

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2407 Disciplinary Docket No. 3
: :
Petitioner : No. 58 DB 2016
: :
v. : Attorney Registration No. 36718
: :
JOHN JOSEPH GARAGOZZO, : (Philadelphia)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 6th day of October, 2017, upon consideration of the Report and Recommendations of the Disciplinary Board, John Joseph Garagozzo is suspended from the Bar of this Commonwealth for a period of two years, and he shall comply with all 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 10/6/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 58 DB 2016
Petitioner	:	
	:	
v.	:	Attorney Registration No. 36718
	:	
JOHN JOSEPH GARAGOZZO	:	
Respondent	:	(Philadelphia)

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 April 12, 2016, Office of Disciplinary Counsel charged John Joseph Garagozzo, Respondent, with violations of the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement arising out of allegations that he engaged in the unauthorized practice of law and related misconduct. Respondent failed to file an Answer.

A prehearing conference was held on July 27, 2016. Respondent failed to appear. A disciplinary hearing was held on August 30, 2016, before a District I Hearing

Committee comprised of Chair Michael L. Turner, Esquire, and Members Mark B. Goodheart, Esquire, and Amy M. Vanni, Esquire. Petitioner presented its case by moving into evidence an Exhibit List and Exhibits P-1 through P-17, and calling one witness. Respondent failed to appear.

Following the submission of a Petitioner's brief, the Hearing Committee filed a Report on January 17, 2017, concluding that Respondent violated the rules as charged in the Petition for Discipline, and recommending that he be suspended for a period of two years.

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

The Disciplinary Board adjudicated this matter at the meeting on April 28, 2017.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, with the power and 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 said Rules of Disciplinary Enforcement.

2. Respondent is John Joseph Garagozzo. He was born in 1957 and was admitted to practice law in the Commonwealth of Pennsylvania in 1982.

Respondent's attorney registration address is P.O. Box 26, Mickleton, NJ 08056. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Petitioner has no prior record of discipline in Pennsylvania.

Facts Nos. 4 - 34 are incorporated by reference in the Petition for Discipline, in accordance with Pa.R.D.E. 208(b)(3), which provides that factual allegations not timely denied are admitted.

4. The Pennsylvania Continuing Legal Education Board ("CLE Board"), assigned Respondent to Compliance Group 1 for the purpose of having to satisfy the Pennsylvania Rules of Continuing Legal Education ("CLE Rules"), which meant that Respondent's due date to comply with CLE requirements was April 30.

5. At all times relevant, Respondent maintained an office for the practice of law at 410 N. 8th Street, Philadelphia, PA 19123 ("the law office").

6. By letter dated February 1, 2013, mailed to Respondent at the law office, the CLE Board, *inter alia*:

a. Enclosed Respondent's Preliminary Annual CLE Report, which showed the CLE courses Respondent had taken towards the CLE requirements as of January 22, 2013;

b. Stated that the CLE Board's records showed that Respondent had yet to complete the CLE requirements due by April 30, 2013;

c. Provided information regarding the CLE requirements, the resources Respondent could use to locate approved CLE courses, and the

number of distance learning credits that can be applied per compliance year;

d. “strongly recommended that [Respondent] take action to satisfy [his] CLE requirements prior to the compliance deadline”; and

e. Informed Respondent that lawyers who failed to complete the CLE requirements by the compliance deadline would be considered non-compliant, resulting in the assessment of a \$100.00 late fee and subjecting his “law license to PA CLE Rule 111 related to administrative suspension.”

7. Respondent received this letter, with enclosure.

8. By letter dated June 21, 2013, mailed to Respondent at the law office, the CLE Board, *inter alia*,

a. Enclosed Respondent’s Annual CLE Report, which showed he was non-compliant with the CLE requirements for the compliance period ending on April 30, 2013;

b. Stated that the CLE Board’s records showed that Respondent was non-compliant with the CLE requirements due by April 30, 2013;

c. Informed Respondent that a late fee of \$100.00 had been assessed because Respondent was non-compliant with the CLE requirements;

d. Advised Respondent that he had sixty days from the date of the notice to complete the CLE requirements and to pay any outstanding late fees and that Respondent’s failure to do so would result “in the assessment of a second \$100 late fee and [his] name being included on a non-compliant report to the Supreme Court of Pennsylvania”;

e. Listed four steps Respondent should take to resolve his non-compliance with the CLE requirements; and

f. Offered assistance "in achieving compliance." (underscore in original)

