

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2417 Disciplinary Docket No. 3
: :
Petitioner : No. 4 DB 2018
: :
v. : Attorney Registration No. 23693
: :
JOSEPH P. MAHER, : (Lehigh County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 25th day of February, 2019, upon consideration of the Report and Recommendations of the Disciplinary Board, Joseph P. Maher is suspended from the Bar of this Commonwealth for a period of one year and one day, and he shall comply with all of 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 02/25/2019

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 4 DB 2018
Petitioner	:	
	:	
v.	:	Attorney Registration No. 23693
	:	
JOSEPH P. MAHER	:	
Respondent	:	(Lehigh 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

By Petition for Discipline filed on January 10, 2018, Petitioner, Office of Disciplinary Counsel, charged Respondent, Joseph P. Maher, with violations of Rules of Professional Conduct (“RPC”) 1.1, 1.3, 1.7(a)(2), 1.16(a)(1), 3.3(a)(1), 4.1(a), and 8.4(d), and Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”) 203(b)(1) and 203(b)(7). Respondent was personally served with the Petition for Discipline and failed to file an Answer. The factual allegations are deemed admitted, pursuant to Pa.R.D.E. 208(b)(3).

By reference for disciplinary hearing dated February 27, 2018, Hearing Committee ("Committee") Members David Rogers Jacquette, Esquire, Robert Tyler Tomlinson, Esquire, and Edward H. Rubenstone, Esquire, were appointed to hear this matter. Chair Jacquette conducted a prehearing conference via telephone on April 2, 2018. Respondent participated pro se. Two days prior to the disciplinary hearing scheduled on May 10, 2018, Respondent requested a continuance due to the fact that he had retained counsel. The hearing was continued until May 30, 2018.

On May 30, 2018, the Committee conducted a hearing. Petitioner offered Exhibits ODC-1 through 20 and ODC 89.151-1 through 3 into evidence without objection. Respondent was represented by Kenneth Bachman, Esquire. Respondent testified on his own behalf and offered Exhibit R-1, which was admitted by the Committee over objection. Respondent presented no other witnesses.

Petitioner filed a Brief to the Hearing Committee on June 26, 2018.

Respondent did not file a brief.

The Committee filed a Report on September 19, 2018, concluding that Respondent violated the rules charged in the Petition for Discipline, and recommending that he be suspended for a period of one year and one day.

The parties did not file exceptions to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on October 25, 2018.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207, Pa.R.D.E., with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provision of said rules.

2. Respondent is Joseph P. Maher, born in 1951 and admitted to practice law in the Commonwealth of Pennsylvania in 1976. His attorney registration address is P.O. Box 225, Emmaus, Lehigh County, PA 18049.

3. On March 31, 2016, Respondent entered his appearance on behalf of Brenda Dreisbach in the custody and relocation matter of ***Brenda I. Dreisbach vs. Anthony Montefusco***, C-48-CV-2015-5404, Court of Common Pleas of Northampton County. Petition for Discipline ("P for D") 4.

4. On April 18, 2016, counsel for Mr. Montefusco filed in the Dreisbach matter a petition for contempt and sanctions. P for D 5.

5. The petition for contempt alleged that Ms. Dreisbach intentionally interfered with Mr. Montefusco's court-ordered visitation and had also committed perjury before the Court. P for D 6.

6. The Dreisbach matter was placed on the Miscellaneous Court List for a 9:00 a.m. hearing on April 29, 2016, before Judge Jennifer R. Sletvold. P for D 7.

7. On April 28, 2016, at approximately 4:25 p.m., Respondent telephoned Judge Sletvold's chambers and spoke with Judge Sletvold's administrative assistant. P for D 8.

