IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 2067 Disciplinary Docket No. 3
	:	No. 62 DB 2013
v.	:	
	:	Attorney Registration No. 88507
CHERI S. WILLIAMS ROBINSON, Respondent	:	(Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 30th day of September, 2014, upon consideration of the Report and Recommendations of the Disciplinary Board dated May 13, 2014, it is hereby

ORDERED that Cheri S. Williams Robinson is suspended from the practice of law for a period of one year and one day, to be followed by a one-year period of probation after reinstatement, subject to the following conditions:

1. Respondent shall select a financial monitor, subject to the approval of the Office of Disciplinary Counsel.

2. The financial monitor shall be an attorney admitted to practice law in this Commonwealth, in good standing.

3. The financial monitor shall do the following during the period of respondent's probation:

   a. Meet with the respondent at least monthly to examine her office and escrow accounts, client ledgers and other financial records to ensure that all such records are being properly maintained and that fiduciary and non-fiduciary

funds are being properly segregated, handled and disbursed in accordance with Rule of Professional Conduct 1.15

b. File quarterly written reports on a Board-approved form with the Secretary of the Board; and

c. Immediately report to the Secretary any violations by respondent of the terms and conditions of probation.

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 9/30/2014

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 62 DB 2013
v.	:	Attorney Registration No. 88507
CHERI S. WILLIAMS ROBINSON Respondent	:	(Montgomery 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 May 13, 2013, Office of Disciplinary Counsel charged Cheri S. Williams Robinson with violations of the Rules of Professional Conduct arising out of alleged misconduct in one client matter. Respondent failed to file an Answer to Petition; therefore, the allegations contained in the Petition are deemed admitted pursuant to Pa.R.D.E. 208(b)(3).

A disciplinary hearing was held on September 5, 2013, before a District II Hearing Committee comprised of Chair Elizabeth A. Schneider, Esquire, and Members

Steven C. Tolliver, Esquire, and Timothy P. Brennan, Esquire. Respondent appeared *pro se.*

Following the submission of briefs by the parties, the Hearing Committee filed a Report on January 7, 2014, concluding that Respondent engaged in professional misconduct and recommending that she be suspended for a period of one year and one day.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on March 11, 2014.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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.

2. Respondent is Cheri S. Williams Robinson. She was admitted to practice law in the Commonwealth of Pennsylvania in 2002. Her address of record is 34 E. Germantown Pk. #84, East Norriton PA 19401. 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 consisting of an Informal Admonition administered in 2011 as a result of her violations of the Rules of Professional Conduct in two separate client matters. In each of these matters, Respondent had deposited fees into an IOLTA Account, but did not hold them there until they were earned, claiming that they were "nonrefundable" "flat fees" to which she was entitled. In connection with these cases, Respondent had committed to revision of her fee agreements.

4. Respondent practices foreclosure defense. She ceased practice for a period of time, but has been practicing law again for about five years beginning in 2009. (N.T. 77-78, 194)

5. In or about December 2009, Leslav and Diana Nieviarovski were referred to Respondent to seek legal assistance in obtaining relief from financial pressure posed by mortgages on four properties they owned in Yonkers, New York. (Pet. 5)

6. By email dated December 28, 2009, following several telephone calls with Respondent, Mr. and Mrs. Nieviarovski confirmed that Respondent was in possession of the Credit Freedom Fighters' audits of the mortgages associated with 168 Vernon Avenue and 178 Vernon Avenue and that these audits were satisfactory for Respondent to start legal action. (Pet 9)

7. On January 6, 2010, Mr. and Mrs. Nieviarovski and their adult son George traveled to Respondent's former law firm, Robinson, Ditnes & Marcus, LLC, in Fort Washington, Pennsylvania, to meet with Respondent. (Pet. 10)

8. During the January 6, 2010 meeting, Respondent:

a. Assured the Nieviarovskis that there had been several egregious violations of the law committed in connection with at least some of their mortgages;

b. Told the Nieviarovskis that they should hire her on the spot because of the strength of their claims;

c. Assured the Nieviarovskis that she would aggressively represent them;

d. Told the Nieviarovskis that she would explain the various banks' transgressions and the resulting damages to them after she obtained documents from the banks holding the mortgages;

e. Stated that it would take about twenty days for the banks to acknowledge receipt of correspondence from her, that the banks then had sixty days to answer, and that the entire process would take about a year to resolve;

f. Represented that she would immediately begin to take steps necessary to prepare and file four lawsuits on behalf of the Nieviarovskis;

g. Told the Nieviarovskis that she understood that "time was of the essence" given their financial difficulties;

h. Stated that it was not a problem for her to handle the engagement without having a New York license to practice law because she would be working on their engagement with her "Godfather," a New York lawyer;

i. Declined the Nieviarovskis request for a contingency fee arrangement in favor of the agreement attached to the Petition for Discipline; and

j. Stated that the Nieviarovskis would most likely recover much more from the banks than the total fee Respondent required.

