

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1746 Disciplinary Docket No. 3
Petitioner	:	
	:	Nos. 32 and 83 DB 2010
v.	:	
	:	Attorney Registration No. 93618
JAMES D. HAYWARD, JR.,	:	
Respondent	:	(Luzerne County)

ORDER

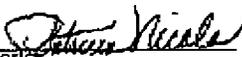
PER CURIAM:

AND NOW, this 25th day of October, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 9, 2011, it is hereby

ORDERED that James D. Hayward is suspended from the Bar of this Commonwealth for a period of four years to run consecutive to the suspension ordered by this Court at No. 1658 Disciplinary Docket No. 3 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 10/25/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	Nos. 32 DB 2010 & 83 DB 2010
Petitioner	:	
	:	
v.	:	Attorney Registration No. 93618
	:	
JAMES D. HAYWARD, JR.	:	
Respondent	:	(Luzerne 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 March 17, 2010, Office of Disciplinary Counsel filed a Petition for Discipline at No. 32 DB 2010 against James D. Hayward, Jr. The Petition charged Respondent with professional misconduct in three separate client matters. Respondent filed an Answer to Petition on May 3, 2010. By cover letter attached to the Answer, Respondent's counsel, James C. Schwartzman, Esquire, explained that he was unable to communicate with Respondent in order to submit a factual Answer, and generally denied

all of the factual averments relative to the charges. Mr. Schwartzman withdrew his appearance on May 18, 2010.

On May 27, 2010, Office of Disciplinary Counsel filed a second Petition for Discipline at No. 83 DB 2010 against Respondent. The Petition charged Respondent with professional misconduct in one client matter. Respondent did not file an Answer to Petition.

A Motion to Consolidate 32 DB 2010 and 83 DB 2010 was filed with the Disciplinary Board on May 27, 2010. By Order of June 23, 2010, the Disciplinary Board granted the Motion to Consolidate.

A disciplinary hearing was held on September 15, 2010, before a District III Hearing Committee comprised of Chair Daniel J. Barrett, Esquire, and Members Victor A. Neubaum, Jr., Esquire, and Thomas V. Casale, Esquire. Petitioner presented five witnesses and offered 19 exhibits. Respondent did not appear.

Following the submission of a Brief by Petitioner, the Hearing Committee filed a Report on January 14, 2011, concluding that Respondent engaged in professional misconduct and recommending that he be suspended for a period of four years.

This matter was adjudicated by the Disciplinary Board at the meeting on April 13, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, 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 James D. Hayward, Jr. He was born in 1951 and was admitted to practice law in the Commonwealth in 2004. His registered public address is CONSUMER LAW FIRM, P.O. Box 5050, Wilkes-Barre PA 18710-5050. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of discipline in Pennsylvania. By Order of January 19, 2011, Respondent was suspended for one year and one day based on his mishandling of a bankruptcy matter on behalf of a client. He failed to provide a written fee agreement, failed to communicate with his client, failed to pay the filing fee with the money he was paid for that purpose, misrepresented to the Bankruptcy Court that the client could not pay the filing fee except by installments, and failed to advise his client that he had not paid the filing fee.

Myers Matter at No. 32 DB 2010

4. Frank and Carole Myers purchased and moved into a mobile home in the Mountain Laurel Campground in Carbon County.

5. The Myerses' mobile home only had running water during the camping season, so they asked and obtained the permission of their landlord, Raelene Eckley, to dig a trench and attach to her water supply so they could have running water year round.

6. The Myerses signed an agreement with Ms. Eckley, but she later stopped the work and refused to allow the Myerses to attach to her water supply.

7. The Myerses called the PA Senior Law Hotline and were referred to Respondent.

8. On October 29, 2008, Respondent met with Mr. and Mrs. Myers. He assured them that they had a lawsuit and told them he would determine the cost of filing suit in Carbon County and he would get back to them.

9. On November 21, 2008, Respondent called Mr. and Mrs. Myers and confirmed that he would get things started; he further advised them that the landlord could not prevent them from selling their mobile home.

10. The Myerses moved to their current residence in Luzerne County and left their mobile home at the campground.

11. Respondent was advised of his clients' new address and telephone number and they sent him correspondence received from Ms. Eckley.

12. On December 16, 2008, Mrs. Myers called Respondent about the cost of filing suit in Carbon County, among other things. Respondent did not respond.

13. On February 13, 2009, Mr. and Mrs. Myers went to Respondent's office and, finding it locked, slipped under the door a note asking Respondent to please call them, as well as documentation pertinent to their case.

