assertions with reckless disregard as to their truth or falsity.

42. Also at the November 23, 2010 hearing before Judge Hagan, Respondent moved to recuse Judge Hagan, asserting that Judge Hagan was tainted by

having reviewed the record which contained Respondent's allegations of ethical misconduct against Judge Bachman and Mr. Dombrowski. (ODC-24 at 100:14-16).

43. On December 20, 2010, Respondent filed a petition for review in the Commonwealth Court. (ODC-25). In that Petition, Respondent referred to his client, Anne Wilson's, "pending motion to recuse Workers' Compensation Judge (WCJ) Joseph Hagan based on extensive unlawful, prohibited, and unethical judicial misconduct ...." ODC-25 at 4. Further, Respondent asserted in the Petition that "[a]t all times material hereto, ***WCJ Bachman engaged in extensive, admitted, improper and unethical judicial misconduct*** against petitioners including but not limited to her bias, prejudice, unfairness, personal interest, ***extensive off the record prohibited ex parte communications with Travelers and Honeywell and their representatives without notice to petitioners involving the merits of the pending Workers' Compensation proceedings before her***; improprieties and the appearance of impropriety throughout the entire foregoing consolidated Workers' Compensation proceedings pending before her involving petitioners' pending penalty petition and Travelers' and Honeywell's purported second 319 subrogation petition to modify or suspend widow's final Workers' Compensation award ...." (ODC-25 at 20 (emphasis added)).

44. Respondent reiterated in the Petition that Judge Bachman had engaged in extensive, prohibited, admitted, manifest bias, prejudice, unfairness, personal interest, ***extensive off the record prohibited ex parte communications with Travelers and Honeywell and their representatives without notice to petitioners involving the merits*** of the foregoing pending Workers' Compensation proceedings before her ...." (ODC-25 at 21 ¶ 39 (emphasis added)).

45. In the same petition for review, Respondent again asserted that "Respondents, WCJ Bachman and Travelers and Honeywell, did not file any timely, verified answers to the allegations in petition for review in the nature of prohibition, ***and further admitted*** that respondents, WCJ Bachman and Travelers and Honeywell, engaged in ***extensive, prohibited, unethical and unlawful judicial misconduct*** ...." (ODC-25 at 22 ¶ 42 (emphasis added)).

46. In the December 20, 2010 petition for review, Respondent asserted that Judge Hagan had engaged in unlawful and prohibited judicial misconduct in numerous respects in the *Wilson* matter, including that Judge Hagan:

a. failed to avoid the appearance of impropriety (ODC-25 at 27 ¶ (a));

b. failed to perform his duties impartially (*id.* ¶ (b));

c. ***admittedly engaged in extensive off the record ex-parte contacts and communications without notice concerning the merits of the Workers' Compensation proceedings***, ***including extensive admitted prohibited ex parte contacts and communications*** with the Office of Adjudication, and its staff, WCJ Bachman and her representatives including her counsel, Thomas Howell, Esquire and respondents, Travelers Casualty and Surety Company and Honeywell, Inc. and their counsel, and petitioner's son-in-law, Donald J. Crichton, involving her incapacity to appear and testify in the proceedings due to her severe illnesses and emergency hospitalization on November 23, 2010 (*id.* ¶ (d)) (emphasis added);

d. "engaged in ex parte communications among WCJ Hagan and the Office of Adjudication and WCJ Bachman and her counsel, and petitioner's son-in-law ...." (*id.* ¶ (e));

e. "improperly and unlawfully identified and placed into the record ... records including correspondence from WCJ Bachman's counsel, Thomas Howell, and WCJ Bachman's alleged untimely and unverified purported answer to petitioners' petition for review in the nature of prohibition at No. 385 MD 2010 which records, inter alia, admittedly were never part of the certified record transferred to him ...." (*id.* at 28 ¶ (e)(carryover));

f. "improperly and unlawfully removed extensive unspecified portions of the certified record ... and gave them to respondents, Travelers' and Honeywell's counsel" (*id.* at 28 ¶ (f));

g. "reviewed, advised and reiterated that he would rely entirely on and be bound by the tainted, biased, and prejudicial record of the entire proceedings created, engineered and entered as a result of WCJ Bachman's manifest bias, prejudice and judicial misconduct against petitioners ...." (*id.* ¶ (g));

h. "delivered an off the record ex parte communication to respondents' counsel via undated letter advising that he vacated WCJ Bachman's prior order indefinitely suspending petitioners'/claimant's pending penalty petition and he would no longer continue the indefinite suspension of the penalty petition ...." (*id.* at 29 ¶ (h));

i. "has ordered petitioners and respondents, Travelers and Honeywell, to file proposed findings of fact and briefs ... based on the void, biased, prejudicial, and unfair entire record of the proceedings engineered, created and entered by WCJ Bachman as a result of her admitted manifest bias, prejudice and judicial misconduct against petitioners; ...." (*id.* at 30 ¶ (j));

j. engaged in prohibited off the record ex parte communications with counsel for Travelers and Honeywell (*id.* at 31 ¶ (l)); and

k. committed "extensive judicial misconduct, bias, prejudice, improprieties, appearance of impropriety, personal interest and extensive prohibited ex parte contacts and communications with the Office of Adjudication, and its staff, WCJ Bachman and her representatives including her counsel, Thomas Howell, Esquire and respondents, Travelers Casualty and Surety Company and Honeywell, Inc. and their counsel, and petitioners' family including her son-in-law via telephone on November 23, 2010 involving petitioners' emergency hospitalization precluding her from testifying until her discharge from the hospital." (*Id.* at 32 ¶ (p)).

47. On February 7, 2011, Respondent filed a brief in the Supreme Court of Pennsylvania at No. 70 MAP 2010, in support of his appeal from the final order of the Commonwealth Court (that dismissed Respondent's request for a writ of prohibition) entered October 26, 2010. (ODC-22). In that brief, Respondent:

a. asserted, as a factual predicate for his Statement of the Question Involved, that the "administrative tribunal ***admitted*** judicial misconduct including presiding over, conducting and entering manifestly

unfair, biased and prejudicial proceedings, record, rulings, orders, hearings, and adjudications based on a biased record thereof[.]" (ODC-22 at 6) (emphasis added).

b. asserted that Respondent filed a petition for review, including a supplemental application requesting recusal of Judge Bachman from the workers' compensation proceedings pending before her, "to prevent irreparable prejudice ... resulting from WCJ Bachman's admitted bias, prejudice, improprieties, and, at a minimum, appearance of impropriety against appellant throughout the compensation proceedings pending before her." (ODC-22 at 16).

c. asserted that "[a]ppellees [which included Judge Bachman] deliberately failed to file any timely, verified answers and admitted WCJ Bachman's judicial misconduct including, at a minimum, appearance of impropriety against appellant throughout the compensation proceedings." (ODC-22 at 16).

d. asserted, as a factual averment in his Argument heading, that the "administrative tribunal admitted judicial misconduct including presiding over, conducting and entering manifestly unfair, biased and prejudicial proceedings, record, rulings, orders, hearings, and adjudications based on a biased record thereof[.]" (ODC-22 at 18).