(Pet. 12 and Exh. A)

9. At the January 6, 2010 meeting, Respondent, on behalf of her former firm, and the Nieviarovskis executed a Litigation Legal Services Agreement. (Pet. 13 & Exh. A)

10. Respondent has never been admitted to the New York bar. Respondent was working with her grandfather, a New York attorney at the time of the engagement, and considered *pro hac vice* representation. However, after entering the representation, her grandfather retired and Respondent entered or attempted to enter a partnership with another New York-licensed attorney, Wilfredo Pesante. (N.T. 20)

11. The purpose of the Litigation Services Agreement was "Offensive Pre-litigation and possible litigation (including defense of Counter Suits." (Pet. Exh. A)

12. Respondent indicated that she did not have experience with offensive litigation, though she did litigate counterclaims, and she was not experienced with work out cases where the individuals were current on their mortgage. (N.T. at 85-86)

13. The Litigation Legal Services Agreement identified each of the four New York properties, providing a description of the scope of the representation and the services covered, set forth required fees of a $10,000 retainer, followed by payments of $1,400 per month until the matters were resolved toward a maximum $40,000 total fee ($10,000 per property), and set forth an hourly billing rate of $450. (Pet. 14 and Exh. A)

14. Respondent acknowledged the fee was higher than a Pennsylvania rate, but indicated she expected to hire a New York attorney to complete the work (N.T. at 21-22) Her grandfather, who had 50 years of experience, charged $450 per hour. (N.T. at 85) Respondent's secretary, Inez Brown, indicated clients paid on a monthly basis based on their individual agreements. There was hourly billing software, but most clients made monthly payments and there was no use of software on the Nieviarovski file. (N.T. 60-64, 106-107). Respondent was unclear about whether this was a flat fee or an hourly case, but indicated it was possible less than $10,000 would be earned, so it seems that hourly billing was intended. (N.T. at 112-114, 141)

15. The Litigation Legal Services Agreement did not state any portion of Respondent's fees or expenses was "earned upon receipt" or "nonrefundable." (Pet 17 & Ex. A)

16. The Litigation Legal Services Agreement indicated that the Firm was "authorized to associate or employ [ ] other counsel/firm, or other individuals, to assist in performing the services required by this agreement." (Pet. Exh. A)

17. Respondent did not obtain the Nieviarovskis' informed consent, confirmed in writing, that legal fees and expenses paid in advance would not be deposited into a Trust Account and withdrawn by Respondent only as the fees were earned or expenses incurred. (Pet. 18)

18. On or about January 6, 2010, the Nieviarovskis provided Respondent with a check made payable to Respondent in the amount of $10,000. Respondent cashed the $10,000 check on or about January 8, 2010, in satisfaction of the initial retainer. (Pet. 20)

19. Respondent did not deposit any portion of the $10,000 advance of unearned fees into a Trust Account to be withdrawn by Respondent only as fees were earned or expenses incurred. Monthly payments of $1,400 were also to begin on February 6, 2010. (Pet. 19, 22)

20. With respect to communication, the following language was included in the Litigation Legal Services Agreement: "A weekly conference call shall be made lasting twenty minutes at no additional charge. Communication shall also be made via email. All correspondence shall be mailed to Clients on a weekly basis. " (Pet. 15 & Exh A)

21. By email dated January 12, 2010, Respondent confirmed receipt of signed and notarized authorizations she had requested from her clients and stated that she would begin working on their matter the next morning. (Pet. 23)

22. Almost immediately, the Nieviarovskis began to feel uncomfortable because of their failure to receive the first required weekly status report or any other information concerning the mortgages Respondent was retained to address. (Pet. 24)

23. By email dated January 21, 2010, the Nieviarovskis requested an update from Respondent. (Pet. 25) Respondent received the January 21, 2010 email and responded that a summary would go out the next day. (Pet. 26). Respondent did not send or otherwise provide any summary to her clients the next day or on the days thereafter. (Pet. 27)

24. By email dated January 31, 2010, the Nieviarovskis sent Respondent a follow-up to their January 21, 2010 request, which Respondent received. (Pet. 28-29)