9. Respondent received this letter, with enclosure.

10. By letter dated September 25, 2013, with enclosure, mailed to Respondent at the law office, the CLE Board, *inter alia*:

a. Stated that the letter served as a second notification that Respondent was non-compliant with the CLE requirements due on April 30, 2013;

b. Informed Respondent that a second late fee of \$100.00 had been assessed;

c. Advised Respondent that if he failed to complete the CLE requirements and pay any outstanding late fees by 4:00 p.m. on October 25, 2013, Respondent's name would be included on a non-compliant report for submission to the Supreme Court of Pennsylvania;

d. Informed Respondent that upon receipt of that non-compliant report, the Supreme Court of Pennsylvania would issue an Order to "administratively suspended [Respondent's] license to practice law in the Commonwealth of Pennsylvania and a third \$100.00 late fee [would] be assessed";

e. Listed five steps Respondent could take to resolve his non-compliance with the CLE requirements;

f. Encouraged Respondent “to remedy this situation **before 10/25/13**”; and

g. Offered to assist Respondent in completing the CLE requirements. (bold in original).

11. Respondent received this letter, with enclosure.

12. Respondent failed to comply with the CLE requirements.

13. By Order of the Supreme Court of Pennsylvania dated December 9, 2013, (“the Order”), effective January 8, 2014, Respondent was administratively suspended from the practice of law in the Commonwealth of Pennsylvania, pursuant to Rule 111(b) of the CLE rules, for failure to satisfy the CLE requirements.

14. By letter dated December 9, 2013, sent to Respondent at the law office by certified mail, return receipt requested, Suzanne E. Price, Attorney Registrar:

a. Enclosed a copy of the Order and one page of the attachment, which contained Respondent’s name;

b. Advised that he was to be administratively suspended effective January 8, 2014, for having failed to comply with the CLE requirements by April 30, 2013;

c. Enclosed the Standard Guidance to Lawyers Who have been Administratively Suspended;

d. Enclosed Rule 217 of the Pennsylvania Rules of Disciplinary Enforcement;

e. Enclosed §§91.91 – 91.99 of the Disciplinary Board Rules;

f. Enclosed Form DB-23(a), Nonlitigation Notice of Administrative Suspension;

g. Enclosed Form DB-24(a), Litigation Notice of Administrative Suspension;

h. Enclosed Form DB-25(a), Statement of Compliance;

i. Advised that he was required to comply with the enclosed Pennsylvania Rules of Disciplinary Enforcement and the Disciplinary Board Rules if he was administratively suspended;

j. Notified Respondent that in "order to resume active status, [he] must comply with the CLE Board before a request for reinstatement [would] be considered;

k. Provided Respondent with two telephone numbers of the CLE staff if he had any questions regarding the Order; and

l. Enclosed a letter prepared by the CLE Board, which provided information regarding compliance with Rule 111(b) of the CLE rules.

15. This letter was signed for on December 11, 2013.

16. Respondent received this letter and knew that as of January 8, 2014, he was administratively suspended.

17. Respondent failed to file a verified Statement of Compliance with the Secretary of the Disciplinary Board within ten days after the effective date of his administrative suspension.

18. Thereafter, Respondent engaged in the practice of law in four matters.

19. In *Commonwealth of Pennsylvania v. Reynaldo Cruz*, filed in the Municipal Court of Philadelphia County, Respondent:

- a. Was privately retained by Mr. Cruz to represent him sometime around October 2014;
- b. Made an advance request for a continuance prior to an October 9, 2014 listing;
- c. Entered his appearance on December 4, 2014;
- d. Appeared in court on behalf of Mr. Cruz on December 4, 2014, March 4, 2015, April 15, 2015 and May 21, 2015;
- e. Arranged for Mr. Cruz to be admitted into an Accelerated Misdemeanor Program; and
- f. Represented Mr. Cruz at trial on May 21, 2015, at which time Mr. Cruz pled guilty on Respondent's advice and was accepted into the Accelerated Misdemeanor Program.