8. In Respondent's April 28, 2016 telephone conversation:

a. Respondent requested a continuance for the April 29 hearing on the basis that his "car was in the shop";

b. The Judge's assistant advised Respondent that Judge Sletvold had denied his request and had directed Respondent to appear with his client in court as scheduled;

c. Respondent advised that he would not be present the next morning and would instead submit a written request for continuance; and

d. The Judge's assistant informed Respondent that the Court would not review the request because the Judge would be sitting on the bench for Miscellaneous Court first thing in the morning, expecting the presence of Respondent and his client.

P for D 9.

9. On April 29, 2016:

a. Neither Respondent nor his client appeared for the scheduled hearing before Judge Sletvold;

b. At 8:07 a.m., Respondent faxed Judge Sletvold's chambers a cover letter and application for continuance for the April 29 Miscellaneous Hearing and represented that Respondent would not be attending the hearing because he was without a vehicle.

- c. Judge Sletvold conducted the hearing as scheduled;
- d. Following testimony, Judge Sletvold found Ms. Dreisbach in contempt of court and awarded sanctions to Mr. Montefusco; and
- e. Judge Sletvold issued a rule to show cause on Respondent, returnable May 6, 2016, as to why Respondent should not be held in contempt for failure to appear at the April 29, 2016 hearing per court instruction.

P for D 10; ODC-1, 2.

10. After receiving notice of the Orders, Respondent placed an ex parte call to Judge Sletvold's chambers, at which time Respondent:

- a. Spoke with the Judge's assistant and expressed his dissatisfaction with the rule to show cause Order and contempt Order; and
- b. Judge Sletvold intercepted the phone call and instructed Respondent to appear at the May 6, 2016 rule returnable.

P for D 11; ODC-3, p. 4.

11. On May 6, 2016, Respondent and Mr. Montefusco's counsel appeared before Judge Sletvold, at which time:

- a. Judge Sletvold admitted into the record two letters in connection with the Court previously instructing Respondent to refrain from ex parte communications;
- b. Judge Sletvold referenced a previous incident in which Respondent had claimed vehicle issues prevented him from following instructions of the Court;

c. Judge Sletvold gave Respondent an opportunity to explain why Respondent had not appeared for his court-ordered appearance on April 29, 2016;

d. Respondent explained that his vehicle was in the shop and that Respondent could not find an alternative ride to the courthouse;

e. Judge Sletvold gave Respondent an opportunity to provide evidence establishing that his vehicle was in the shop as Respondent had represented; and

f. Respondent represented that the mechanic was named "Eddie" and did not give receipts.

P for D 12; ODC-3.

12. After considering all the testimony and evidence Respondent offered at the hearing, Judge Sletvold found Respondent deliberately neglected the scheduled court appearance on April 29, 2016, of which he had sufficient notice, without a legitimate excuse. ODC-12, p.3.

13. By Order dated May 6, 2016, Judge Sletvold found Respondent in criminal contempt of court pursuant to 42 PA.C.S.A. §4132(2) and fined Respondent \$500.00. P for D 13; ODC-4; ODC-12.

14. To date, Respondent has not paid the \$500.00 fine in connection with the May 6, 2016 contempt order. P for D 14.

15. On June 15, 2016, Respondent filed on behalf of himself, a notice of appeal to the Superior Court from the May 6, 2016 Order holding Respondent in contempt, which was docketed as 1851 EDA 2016. P for D 15; ODC-5, 6.

16. On June 8, 2016, Judge Sletvold denied Ms. Dreisbach's motion for reconsideration of the April 29, 2016 Order finding her in contempt. P for D 16.

17. On July 6, 2016, Respondent filed on behalf of Ms. Dreisbach a notice of appeal to the Superior Court from the April 29, 2016 Order finding Ms. Dreisbach in contempt. P for D 17; ODC-8, pp 3, 5; ODC-10.

18. The appeal of Ms. Dreisbach's contempt order was docketed as 2202 EDA 2016. P for D 18; ODC-10.

19. On July 13, 2016, Northampton County Judge Samuel Murray conducted a hearing in the Dreisbach custody matter relating to Ms. Dreisbach's request for relocation. P for D 20; ODC-7.