48. On November 14, 2011, Respondent filed in the Supreme Court, in *Anne Wilson v. Sandi Vito, et al.,* 51 EAP 2011, Appellant's Brief Sur Appeal from the Final Order by the Commonwealth Court Entered June 14, 2011 at 935 MD 2010 etc. (ODC-26). In that brief, Respondent:

a. as a factual predicate for his statement of the first question involved, stated "Where amended petition for review raises substantial doubt as to tribunal's ***admitted*** impropriety and/or appearance of impropriety ...." (ODC-26 at 10)(emphasis added);

b. stated that "WCJ Patricia Bachman presided over and engaged in extensive, admitted and/or presumed unethical judicial misconduct against Anne Wilson including improprieties and, at a minimum, the appearance of impropriety throughout the entire foregoing consolidated Workers' Compensation proceedings assigned to her at Bureau Claim No. 3240923 ...." (ODC-26 at 24); and

c. "WCJ Hagan also engaged in extensive, unethical judicial misconduct and improprieties and, at a minimum, appearance of impropriety including extensive off the record ex parte communications without notice concerning the merits of the pending consolidated compensation proceedings before him." (ODC-26 at 25).

49. Respondent's assertions contained in paragraphs 42, 43, 44, 45, 46(a) through (k), 47(a) through (d) and in paragraph 48(a) through (c) above were frivolous, false and unsupported by the record in the *Wilson* matter, and were made by Respondent knowing such assertions to be false or with reckless disregard as to their truth or falsity.

50. Judge Bachman credibly testified at the disciplinary hearing on October 23, 2018 and expressly denied: ever having any prohibited ex parte communications with Mr. Dombrowski in connection with the *Wilson* matter; having any prohibited ex parte communications with any of the parties in the *Wilson* matter; having

any ex parte communications with any officers or employees of Honeywell, Allied Signal, or Travelers Insurance Company; and discussing the merits of the case, ex parte, with any of the attorneys involved in the *Wilson* matter, including Respondent and Mr. Dombrowski. (N.T. II 285:16 – 286:3; 286:5-10; 286:12-18; 286:20 – 287:4). Further, when read Respondent's statement from ODC-15 that "WCJ Bachman and her staff had engaged in extensive off-the-record ex parte contact and communications without notice and hearing concerning the foregoing Worker's Compensation proceeding pending before her," and when asked by Petitioner "Did that happen?" Judge Bachman responded "No." (N.T. II 287:8-22).

51. Judge Hagan credibly testified at the disciplinary hearing on October 23, 2018 and expressly denied any judicial misconduct or appearance of impropriety, expressly denied having had any prohibited ex parte communications as asserted by Respondent, and stated that there was no truth to Respondent's assertions of judicial misconduct, impropriety, appearance of impropriety, or prohibited ex parte communications. (N.T. III 265:14-24; 266:2-15; 273:5 – 275:11; 275:13 – 276:3; 276:5-18; 276:19 – 277:17; 277:19 – 278:7; 278:10-24; 279:1-280:1; 280:3-23; 282:23– 283:4; 284:14 – 285:8; 285:12 - 286:1; 289:21 - 290:2; 290:7-22; 291:2-13; 291:15 – 292:17; 293:5 – 295:2).

52. Mr. Dombrowski credibly testified at the disciplinary hearing on October 22, 2018 and expressly denied: ever having any ex parte communications with Judge Bachman in the *Wilson* case and ever having any ex parte communications with Judge Hagan in the *Wilson* case. (N.T. I 209:24 – 210:8; 210:10-13; 241:13-15). ("I never had an ex parte communication with Judge Bachman in the time that I've been on earth."). Further Mr. Dombrowski testified that he has no knowledge of Judge Bachman or Judge

Hagan ever admitting to having engaged in improper ex parte communications with any of the parties. (N.T. I 211:17 – 212:4). In addition, Mr. Dombrowski reviewed numerous documents in the *Wilson* case and consulted with Travelers' officers and employees to get information as to what the correct response would be. (N.T. I 214:4 – 215:1). Through his investigation, Mr. Dombrowski learned that there was never any ex parte communications between Judges Bachman and Hagan and any Travelers' employees, and that there was no contact with respect to Judge Hagan or Judge Bachman as Respondent had alleged. (N.T. I 215:14 – 216:22).

53. Respondent presented no evidence to support his assertions that Judge Bachman or Judge Hagan engaged in judicial misconduct, committed any impropriety or appearance of impropriety, or engaged in any improper ex parte communications in connection with the *Wilson* matter.

54. Respondent presented no evidence that Mr. Dombrowski engaged in any improper ex parte communications in connection with the *Wilson* matter.

55. Ms. Meehan credibly testified at the hearing on October 24, 2018. Respondent presented no evidence that Ms. Meehan engaged in any improper ex parte communications in connection with the *Wilson* matter.

56. The evidentiary record of the disciplinary hearing on October 22 through 26, 2018, establishes that Respondent's assertions that Judge Bachman, Judge Hagan, Mr. Dombrowski, and Ms. Meehan had engaged in improper ex parte communications in the *Wilson* matter were frivolous, false, and were made knowingly or with reckless disregard as to the truth or falsity of such assertions.

57. Respondent, who did not testify, presented no direct evidence of his subjective state of mind, or actual belief. There is no evidence that Respondent actually

believed that either Judge Bachman or Judge Hagan had engaged in any misconduct or were biased, or that Respondent had a non-frivolous basis in law or fact to move for their recusal.

58. There is no evidence that Respondent had an objectively reasonable belief that what any of his allegations were true and supported after a reasonably diligent inquiry.

59. After both sides had rested their cases, the Special Master determined that ODC had proven a prima facie case of at least one violation of the rules. (*See* N.T. V 297:20-22; 298:12-19; *see* D. Bd. Rule § 89.151(a)) Following this determination, the matter proceeded to a hearing under D. Bd. Rule § 89.151(b) (addressing factors relevant to the appropriate measure of discipline)(the "151(b) hearing").