14. On February 17, 2009, Respondent called Mr. and Mrs. Myers on their cell phone but the call was disconnected and when they tried to call back, they got Respondent's answering machine. Respondent did not call them back.

15. On March 6, 2009, Respondent contacted his clients and advised that he would be finished checking all of the information and that he had papers ready to be signed. He advised his clients that the cost of filing suit in Carbon County was \$200.

16. After March 6, 2009, Mr. and Mrs. Myers did not hear from Respondent or receive the papers he said were ready to sign.

17. Mr. and Mrs. Myers left many messages on Respondent's answering machine to call them back.

18. On May 14, 2009, Mr. and Mrs. Myers called the PA Senior Law Hotline and were advised to send Respondent a certified letter which they did on May 20, 2009, asking him to please call them or refer them to another attorney.

19. Respondent signed for the certified letter on May 22, 2009, but never contacted his clients.

20. On June 9, 11, and 18, 2009, Mr. and Mrs. Myers called Respondent and left more messages, but he did not respond.

21. Mr. and Mrs. Myers filed a disciplinary complaint against Respondent with Office of Disciplinary Counsel on June 29, 2009.

22. Disciplinary Counsel sent Respondent a copy of the Myerses' complaint on July 23, 2009. A DB-7 Request for Statement of Respondent's Position was sent to Respondent on August 12, 2009.

23. On August 12, 2009, Respondent called his clients and asked if they still wanted him to represent them, and they answered in the affirmative.

24. On September 10, 2009, the Myerses met with Respondent at his office and executed an Agreement to Provide Legal Services.

25. Mr. and Mrs. Myers advanced Respondent a \$200 deposit and they received from Respondent a handwritten receipt for their payment.

26. Respondent deposited the funds into a non-IOLTA account at Citizens Bank.

27. By letter of October 13, 2009, Respondent responded to the DB-7 Letter of August 12, 2009, and acknowledged receipt of \$200 and indicated that he had "prepared the complaint."

28. On October 22, 2009, Mrs. Myers called Office of Disciplinary Counsel to advise that Respondent had contacted her to request payment of the \$200 deposit. She reminded Respondent that she had already made the payment in September and he had negotiated the check. Respondent then informed Mrs. Myers that he would proceed to draft a complaint.

29. This was inconsistent with the statement Respondent had made to Office of Disciplinary Counsel in his October 13, 2009 response, wherein he indicated he had already prepared a complaint.

30. Mrs. Myers called Respondent's office on December 8, 15 and 22, 2009, leaving messages to see if he had filed the complaint and served Ms. Eckley.

31. Respondent failed to return any of Mrs. Myers' voicemails or take any action to move forward with the Myerses' case.

32. By letter of January 15, 2010, Mr. and Mrs. Myers asked Respondent to refund the \$200 they had advanced to him and to return their papers so they could attempt to find new counsel.

33. Respondent failed to reply to the letter, refund the \$200, or return any papers to the Myerses.

Heddings Matter at No. 32 DB 2010

34. In late October 2007, Harold Heddings made an appointment to meet with Respondent regarding a landlord-tenant matter.

35. In late October or on November 1, 2007, Mr. Heddings met with Respondent and advised him of the facts of the matter regarding the actions of his landlord, Ward Wesley, Jr.

36. Respondent advised Mr. Heddings that Respondent was going to write up criminal charges and send them to the magistrate to see if they should go to the District Attorney. However, Respondent never did so.

37. Respondent agreed to work for a portion of any recovery but requested Mr. Heddings to pay costs and asked for \$160 to file and serve Mr. Wesley.

38. Mr. Heddings paid Respondent \$160 for which Respondent gave him a receipt dated November 1, 2007, with the notation "Filing and serve fee Writ of summons."

39. On November 2, 2007, Respondent filed a Praecipe for Writ of Summons and obtained a Writ of Summons and paid a filing fee of \$109.

40. Respondent did not communicate the basis or rate of his fees in writing to Mr. Heddings or enter into a written contingent fee agreement with him.

41. Respondent took no action to serve the Writ upon Mr. Wesley. The Sheriff's office has no record that Respondent gave it the Writ to serve.

42. On November 5, 2007, Mr. Heddings called Respondent to determine if he had filed his case and Respondent advised him that Respondent had and had served Mr. Wesley on November 2, 2007.

43. Thereafter, Mr. Heddings frequently called Respondent and left messages for Respondent to call. Respondent failed to return any of the calls.

44. Since Respondent was not returning any of his calls, Mr. Heddings had his sister call Respondent and leave a message that she wanted an appointment with him concerning a financial matter.