20. At the July 13, 2016 hearing:

a. Respondent and Attorney John Everett Cook appeared;

b. Judge Murray inquired as to which attorney was representing Ms. Dreisbach;

c. Mr. Cook represented that it was his understanding that Ms. Dreisbach was retaining him to do the trial work;

d. Respondent stated that he "had an inkling that [Ms. Dreisbach] was going to switch counsel because it's possible [Respondent] might have to be a witness somewhere under the ethical rules, so [Respondent] would have to recuse [himself] from further involvement in this case due to that fact. So that was one of the necessity issues that prompted in (sic) a change in counsel";

e. In response to Judge Murray's inquiry as to why Respondent would be a fact witness, Respondent replied that Respondent was the

godfather of Ms. Dreisbach's older child and that the child had been baptized a few months ago;

f. Respondent acknowledged that he had babysat for Ms. Dreisbach's child;

g. Judge Murray opined several times that Respondent had a conflict of interest and inquired whether Respondent would withdraw his appearance on behalf of Ms. Dreisbach;

h. Mr. Cook assumed representation of Ms. Dreisbach for the relocation hearing and Respondent was requested to leave the courtroom.

P for D 21; ODC-7.

21. On July 14, 2016, Judge Sletvold sent a letter to Respondent and Attorneys Ian Musselman and Cook, inquiring as to who would be representing Ms. Dreisbach before the Superior Court on Ms. Dreisbach's appeal from Judge Sletvold's contempt Order. P for D 22.

22. On July 22, 2016, Judge Sletvold conducted a conference with Respondent, Ms. Dreisbach, Mr. Musselman, Mr. Cook and Mr. Montefusco's counsel, Catherine Kollet, Esquire, in connection with Ms. Dreisbach's appeal of the April 29, 2016 Order holding her in contempt. P for D 23; ODC-8.

23. At the July 22, 2016 conference:

a. Judge Sletvold stated that she needed to know which attorney was going to represent Ms. Dreisbach in connection with Ms. Dreisbach's appeal of the April 29, 2016 Order holding Ms. Dreisbach in contempt, docketed as 2202 EDA 2016;

b. Ms. Dreisbach stated that “it’s probably best that Attorney Cook represent [her] on all cases in regards to Northampton County to prevent any further conflicts”;

c. Attorney Cook stated that he would be willing to represent Ms. Dreisbach with respect to her appeal before the Superior Court;

d. Judge Sletvold granted Attorney Musselman leave to withdraw his representation of Ms. Dreisbach;

e. Judge Sletvold stated “Attorney Maher, I am directing you to have no further activity as far as acting as counsel for Ms. Dreisbach pertaining to anything in the trial court or in the Superior Court in the custody and relocation matter bearing case number 2015-5404”;

f. Judge Sletvold clarified that “[Respondent] can represent [himself] on appeal from [Respondent’s] own contempt petition but [Respondent] cannot represent Ms. Dreisbach or any way act as her representative before the court here or with the Superior Court appeal”;

g. Respondent acknowledged that he understood he could not represent Ms. Dreisbach.

P for D 24; ODC-8.

24. By Order dated July 22, 2016, Judge Sletvold decreed that:

a. Respondent’s appearance on behalf of Ms. Dreisbach in the Dreisbach matter was withdrawn based on a conflict of interest established on the July 13, 2016 record before Judge Murray;

b. Mr. Cook would represent Ms. Dreisbach with all aspects of her custody and relocation case;

c. Mr. Musselman was granted leave to withdraw as Ms. Dreisbach's counsel;

d. Mr. Cook would represent Ms. Dreisbach with respect to her appeal of the contempt order against her pending before the Superior Court; and

e. Respondent was to refrain from making any filings on behalf of Ms. Dreisbach or acting as Ms. Dreisbach's counsel with respect to the Dreisbach matter.

P for D 25; ODC-9.