60. During the 151(b) hearing, Petitioner offered numerous items of documentary evidence, which were admitted into evidence. (*See* ODC-36 through ODC-48).

61. During the final portion of the 151(b) hearing, Respondent was sworn and responded to the Special Master's questions. (N.T. V 350:17 – 362:2).

62. The Special Master gave Respondent an opportunity to acknowledge and express remorse for his conduct that gave rise to the charges against him, or to at least demonstrate that he recognized he should have conducted himself differently with respect to his many assertions of unethical conduct, including alleged improper, ex parte communications, and admissions of improper, ex parte, communications on the part of Judge Bachman and Judge Hagan and Mr. Dombrowski.

(N.T. V 328:19 – 337:16). Respondent did not express remorse. (*See* N.T. V 325:15 - 337:14).

63. Respondent offered the following explanation:

> [W]hat I was trying to set forth, perhaps inarticulately, is the underlying event of the conversation was admitted, and the question of its legal effect or efficacy, whether it's improper, was set forth in that document because it was admitted to have occurred. And when you seek a writ of prohibition, by definition, you assert that it is improper because of the reasons I've argued ....
> (N.T. V 345:14 - 346:3).

64. In another instance, when questioned about his assertion as alleged in the Petition for Discipline that Judge Bachman and her staff had admitted to having engaged in improper ex parte communications, Respondent testified:

> I would love not to have done it that way, if that would assist the Master, but what I'm trying to explain to the Master is they admitted the event.
>
> The question of whether it's improper, and my allegation was that it was improper, and, therefore, in order to seek a writ of prohibition, you must allege that it is improper.
> (N.T. V 337:3-14).

65. Respondent's explanations as set forth in the preceding two paragraphs are disingenuous because Respondent did not merely allege that Judge Bachman had admitted the *occurrence* of the phone call between Ms. Meehan and Mr. Dombrowski. Respondent clearly alleged, numerous times, in the *Wilson* matter as well as in filings in the Commonwealth Court and the Supreme Court that Judge Bachman and Judge Hagan and Mr. Dombrowski ***had admitted to the fact of engaging in improper, ex parte communications about the merits of the case***.

66. Respondent knew he had no basis in fact or law for making the accusations he made and that doing so was ethically improper, in that Respondent has

admitted that he alleged the impropriety not because it was true but because such an allegation was required to seek a writ of prohibition. In other words, he made these baseless allegations in order to pursue litigation that has been a persistent disruption to the courts and disciplinary system.

67. Rather than demonstrating any remorse or recognition that his assertions of unethical conduct on the part of Judge Bachman and Judge Hagan and Mr. Dombrowski were reckless, Respondent told the Special Master that he (Respondent) was in the process of preparing a new federal complaint against Disciplinary Counsel Gottsch and Office of Disciplinary Counsel (in addition to the complaint he previously filed against them). (N.T. V 367:23 – 369:7).

68. By his conduct and words at the disciplinary hearing, Respondent failed to acknowledge that there was anything wrong with making the allegations of ethical impropriety against Judges Bachman and Hagan and Mr. Dombrowski.

Aggravating Factors

69. Respondent did not accept responsibility for his misconduct.

70. Respondent failed to show any remorse.

71. Respondent lacked credibility as an advocate.

72. Respondent displayed poor advocacy.

73. Respondent's conduct during these disciplinary proceedings evidenced a lack of respect for the disciplinary system.

74. Throughout the *Wilson* matter and these proceedings, Respondent aggressively resisted proper authority and attempted to create a perception of a conspiracy against him, and in so doing made repeated false statements and reckless aspersions against anyone who disagreed or admonished his behavior.

75. Respondent procured a misleading statement from a witness, Lana Meehan. (R-5).

a. Respondent subpoenaed Ms. Meehan to appear in Petitioner's Philadelphia office for a prior proceeding in this matter on October 16, 2017. N.T. III 98:2-8 (Meehan)). Following the proceeding, at which Ms. Meehan appeared but was not called to testify, she agreed to go to Mr. McHale's office in Philadelphia with Respondent and Mr. McHale. (N.T. III 98:21-24; 99:7 - 100:17 (Meehan)). Disciplinary Counsel was not present at this meeting.

b. At Mr. McHale's office, Respondent and Mr. McHale discussed with Ms. Meehan Judge Bachman's procedure for transmitting orders, and the phone calls that Ms. Meehan made to Mr. Dombrowski and Respondent on February 12, 2010, upon instructions from Judge Bachman. (N.T. V 94:24 – 95:6; 99:16 – 100:7; 113:2 – 114:18 (McHale)). At that meeting, Ms. Meehan told Mr. McHale and Respondent that when she called Respondent she did not reach him but she left a message on his answering machine conveying the same information that she had conveyed to Mr. Dombrowski on her phone call to him.[3] (N.T. V 114:11 - 118:10).

c. Respondent then procured a handwritten statement from Ms. Meehan, which she wrote at Respondent's request, as Respondent told her what to write. (N.T. III 101:13-103:3; 107:1-10 (Meehan)). The statement provided that "[p]ursuant to J. Bachman's instructions I called Mr.

[3] Mr. McHale took the stand as a witness for Respondent and testified regarding this meeting and the information surrounding the handwritten statement of Ms. Meehan.

Dombrowski and only told him that respondent's request for reconsideration was denied." (R-5 at 2). The statement further stated that "I was unable to reach respondent Mr. Murphy to leave this message." (*Id.*)

d. The handwritten statement omitted the fact that Ms. Meehan had left a message on Respondent's answering machine (as Mr. McHale testified Ms. Meehan had told him and Respondent). Through this omission, Respondent procured from Ms. Meehan a statement that was misleading, because it implied that Ms. Meehan never conveyed the information to Respondent, when in fact she conveyed the information to him by leaving a message on his answering machine.

76. In his May 31, 2019 Brief on Exceptions filed with the Board, Respondent described the Special Master's Report as "tainted, prejudicial, biased" and falsely and without support attacked the tribunal by claiming the Master "conducted manifestly biased and prejudicial proceedings including conducting prohibited ex parte proceedings and communications with ODC..." Respondent's Brief on Exceptions at 6, 16.

77. In his May 31, 2019 Brief on Exceptions filed with the Board, Respondent falsely and without support accused Petitioner of "egregious, continual, intentional prosecutorial misconduct..." Respondent's Brief on Exceptions at 6.