45. Respondent returned the sister's call and made an appointment with her for July 10, 2008 at 3 p.m.

46. Mr. Heddings appeared at Respondent's office on July 10, 2008 at 3:00 p.m. to ask him about the status of his matter.

47. Respondent was surprised to see Mr. Heddings and advised him that "these things take time" but Respondent would prepare a complaint.

48. Mr. Heddings specifically asked if Mr. Wesley had been served with the Writ of Summons, to which Respondent replied that he had.

49. July 10, 2008 was the last date Mr. Heddings ever spoke to Respondent, despite numerous calls to Respondent and even going to Respondent's office on a regular basis.

50. On October 5, 2009, Mr. Heddings went to the Luzerne County Courthouse and learned that Respondent had not filed a criminal case for the theft of property, but had filed a civil case by Writ of Summons, which was never served.

51. Mr. Heddings filed a disciplinary complaint in October 2009.

52. By letter to Respondent dated December 8, 2009, Mr. Heddings asked for a refund of the unexpended portion of the \$160 he paid to Respondent on November 1, 2007, a copy of his file and other paperwork. Respondent never replied.

Pintsch Matter at No. 32 DB 2010

53. Timothy and Tanya Pintsch contacted Respondent on August 10, 2009 in regard to a foreclosure action filed against them by First Horizon Home Loans in Luzerne County.

54. On August 11, 2009, Respondent returned the call and spoke to Mrs. Pintsch and advised her that Respondent's fee for handling foreclosures was \$300 and they should wait until they were served and then Respondent would file a response.

55. Mrs. Pintsch said she could mail \$150 and Respondent could bill them for the balance. Respondent agreed to send something in writing, but he never did.

56. On August 17, 2009, the Pintsches were served with the Complaint in Mortgage Foreclosure, which advised them that they had 20 days to respond.

57. On August 24, 2009, the Pintsches mailed Respondent a check for \$150, which Respondent deposited into his IOLTA account.

58. On August 25, 2009, the Pintsches faxed Respondent the mortgage papers.

59. By email to Respondent on August 31, 2009, Mr. Pintsch asked Respondent if he had received the papers and reviewed them.

60. On August 31, 2009, Respondent emailed a response and advised that he had the paperwork and would review it soon.

61. The Pintsches contacted Respondent on numerous occasions in early September 2009, by telephone and email, without receiving a response.

62. No responsive pleading was filed on behalf of the Pintsches within the 20 day time limit.

63. When no responsive pleading was filed 20 days after August 17, 2009, on September 9, 2009, First Horizon Home Loans sent the Pintsches a 10-day notice of

default and advised them that if they did not take action within ten days a judgment could be entered against them.

64. Respondent failed to file preliminary objections or an answer to the complaint in foreclosure and a default judgment was entered against the Pintsches on October 1, 2009.

65. On October 3, 2009, Mr. Pintsch asked Respondent to either do something about their case or refund their money and refer them to other counsel.

66. On October 4, 2009, Respondent apologized, indicated he had moved his office, and stated that he had a Petition to Open which he would file the next day. Respondent indicated he would send copies of the documents to the Pintsches.

67. Respondent failed to file a Petition to Open on behalf of his clients.

68. Mr. Pintsch contacted Respondent several times regarding the Petition to Open, but never received a response. On October 10, 2009, Mr. Pintsch received a refund of the monies they had paid.

69. In late October 2009, the Pintsches filed a disciplinary complaint against Respondent.

70. In November 2009, Respondent called the Pintsches and advised that he would still file a Petition to Open. Mr. Pintsch told Respondent they had lost confidence in him and wanted a refund. Respondent mailed a check to Mr. Pintsch.

Engle Matter at No. 83 DB 2010

71. On or about April 29, 2009, Thomas Engle, President of Engel Eyewear, Inc. retained Respondent to represent him and his company in various matters.

72. At Respondent's request, Mr. Engle paid him the sum of \$1,000 by check dated April 29, 2009. Respondent did not communicate to Mr. Engle in writing the basis or rate of Respondent's fees.

73. Respondent did not deposit the \$1,000 into an IOLTA account.

74. Mr. Engle referred six different legal matters to Respondent.

75. Mr. Engle called Respondent numerous times in attempts to get status reports on these matters, but Respondent rarely returned his calls.

76. Between December 2, 2009 and March 27, 2010, Mr. Engle's records indicate he called Respondent a total of 36 times; most times he had to leave a message for Respondent.

77. On December 11, 2009, Mr. Engle met with Respondent at his law office and paid him an additional \$500 by check dated December 11, 2009.