20. In ***Commonwealth of Pennsylvania v. James R. Jones***, filed in the Municipal Court of Philadelphia County, Respondent:

- a. Was privately retained by Mr. Jones to represent him sometime around April 2015;
- b. Entered his appearance on April 16, 2015;
- c. Appeared in court on behalf of Mr. Jones on April 16, 2015, May 1, 2015, and June 3, 2015;
- d. Arranged for Mr. Jones to be considered for the Accelerated Rehabilitative Disposition program; and
- e. Represented Mr. Jones at trial on June 3, 2015, at which time Mr. Jones pled guilty on Respondent's advice.

21. In the case of *In the Appeal of E.R. v. Z.R.*, filed in the Commonwealth of Pennsylvania, Department of Human Services, Bureau of Hearings and Appeals, Respondent represented E.R. at an administrative hearing held on November 6, 2014, at the Bureau of Hearings and Appeal (“the Bureau”) before Derrick D. Crago, an Administrative Law Judge (“ALJ”), which resulted in ALJ Crago recommending that E.R.’s appeal be sustained and that the “indicated report of child abuse be expunged.”

22. On January 7, 2015, Francis A. Beatty Stone, the Regional Manager for the Bureau, issued an Order that adopted the December 15, 2014 Recommendation issued by ALJ Crago.

23. On June 4, 2015, Respondent appeared on behalf of E.R. in a custody case pending in the Family Court Division of the Court of Common Pleas of Philadelphia County, at which time he:

- a. Attempted to negotiate with Deborah L. Culhane, Esquire, opposing counsel; and
- b. Participated in an off-the-record sidebar with Ms. Culhane and the judge assigned to the custody case.

24. Respondent failed to advise Mr. Cruz, Mr. Jones and E.R. that:

- a. He was administratively suspended; and
- b. He could not represent them in their legal matters.

25. Respondent failed to advise the judges assigned to the above cases and opposing counsel that he was administratively suspended.

26. During the period that Respondent was administratively suspended, he continued to serve as a provider of pre-paid legal services for a local union.

27. Sometime shortly before April 7, 2015, Respondent satisfied the CLE requirements, as mandated by the CLE Board, in order to be reinstated to active status in the Commonwealth of Pennsylvania.

28. On June 8, 2015, Respondent filed with the Attorney Registration Office the paperwork and fees necessary to be reinstated to active status in the Commonwealth of Pennsylvania.

29. Among the paperwork Respondent filed with the Attorney Registration Office was a Statement of Compliance that was dated June 1, 2015.

30. In the Statement of Compliance, Respondent represented that he had "fully complied with the provisions of the Order of the Supreme Court, with the applicable provisions of the Pennsylvania Rules of Disciplinary Enforcement and with the applicable Disciplinary Board Rules."

31. Respondent signed the Statement of Compliance and certified that "under penalties provided by 18 Pa.C.S. §4904 (relating to unsworn falsification to authorities) that the foregoing statements are true and correct and contain no misrepresentations or omissions of material fact."

32. In the Statement of Compliance, Respondent misrepresented that he had complied with the Order and the Pennsylvania Rules of Disciplinary Enforcement.

33. On June 8, 2015, Respondent was reinstated to active status in the Commonwealth of Pennsylvania.

34. Between January 8, 2014 and June 7, 2015, Respondent continued to maintain an office for the practice of law at the law office and to hold himself out as eligible to practice law, through the use of letterhead.

35. Petitioner's Auditor/Investigator, B. Jon Sherman, testified at the disciplinary hearing on August 30, 2016. N.T. 11-19.

36. On the morning of May 17, 2016, Mr. Sherman went to Respondent's residence at 5 W. Wolfert Station Road, Mickleton, New Jersey, for the purpose of serving Respondent with the Petition for Discipline. N.T. 13-14.