III. CONCLUSIONS OF LAW

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

1. 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;

2. 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;

3. 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;

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

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

IV. DISCUSSION

This matter is before the Board following the issuance of the Special Master's Report and Recommendation, Respondent's exceptions to the Report and Petitioner's exceptions opposing Respondent's exceptions, and oral argument. Respondent is charged with violating RPC 3.1 (bringing or defending a proceeding or asserting or controverting an issue therein without a good faith basic); RPC 3.3(a)(1) (making a false statement of material fact to a tribunal or failing to correct such a false statement); RPC 8.2(a) (knowingly or recklessly making a false statement concerning the integrity of a judge or adjudicatory officer); RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (engaging in conduct that is prejudicial to the administration of justice). Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v. John Grigsby***, 425 A.2d 730, 732 (Pa. 1981). Based on the evidentiary record, and for the reasons stated herein, we conclude that Petitioner met its burden and we recommend that Respondent be suspended from the practice of law for a period of five years.

This matter arose out of proceedings in a workers' compensation matter, *Wilson v. Honeywell, Inc. (formerly Allied Signal)*, Bureau Claim No. 3240923, in which Respondent represented the claimant. In that matter, Respondent repeatedly made false allegations that two Workers' Compensation Judges, Patricia Bachman and Joseph Hagan, and Respondent's opposing counsel, Neil Dombrowski, Esquire had engaged in improper ex parte communications and in fact had admitted to having done so. Respondent's allegations were based principally on a telephone call that Judge

Bachman's secretary, Lana Meehan, had placed to Mr. Dombrowski and Respondent on February 12, 2010 to report the fact that Judge Bachman had issued certain rulings in the *Wilson* matter. The calls were made at Judge Bachman's behest, pursuant to her standard protocol, to assure that the parties would be adequately prepared for an upcoming hearing scheduled for February 18, 2010.

On February 12, 2010, Ms. Meehan reached Mr. Dombrowski on the telephone and reported the fact of Judge Bachman's ruling to him. There was no other discussion between the two. Ms. Meehan then placed a call to Respondent, but was unable to personally speak with him, so left a message on Respondent's answering machine conveying the identical information that she had conveyed to Mr. Dombrowski.

The same day Mr. Dombrowski received the call from Ms. Meehan, Mr. Dombrowski sent a letter to Judge Bachman confirming the information that Ms. Meehan had conveyed to him on the telephone. Mr. Dombrowski copied Respondent on that letter and sent it to Respondent by regular and certified mail. At the hearing before Judge Bachman on February 18, 2010, Mr. Dombrowski reiterated on the record the fact of Ms. Meehan's telephone call to him and the information she had conveyed to him.

Respondent made his initial allegations of improper ex parte communications by Judge Bachman and Mr. Dombrowski when, at the February 18, 2010 hearing, Respondent orally moved for the recusal of Judge Bachman. Respondent's recusal request came later in the hearing, following Mr. Dombrowski's request that Judge Bachman consider entering a "supersedeas" order which, if granted would suspend or even eliminate Respondent's client's benefits and Respondent's ongoing legal fees.[4]

[4] The Special Master perceptively deduced that Respondent's motive for making his false statements was to "rid himself of Judge Bachman when it became apparent to him that she intended to make rulings adverse to his client's case and his own financial interests." Special Master Report at 29. For the purposes of the

Respondent later made repeated allegations of unethical, improper judicial conduct against Judge Bachman and Judge Hagan and allegations of improper, fraudulent conduct against Mr. Dombrowski in filings in the *Wilson* matter and in the Commonwealth Court and the Supreme Court.

The Special Master, considering these facts, issued a well-reasoned Report and concluded that Respondent committed ethical misconduct that warranted a suspension of his license to practice law for a period of five years. Respondent filed exceptions to the Report and recommendation, insisting that he has committed no ethical misconduct and the charges against him should be dismissed. Having considered the parties' arguments, we conclude that Respondent's exceptions are without substance. Respondent offers a distorted and incorrect version of the evidence that is unsupported by the actual record, relies on Respondent's personal view of the witnesses' credibility, and is dependent on the excluded testimony of the "expert" witness Respondent proffered.

As a preliminary matter, we find that ex parte communications from a court to counsel are proper in certain circumstances. The Pennsylvania Code of Judicial Conduct Rule 2.9 permits judges to engage in ex parte communications for administrative purposes provided that they do not deal with substantive matters or issues on the merits, where the judge reasonably believes the communications will not result in one party gaining a procedural or tactical advantage, and where there is adequate notice to both sides. Without deciding whether the subject communications were "ex parte," we conclude that the calls made by Ms. Meehan were not prohibited under the Code of

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Board's discussion, we need not determine Respondent's motives in order to determine whether his conduct violated the Rules in question.

Judicial Conduct, as there is no evidence of record that the subject calls included a discussion of the merits of the case or any fact in issue.

The record established that Respondent had no basis to believe or suspect that Ms. Meehan discussed the merits or a fact in issue with Mr. Dombrowski, and had no reason to believe or suspect that Judge Bachman ever discussed the merits or a fact in issue with Mr. Dombrowski. Nevertheless, Respondent used this anodyne communication from Ms. Meehan to Mr. Dombrowski to initiate a full-throated attack on the tribunal and his opposing counsel by asserting repeatedly that Judge Bachman and Mr. Dombrowski, and subsequently Judge Hagan, had improper ex parte communications about the merits of the case and had admitted that they had repeated prohibited ex parte communications about the merits of the case.

Respondent's statements were false, and Respondent knew they were false; at a minimum, Respondent made the statements with reckless disregard as to their truth or falsity. Respondent made the assertions and repeated them many times, having no evidence that his assertions were true. What is clear is that when Respondent first made the assertions at the February 18, 2010 hearing, the most he could have known was that Ms. Meehan had informed Mr. Dombrowski on the telephone of the fact of Judge Bachman's ruling on certain motions.

Petitioner's direct evidence in the form of Respondent's own writings and the testimony of Judges Bachman and Hagan and of Mr. Dombrowski, established that Respondent violated the Rules of Professional Conduct.

Judge Bachman credibly testified at the hearing and expressly denied: ever having any prohibited ex parte communications with Mr. Dombrowski in connection with the *Wilson* matter; having any prohibited ex parte communications with any of the parties

in the *Wilson* matter; having any ex parte communications with any officer or employee of Honeywell, Allied Signal or Travelers Insurance Company; and discussing the merits of the case, ex parte, with any of the attorneys involved in the *Wilson* matter, including Respondent and Mr. Dombrowski. N.T. II 285-287. When asked whether she and her staff had engaged in extensive off-the-record ex parte contact and communications without notice and hearing concerning the *Wilson* proceeding, Judge Bachman credibly testified that it did not happen. N.T. II 287.