25. No challenge or appeal was filed with respect to the July 22, 2016 Order. ODC-16, p. 4.

26. Respondent never filed a motion to withdraw his appearance in the 2202 EDA 2016 Superior Court Appeal. N.T. 98.

27. On August 18, 2016, the Superior Court issued an Order in 2202 EDA 2016 directing Ms. Dreisbach to show cause as to the basis of the Superior Court's jurisdiction over her appeal. The Order noted that the April 29, 2016 contempt Order imposing sanctions on Ms. Dreisbach was immediately appealable and the notice of appeal should have been filed within 30 days. P for D 26; ODC-10.

28. On August 31, 2016, Respondent filed Appellant's Response to Rule to Show Cause to Collateral Order Appeal Issue on behalf of Ms. Dreisbach in the 2202 EDA 2016 Superior Court matter. P for D 27; ODC-10, 11.

29. The August 31, 2016 Response contained the following representations, *inter alia*:

It was decided between the three counsel (sic) that it was best that Attorney Maher handle the reply to this Honorable Court's August 18, 2016, Rule to Show Cause. In so replying, [Respondent] felt it was necessary to explain the chaos and confusion in the procedural (and substantive) history of this case that Judge Sletvold had created from day one of her involvement in this matter...In summary, it is contended that due to the chaos that Judge Sletvold created procedurally and substantively that this Honorable Court should allow this matter to proceed to this Honorable Court. P for D 28; ODC-11.

30. Respondent's representation to the Superior Court that it had been decided between the three attorneys that it was best that Respondent handle Ms. Dreisbach's Reply was false and Respondent knew it to be false. Respondent never had a conversation with Mr. Cook or Mr. Musselman as to which counsel should file Ms. Dreisbach's Reply and Mr. Cook never authorized Respondent to file the Reply. P for D 29; ODC-13, pp. 6-10, 13-14.

31. Respondent's filing of the August 31, 2016 response with the Superior Court was in open defiance of Judge Sletvold's July 22, 2016 Order and in direct contravention of Ms. Dreisbach's stated wishes on the record that it was best that Mr. Cook represent her to prevent further conflicts. P for D 30.

32. On August 31, 2016, Judge Sletvold filed a Memorandum Opinion Pursuant to Pa.R.A.P. 1925(a) in connection with Respondent's Notice of Appeal (1851 EDA 2016) of the May 6, 2016 Order finding him in contempt. ODC-12; ODC-18, p. 2.

33. In the August 31, 2016 Opinion, Judge Sletvold explained:

a. A summary punishment for contempt was imposed because she found that Respondent had deliberately failed to attend a scheduled court appearance with his client when he had sufficient notice, without a legitimate excuse;

b. An established deliberate absence from a scheduled court proceeding falls within the purview of the prohibition set forth under subsection two of 42 Pa.C.S.A. §4132;

c. She intended to make, and did make, an adjudication of criminal contempt that falls within the purview of 42 Pa.C.S.A. §4132(2), to admonish Respondent and to vindicate the authority of the court;

d. Respondent was provided notice, afforded procedural safeguards and an opportunity to be heard relating to the contempt charge; and

e. Respondent's blatant disregard for the Court's authority was unacceptable and, his excuse was weak and lacking in credibility. ODC-12.

34. On September 19, 2016, the Superior Court quashed as untimely Ms. Dreisbach's appeal docketed to 2202 EDA 2016 of the April 29, 2016 Order holding her in contempt.¹ ODC-10.

35. On September 29, 2016, Judge Sletvold issued a rule to show cause on Respondent and Mr. Cook, as to why Respondent and Mr. Cook should not be held in contempt of the July 22, 2016 Order prohibiting Respondent from engaging in any further activity on behalf of Ms. Dreisbach, returnable October 21, 2016. P for D 31; ODC-16, p. 5.