37. On that date, Mr. Sherman spoke with Respondent's wife, who told Mr. Sherman that Respondent no longer resided at the Wolfert Station Road residence and that she and Respondent were divorcing. Respondent's wife provided Mr. Sherman with an address for Respondent's mother at 108 Brook Hollow Court, Mickleton, New Jersey ("the Brook Hollow Court residence"). N.T. 14.

38. Thereafter, Mr. Sherman went to the Brook Hollow Court residence and was told that Respondent was not there at that time. N.T. 15.

39. On May 25, 2016, Mr. Sherman returned to the Brook Hollow Court residence and served Respondent with the Petition for Discipline. N.T. 16, 18

40. A prehearing conference was held on July 27, 2016.

41. Respondent had notice of the date, time, and location of the prehearing conference. Prehearing Conference Exhibit 1; Prehearing Transcript N.T. 4-5, 8-10.

42. Respondent failed to appear for the prehearing conference.

43. At the prehearing conference, the Hearing Committee Chair directed Petitioner to send Respondent a letter by first class mail and by certified mail, notifying Respondent of the date, time and location of the disciplinary hearing.

44. By letter dated July 28, 2016, which was sent to Respondent by first class mail and by certified mail, return receipt requested, and addressed to Respondent

at the 108 Brook Hollow Court residence and Respondent's public access address at P.O. Box 26, Mickleton, NJ 08056 ("the P.O. Box address"), Petitioner, *inter alia*;

a. Informed Respondent of what transpired at the prehearing conference; and

b. Reminded Respondent that the disciplinary hearing was scheduled for "Tuesday, August 30, 2016, at [Petitioner's Philadelphia] office at 9:30 a.m." P-14.

45. The July 28, 2016 certified letter that was mailed to the 108 Brook Hollow Court residence was delivered to that location on August 1, 2016. P-15.

46. The July 28, 2016 certified letter that was mailed to the P.O. Box address was returned to Petitioner's office by the United States Postal Service, with handwritten markings on the envelope indicating that three attempts had been made to deliver that letter and a label affixed to the envelope stating that the certified letter was "UNCLAIMED UNABLE TO FORWARD." P-16.

47. The July 28, 2016 letters that were sent to Respondent by first class mail at the 108 Brook Hollow Court residence and the P.O. Box address were not returned to Petitioner as undeliverable by the United States Postal Service. N.T. 10.

48. Prior to Petitioner mailing the July 28, 2016 letter to Respondent, Petitioner had mailed a July 13, 2016 letter to Respondent, which was sent by first class mail, addressed to Respondent at the 108 Brook Hollow Court residence and the P.O. Box address. PH-1.

49. In the July 13, 2016 letter, Petitioner had informed Respondent of the date, time and location of the disciplinary hearing. PH-1.

50. On August 29, 2016, Mr. Sherman called Respondent using Respondent's cell phone number. Mr. Sherman left a voicemail message on Respondent's cell phone in which he identified himself, reminded Respondent that there was a disciplinary hearing scheduled for the following morning, and requested that Respondent call Mr. Sherman so that Respondent could inform Mr. Sherman whether Respondent intended to appear at the disciplinary hearing. N.T. 17.

51. Mr. Sherman did not receive a return telephone call from Respondent. N.T. 17.

52. Respondent did not call Petitioner's office on the morning of the disciplinary hearing to advise Petitioner whether Respondent would be attending the disciplinary hearing. N.T. 10, 17.

53. Respondent had notice of the date, time and location of the disciplinary hearing.

54. Respondent failed to appear at the disciplinary hearing. N.T. 1-23.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following rules:

1. RPC 5.5(a) – A lawyer shall not practice law in a jurisdiction in violation of the regulation of the legal profession in that jurisdiction, or assist another in doing so.

2. PRC 7.1 – A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services. A communication is false or

misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

3. RPC 8.1(a) – An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not knowingly make a false statement of material fact.