Judge Hagan credibly testified and expressly denied any judicial misconduct or appearance of impropriety and expressly denied having had any prohibited ex parte communications as asserted by Respondent. Judge Hagan testified that there was no truth to Respondent's assertions of judicial misconduct, impropriety, appearance of impropriety, or prohibited ex parte communications. N.T. III 265-266, 273-275, 275-2777; 277-278; 279-280; 282-283; 284-285; 285-286; 289-290; 291-292; 293-295.

Mr. Dombrowski credibly testified at the hearing and expressly denied ever having any ex parte communications with Judge Bachman in the *Wilson* matter and ever having any ex parte communications with Judge Hagan in the *Wilson* case. N.T. I 209-210, 214. Further, Mr. Dombrowski testified that he had no knowledge of Judge Bachman or Judge Hagan ever admitting to having engaged in improper ex parte communications with any of the parties. N.T. 1 211-212. In addition, Mr. Dombrowski reviewed numerous documents in the *Wilson* matter and consulted with Travelers' officers and employees to get information as to what the correct response would be. N.T. I 214-215. Through his investigation, Mr. Dombrowski learned that there were never any ex parte communications between Judges Bachman and Hagan and any Travelers' employees,

and that there was no contact with respect to Judge Hagan or Judge Bachman as Respondent had alleged. N.T. I 215-216.

Upon this record, Petitioner proved that Respondent did not have a good faith, reasonable basis for asserting that Judge Bachman and Judge Hagan or Mr. Dombrowski had engaged in improper ex parte communications, or any other misconduct. Respondent's assertions violated RPC 3.1 and RPC 3.3(a)(1), as his false assertions were of material facts and all of the false assertions were made to tribunals.

Petitioner proved that Respondent violated RPC 8.2(a), as he knowingly or with reckless disregard made statements concerning the qualifications or integrity of Judge Bachman and Judge Hagan. In the context of false and inflammatory statements against judges, the Supreme Court of Pennsylvania set forth standards for finding a rule violation in ***Office of Disciplinary Counsel v. Neil Werner Price***, 732 A.2d 599 (Pa. 1999). As the Court held therein, Petitioner must initially establish that Respondent made false allegations in a court pleading. The direct, credible testimony of Judge Bachman and Judge Hagan and Mr. Dombrowski, provided sufficient evidence to establish that Respondent's allegations in court pleadings were false. Once Petitioner met its burden of establishing the falsity of the allegations, the burden shifted to Respondent to establish that his "allegations are true or that he had an objective reasonable belief that the allegations were true, based upon a reasonably diligent inquiry." ***Price***, 732 A.2d at 604. A determination of misconduct hinges upon whether Respondent acted knowingly or recklessly, or with the support of a reasonable factual basis. "Knowingly...denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." RPC 1.0(f). Recklessness is shown by the "deliberate closing of one's eyes to the facts that one had a duty to see or stating as fact things of which one was

ignorant." ***Office of Disciplinary Counsel v. Anonymous Attorney A***, 714 A.2d 402, 407 (Pa. 1998).

The evidence Respondent presented through his two witnesses and documents, failed utterly to establish that the accusations Respondent made were true or that he had an objective, reasonable belief that they were true. Respondent did not testify on his own behalf and did not put any evidence in the record of his subjective belief at the time he made his assertions. The record demonstrates that when the burden shifted to Respondent, he did not carry it.

Relatedly, Respondent's false accusations against Judge Bachman and Judge Hagan and Mr. Dombrowski violated RPC 8.4(c). In ***Anonymous Attorney A***, the Court held that the mental culpability required to establish a violation of RPC 8.4(c) is made out upon a showing that a misrepresentation was made knowingly or with reckless ignorance of the truth or falsity thereof. ***Anonymous Attorney A***, 714 A.2d at 406. The Court further explicated this standard in ***Office of Disciplinary Counsel v. Robert Surrick***, 749 A.2d 441 (Pa. 2000), wherein it held that, similar to the standard set forth in ***Price*** to establish a violation of RPC 8.2(a), Petitioner may meet its burden of proving RPC 8.4(c) by establishing that an attorney put forth false allegations, thus shifting the burden to the attorney to show an objective reasonable basis for the allegations, or that they were premised upon a reasonably diligent inquiry. ***Surrick***, 749 A.2d at 444. Herein, and as discussed above, Petitioner met its burden to establish that Respondent put forth false allegations; however, Respondent did not meet his burden to show that the allegations were true or that following a reasonably diligent inquiry, he had formed an objective belief that the allegations were true.

Respondent's repeated, false assertions against judges and opposing counsel undermined the integrity of the tribunals, eroded the public's confidence in the courts, and prejudiced the administration of justice, in violation of RPC 8.4(d)...

Having concluded that Respondent violated the Rules of Professional Conduct, we turn to the appropriate discipline to address his misconduct. In looking at the general considerations governing the imposition of final discipline, it is well-established that each case must be decided individually on its own unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 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***, 472 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. 4th 398 (1995). The Board is mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts, and deter unethical conduct. ***Office of Disciplinary Counsel v. Akim Czmus***, 889 A.2d 117 (Pa. 2005).

In recommending an appropriate sanction, the Board must consider the attendant aggravating or mitigating factors. The record before us reveals numerous weighty aggravating factors, which increase the severity of Respondent's conduct.

Failure to Accept Responsibility and Demonstrate Remorse

Respondent failed to acknowledge that there was anything wrong with making the allegations of ethical impropriety against Judge Bachman and Judge Hagan and Mr. Dombrowski, and indeed, by his conduct and words at the disciplinary hearing,

demonstrated only that he will not be deterred from alleging whatever he thinks is necessary to obtain the relief he desires, even if by doing so he violates the Rules of Professional Conduct. Respondent failed to accept responsibility and failed to demonstrate remorse. It is well-established that a respondent's impenitent attitude constitutes an aggravating factor. ***Office of Disciplinary Counsel v. John Kelvin Conner***, No. 29 DB 2018 (D. Bd. Rpt. 4/2/2019) (S. Ct. Order 6/20/2019) (citing ***Office of Disciplinary Counsel v. Thomas Allen Crawford, Jr.***, 160 DB 2014 (D. Bd. Rpt. 9/13/2017) (S. Ct. Order 11/4/2017). Respondent refused to acknowledge that his actions were improper and that he committed wrongdoing, and remained unchastened throughout these proceedings.

