

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 21 DB 2018
Petitioner	:	
	:	File Nos. C1-16-299
v.	:	
	:	Attorney Registration No. 201798
MARC I. SIMON	:	
Respondent	:	(Philadelphia)

O R D E R

AND NOW, this 22nd day of February, 2018, in accordance with Rule 208(a)(5), Pa.R.D.E., the determination by a Review Panel of the Disciplinary Board of the above captioned matter is accepted; and it is

ORDERED that the said MARC I. SIMON be subjected to a **PUBLIC REPRIMAND** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(a)(5) and Rule 205(c)(8) of the Pennsylvania Rules of Disciplinary Enforcement.


Costs shall be paid by the Respondent.

BY THE BOARD:



Board Chair

TRUE COPY FROM RECORD
Attest:



Marcee D. Sloan, Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania

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OFFICE OF DISCIPLINARY COUNSEL	:	No. 21 DB 2018
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v.	:	
	:	Attorney Registration No. 201798
MARC I. SIMON	:	
Respondent	:	(Philadelphia)

PUBLIC REPRIMAND

Marc I. Simon, you stand before the Disciplinary Board, your professional peers and members of the public for the imposition of a Public Reprimand. It is an unpleasant task to publicly reprimand one who has been granted the privilege of membership in the bar of this Commonwealth. Yet as repugnant as this task may be, it has been deemed necessary that you receive this public discipline.

Mr. Simon, you are being reprimanded today in connection with your misconduct involving your failure to respond to discovery requests and comply with court orders that directed your law firm's clients to comply with discovery requests. The record indicates that at all relevant times, you had managerial and supervisory authority at Simon & Simon, PC. Mr. Toney Davis retained your firm to represent him in recovering damages for injuries he sustained in an accident. On December 4, 2014, you commenced a lawsuit on behalf of Mr. Davis by filing a complaint in the Delaware County Court of Common Pleas, said case captioned ***Toney Davis vs. Venita Showell, Administratrix of the Estate of Webster H. Kilson.***

On April 15, 2015, defendant's counsel, Hugh J. Gillespie, Esquire, filed a Motion to Compel Plaintiff's Answer to interrogatories and Responses to Requests for

Production of Documents (“the Showell Motion to Compel”). By Order dated April 23, 2015, President Judge Chad F. Kenney, Sr., granted the Showell Motion to Compel and directed Mr. Davis to provide discovery responses within 20 days from the date of the Order or suffer the imposition of sanctions. You failed to comply with the April 23, 2105 Order.

On June 11, 2015, Mr. Gillespie filed a Motion for Sanctions. By Order dated July 13, 2015, President Judge Kenney granted the unopposed Showell Sanctions due to Mr. Davis’ failure to comply with the April 23, 2015 Order, and precluded Mr. Davis from “presenting at trial any witnesses, testimony or evidence relating to information requested in Defendant’s Interrogatories and Request for Production of Documents and the allegations appearing in Plaintiff’s Complaint.”

On July 22, 2015, you filed Plaintiff’s Motion for Reconsideration. In the Motion, you claimed that due to your oversight, the Showell Motion to Compel was not calendared on your firm’s computer system and “unfortunately” the motion and discovery request went unanswered. On July 24, 2015, Mr. Gillespie filed a Motion for Summary Judgment. On September 30, 2015, Judge Kenney held a hearing on the Reconsideration Motion.

At the hearing, you stated, *inter alia*, that:

1. You had “too large of a caseload and not enough people to address the discovery and we did the best we could and it was an epidemic and it was an epidemic long before Your Honor brought it to our attention” (9/30/15, N.T. 7);
2. “It really wasn’t until Your Honor entered the Rule that [you] realized how big of a problem it [discovery production] was” (N.T. 7-8);

3. You had addressed the failure to promptly comply with discovery requests by recently hiring additional staff and by designating an attorney to manage the firm's discovery (N.T. 8);
4. You understood "that we were not in compliance for a significant period of time" in responding to discovery requests and court orders directing the firm to respond to discovery requests (N.T. 11);
5. "this was a situation where we had too many cases and not enough people managing them, and that's [my] fault" (N.T. 11); and
6. Mr. Davis had provided the firm with discovery information in December 2014, but the firm "did not have the appropriate resources to respond" (N.T. 11-12).