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

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

6. Pa.R.D.E. 203(b)(3) – Wilful violation of any other provisions of the Enforcement Rules shall be grounds for discipline, via

a. Pa.R.D.E. 217(c) - (superseded effective 2/28/15) – a formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or transfer to inactive status, by registered or certified mail, return receipt requested: (1) all persons or their agents or guardians to whom a fiduciary duty is or may be owed at any time after the disbarment, suspension, administrative suspension or transfer to inactive status, and (2) all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts, under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing. The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as

the formerly admitted attorney is disbarred, suspended, administratively suspended or on inactive status;

b. Pa.R.D.E. 217(c)(1) - (effective 2/28/15) - A formerly admitted attorney shall promptly notify, or cause to be promptly notified, of the disbarment, suspension, administrative suspension or transfer to inactive status all persons or their agents or guardians, including but not limited to wards, heirs and beneficiaries, to whom a fiduciary duty is or may be owed at any time after the disbarment, suspension, administrative suspension or transfer to inactive status. The notice required by this subdivision (c) may be delivered by the most efficient method possible as long as the chosen method is successful and provides proof of receipt. See Note after subdivision (a), *supra*. At the time of the filing of the verified statement of compliance required by subdivision (e)(1) of this Rule, the formerly admitted attorney shall file copies of the notices required by this subdivision and proofs of receipt with the Secretary of the Board and shall serve a conforming copy on the Office of Disciplinary Counsel. The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is disbarred, suspended, administratively suspended or on inactive status.

c. Pa.R.D.E. 217(c)(2) - (effective 2/28/15) - A formerly admitted attorney shall promptly notify, or cause to be promptly notified, of the disbarment, suspension, administrative suspension or transfer to inactive status all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where

there is a reasonable probability that they may infer that he or she continues as an attorney in good standing. The notice required by this subdivision (c) may be delivered by the most efficient method possible as long as the chosen method is successful and provides proof of receipt. See Note after subdivision (a), *supra*. At the time of the filing of the verified statement of compliance required by subdivision (e)(1) of this Rule, the formerly admitted attorney shall file copies of the notices required by this subdivision and proofs of receipt with the Secretary of the Board and shall serve a conforming copy on the Office of Disciplinary Counsel. The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorney is disbarred, suspended, administratively suspended or on inactive status.

d. Pa.R.D.E. 217(d) - (superseded effective 2/28/15) – The order imposing suspension, disbarment, administrative suspension or transfer to inactive status shall be effective 30 days after entry. The formerly admitted attorney, after entry of the disbarment, suspension, administrative suspension or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry of the order and its effective date the formerly admitted attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

e. Pa.R.D.E. 217(d)(1) - Orders imposing suspension, disbarment, administrative suspension or transfer to inactive status shall be effective 30 days after entry. The formerly admitted attorney, after entry of

the disbarment, suspension, administrative suspension or transfer to inactive status order, shall not accept any new retainer or engage as attorney for another in any new case or legal matter of any nature. However, during the period from the entry date of the order and its effective date the formerly admitted attorney may wind up and complete, on behalf of any client, all matters which were pending on the entry date.

f. Pa.R.D.E. 217(d)(2) - In addition to the steps that a formerly admitted attorney must promptly take under other provisions of this Rule to disengage from the practice of law, a formerly admitted attorney shall promptly cease and desist from using all forms of communication that expressly or implicitly convey eligibility to practice law in the state courts of Pennsylvania, including but not limited to professional titles, letterhead, business cards, signage, websites, and references to admission to the Pennsylvania Bar.

g. Pa.R.D.E. 217(e) - (superseded effective 2/28/15) – Within ten days after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing: (1) that the provisions of the order and these rules have been fully complied with; and (2) all other state, federal and administrative jurisdictions to which such person is admitted to practice. Such statement shall also set forth the residence or other address of the formerly admitted attorney where communications to such person may thereafter be directed.

h. Pa.R.D.E. 217(j)(3) – A formerly admitted attorney may have direct communication with a client or third party regarding a matter being handled by the attorney, organization or firm for which the formerly admitted attorney works only if the communication is limited to ministerial matters such as scheduling, billing, updates, confirmation of receipt or sending of correspondence and messages. The formerly admitted attorney shall clearly indicate in any such communication that he or she is a legal assistant and identify the supervising attorney.

i. Pa.R.D.E. 217(j)(4)(iii) – A formerly admitted attorney is specifically prohibited from performing any law-related services for any client who in the past was represented by the formerly admitted attorney.