Resisting Proper Authority

Respondent resisted proper authority and attempted to create a perception of a conspiracy against him, and in so doing made repeated false assertions and cast aspersions against anyone who disagreed or admonished his behavior. During the pendency of this disciplinary matter, he utilized a scorched earth strategy of seeking recusal of anyone he deemed an obstacle to accomplishing what he desired and anyone who opposed him, not unlike his strategy in the matters that underpin this disciplinary proceeding. Respondent sought the recusal/disqualification of Chief Disciplinary Counsel Paul J. Killion, Disciplinary Counsel Michael Gottsch, the Special Master, and various Disciplinary Board members.

Respondent railed against the disciplinary system at every opportunity, and most egregiously, continued his pattern of making false allegations by accusing the Special Master and Office of Disciplinary Counsel of improper conduct and impugning the

veracity of the tribunal before which he appeared. *See*, Respondent's Brief on Exceptions at 6, "The Master conducted manifestly biased and prejudicial proceedings including conducting prohibited ex parte proceedings and communications with [Petitioner] over respondent's objections throughout the proceedings..." Respondent accused Petitioner of impropriety, asserting that Petitioner engaged in "egregious, continual, intentional prosecutorial misconduct..." *Id.* In yet another example of his inflammatory rhetoric, Respondent falsely asserted that "ODC and Cohen specifically admit that Bachman, Dombrowski and Hagan engaged in cumulative ex parte communications involving Bachman, Hagan and Dombrowski...." Respondent's Brief on Exceptions at 32 (emphasis added).

Respondent's conduct for the duration of these proceedings demonstrated a thorough and complete lack of respect for the disciplinary system, disciplinary counsel, and the Special Master, as characterized by Respondent's arguing incessantly with the Special Master, *see, e.g.*, N.T. II 324-325; 391-392; N.T. IV 377-379, accusing the Special Master several times during the hearing (often in a raised tone of voice, as noted by the Master in his Report, p. 41) of bias or even extreme or egregious bias against him, *see, e.g.,* N.T. I 316; N.T. III 547-548; N.T. V 31, and accusing Chief Disciplinary Counsel Killion and "anyone" involved in this matter of obstruction of justice, violation of constitutional rights, and suppression of evidence. Prehearing Conference August 2, 2018, N.T. 7.

Poor Advocacy

Respondent exhibited poor advocacy throughout the hearing. He demonstrated a failure to adequately prepare, as he did not have exhibits and copies ready for use and had difficulty finding exhibits. Respondent ignored instructions from

the Special Master to concisely state objections, see *e.g.*, N.T. I 45-46; 87; 148-149; 208-209; N.T. II 174-175; 215-216; 276-277. Respondent made representations that the Special Master determined lacked credibility. For example, Respondent mischaracterized witness testimony as part of his objections and questions. *See*, e.g. N.T. II 192; 358; 407-408; N.T. III 524 – 525; N.T. IV 298-299; 359. Respondent subjected Petitioner's witnesses to extraordinarily lengthy cross-examinations, employing incessant argumentativeness and constantly attempting to interject his own version of facts by his questions regarding matters that were never established as facts. Respondent's pleadings are verbose and confusing, forcing the Special Master and this Board to parse through his prose in order to attempt to understand Respondent's position. For example, in Respondent's Brief on Exceptions, one single paragraph ran for thirteen pages and was composed of lengthy run-on sentences. *See*, Respondent's Brief on Exceptions at 1-13.

Misleading Statement

Respondent procured a misleading statement from a witness, Lana Meehan. Respondent subpoenaed Ms. Meehan to appear at Petitioner's office for a prior proceeding in this matter on October 16, 2017. Following the proceeding, at which Ms. Meehan appeared but was not called to testify, she agreed to go to Attorney McHale's office with Respondent and Attorney McHale. Petitioner was not present at this meeting. Ms. Meehan testified at the disciplinary hearing that Respondent procured a handwritten statement, which she worded at Respondent's request, which statement omitted the fact that Ms. Meehan had left a message on Respondent's answering machine. Through this omission, Respondent procured a statement that was misleading, because it implied that Ms. Meehan had never conveyed the information to Respondent, when in fact she had

conveyed the information to him by leaving a message on Respondent's answering machine. Respondent's act in procuring the misleading statement aggravates his misconduct and shows that he was aware that his false assertions against Judge Bachman and Mr. Dombrowski violated the Rules of Professional Conduct.

Similar Conduct in Third Circuit

Respondent has been chastised previously by the United States Court of Appeals for the Third Circuit for conduct similar to that with which he is charged in this matter–attributing to his opponent supposed "admissions" that were never made. Specifically, the Third Circuit rebuked Respondent for his continuous misuse of the term "admittedly" "to described what [Respondent] sees as his own appropriate conduct and [others'] missteps, as well as what he asserts are its legal and factual concessions. This style has enhanced our difficulty understanding these confusing matters for [Respondent's opponent] frequently is not admitting what Murphy suggests it admits." ODC-36 at 6 n.4. Despite the Third Circuit's foregoing admonition to Respondent in 2006, Respondent recklessly and falsely alleged, in the *Wilson* matter and in filings with the Commonwealth Court and the Supreme Court, that Judge Bachman and Judge Hagan and Mr. Dombrowski had admitted matters that in fact they had not admitted.

Federal Lawsuit

Respondent attempted to derail this disciplinary proceeding by filing suit in federal court in the Eastern District of Pennsylvania, naming as defendants the Disciplinary Board, Chief Disciplinary Counsel Killion, Disciplinary Counsel Gottsch, and other disciplinary officials. ODC-43.

Mitigating Factor

Respondent is seventy-five years of age and has practiced law for nearly five decades without incident. It is well-established that a lack of prior discipline may serve to mitigate a respondent's misconduct. ***Office of Disciplinary Counsel v. Philip A. Valentino***, 730 A.2d 479, 483 (Pa. 1999). We recognize this mitigating factor, but afford it little weight when considering the totality of the circumstances, due to the serious nature of Respondent's misconduct and the weighty aggravating factors, which include his pattern of behavior throughout the instant proceedings.

While there is no *per* se discipline in Pennsylvania, *see generally* ***Lucarini***, 472 A.2d at 189-91, our review of Pennsylvania disciplinary cases reveals that suspension from the practice of law is the appropriate sanction where, as here, an attorney's pattern of persistently filing pleadings containing false allegations against jurists and opposing counsel tarnishes the reputation of the courts and the legal profession.