78. Respondent did not deposit these funds into his IOLTA account.

79. By email to Respondent on January 26, 2010, Mr. Engle asked Respondent to provide him with updates on the six legal matters. Respondent did not respond.

80. By facsimile dated February 12, 2010, Mr. Engle gave Respondent two choices: to schedule an appointment and be prepared to show documentation of what Respondent had done; or return all documents and the retainer so Mr. Engle could retain other counsel.

81. On February 14, 2010, Respondent advised Mr. Engle that he would return all of the documents; however, Respondent did not do so at that time.

82. Respondent inadvertently emailed to Mr. Engle a Petition he prepared for other clients, thereby revealing private information.

83. By facsimile of February 15, 2010, Mr. Engle informed Respondent that he would not file a disciplinary complaint without first giving Respondent an opportunity to correct his relationship with Mr. Engle.

84. By letter to Respondent dated March 25, 2010, Mr. Engle noted that Respondent had not returned all of the documents he promised to return; stated that Respondent's services were not acceptable and were no longer required; complained that Respondent had provided him with nothing but poor excuses and little proof of any work; requested documents regarding his six legal matters and a clear timeline of all filings and work completed; and, return of funds.

85. Respondent did not return all of Mr. Engle's documentation, account for what he did on behalf of Mr. Engle, or refund the unearned portion of the \$1,500 Respondent had been paid.

86. Respondent did not attend the disciplinary hearing despite proper notice of the date, time and place.

87. Respondent stipulated to a five year suspension from practice before the U.S. Bankruptcy Court for the Middle District of Pennsylvania which stipulation was accepted and made into an Order of Court on September 29, 2010, and Respondent's filing privileges were revoked, effective immediately.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 – A lawyer shall provide competent representation to a client.

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

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

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

5. RPC 1.5(b) – When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

6. RPC 1.5(c) – A fee may be contingent on the outcome of the matter for which service is rendered, except in a matter in which a contingent fee is prohibited by paragraph (d). A contingent fee agreement shall be in writing and shall state the method by which the fee is to be determined, including the percentage or percentages that shall accrue to the lawyer.

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

8. RPC 1.15(m) – All Qualified Funds which are not Fiduciary Funds shall be placed in an IOLTA Account.

9. RPC 1.15(e) – Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the

client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property.

10. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, 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 expenses that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges against Respondent in four separate client matters contained in two Petitions for Discipline. Respondent did not file a factual Answer to either Petition for Discipline; therefore, the factual allegations contained in the Petitions are deemed admitted pursuant to Rule 208(b)(3). These admitted facts support and establish that Respondent violated the Rules of Professional Conduct charged in each of the four matters. The record is replete with evidence establishing Respondent’s violation of the Rules of Professional Conduct. The Complainants testified at the disciplinary hearing as to Respondent’s continued misconduct, thus supporting the conclusion that Respondent violated the Rules as charged in the Petitions for Discipline. Respondent did not appear to present his side of this matter.

Respondent’s misconduct involves his essential abandonment of the four Complainants involved. The Myerses were referred to Respondent who advised them they had a good case. Respondent never took action to pursue the claims, despite numerous

telephone calls and messages. Respondent ignored the certified letter sent by the Myerses asking him to either call them or refer them to another attorney. Following the involvement of Disciplinary Counsel in July 2009, Respondent arranged to meet with his clients, but fell back into a pattern of failing to respond to their messages. On one occasion when he actually met with the Myerses, he misrepresented to them that he had filed a complaint on their behalf. Respondent has never returned the Myerses' documents or refunded their monies.

Mr. Heddings retained Respondent to represent him in the belief that Respondent would initiate a private criminal complaint against Mr. Heddings' landlord. This never occurred. Respondent filed a Praecipe for Writ of Summons and paid the filing fee, but he never filed proof of service and never took action to pursue Mr. Heddings' claims. Mr. Heddings demanded the return of his documents and unearned fees, but Respondent ignored these requests.

The Pintsches believed Respondent would represent them in the foreclosure of their home. However, he was uncommunicative with them and did not follow through on the agreed upon course of action. Respondent never filed preliminary objections and allowed a default judgment to be entered against them. Thereafter, Respondent advised the Pintsches that he would remedy the situation by filing a Petition to Open, but never did. Respondent did refund the Pintsches' money when asked to do so.

Respondent was retained by Mr. Engle to handle a variety of legal issues concerning Mr. Engle's business. Respondent was paid \$1,500 but did little or nothing on the six matters. Mr. Engle called Respondent continuously to check on the progress of the matters, only to have Respondent make excuses. Mr. Engle discharged Respondent and

demanded the return of all files and documents, as well as a complete accounting and refund of unearned fees. Respondent has never complied.