j. Pa.R.D.E. 217(j)(4)(iv) – A formerly admitted attorney is specifically prohibited from representing himself or herself as a lawyer or person of similar status.

k. Pa.R.D.E. 217(j)(4)(v) – A formerly admitted attorney is specifically prohibited from having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3).

l. Pa.R.D.E. 217(j)(4)(vi) – A formerly admitted attorney is specifically prohibited from rendering legal consultation or advice to a client.

m. Pa.R.D.E. 217(j)(4)(vii) – A formerly admitted attorney is specifically prohibited from appearing on behalf of a client in any hearing or proceeding or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer, or any other adjudicative person or body.

n. Pa.R.D.E. 217(j)(4)(ix) – A formerly admitted attorney is specifically prohibited from negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction.

IV. DISCUSSION

This matter is before the Board for consideration of the allegations of unauthorized practice of law and related misconduct charged in a Petition for Discipline filed on April 12, 2016. Respondent failed to file an Answer to the Petition; consequently, the factual allegations set forth in the Petition are deemed admitted pursuant to Pa.R.D.E. 208(b)(3).

The factual allegations and Petitioner's exhibits establish that: Respondent knew that due to his failure to comply with CLE requirements, he had been administratively suspended from the practice of law in the Commonwealth by Order of the Supreme Court dated January 8, 2014; Respondent failed to file a verified Statement of Compliance with the Secretary of the Disciplinary Board within ten days after the effective date of his administrative suspension; Respondent engaged in the unauthorized practice of law by representing clients he had represented prior to his administrative suspension and by representing new clients subsequent to his administrative suspension; Respondent failed to advise the courts, opposing counsel and his clients that he had been placed on administrative suspension; Respondent held himself out as eligible to practice law and maintained an office for the practice of law using letterhead throughout the period of his administrative suspension; and, Respondent filed with the Attorney Registration

Office on June 8, 2015, paperwork and fees for reinstatement to active status; including the filing of a Statement of Compliance, wherein he misrepresented that he complied with the suspension order and the applicable provisions of the Pennsylvania Rules of Disciplinary Enforcement.

Petitioner has established by clear and satisfactory evidence that Respondent's conduct violated the rules charged in the Petition for Discipline. **Office of Disciplinary Counsel v. Robert Surrick**, 749 A.2d 441, 444 (Pa. 2000). Having concluded that Respondent committed professional misconduct, the Board must determine the appropriate discipline. For the following reasons, we conclude that a suspension for a period of two years is warranted in this particular matter.

The Board's recommended discipline must reflect facts and circumstances unique to the case, including circumstances that are aggravating or mitigating. **Office of Disciplinary Counsel v. Joshua Eilberg**, 441 A.2d 1193, 1195 (Pa. 1982). The final discipline imposed is determined on a case-by-case basis on the totality of the facts presented. Nevertheless, despite the fact-intensive nature of the endeavor, consistency is required so that similar misconduct "is not punished in radically different ways." **Office of Disciplinary Counsel v. Robert S. Lucarini**, 472 A.2d 186, 190 (Pa. 1983).

For a period of approximately eighteen months, Respondent engaged in the unauthorized practice of law after he was placed on administrative suspension by the Supreme Court. The record established that Respondent was admitted to practice law in Pennsylvania in 1982 and has no discipline of record. Respondent's thirty years of practice without a blemish on his record is a mitigating factor. **Office of Disciplinary Counsel v. Philip A. Valentino**, 730 A.2d 479, 483 (Pa. 1999); **Office of Disciplinary Counsel v. James Allen Steiner**, 103 DB 2013 (D. Bd. Rpt. 6/18/2015) (S. Ct. Order

8/7/2015). However, Respondent's failure to participate in the instant disciplinary proceedings is a well-established aggravating factor. **Office of Disciplinary Counsel v. Joseph R. Reisinger**, 44 DB 2015 (D. Bd. Rpt. 8/15/2016) (S. Ct. Order 3/31/2017). Not only did Respondent fail to file an Answer to the Petition, he failed to attend the prehearing conference and failed to appear at the disciplinary hearing. Petitioner's reminders by certified and first class mail and by telephone to Respondent of the disciplinary hearing went unacknowledged. The Board has previously stated, "[e]ven though this is Respondent's first adjudication of disciplinary violations, her failure to participate in the disciplinary process is an aggravating factor that far outweighs any mitigation to which [Respondent] might be entitled because of her prior clean record." **Office of Disciplinary Counsel v. Carol Chandler**, No. 10 DB 2010 (D. Bd. Rpt. 4/15/2011, at 10) (S. Ct. Order 8/17/2011).

