

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1735 Disciplinary Docket No. 3
Petitioner :
 : No. 216 DB 2009
v. :
 : Attorney Registration No. 46188
DENNIS JOSEPH SPYRA, :
Respondent : (Allegheny County)

ORDER

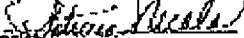
PER CURIAM:

AND NOW, this 3rd day of October, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated April 15, 2011, the Petition for Review and response thereto, it is hereby

ORDERED that Dennis Joseph Spyra is suspended from the Bar of this Commonwealth for a period of six months and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola
As Of 10/3/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL : No. 216 DB 2009
Petitioner :
v. : Attorney Registration No. 46188
DENNIS JOSEPH SPYRA :
Respondent : (Allegheny County)

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

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

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

I. HISTORY OF PROCEEDINGS

On December 29, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against Dennis Joseph Spyra, Respondent. The Petition charged Respondent with violations of Rules of Professional Conduct in

connection with his representation of two separate clients. Respondent filed an Answer to Petition for Discipline on January 28, 2010.

A disciplinary hearing was held on April 26, 2010 before a District IV Hearing Committee comprised of Chair Laura Ditka, Esquire and Members Jan Swenson, Esquire, and Anthony R. Himes, Esquire. Respondent appeared pro se.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on September 3, 2010, concluding that Respondent engaged in professional misconduct and recommending that he be suspended for a period of three months.

Respondent obtained counsel, Richard H. Lindner, Esquire, who entered his appearance on September 17, 2010. Respondent filed a Brief on Exceptions on October 4, 2010 and requested oral argument before the Disciplinary Board.

Petitioner filed a Brief Opposing Exceptions on October 25, 2010.

Oral argument was held on December 8, 2010 before a three member panel of the Disciplinary Board.

This matter was adjudicated by the Board at the meeting on January 19, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent is Dennis Joseph Spyra. He was born in 1952 and was admitted to practice law in the Commonwealth of Pennsylvania in 1986. His attorney registration mailing address is 1711 Lincoln Way, White Oak PA 15131. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of professional discipline in Pennsylvania. He received a Private Reprimand in 2006 for violations of Rules of Professional Conduct 1.3 and 1.4(a). He received an Informal Admonition in 2004 for violations of Rules of Professional Conduct 1.5(b) and 1.16(d).

The Billings Matter

4. In or about April 2005, Tammy L. Billings engaged Paul Daniels, Esquire, who commenced the filing of a Chapter 13 Voluntary Petition in the United States Bankruptcy Court of the Western District of Pennsylvania.

5. Sometime in July 2007, Mrs. Billings terminated the representation of Attorney Daniels.

6. While waiting in the hallway at her previously scheduled bankruptcy hearing, Mrs. Billings met Respondent's employee, Noemy Reis. Based on Mrs. Billings' conversation with Ms. Reis, Mrs. Billings met with Respondent on or about mid-July 2007.

7. Mrs. Billings signed a written fee agreement letter with Respondent on or about July 19, 2007. During the July consultation, Respondent informed Mrs. Billings that the fee for representation in the bankruptcy matter would be \$2,500. Respondent requested that Mrs. Billings provide to him information necessary for the bankruptcy matter.

8. On August 19, 2007, Mrs. Billings paid to Respondent the sum of \$1,500 and was issued a receipt for same.

9. Respondent never entered his appearance of record on behalf of Mrs. Billings.

10. A meeting of creditors was originally scheduled for August 20, 2007. The meeting was rescheduled to October 1, 2007. At some point, Mrs. Billings contacted Respondent's office and informed office personnel of the meeting scheduled for October 1, 2007.

11. In or about late September 2007, Mrs. Billings contacted Respondent's office with respect to the pending creditors' meeting. Mrs. Billings specifically inquired as to whether someone from Respondent's office would be at the meeting. Although Mrs. Billings did not speak to Respondent during the telephone call, she was told to attend the meeting and someone from Respondent's office would be there to represent her.

12. On October 1, 2007, Mrs. Billings appeared at the meeting, but no one from Respondent's office appeared to represent her. Mrs. Billings immediately contacted Ms. Reis and informed her that no one appeared. Ms. Reis apologized and Mrs. Billings left without attending the meeting of creditors.

13. On or about October 9, 2007, Mrs. Billings contacted Respondent's office, informing them she was terminating Respondent's representation and requesting a refund of the \$1,500 paid to Respondent.