36. On October 21, 2016, Respondent, Mr. Cook and Ms. Dreisbach appeared before Judge Sletvold, at which time:

¹ The Docket to 2202 EDA 2016 identifies Respondent as filing a Petition for Allowance of Appeal to the Supreme Court. In fact, the Petition was filed pro se by Ms. Dreisbach and not filed by Respondent.

a. Mr. Cook testified under oath that he never had a conversation with Respondent concerning an agreement between himself, Mr. Musselman or Respondent as to who would file the reply to the Superior Court's August 18, 2016, rule to show cause;

b. Mr. Cook strongly disagreed that he ever authorized Respondent to file anything for Mr. Cook in a case involving Ms. Dreisbach;

c. Mr. Cook testified that when Ms. Dreisbach's appeal came to him it had already been filed by Respondent so when the issue of timeliness came up he advised Ms. Dreisbach that if Respondent provided him reasons as to why it was filed late, Mr. Cook would review and consider filing an answer to the rule to show cause issued by the Superior Court. He never received anything from Respondent so he never filed an answer to the rule to show cause because he had "nothing to say" to the Superior Court;

d. Mr. Cook explained that he had met with Ms. Dreisbach and had conversations with her about what could and couldn't be done and he "decided ultimately to do what [he]] didn't do";

e. Respondent testified that he never spoke to Mr. Cook directly about who should file the reply to the Superior Court's August 18, 2016 rule to show cause;

f. When Judge Sletvold questioned Respondent about his misrepresentation to the Superior Court and his difficulty in following orders, Respondent replied that he "disagreed with [her] order back on the 22nd"; and

g. Following testimony, Judge Sletvold dismissed the rule to show cause as to Mr. Cook and issued an order finding Respondent in contempt and fining Respondent \$500.00.

P for D 32; ODC-13.

37. To date, Respondent has not paid the \$500.00 fine in connection with the October 21, 2016 Order finding Respondent in contempt. P for D 33.

38. On December 5, 2016, Respondent filed a Notice of Appeal to the Superior Court from the October 21, 2016 Order finding Respondent in contempt, which was docketed as 3829 EDA 2016. P for D 34; ODC-15.

39. On February 3, 2017, Judge Sletvold filed a Memorandum Opinion Pursuant to Pa.R.A.P. 1925(a), in connection with Respondent's Notice of Appeal (3829 EDA 2016) of the October 21, 2016 Order finding him in contempt. ODC-16.

40. In the February 3, 2017 Opinion, Judge Sletvold explained:

a. She imposed a summary punishment for contempt because she found that Respondent deliberately took action in direct defiance of a clear Order of Court, without a legitimate excuse;

b. She intended to make, and did make, an adjudication of criminal contempt that falls within the purview of 42 Pa.C.S.A. § 4132(2) to admonish Respondent and to vindicate the authority of the Court; and

c. Respondent was afforded procedural safeguards of notice and unrestrained opportunity to be heard.

41. On March 6, 2017, the Superior Court granted Respondent's application and consolidated the appeals at 1851 EDA 2016 and 3829 EDA 2016. P for D 35; ODC-6, 15.

42. On October 11, 2017, the Superior Court issued a memorandum opinion agreeing with and adopting “the well-reasoned opinions of the Honorable Jennifer R. Sletvold” and affirmed the two orders issued by Judge Sletvold holding Respondent in contempt. P for D 36; ODC-18.

43. Respondent did not report his contempt convictions to Petitioner. P for D 38.

44. By DB-7 Request for Statement of Respondent’s Position dated October 12, 2017, Petitioner advised Respondent of the alleged misconduct and further advised that failure to respond to the DB-7 letter without good cause was an independent ground for discipline pursuant to Pa.R.D.E. 203(b)(7). P for D 39; ODC-19.

45. The October 12, 2017 DB-7 letter was sent by certified mail, return receipt requested, and was received by Respondent on October 18, 2017. P for D 40; ODC-19.

46. By reminder letter dated November 27, 2017, and received by Respondent on December 5, 2017, Petitioner advised Respondent that Petitioner had not received a response to the October 12, 2017 DB-7 letter and that Petitioner intended to seek to impose discipline for his violation of Pa.R.D.E. 203(b)(7) if he failed to respond within ten days. P for D 41; OD-20.