The primary purpose of the lawyer disciplinary system in Pennsylvania is to protect the public from unfit lawyers, to preserve the integrity of the courts, and to deter unethical conduct. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). In determining discipline, it is important to consider the seriousness and extent of the misconduct, any mitigating or aggravating circumstances, and the disposition of similar disciplinary matters.

Respondent's misconduct is serious. In addition, serious aggravating circumstances exist, the foremost of which is Respondent's significant disciplinary record in the Supreme Court of Pennsylvania and in the U.S. Bankruptcy Court for the Middle District of Pennsylvania.

By Order of January 19, 2011, Respondent was suspended for one year and one day by the Supreme Court of Pennsylvania. Respondent mishandled the bankruptcy matter of a client by failing to provide a written fee agreement, failing to communicate with his client, failing to pay the filing fee with the money he was paid specifically for that purpose, misrepresenting to the Bankruptcy Court that the client could not pay the filing fee except by installments, and failing to advise the client that he had not paid the filing fee. Essentially, Respondent engaged in the same type of misconduct as in the instant matter. He neglected his client's case with the added seriousness of making a misrepresentation to the court.

Respondent is currently suspended for a period of five years from the U.S. Bankruptcy Court for the Middle District of Pennsylvania by Order of September 29, 2010. According to the Complaint filed by the U.S. Trustee and the Stipulation signed by

Respondent, the proceedings involved nine different bankruptcy cases which Respondent mishandled.

Another aggravating factor is Respondent's failure to participate in the instant proceedings against him and his lack of cooperation with Office of Disciplinary Counsel. In the previous disciplinary matter resulting in the one year and one day suspension, Respondent answered the Petition for Discipline and appeared at his hearing represented by counsel. In the instant matter, Respondent has failed to participate at any level, and his absolute disregard for the proceedings signifies a lack of fitness and competence.

Respondent's misconduct warrants suspension. Here, he has already been deemed unfit to practice law and suspended for one year and one day for misconduct involving one client. The instant Petitions for Discipline involve four more clients and necessitate a more significant period of suspension. Indeed, Respondent's misconduct continues to this day, as he has failed to return his former clients' personal property in three of the above matters.

There are many prior disciplinary cases involving multiple counts of neglect and lack of communication. Most often, suspension has been the sanction imposed in these matters. The length of the suspension is determined by the egregiousness of the matter. Office of Disciplinary Counsel v. Howard Goldman, No. 157 DB 2003, 78 Pa. D. & C. 4th 538 (2005). A one year and one day suspension was imposed on Mr. Goldman after he mishandled the cases of four clients. Mitigating factors were considered in that Respondent expressed remorse, cooperated with the investigation, and had a good reputation in the community.

In the matter of Office of Disciplinary Counsel v. James F. Menconi, 92 DB 2009, 1583 Disciplinary Docket No. 3 (Pa. May 17, 2010), Mr. Menconi received a

suspension for two years after he neglected the administration of a decedent's estate, and failed to turn the file over to successor counsel for six months. The Inheritance Tax Return was not filed resulting in late fees and fines for the estate. Mr. Menconi failed to answer the Petition for Discipline and failed to attend the disciplinary hearing.

In a case that resulted in disbarment, the attorney collected money up front to do certain things, did not perform the legal work, and then could not be located. In total, the attorney neglected five separate legal matters. Additionally, this attorney had been held in contempt for failure to pay a support order, and at the time he disappeared, there were outstanding arrest warrants for issuing bad checks. Office of Disciplinary Counsel v. Jones, 72 Pa. D. & C. 4th 98 (2005).

Based on the totality of the record in this matter, as well as guidance received from prior similar cases, the Board recommends that Respondent be suspended for a period of four years, consecutive to the suspension imposed in the previous disciplinary matter.

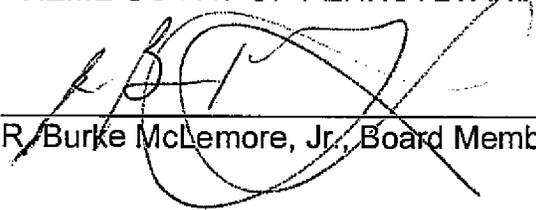
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, James D. Hayward, be Suspended from the practice of law for a period of four years consecutive to his prior Suspension ordered by the Supreme Court on January 19, 2011.

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: 
R. Burke McLemore, Jr., Board Member

Date: June 9, 2011

Board Members Buchholz, Nasatir and Lawrence dissent and would recommend Disbarment.

Board Member Jefferies did not participate in the adjudication.