25. On February 1, 2010, Respondent sent an email to her clients that there were technical delays, in that her new document system was supposed to email the notes on a scheduled date, and stating that case notes had to be done by hand and sent

out by regular mail, which would also be sent to them personally by Respondent by email that morning. (Pet. 30)

26. Respondent had not in fact sent case notes to her clients by regular mail and never did so by any means on February 1, 2010 or thereafter. (Pet. 31)

27. By February 1, 2010 email, the Nieviarovskis asked Respondent whether Respondent had received documents from Bank of America required to complete the forensic audits. (Pet. 32) Respondent received the email but did not respond to it. (Pet. 33)

28. Beginning on or about February 6, 2010, the Nieviarovskis consistently satisfied their payment obligations under the terms of the Litigation Legal Services Agreement by mailing to Respondent checks in the amount of $1,400 on a monthly basis. Their final check, mailed to Respondent in November 2011, was in the amount of $600 in satisfaction of the maximum $40,000 fee. (Pet. 34)

29. From February 2010 through December 2010, Respondent consistently deposited her clients' monthly payments into an operating account she maintained at TD Bank. (Pet. 35; ODC-16)

30. Respondent did not deposit any of the monthly payments the Nieviarovskis made into a Trust Account to be withdrawn by Respondent only as fees were earned or expenses incurred. (Pet. 36)

31. On February 16, 2010, Jennifer Caggiano, a family friend of the Nieviarovskis, contacted Respondent by email attaching a letter she had written to Respondent on behalf of the Nieviarovskis. By that letter, Ms. Caggiano sought a status update and reinforced that the Nieviarovskis intended to pursue the matter with Respondent's firm under the terms of the Litigation Legal Services Agreement, including a

weekly conference call in addition to weekly email correspondence. Ms. Caggiano also inquired whether all necessary documents had been received and whether Respondent had implemented a new email system, as she had represented in her February 1, 2010 email. (Pet. 37)

32. By email dated February 19, 2010, Respondent provided the following information to Ms. Caggiano, copying the Nieviarovskis and their son George:

a. Received authorizations on January 12, 2010

b. Letters went out on January 15, 2010

c. Bank of Americas certified receipts came back on Feb 1, 2010 (Copy Enclosed)

d. Wells Fargo came back on January 28, 2010 (Copy Enclosed)

e. Wachovia is not back yet

f. Will update on Docs when they come in

(Pet. 38) Respondent did not attach to her February 19, 2010 email copies of any letters or otherwise supply copies to her clients. (Pet. 39) This February 19, 2010 email was the only "status report" Respondent supplied. (Pet. 40)

33. On February 22, 2010, George Nieviarovski thanked Respondent for her February 19, 2010 email and requested additional information, including copies of correspondence Respondent had sent, and an explanation of Respondent's threshold for dealing with uncooperative banks, specifically asking at what point Respondent would compel legal action. Respondent received the February 22, 2010 email, but failed to respond. (Pet 41-42)

34. On March 7, 2010, George Nieviarovski sent Respondent another email repeating the outstanding request for information he had made on behalf of his parents. (Pet. 43)

35. Respondent declined to communicate with her clients' son George, ultimately sending him an email on March 7, 2010, stating that she had spoken with Mrs. Nieviarovski. The content of Respondent's March 2010 conversation with Mrs. Nieviarovski was that Respondent told her not to be so concerned. (Pet. 44)

36. On March 7, 2010, George Nieviarovski again demanded a written response to the inquiries he had made. (Pet. 45) Respondent replied on the same date as follows: "We agreed that there would be a conversation via phone every week to last no more than 20 min. Check the agreement. I am not in a position to download anything tonight." (Pet. 46)

37. On March 9, 2010, George Nieviarovski again demanded a response to the questions he had directed to Respondent on behalf of his parents. (Pet. 47) Respondent received the March 9, 2010 email, but did not respond. (Pet. 48)

38. On or about March 24, 2010, Respondent was supplied with copies of attorney opinion letters and forensic review reports from Credit Freedom Fighters directed to the Nieviarovskis purportedly relating to the mortgages associated with 1083 Miles Square Road and 178 Vernon Avenue. (Pet. 49)

39. In or about April 2010, Mrs. Nieviarovski discovered errors in the forensic audit that was supplied relating to 168 Vernon Avenue, was alarmed, and attempted to contact Respondent by telephone. While Mrs. Nieviarovski was on the phone with Respondent's assistant, Respondent called out to her assistant the message that "Don't worry so much." (Pet. 50)