14. Mrs. Billings sent a letter dated October 13, 2007, to Respondent informing him, among other things:

(a) effective October 9, 2007, Respondent's professional services were terminated;

(b) she was requesting a refund of the \$1,500 retainer cash payment made;

(c) numerous telephone calls from her and or her husband were unanswered or not returned;

(d) Respondent never entered an appearance on her behalf in the bankruptcy proceedings.

15. Respondent never answered Mrs. Billings' letter dated October 13, 2007, did not return the \$1,500 retainer, nor did he initiate contact in any other manner with his client to discuss the matter.

16. Mrs. Billings retained the professional services of Donald Calaiaro, Esquire.

17. By letter dated October 17, 2007, Mr. Calaiaro informed Respondent, among other things, that:

(a) he had been retained to represent Mrs. Billings in her Chapter 13 matter and enclosed a copy of his Entry of Appearance;

(b) Respondent could forward to Mrs. Billings directly the refund of \$1,500;

(c) Mrs. Billings told Mr. Calaiaro that she intended to go the Disciplinary Board regarding Respondent's conduct but if Respondent sent the money to her, she would not file a complaint;

(d) Mr. Calaiaro urged Respondent to refund the money to Mrs. Billings promptly;

(e) Respondent should forward any documents in his file that he thought would be necessary for Mrs. Billings' representation;

(f) Mr. Calaiaro invited Respondent to discuss the matter with him if he had any questions.

18. Respondent did not specifically respond to Mrs. Billings or Mr. Calaiaro.

19. Sometime during the summer of 2008, Mrs. Billings filed a complaint with both the Office of Disciplinary Counsel and the Pennsylvania Lawyers Fund for Client Security.

20. By letter of inquiry dated July 8, 2008, Petitioner contacted Respondent by certified mail relative to his handling of the Billings matter.

21. By letter of July 28, 2008, Respondent replied to Petitioner regarding the Billings matter. In essence, he stated that a certain employee was no longer employed by his firm; a review of the file indicated that a Motion to Retain Counsel was prepared and his office was waiting additional information from Mrs. Billings to add additional creditors; Mrs. Billings failed to provide such information; and Respondent recalled speaking with Mrs. Billings' husband and offered to refund half of the retainer.

22. Noemy Reis testified at the disciplinary hearing. She has been employed by Respondent's office since October 2001.

23. Ms. Reis made the appointment for Mrs. Billings to meet with Respondent at his office, but she was not present during the consultation with Mrs. Billings.

24. Whether it was for strategy or procedural reasons, Respondent did not file an appearance of record in the U.S. Bankruptcy Court.

25. Respondent does not recall speaking to Mrs. Billings by telephone, nor did he send her a letter or any type of communication explaining to her the risks of failing to provide his office with the information requested at the initial consultation in July 2007.

26. Other than draft documents related to the filing of an appearance with the bankruptcy court, which Respondent did not file,

Respondent presented no documents related to any work performed for or on behalf of Mrs. Billings.

27. In May 2009, Mrs. Billings received a check from Respondent for \$1,500 as a refund of her retainer payment.

28. Respondent failed to show sincere and credible remorse for his misconduct.

The Stumpo Matter

29. In or about August 2005, Virginia L. Stumpo retained Respondent to file a Chapter 7 bankruptcy petition on her behalf.

30. At that time, Ms. Stumpo paid Respondent \$470 toward his fee of \$1,000 to represent her and \$209 for the filing fee of the petition.

31. On September 11, 2005, Respondent filed or caused to be filed a Chapter 7 voluntary petition on behalf of Ms. Stumpo which was filed in the United States Bankruptcy Court in the Western District of Pennsylvania.

32. The assets listed in Ms. Stumpo's schedule in the petition included, among other things, her interest in a Hartford Profit Sharing/Annuity with a value of \$77,000.

33. On Schedule C of the petition, Ms. Stumpo elected to exempt the annuity account pursuant to 42 Pa.C.S.A. Section 8124(b)(1)(ix).