As a general matter, in numerous cases of the unauthorized practice of law where a respondent-attorney is on administrative suspension or inactive status or has no Pennsylvania law license, a suspension for more than one year has been imposed, requiring the respondent-attorney to petition for reinstatement, in light of the fact that the practice of law without a license is a serious act of professional misconduct. See **Office of Disciplinary Counsel v. Brendan J. Magee**, 137 DB 2015 (D. Bd. Rpt. 10/4/2016) (S. Ct. Order 12/19/2016) (one year and one day suspension; lawyer licensed solely in Colorado appeared as counsel for stepson at school expulsion hearing in Pennsylvania; no mitigating factors); **Office of Disciplinary Counsel v. Lek Domni**, 98 DB 2015 (D. Bd. Rpt. 5/3/2016) (S. Ct. Order 6/27/2016) (one year and one day suspension; respondent-attorney placed on administrative suspension and thereafter failed to withdraw as counsel in several matters; abandoned practice and left Pennsylvania without

informing clients; failed to appear at disciplinary hearing); **Office of Disciplinary Counsel v. David M. Siegel**, No. 16 DB 2013 (D. Bd. Rpt. 1/13/2014) (S. Ct. Order 4/30/2014) (one year and one day suspension; respondent-attorney continued to practice law after administrative suspension by failing to withdraw his appearance in four bankruptcy matters; other misconduct; mitigating circumstances); **Office of Disciplinary Counsel v. Peter W. DiGiovanni** No. 36 DB 2008 (D. Bd. Rpt. 2/27/2009) (S. Ct. Order 5/28/2009) (suspension of one year and one day; respondent-attorney practiced law for approximately five months after involuntary transfer to inactive status; took new cases; cooperated with Office of Disciplinary Counsel, but failed to show sincere remorse); **Office of Disciplinary Counsel v. Thomas Joseph Coleman, III**, No. 98 DB 2003 (D. Bd. Rpt. 1/24/2005) (S. Ct. Order 4/19/2005) (two year suspension; respondent-attorney signed hundreds of pleadings while on inactive status); **Office of Disciplinary Counsel v. Kenneth Charles Jones**, No. 71 DB 1999 & 126 DB 1999 (D. Bd. Rpt. 6/12/2001) (S. Ct. Order 8/15/2001) (two year suspension; respondent-attorney engaged in the unauthorized practice of law while on inactive status for approximately 18 months).

Respondent's misconduct parallels the cases cited above, in that he was transferred to administrative suspension, received notice of his status and his inability to practice law, and continued to not only represent current clients, but obtained new client representation. He represented three clients, including at trial, without advising those clients, the courts or opposing counsel that he was prohibited from such representation. In addition, Respondent continued to serve as a provider of pre-paid legal services to a local union. Respondent's unauthorized practice of law in violation of the Supreme Court's administrative suspension order, occurred over a period of approximately 18 months. Thereafter, Respondent chose to ignore the serious charges of misconduct

brought by Petitioner.

Based on case precedent, the serious nature of the misconduct, and after weighing the aggravating and mitigating factors, we recommend that Respondent be removed from the practice of law for two years. This sanction will fulfill the goals of the disciplinary system by protecting the public and maintaining the integrity of the courts and the legal profession. *Office of Disciplinary Counsel v. John R. Christie*, 639 A.2d 782, 785 (Pa. 1994).

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, John Joseph Garagozzo, be Suspended from the practice of law in this Commonwealth for a period of two years. 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: _____


P. Brennan Hart, Member

Date: _____

8/8/17