47. Respondent did not provide a response to the October 12, 2017 letter. P for D 42.

48. Petitioner personally served Respondent with the Petition for Discipline on January 25, 2018. Respondent did not file an Answer. N.T. 10 -12.

49. Respondent testified at the disciplinary hearing on May 30, 2018.

50. Respondent testified that the reason he did not respond to the DB-7 letter was that he was “extremely busy,” being a sole practitioner. N.T. 74, 75. He thought he would “get to it,” but never did. N.T. 74, 90-91.

51. Respondent testified that he “was involved with a lot of other things” and too busy to respond to the Petition for Discipline. N.T. 91-92.

52. Respondent apologized for his failure to respond to disciplinary counsel. N.T.74.

53. Respondent made excuses for his misconduct, rather than taking responsibility.

54. Respondent would not admit that his statement in the Superior Court pleading that he, Attorney Cook, and Attorney Musselman decided that Respondent was the best person to handle the reply to the rule to show cause, was a misrepresentation to the Court. Instead, Respondent claimed that he was writing in “haste” and it was a “rushed statement.” N.T. 83, 85.

55. Respondent admitted that he knew when he filed the pleading that it was in violation of Judge Sletvold’s order, but he took no steps to remedy his action. N.T. 86.

56. Respondent did not express remorse for his contemptuous behavior, his misrepresentation to the Superior Court, or his inadequate representation of his client.

57. Respondent has a record of prior discipline. He received Informal Admonitions on September 12, 2009 and May 5, 2016.

58. In the 2016 Informal Admonition, Respondent violated RPC 1.9(a), 1.16(a)(1), and 8.4(d) arising out of his misconduct in a custody matter. Respondent’s representation of a client versus his former client breached his duty to the former client,

who he had previously represented in a substantially-related matter. The former client's interests were materially adverse to the interests of the current client, and Respondent did not obtain the former client's informed consent for his representation of the current client. Respondent's failure to withdraw his representation of the current client and his willful violation of a preclusion order resulted in the judge holding him in contempt and constituted conduct prejudicial to the administration of justice.

59. Respondent testified that he accepted the Informal Admonition at the advice of counsel and believed that he had done nothing wrong. N.T. 88.

60. In the 2009 Informal Admonition, Respondent violated RPC 1.16(c) and 8.4(d) arising out of misconduct in connection with his client's criminal trial. Respondent failed to appear at the scheduled trial without filing a petition with the court seeking permission to withdraw his appearance and without having been granted leave from the court, causing the judge to continue the trial.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

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

3. RPC 1.7(a)(2) – Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent

conflict of interest exists if there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

4. RPC 1.16(a)(1) – Except as stated in paragraph (c), a lawyer shall not represent a client, or where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the rules of professional conduct or other law.

5. 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.

6. RPC 4.1(a) – In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

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

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

9. Pa.R.D.E. 203(b)(1) – Conviction of a crime shall be grounds for discipline.

10. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rules §87.7(b) for a statement of the respondent-attorney's position shall be grounds for discipline.

11. Pa.R.D.E. 214(a) – An attorney convicted of a crime shall report the fact of such conviction within 20 days to the Office of Disciplinary Counsel.

IV. DISCUSSION

Herein, the Board considers the matter of Respondent's two instances of criminal contempt, lack of candor to a tribunal, inadequate representation of a client, and disregard of the disciplinary process. Although personally served, Respondent failed to answer the Petition for Discipline. Accordingly, pursuant to Rule 208(b)(3), Pa.R.D.E., the factual allegations are deemed admitted. These admissions, supplemented by Petitioner's exhibits and Respondent's testimony, demonstrate that Respondent engaged in misconduct in violation of RPC 1.1, 1.3, 1.7(a)(2), 1.16(a)(1), 3.3(a)(1), 4.1(a), 8.4(c), 8.4(d), Pa.R.D.E. 203(b)(1), and 203(b)(7). We conclude that Petitioner met its burden to prove Respondent's ethical misconduct by clear and satisfactory evidence. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). For the following reasons, we recommend that Respondent be suspended for a period of one year and one day.