34. On January 4, 2006, counsel for Trustee, James R. Walsh, Esquire, filed an Objection of Trustee to Ms. Stumpo's Claimed Exemptions. The Objection indicated, among other things, that:

- (a) The Trustee objected to the exemptions in the annuity account;
- (b) The Trustee objected to the exemptions as it was unknown as to whether any amounts were rolled over from an ERISA approved plan within one year of filing;
- (c) The Trustee objected to the exemptions as it was unknown as to what portion was contributed in excess of the statutory amount in any one year; and
- (d) The Trustee requested that the Court enter an Order to determine that the exemption was disallowed and further, he authorized the firm of Spence, Custer, Saylor, Wolfe & Rose, LLC to file the instant action.

35. By Order dated January 5, 2006, Judge Bernard Markovitz set a hearing date of February 7, 2006.

36. On January 6, 2006, Respondent filed or caused to be filed a Response to the Trustee's Objections to his client's claimed exemptions.

37. On February 7, 2006, a hearing was held in the matter at which time Ms. Stumpo was represented by Mark McIlvaine, Esquire, of Respondent's office.

38. By letter dated February 7, 2006, David J. Novak, counsel to Trustee Walsh:

- (a) Requested that Mr. McIlvaine provide his office with the documents evidencing the position that the fund was the result of a rollover from a previous qualified plan; and
- (b) Requested that Mr. McIlvaine provide the following
 - (i) documents supporting that the previous plan was a qualified plan;
 - (ii) documents indicating that the IRA was a result of the rollover from the previous plan; and
 - (iii) documents indicating any contributions and/or lack thereof to the plan after the rollover.

39. Neither Respondent nor anyone from his office responded to Mr. Novak's letter.

40. By Order dated February 8, 2006, Ms. Stumpo's bankruptcy matter was transferred to Judge Jeffrey A. Deller and by Order dated February 17, 2006, Judge Deller ordered that an evidentiary hearing on the Objection to Ms. Stumpo's claim of exemptions was set for March 28, 2006.

41. The docket reflects that Respondent, Ms. Stumpo, Trustee Walsh and the Office of the United States Trustee were notified of said hearing.

42. In or about the beginning of March 2006, Mr. McIlvaine informed Ms. Stumpo that she needed to obtain a letter from Hartford Life Annuity and Insurance Company that confirmed that she had not contributed to her rollover since or after 2001.

43. Ms. Stumpo requested that Hartford provide her a letter confirming that she had not made contributions to her rollover IRA since or after 2001.

44. By letter dated March 24, 2006, Laurie Kolosky of Hartford faxed a copy of said letter to Mr. McIlvaine.

45. On March 27, 2006, Mr. Novak's assistant called Respondent's office to discuss the issues to be heard at the March 28, 2006 hearing.

46. Respondent's secretary told Mr. Novak's assistant that Mr. McIlvaine was no longer associated with their office and she would get someone else.

47. Thereafter, neither Respondent nor anyone from his office spoke with Mr. Novak's assistant or called Mr. Novak.

48. On March 28, 2006, an evidentiary hearing was held.

49. Neither Respondent nor anyone from his office appeared on behalf of Ms. Stumpo.

50. By Order of Court dated March 28, 2006, it was ordered that the exemption Respondent claimed on behalf of Ms. Stumpo was disallowed.

51. By letter of March 29, 2006, Respondent sent some information to Trustee Walsh regarding Ms. Stumpo's account with Hartford, although this was not the information needed and requested by the Trustee.

52. Respondent was notified of the March 28, 2006 Order.

53. Thereafter, Respondent did not file a motion for reconsideration of the March 28, 2006 Order, file a motion to vacate order, or take any action to protect Ms. Stumpo's interest.

54. In or about the end of March 2006, Ms. Stumpo called Respondent's office about the March 28, 2006 Order that she had received from the Bankruptcy Court, but was unable to speak to anyone.

55. During the first week of April 2006, Ms. Stumpo again called Respondent's office about the Order and was advised by a member of Respondent's staff that she did not need to worry, they would take care of it.

56. By Order dated May 9, 2006, a discharge from bankruptcy was granted in Ms. Stumpo's Chapter 7 case.

57. In about mid-May 2006, Ms. Stumpo called Respondent's office and spoke to him about why her bankruptcy matter was discharged.

58. According to Ms. Stumpo, Respondent informed her that "You win some and you lose some," or words to similar effect, and did not take further action to protect Ms. Stumpo's interests.

59. In the latter part of May 2006, Ms. Stumpo called Respondent's office and made an appointment to meet with him regarding the discharge.

60. Thereafter Respondent's office cancelled her appointment.

61. A few months later, Ms. Stumpo again called Respondent's office because she never received anything from the Bankruptcy Court.