The Court has disciplined attorneys for making false assertions against jurists and others. In the matter of ***Office of Disciplinary Counsel v. Eugene Andrew Wrona***, No. 123 DB 2004 (D. Bd. Rpt. 3/31/2006) (S. Ct. Order 6/29/2006), the Court disbarred Wrona, who had no prior history of discipline, for violating RPCs 3.3(a)(1), 8.2(b), 8.4(a), 8.4(c) and 8.4(d). Wrona made false accusations that Lehigh County Common Pleas Judge Alan M. Black altered court audiotapes, that the court monitor "may have perjured herself," and that "Judge Black ha[d] knowledge that her testimony was false and did nothing to correct the record." D. Bd. Rpt. at 7. Wrona further asserted that "criminal misconduct is taking place with the knowledge, or at least a conscious 'look the other way,' of officers of the court," and that "Judge Black is aware that the audiotapes do

not contain a complete and accurate record of the proceedings." *Id.* In a motion to disqualify Judge Black, Wrona asserted that Judge Black had engaged in "subornation of perjury" and in "criminal misconduct." D. Bd. Rpt. at 8. Wrona's accusations were contained in multiple letters, pleadings, court filings, affidavits and internet postings. All of his assertions against Judge Black were false. The Board concluded:

> [T]his Respondent is truly unfit to practice law. He exhibited no awareness of his responsibilities and obligations to the court. He was prepared to fight his case in any way possible, including making false and injurious accusations against a judge in a persistent manner through a number of years and to a variety of audiences. This "zealous" representation goes far beyond that contemplated by the ethical rules governing this profession. Respondent has not demonstrated that he possesses the qualities and character necessary to practice law in this Commonwealth. Despite his own opinion of his actions, the record is clear that Respondent did not serve his client well. It is the Board's opinion that the general public is well-served to have Respondent removed from the roll of active attorneys.

Id. at 21-22.

In five matters, the Court imposed suspensions for five years on attorneys who made false allegations against jurists. In ***Price***, the respondent filed three court documents that contained false allegations against two district justices and an assistant district attorney. Price accused the district justices of conspiracy, "official oppression," "coercion over various law enforcement or political officials," abuse of office, "prosecutorial bias to ingratiate [one District Justice] with disciplinary and other authorities," and sexual harassment of several constituents. The Board found that Price's assertions were either knowingly or recklessly made, and found that Price had violated RPCs 3.1, 3.3(a)(1), 8.2(b), 8.4(c), and 8.4(d) - the same rules at issue in the instant

matter. The Board recommended that Price be suspended for a period of one year and one day. Upon review, the Court suspended Price for a period of five years.

The Court noted that Price had presented no evidence establishing a factual basis to support his allegations, and that his "suspicions" did not give rise to an objective, reasonable belief that his allegations were true. ***Price***, 732 A.2d at 604. The Court explained why greater discipline than the one year and one day suspension recommended by the Board was warranted:

> In determining the appropriate discipline to be imposed, . . . [w]e note that even at this stage of the proceeding, Respondent denies that he engaged in any wrongdoing and submits that he should not be subject to any form of discipline. This indicates that Respondent has no understanding of the potential damage he may have caused to the victims' reputations and to the functioning of our legal system, which is based upon good faith representations to the court. Moreover, the false accusations against District Justice Farra and District Justice Berkheimer included attacks upon their performance of official duties. Such scandalous accusations erode the public confidence in the judicial system in general and in these District Justices in particular.

Id. at 606-607. Notably, three justices dissented for disbarment.

In ***Surrick***, the respondent accused Common Pleas Court Judge Harry J. Bradley and Superior Court Judge Peter Paul Olszewski, of wrongdoing. Surrick alleged that Judge Bradley "fixed" a verdict in a civil matter in the Delaware County Court of Common Pleas, and Judge Olszewski issued orders and decisions against the respondent in order to gain favor with the Supreme Court. Both judges emphatically denied Surrick's accusations. Surrick was charged with, *inter alia*, violating RPC 8.4(c). The Court held that the objective, reasonable-lawyer standard set forth in ***Price*** also applied to violations of RPC 8.4(c), as "a subjective approach would permit lawyers to defend the most wanton and scurrilous attacks upon innocent third parties by stating that

they personally believed it was true." ***Surrick***, 749 A.2d at 445. The Court rejected the Board's recommendation of a public censure because "[a]lthough we have concluded that respondent acted recklessly rather than intentionally in this matter, the impact upon Judge Bradley, Judge Olszewski and the judicial system as a whole is the same." *Id.* at 449. In determining that Surrick be suspended for five years, the Court adopted a rationale that applies with equal force here:

> An accusation of judicial impropriety is not a matter to be taken frivolously. An attorney bringing such an accusation has an obligation to obtain some minimal factual support before leveling charges that carry explosive repercussions. When an attorney makes an accusation of judicial impropriety without first undertaking a reasonable investigation of the truth of that accusation, he injures the public, which depends upon the unbiased integrity of the judiciary, the profession itself, whose coin of the realm is their ability to rely upon the honesty of each other in their daily endeavors, and the courts, who must retain the respect of the public and the profession in order to function as the arbiter of justice. "Truth is the cornerstone of the judicial system; a license to practice law requires allegiance and fidelity to the truth." When a lawyer holds the truth to be of so little value that it can be recklessly disregarded when his temper and personal paranoia dictate, that lawyer should not be permitted to represent the public before the courts of this Commonwealth.

Id. (citations omitted).[5]

In ***Office of Disciplinary Counsel v. Donald A. Bailey***, No. 11 DB 2011 (D. Bd. Rpt. 5/1/2013) (S. Ct. Order 10/2/2013), the Court imposed a five-year

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[5] *See also* ***Office of Disciplinary Counsel v. Joseph R. Reisinger,*** No. 44 DB 2015 (D. Bd. Rpt. 8/15/2016) (S. Ct. Order 3/31/2017) (Respondent disbarred for, *inter alia*, alleging that two judges intentionally conspired with Respondent's opposing parties, alleging that "Judge Brown is obviously not fit to continue to serve as a jurist in any courtroom in this Commonwealth," initiating a lawsuit against Judge Michael T. Vough titled "Complaint for Permanent Injunction Because of Judicial Corruption and Commission of Criminal Acts," and alleging in the complaint that Judge Vough's decisions in Respondent's matters had no legal basis and therefore constituted "criminal" acts. The Board determined that Respondent had violated RPCs 8.2(b), 8.4(c) and 8.4(d) when he "repeatedly and consistently misstated and misrepresented the actions of jurists and court personnel as improper, unwarranted and illegal." D. Bd. Rpt. at 23).

suspension on Bailey for professional misconduct arising from a series of false allegations against members of the federal judiciary in a motion for rehearing *en banc*.