The facts demonstrate that Respondent, in connection with his representation of Brenda Dreisbach in a custody and relocation matter, sought a continuance of an April 29, 2016 hearing before Judge Sletvold, which was denied. With full knowledge that the court had denied his request, Respondent and his client failed to appear for the scheduled hearing, after which Judge Sletvold found Ms. Dreisbach in contempt of court and issued a rule to show cause on Respondent for his failure to appear. Respondent failed to timely file an appeal of the contempt order issued by Judge Sletvold on Ms. Dreisbach. Respondent was provided with an opportunity to be heard at the show cause hearing, but did not provide a plausible explanation for his failure to

appear at the April 29, 2016 hearing. Judge Sletvold held Respondent in criminal contempt of court and fined him \$500.00.

Thereafter, Respondent was precluded from continuing to represent Ms. Dreisbach due to Respondent's admitted conflict of interest, which was revealed during a July 13, 2016 hearing before Judge Samuel Murray. Upon questioning by Judge Murray, Respondent acknowledged that he was the godfather of Ms. Dreisbach's child and had babysat the child on occasion. When Judge Murray inquired as to whether Respondent would withdraw his appearance, Respondent answered in the affirmative.

On July 22, 2016, Judge Sletvold held a conference in order to determine who would be representing Ms. Dreisbach going forward, including in the appeal to the Superior Court of Judge Sletvold's order holding Ms. Dreisbach in contempt. At the conference, Judge Sletvold directed that Respondent have "no further activity as far as acting as counsel for Ms. Dreisbach pertaining to anything in the trial court or in the Superior Court." By Order dated July 22, 2016, Judge Sletvold decreed that Respondent's appearance on behalf of Ms. Dreisbach was withdrawn; Attorney Cook would represent Ms. Dreisbach; and because of the conflict of interest, Respondent was to refrain from making any filings on behalf of Ms. Dreisbach or acting as her counsel in the matter. Respondent did not challenge this Order.

On August 31, 2016, Respondent deliberately and knowingly defied Judge Sletvold's July 22, 2016 Order and continued to represent Ms. Dreisbach in the Superior Court appeal, despite the acknowledged conflict of interest, by filing a response to a rule to show cause on her behalf. Respondent misrepresented to the Superior Court that he and Attorneys Cook and Musselman had agreed that Respondent would file that pleading. In his pleading, Respondent derisively referred to the procedural and substantive "chaos

and confusion” caused by Judge Sletvold. Ultimately, the Superior Court quashed the appeal as untimely, noting that the April 29, 2016 contempt order was immediately appealable and Respondent should have filed the notice of appeal within 30 days after entry of that order.

When Respondent’s Superior Court filing was brought to Judge Sletvold’s attention, she issued a rule to show cause on Respondent and found that he had violated her July 22, 2016 Order. The evidence of record at the contempt hearing established that Mr. Cook never had a conversation with Respondent concerning any agreement between himself, Respondent or Mr. Musselman as to who would file Ms. Dreisbach’s Reply. Respondent admitted at the contempt hearing that he never spoke directly to Mr. Cook about who should file the Reply. Judge Sletvold held Respondent in contempt and levied a \$500.00 fine against him.

The Superior Court affirmed both contempt orders and issued a memorandum opinion agreeing with and adopting “the well-reasoned opinions of the Honorable Jennifer R. Sletvold.” Respondent failed to pay the contempt fines levied by Judge Sletvold, and failed to report the criminal convictions to Petitioner, as required by Rule 214(a), Pa.R.D.E.

Respondent ignored Petitioner’s attempts to investigate this matter when he failed to respond to the DB-7 letter request for a statement of Respondent’s position. At the hearing, Respondent testified that he was too busy to respond to either the DB-7 letter or to the Petition for Discipline.