62. Ms. Stumpo was informed by Respondent's office that the Court was behind schedule and that was why she did not yet receive anything.

63. By letter dated May 23, 2007, Joseph F. Gula, III, Esquire, advised Respondent that:

- (a) His office represented the Chapter 7 Trustee in Ms. Stumpo's matter;
- (b) They objected to Ms. Stumpo's exemption in a Hartford Profit Sharing/Annuity valued at \$77,000;
- (c) On March 29 [sic] 2006, the Court entered an Order which disallowed the claimed exemption;
- (d) rather than have them file a Complaint against Respondent's client and incur additional fees, they would like to resolve the same by agreement;
- (e) Since the case had languished for over a year, Mr. Gula needed to hear from Respondent within ten days of date of the letter; and
- (f) otherwise, Mr. Gula would file a Complaint and move forward in Bankruptcy Court.

64. On May 32, 2007, Respondent called Mr. Gula and informed him that Respondent's belief was that the exemption was proper, and Respondent would be sending the information to the Trustee and/or his counsel.

65. Thereafter, Respondent did not send to the Trustee or his counsel the documents in regard to Ms. Stumpo's matter.

66. By letter dated October 1, 2007, Mr. Novak advised Laurie Kolosky of Hartford, among other things, that:

- (a) Ms. Stumpo had filed for protection pursuant to Chapter 7 on September 11, 2005;
- (b) At that time, property of the bankruptcy estate included the Hartford Life Variable Annuity and Ms. Stumpo attempted to exempt same from her creditors;
- (c) Objections were filed to the exemption;
- (d) By Order of Court dated March 29 [sic] 2006, the objection to the exemption was sustained and the exemptions claimed by Ms. Stumpo were disallowed;
- (e) Accordingly, the annuity was property of the Estate and could be used to pay the unsecured creditors;
- (f) The fund needed to be turned over to the Chapter 7 Trustee;
- (g) The check should be made payable to James R. Walsh, Trustee; and
- (h) Should they not be in receipt of the funds within 20 days of date of correspondence, they would bring an action in the Bankruptcy Court against Hartford.

67. In or about the first week of October 2007, Ms. Stumpo called Respondent's office and left repeated messages for Respondent to call her about the letter dated October 1, 2007 that she received from Mr. Novak.

68. Respondent did not return Ms. Stumpo's calls.

69. Thereafter, Ms. Stumpo made an appointment to meet with Respondent on October 13, 2007.

70. A representative of Respondent's office informed Ms. Stumpo that the matter she wanted to discuss with Respondent was a new case, and she would have to pay Respondent an additional \$100.

71. Ms. Stumpo did not keep her meeting with Respondent as she did not have the funds to pay him an additional fee.

72. Respondent did not respond or file any pleadings with the Court on behalf of Ms. Stumpo.

73. On December 5, 2007, Mr. Novak, upon receipt of funds from the liquidation of the IRA, filed an Application to Employ an Accountant in regard to the Stumpo matter.

74. Respondent was given electronic notice of the filing of the Application to Employ an Accountant by the Bankruptcy Court.

75. By Court Order dated December 11, 2007, the Application to Employ an Accountant was approved and said notice of the Order was provided to Respondent.

76. Respondent did not file anything on behalf of Ms. Stumpo with the Court.

77. On or about January 18, 2008, Ms. Stumpo, acting on her own behalf, filed a letter requesting release of her funds.

78. The Court scheduled a hearing before Judge Jeffrey Deller on Ms. Stumpo's pro se letter for February 26, 2008.

79. At the February 26, 2008 hearing, Ms. Stumpo represented herself. Respondent was present and represented himself, and Mr. Walsh was present as Trustee. The hearing was continued until April 1, 2008.

80. On April 1, 2008, the continued hearing was held, at which time Respondent represented Ms. Stumpo.

81. By Order dated April 7, 2008, Judge Deller denied the Motion to Release funds without prejudice to Ms. Stumpo's ability to commence a malpractice action against legal counsel, and without prejudice to Ms. Stumpo's claim that the annuity fund was not property of the estate.