The Board noted:

> Respondent attempted to create the perception of a far-ranging judicial conspiracy based on his subjective interpretation of events. As the Hearing Committee aptly noted, "We are led to conclude that it is Respondent who has in fact 'personalized' these outcomes and has chosen to vilify those jurists who find against him or admonish his failure to abide by rules governing advocacy." (Hearing Report, p. 44-45). Further, "The evidence reveals not a conspiracy against Respondent, but an aggressive resistance on Respondent's part to accept the proper authority of the court and to cast aspersions on anyone in a position of authority who disagrees or admonishes his behavior."[1] ....
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> [1] As documented in the Hearing Committee Report, the record of this disciplinary proceeding reflects a similar course of behavior by Respondent in response to rulings made by the Hearing Committee Chair and Board Chair.
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> * * *
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> The Board recognizes that the guiding principles of our disciplinary system are protection of the public from attorneys who are unfit or unable to represent clients within the bounds of ethical conduct; and to preserve public respect for our judiciary by protecting it from unwarranted and inappropriate attacks. Should Respondent ever seek to practice law again in the future he would be required to prove his fitness to do so by clear and convincing evidence. As such, the recommended sanction would carry out the goals of both protecting the public by removing Respondent from the practice of law, and signaling the profession's intolerance for unwarranted and baseless assaults on the judiciary.

D.Bd. Rpt. at 15, 18.

In ***Office of Disciplinary Counsel v. William Z. Warren***, No. 151 DB 2007 (D. Bd. Rpt. 8/15/2008) (S. Ct. Order 2/2/2009), the Court suspended Warren for five years for falsely accusing a judge of unethical conduct and criminal activity in a motion to

recuse and repeating the assertions on appeal to the Superior Court. Warren asserted that the judge's judicial opinion constituted an admission that the judge had violated the defendant's constitutional rights.

In ***Office of Disciplinary Counsel v. Daniel C. Barrish***, No. 130 DB 2004 (D. Bd. Rpt. 12/6/2005) (S. Ct. Order 3/15/2006), the Court suspended Barrish for five years for making false allegations against two judges in pleadings to the Supreme Court and in an article published over the internet. Barrish accused the judges of case fixing, dishonesty, filing false case reporting forms, filing false financial records, and taking bribes. The Board noted that Barrish showed no remorse and continued to make accusations against the judges at his disciplinary hearing. The Board found that Respondent did not recognize "the deleterious effects on the legal system of making unfounded accusations against judicial officers." D. Bd. Rpt. p. 20.

The Court imposed lesser discipline in ***Office of Disciplinary Counsel v. Dora R. Garcia a/k/a Dora R. Palmieri,*** No. 182 DB 2006 (S. Ct. Order 10/25/2007) (consent discipline). Therein, Garcia received a fifteen-month suspension on consent for making false accusations about the integrity and qualifications of five judges, including a workers' compensation judge. Garcia had no record of discipline and admitted that "her conduct represented a serious departure from what is acceptable and what will be tolerated by the bench and Bar of the Commonwealth." (Joint Petition for Consent Discipline, ¶ 77) ***Garcia*** is readily distinguishable from Respondent Murphy's matter because Garcia "admit[ed] and fully appreciate[d] the seriousness of her past conduct." *Id.* ¶ 75.[6]

[6] Examples of cases involving false accusations against judges that did not result in a suspension are ***Office of Disciplinary Counsel v. David Foster Gould, III,*** No. 160 DB 2016 (D. Bd. Opinion 6/24/2018) (public

The decisional law establishes a baseline of a lengthy suspension to address Respondent's egregious misconduct. Upon this record, we recommend that Respondent be suspended for five years, in line with the discipline imposed in ***Price***, ***Surrick***, ***Bailey***, ***Warren***, and ***Barrish***. Of the matters discussed above, ***Wrona*** is the only case that resulted in disbarment; the Board therein noted that Wrona's misconduct involved the "very first court case handled on [Wrona's] own" and further noted that Wrona had no "steady, competent legal work to help mitigate the severity of his misconduct" and was "truly unfit" to practice law. ***Wrona*** D. Bd. Rpt. at 21. While there is no doubt that Respondent's conduct renders him unfit to practice law, the weight of the case law goes against disbarment.

A suspension for five years is appropriate, as the public interest warrants removing Respondent from active practice because he has been unwilling to conform his conduct to the Rules of Professional Conduct. Respondent has exhibited an extreme degree of unprofessionalism and neither appreciates nor apparently is concerned with, the impact of his conduct on the profession. Respondent exhibited no awareness of the potential damage he may have inflicted on the reputations of those he accused of improprieties, and on the legal system itself. Respondent has persistently and

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reprimand imposed for attorney's violation of RPC 8.2(a); respondent accused a Common Pleas Court judge of being "biased" and pre-disposed to rule in favor of the opposing party because the opposing party was a municipal authority; the litigation in question involved respondent's personal matter, wherein he lost his objectivity and professionalism); ***Office of Disciplinary Counsel v. Gregory Gerard Stagliano,*** No. 66 DB 2011 (D. Bd. Order 7/27/2012) (public reprimand imposed on respondent for an outburst at a hearing where he lost his temper and made false allegations against two Court of Common Pleas Judges; respondent consented to the discipline, admitted that his allegations were made recklessly and lacked evidentiary support, and expressed regret and remorse for his allegations against the judges); ***Office of Disciplinary Counsel v. Robert Alton Wilson***, No. 150 DB 2007 (D. Bd. Rpt. 10/22/2008) (S. Ct. Order 2/2/2009) (The respondent received a public censure for filing a reply brief in which he falsely alleged that a judge's decision was politically motivated; respondent had previously received a private reprimand; respondent admitted during his testimony at his disciplinary hearing that he should not have used the language he used and stated that he did not intend to malign the judge).

consistently abused the tribunals before which he appeared and displayed a conspicuous lack of remorse for his behavior.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Robert J. Murphy, be Suspended for a period of five 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: _____
John F. Cordisco, Member

Date: 9/3/19
Board Chair Trevelise recused.