Having concluded that Respondent engaged in professional misconduct, this matter is ripe for the determination of discipline. It is well-established that in evaluating professional discipline, each case must be decided individually on its own

unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***, 427 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***, 473 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).

Respondent was held in criminal contempt on two occasions for his willful defiance of court orders, engaged in misrepresentation and lack of candor to the court and a conflict of interest, failed to timely appeal his client’s contempt order, and failed to respond to Petitioner’s request for information.

Attorneys who have engaged in contemptuous conduct, in combination with other misconduct, have received suspensions of one year and one day. ***Office of Disciplinary Counsel v. Michael Elias Stosic***, 65 DB 2015 (D. Bd. Rpt. 6/23/2016) (S. Ct. Order 9/14/2016) (respondent was suspended for one year and one day after he was adjudicated in criminal contempt on three occasions for failing to attend court proceedings; failing to communicate and provide competent representation in five client matters; and, providing misleading information related to his professional liability insurance); ***Office of Disciplinary Counsel v. Kevin Mark Wray***, No. 19 DB 2017 (S. Ct. Order 7/6/2017) (respondent was suspended for one year and one day on consent resulting from his criminal contempt conviction for failure to appear for court proceedings, and for failing to communicate and provide competent representation in six client matters.)

In aggravation, Respondent expressed no remorse for his actions, showed disregard for the disciplinary process, and has a prior record of discipline.

Throughout this disciplinary proceeding, Respondent exhibited a nonchalant attitude and lack of remorse, which demonstrated his failure to appreciate the seriousness of his conduct. Respondent initially ignored two letters from Petitioner requesting his response to the DB-7 letter and which put him on clear notice that failure to respond was an independent ground for discipline. The Petition for Discipline was personally served on Respondent, yet he did not submit an answer because he was “too busy.” At the hearing, Respondent apologized for his failure to respond to disciplinary inquiries, but did not take responsibility for any of his serious misconduct; rather, he provided multiple excuses and minimized his actions. As further evidence of Respondent’s lack of contrition, we note that Respondent has failed to pay the fines levied against him in the two contempt proceedings.

The record establishes that Respondent has breached his ethical duties in prior matters, resulting in the imposition of Informal Admonitions in 2009 and 2016. In the 2016 Informal Admonition matter, a case nearly identical to the instant matter, Respondent engaged in a conflict of interest when he represented a client against a former client in a custody matter. Very similar to the instant disciplinary proceeding, Respondent demonstrated disrespect for judicial authority by willful defiance of a court order precluding him from further representation in the matter, resulting in the judge holding Respondent in contempt. The 2009 Informal Admonition resulted from Respondent’s failure to appear at his client’s scheduled criminal trial without being granted leave by the court to withdraw his appearance.

Respondent's prior admonitions and the current disciplinary matter reflect a continuing pattern of disrespect for judicial authority. Chief Disciplinary Counsel imposed Respondent's most recent admonition on May 5, 2016. One day later, in the instant matter, Respondent appeared at the first contempt hearing before Judge Sletvold. He repeated his pattern of willful disregard for court orders by defying Judge Sletvold's July 22, 2016 Order, and in October 2016, he appeared before Judge Sletvold in the second contempt hearing. We conclude that Respondent's prior discipline did not act as a deterrent to Respondent's penchant for disregarding court orders and procedures, underscoring the necessity for more severe discipline in the instant matter.

Respondent did not present any character witnesses or mitigation evidence.

It is well-established 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). Upon this record, the Board concludes that Respondent is unfit to practice law. Respondent's continued disregard for the authority of the courts and the impact such actions have on his clients and the bar in general, his lack of genuine and sincere remorse, and his lackadaisical approach to the disciplinary process warrant a suspension of one year and one day.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Joseph P. Maher, be Suspended for a period of one year and one day 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: /s/ John P. Goodrich 
John P. Goodrich, Member

Date: 12/14/18