82. On April 17, 2008, Respondent filed a Motion for Reconsideration, which was scheduled for hearing on May 16, 2008.

83. On May 16, 2008, Judge Deller stayed the case until after mediation of the matter.

84. On July 11, 2008, a status conference was held in Ms. Stumpo's matter.

85. By Order of July 31, 2008, Judge Thomas P. Agresti ordered, among other things, that:

- (a) As a result of the telephone conference with the parties involved in the mediation of Ms. Stumpo's matter, a number of pending matters were reviewed;

(b) It was determined that Ms. Stumpo required representation by counsel independent of the services provided by Respondent in the event any conflict arose;

(c) For the purposes of the mediation hearing only, Norman E. Gilkey, Jr., Esquire, had agreed to represent Ms. Stumpo on a pro bono basis;

(d) At the time of the telephone conference the Court requested the parties to provide copies of any relevant pleadings and memoranda filed to date;

(e) On or before August 15, 2008, the parties were directed to provide the Court with copies of such documents, copy each other with same, and provide proof to the Court; and

(f) The mediation conference would be scheduled by separate order.

86. By Order dated August 4, 2008, Judge Agresti ordered, among other things, that:

(a) mediation was scheduled for October 3, 2008;

(b) unless otherwise ordered by the Mediation Court all counsel of records and their respective clients should be prepared to attend the mediation without excuse; and

(c) any such party failing to personally attend the mediation without prior permission by the Court, would be

subject to the imposition of sanctions, after notice and hearing, which sanctions might include reprimand, monetary fines and /or loss of an opportunity to present evidence at the time of trial.

87. Ms. Stumpo retained independent counsel, Jay N. Silberblatt, Esquire, to file a civil action against Respondent for legal malpractice and a Praecipe for Writ of Summons was filed on September 17, 2008 in the Court of Common Pleas of Allegheny County.

88. On October 3, 2008, a mediation conference was held in Ms. Stumpo's bankruptcy case and an Order Approving Settlement was signed by Judge Agresti on October 9, 2008, reflecting that the underlying factual basis for the March 28, 2006 Order granting the Trustee's Objections which allowed the Trustee to proceed with the liquidation of Ms. Stumpo's IRA was incorrect.

89. The Court found that had all of the facts in the matter been made available to the Trustee, the Trustee would not have recommended liquidation, and the Court would not have entered the Order of March 28, 2006.

90. On January 28, 2009, a complaint was filed on behalf of Ms. Stumpo against Respondent in the civil action.

91. Ms. Stumpo's civil action against Respondent was settled out of court.

92. Respondent failed to show sincere and credible remorse.

III. CONCLUSIONS OF LAW

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

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

2. RPC 1.16(d) - Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect the client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

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

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

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

3. RPC 1.4(a)(4) - A lawyer shall promptly comply with reasonable requests for information.

4. RPC 5.1(a) - A partner in a law firm, and a lawyer who individually or together with other lawyers possesses comparable managerial authority in a law firm, shall make reasonable efforts to insure that the firm has

in effect measures giving reasonable assurance that all lawyers in the firm conform to the rules of professional conduct.

5. RPC 5.1(b) - A lawyer having direct supervisory authority over another lawyer shall make reasonable efforts to insure that the other lawyer conforms to the Rules of Professional Conduct.

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

Petitioner did not prove by clear and satisfactory evidence that Respondent violated Rule of Professional Conduct 5.3(a).

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges filed against Respondent by way of a Petition for Discipline. The Petition alleged that Respondent violated Rules of Professional Conduct relative to his representation of two separate clients. Respondent filed a timely Answer and represented himself at the disciplinary hearing on April 26, 2010.¹

Review of the record demonstrates that Petitioner met its burden by clear and satisfactory evidence, that Respondent violated Rules of Professional Conduct 1.3 and 1.16(d) in the Tammy Billings matter, and Rules of Professional Conduct 1.3, 1.4(a), 1.4(a)(4), 5.1(a), 5.1(b), and 8.4(d) in the Virginia Stumpo matter.

¹ Respondent retained counsel shortly after the Hearing Committee Report was filed.

Mrs. Billings retained Respondent to handle a bankruptcy matter. Other than a consultation with Mrs. Billings in July 2007, Respondent rendered no other professional services to his client after collecting a deposit on the retainer fee. The record is devoid of any documents prepared for filing, letters sent to Mrs. Billings, or telephone calls made in pursuit of Mrs. Billings' case. Mrs. Billings was left feeling confused and uncertain about the status of her matter, as Respondent's communication with her was practically non-existent. Respondent had opportunities to make a refund to Mrs. Billings, but did not do so until well after the involvement of Petitioner and the Pennsylvania Lawyers Fund for Client Security.

