

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 32 DB 2018
Petitioner :
 : File Nos. C4-16-516 & C4-16-753
v. :
 : Attorney Registration No. 83406
JOSEPH F. NICOTERO :
Respondent : (Allegheny County)

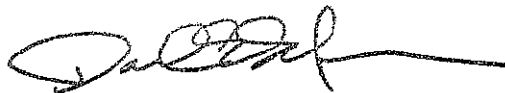
ORDER

AND NOW, this 12th day of March, 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 JOSEPH F. NICOTERO 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

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

OFFICE OF DISCIPLINARY COUNSEL	:	No. 32 DB 2018
Petitioner	:	
	:	File Nos. C4-16-516 & C4-16-753
v.	:	
	:	Attorney Reg. No. 83406
JOSEPH F. NICOTERO	:	
Respondent	:	(Allegheny County)

PUBLIC REPRIMAND

Joseph F. Nicotero, 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. Nicotero, the record indicates that you are being reprimanded for your misconduct in two client matters. In the Stauble matter, in December 2015, you agreed to represent Kathleen Stauble in her divorce matter. Ms. Stauble paid you \$2,000 by check as a retainer for your representation. Although you had not previously represented Ms. Stauble, you failed to communicate to her, in writing, the basis or rate of the fee for the representation, before or within a reasonable time after commencing the representation.

When Ms. Stauble met with you in December 2015, you indicated that you would request a Master's Hearing. She also clearly communicated to you that aspects of her case were very time-sensitive, as she was still living with her husband and attempting to buy a new house. Ms. Stauble communicated with you repeatedly by text message

from January 2016 through April 2016 regarding settlement of her case, the need to have her husband sign an agreement waiving any interest in her new home, and her desire to move the case forward as quickly as possible. You did not promptly respond to these texts.

On February 10, 2016, you met with your client regarding a settlement proposal from her husband and indicated that you would follow through on requesting information from opposing counsel. The closing on your client's new home was scheduled for March 12, 2016. On February 25, 2016, Ms. Stauble provide you with a document to send to opposing counsel waiving her husband's interest in her new home and a list of personal items that she was removing from the marital residence. Ms. Stauble repeatedly asked that you copy her on all correspondence to opposing counsel and to receive a copy of all correspondence received from opposing counsel, but you failed to do so.

On March 16, 2016, Ms. Stauble met with you and you apologized for your lack of communication and for your delay in handling her matter. You failed to timely serve opposing counsel with a notice of Master's Hearing scheduled in Ms. Stauble's case for April 25, 2016, despite your representation to the contrary.

Ms. Stauble terminated your representation on April 22, 2016. At that time, she requested a copy of her file and itemized billing statements. While you provided the file, you did not provide the billing statements, and you did not refund any unearned fees.

In the Phillips matter, in April 2016 you agreed to represent Pattie Phillips in her divorce. At that time, Ms. Phillips paid you \$600 by check for an uncontested divorce. You informed your client that you would file the action in Cambria County due to costs. Several weeks later, Ms. Phillips attempted to meet with you but you cancelled the appointment due to difficulties at your office. Subsequently, your client contacted the

Prothonotary in Cambria County and learned that no divorce action had been filed on her behalf. Ms. Phillips then contacted you and told you she was going to contact ODC. You asked Ms. Phillips not do that and you promptly sent to her the divorce papers, which she signed and returned to you.

Thereafter, you did not communicate with your client, which prompted her to send you a certified letter on August 31, 2016. You did not respond to the certified mail or communicate with Ms. Phillips, but in the meantime, you filed your client's divorce complaint on August 22, 2016.

By DB-7 letter dated March 6, 2017, Office of Disciplinary Counsel contacted you regarding these matters and asked for your timely response. The record shows that the first class regular mail was not returned, and you received the certified mailing on April 6, 2017. On May 2, 2017, you contacted ODC by telephone and indicated that you had changed your attorney registration address, as you had moved your office, and confirmed that you received the DB-7 letter. ODC reminded you that you needed to send your written response by May 6, 2017, but you failed to submit a written response to explain your actions in these matters.

In the Phillips matter, on April 6, 2017, you filed the requisite papers to finalize the divorce and the divorce was entered by the court on April 13, 2017.

In the Stauble matter, in approximately May or June 2017, you spoke with Ms. Stauble and agreed to a \$1,600.00 refund. However, you did not immediately refund Ms. Stauble's monies and in October 2017, Ms. Stauble contacted you in regard to her refund. In early November 2017, Ms. Stauble received her refund check from you.

Your conduct in this matter has violated the following Rules of Professional Conduct and Pennsylvania Rule of Disciplinary Enforcement:

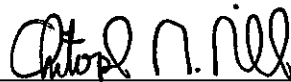
1. RPC 1.3 – In that, you failed to act with reasonable diligence and promptness in representing your clients;
2. RPC 1.4(a)(3) – In that, you failed to keep your clients reasonably informed about the status of their cases;
3. RPC 1.4(a)(4) – In that, you failed to promptly comply with reasonable requests for information;
4. RPC 1.5(b) – In that, although you had previously never represented Ms. Stauble, you failed to provide her with a writing, setting forth the rate of basis or your fee before or within a reasonable time after commencing the representation;
5. RPC 1.16(d) – In that, you failed to timely return the unearned portion of the retainer paid to you by Ms. Stauble when your representation was terminated in April 2016. You did not return your client's funds to her until November 2017;
6. RPC 8.1(b) – In that, you failed to respond in writing to the Letter of Inquiry dated March 6, 2017 sent to you by Office of Disciplinary Counsel;
7. Pa.R.D.E. 203(b)(7) – In that, your failure to respond to Office of Disciplinary Counsel's Letter of Inquiry constitutes misconduct and is grounds for discipline.

We note that you were admitted to practice law in the Commonwealth in 1999 and have never been the subject of professional discipline in any other matter.

Mr. Nicotero, 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.

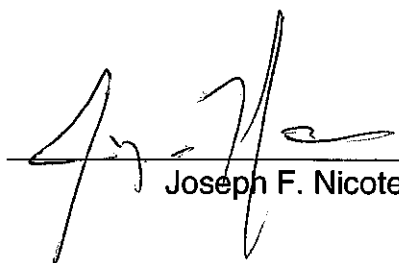


Designated Member
The Disciplinary Board of the
Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Pittsburgh, Pennsylvania, on October 24, 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 the Allegheny County Court of Common Pleas, 437 Grant Street, 17th Floor, Courtroom 2, Pittsburgh, Pennsylvania, on October 24, 2018.



Joseph F. Nicotero