At the September 30, 2015 hearing, you provided exhibits wherein you listed 30 civil cases in which the firm's clients had failed to respond to discovery requests, prompting defendants in those cases to file Motions to Compel. Among the 30 civil cases, there were instances in which judges issued orders granting motions for sanctions against your firm's clients.

By Order dated November 30, 2015, President Judge Kenney denied the Reconsideration Motion and on December 10, 2015, he issued an Order granting the Motion for Summary Judgment. Attached to the Order and Opinion was a list of 51 civil cases in which your firm's clients had failed to respond to discovery requests. Among the 51 civil cases, there were instances in which judges issued orders granting motions for sanctions against your firm's clients. You appealed the December 10, 2015 Opinion and Order to the Superior Court. The Court vacated Judge Kenney's Order granting summary judgment.

In the Kimberlie Gregory matter, on May 8, 2014, you commenced a lawsuit on behalf of Ms. Gregory by filing a complaint in the Delaware County Court of Common Pleas. On January 27, 2015, defendants' counsel filed a Motion for Summary Judgment. On April 16, 2015, the Honorable Charles B. Burr, II granted the Motion, and you appealed that order to the Superior Court. By Order dated April 29, 2015, Judge Burr directed Ms. Gregory to file a concise statement of errors complained of on appeal within 21 days of the date of the Order. You filed an untimely concise statement of matters complained of on appeal, which resulted in defendants' counsel filing an Application to Dismiss in the Superior Court. By Order dated July 14, 2015, the Superior Court granted the Application to Dismiss. You notified Ms. Gregory of the dismissal and the Court's reasons for doing so; you filed an uninsured motorist claim on behalf of Ms. Gregory in the Philadelphia Court of Common Pleas, based on her accident that was the subject of the lawsuit; and settled that lawsuit after obtaining a favorable award in a private binding arbitration proceeding.

Your conduct in this matter has violated the following Rules of Professional Conduct ("RPC"):

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
2. 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 lawyer firm, shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that all lawyers in the firm conform to the Rules of Professional Conduct.

3. RPC 5.3(a) – With respect to a nonlawyer employed or retained by or associated with a lawyer, a partner and a lawyer who individually or together with other lawyers possess comparable managerial authority in a lawyer firm shall make reasonable efforts to ensure that the firm has in effect measures giving reasonable assurance that the person's conduct is comparable with the professional obligations of the lawyer.
4. RPC 8.4(d) – It is professional misconduct for lawyer to engage in conduct that is prejudicial to the administration of justice.

The record indicates that you have taken concrete steps to address the deficiencies in responding to discovery requests. You hired individuals for new positions that are specifically tasked with responding to initial discovery requests and to follow-up on issues that arise after discovery has been provided. Supervisors, including you, are tasked with ensuring that the firm is properly and promptly addressing discovery requests. Aside from increasing staff, you have implemented procedures that routinize the manner in which discovery requests are handled within your firm, and you improved the manner in which files are assigned to attorneys.

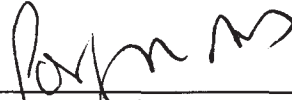
These remedial steps, and the fact that you have no prior discipline, constitute mitigating factors in this matter.

Mr. Simon, your conduct in this matter is now fully public. This Public Reprimand is a matter of public record.

As you stand before the Board today, we remind you that you have a continuing obligation to abide by the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This Public Reprimand is proof that Pennsylvania lawyers will

not be permitted to engage in conduct that falls below professional standards. Be mindful that any future dereliction will subject you to disciplinary action.

This Public Reprimand shall be posted on the Disciplinary Board's website at www.padisciplinaryboard.org.



Designated Member
The Disciplinary Board of the
Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Philadelphia, Pennsylvania, on April 3, 2018.

ACKNOWLEDGMENT

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in his presence and in the presence of the designated panel of The Disciplinary Board at 1601 Market Street, Suite 3320, Philadelphia, Pennsylvania, on April 3, 2018.



Marc I. Simon