Respondent's misconduct in Ms. Stumpo's bankruptcy matter began when he failed to respond to the Trustee's request for documents to support Ms. Stumpo's contention that an annuity was exempt. He subsequently failed to attend an evidentiary hearing on March 28, 2006, scheduled before Judge Jeffery Deller, to address the objections to Ms. Stumpo's claimed exemptions. Respondent had actual notice of the hearing, as he admitted having received e-mail notification. He did not appear nor did any lawyer from his office. Even more troubling was Respondent's failure to file a motion for reconsideration after receiving Judge Deller's March 28, 2006 Order, wherein Ms. Stumpo's exemption was disallowed. Respondent did nothing to protect his client's interests, even after receiving subsequent letters from the Trustee in May and October of 2007. Throughout these proceedings, Respondent did not engage in meaningful communication with his client to explain or review the events

concerning her case. Ultimately, in January 2008 Ms. Stumpo on her own sent a letter to the Court, which began a review process of her case.

Respondent accepts no responsibility for creating the situation his client found herself in. He attempts to blame an associate in his office who handled the matter and left the law office, supposedly without informing Respondent of the hearing date. This claim is certainly not credible, as Respondent admitted receiving e-mail notice of the March 28, 2006 date of hearing. While the mediation process resulted in the conclusion that Ms. Stumpo's exemption was proper, Respondent fails to realize that if he had acted promptly and diligently, all of the hearings and mediation would have been unnecessary.

The Board must recommend an appropriate sanction for Respondent's misconduct within the context of the primary function of the disciplinary system, which is to determine the fitness of an attorney to continue the practice of law, and to protect the courts and the public from unfit lawyers. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983)

We first review the recommendations made by the Hearing Committee and the parties. The Hearing Committee has recommended that Respondent be suspended for a period of three months. Petitioner agrees with this recommendation. In making the recommendation, the Committee accounted for the nature and gravity of the misconduct, Respondent's prior discipline, and Respondent's lack of remorse or recognition of wrongdoing. The Committee found no mitigating factors.

Respondent strenuously objects to any length of suspension and contends that a public censure is appropriate discipline. Respondent emphasizes that he has not been charged with dishonest conduct and that he cooperated with Petitioner. Although Respondent alluded to financial pressures and staff difficulties in his Brief on Exceptions, these issues are not of record and therefore not within the Board's review.

The instant misconduct marks Respondent's third involvement with the disciplinary system in less than ten years. In 2004, a matter was resolved with an Informal Admonition. In 2006, the matter was resolved with a Private Reprimand. The above instances of private discipline involved misconduct similar to the instant misconduct. Respondent faces discipline yet again, and it is natural to question whether Respondent has learned anything from his past experiences. It appears that the answer is in the negative, particularly based on Respondent's lack of remorse and failure to recognize his wrongdoing in the current matter. Respondent's recidivism necessitates that the instant matter be resolved with public discipline, as private discipline has failed to impress upon him the shortcomings in his methods of practicing law.

In weighing the serious nature of Respondent's actions, the aggravating circumstances and the lack of mitigating circumstances, the Board is persuaded that suspension is warranted. In determining the length of the suspension, it is important to note that Respondent's conduct involved two separate clients, neglect of files, failure to communicate and failure to return files and fees promptly, as well as prejudice to the administration of justice.

In the matter of Office of Disciplinary Counsel v. Allan G. Gallimore, No. 17 DB 2006, No. 1289 Disciplinary Docket No. 3 (Pa. Nov. 30, 2007), an attorney was suspended for a period of three months resulting from his neglect of one client matter. This attorney had a history of discipline consisting of an Informal Admonition and a Private Reprimand. This attorney expressed sincere remorse for his misconduct, and the Board found that he did take initial steps to discharge his duty to his client, but failed to monitor his files.

While the Gallimore matter is somewhat similar to the instant matter, the Board is persuaded that the facts of Respondent's matter are more egregious, as it involves two client matters and no remorse on Respondent's part.

The Board recommends that Respondent be suspended for a period of six months.


V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Dennis Joseph Spyra, be Suspended from the practice of law for a period of six months.

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: 
Mark S. Baer, Board Member

Date: April 15, 2011

Board Member Todd did not participate in the adjudication.