40. In May of 2010, Respondent began discussing a new partnership with Wilfredo Pesante. (N.T. 90) Ultimately this partnership or attempt at forming a partnership with Mr. Pesante failed sometime before February of 2011. (N.T. 93-94)

41. On May 16, 2010, having received no update from Respondent either in writing or by telephone since the limited information supplied in Respondent's February 19, 2010 email, the Nieviarovskis emailed Respondent seeking a status report. (Pet. 51) Respondent received the May 16, 2010 email, but made no response. (Pet. 52)

42. On or about May 24, 2010, Respondent was supplied with copies of attorney opinion letters and corrected forensic review reports directed to the Nieviarovskis purportedly relating to the mortgages associated with 168 Vernon Avenue and 73 Edgewood Avenue. (Pet. 53)

43. The Nieviarovskis wrote to Respondent again by emails dated June 9, 2010 and July 21, 2010, repeating their request for a status report. The July 21, 2010 email stated in part: "In the event you do not want to do anything on our deal- PLEASE RETURN OUR MONEY. TIME IS GOING BY. OUR GENERAL SITUATION IS DETERIORATING. NOTHING IS GAINED BY INACTION." (Pet. 54) Respondent received these inquiries but initiated no response. (Pet. 55)

44. On or about July 22, 2010, Respondent accepted a telephone call from Mrs. Nieviarovski, at which time Respondent told Mrs. Nieviarovski that Respondent had never seen letters or any other materials which the Nieviarovskis had supplied to her by stapling them to the monthly checks they mailed to Respondent, all of which had been negotiated. (Pet. 56)

45. On or about July 30, 2010, Mrs. Nieviarovski and her son had a telephone conference with Respondent and another individual, who Respondent

represented to be a New York attorney, during which they asked Respondent for copies of any documents Respondent had generated in connection with the matter and an accounting of her time. (Pet. 57)

46. By July 30, 2010 email to Respondent, George Nieviarovski confirmed the urgency of his parents' situation. (Pet. 58) Respondent replied that she was sending the requested files by certified mail. (Pet. 59) On August 2, 2010, Respondent sent two packages to her clients. (Pet. 60; ODC-18)

47. On or about August 4, 2010, the Nieviarovskis received two packages from Respondent. The return address listed on the envelopes was "Cheri Robinson & Associates, 426 Pennsylvania Avenue, Suite 203, Ft. Washington, Pennsylvania," indicating to the Nieviarovskis for the first time that Respondent had changed her law firm affiliation and address. (Pet. 61; ODC-18)

48. The packages, which did not include cover letters, contained, among other things:

a. A purported list of work Respondent claimed to have performed from January 12, 2010, through June 1, 2010, reflecting 44 total hours;

b. Documents reflecting minimal contact from Respondent to various banks; and

c. Draft interrogatories and document requests by Wells Fargo directed to the Nieviarovskis.

(Pet. 62; ODC -18)

49. The packages did not include drafts of any demand letters or complaints or any other materials to reflect that Respondent had begun to prepare any demand letters or lawsuits on her clients' behalf. (Pet. 63; ODC-18)

50. A Complaint and discovery requests were at some point prepared by paralegals for the Pesante law firm. (N.T. 89-90) Respondent indicated that litigation was not her main goal, but also indicated that negotiating would be difficult because her clients were not behind on their mortgages. She said she was gathering information, but did not state anything specific that created difficulties with her acquisition of information. (N.T. 72-74) Respondent indicated banks were generally not forthcoming with records or information, but did not state any specific issues with the Nieviarovski file regarding the information provided by banks. (N.T. 70)

51. During a telephone call on or about August 4, 2010, Mrs. Nieviarovski spoke to Respondent's assistant to request a meeting with Respondent. The appointment was set for Tuesday, August 31, 2010 at 11:00 a.m. (Pet. 65)

52. By letter dated August 6, 2010, sent to Respondent by certified mail, the clients:

a. Inquired whether they needed to respond to the interrogatories she had sent to them and expressed disappointment with the papers they had received;

b. Expressed "dismay" and "astonishment" at Respondent's July 22, 2010 statement that she did not have the notes and letters they had stapled to checks they sent to Respondent;

c. Confirmed that Respondent had told them the entire process for dealing with the mortgages on the four properties would take a year;

d. Confirmed that they were making their seventh monthly installment payment without having received the weekly updates required by the Litigation Legal Services Agreement;

e. Inquired whether they might be able to meet with Respondent in the afternoon on a date prior to August 31, 2010; and

f. Enclosed the most recent statement for the mortgages attached to their four properties.

(Pet 66; ODC -14)

53. On August 12, 2010, an agent of Respondent's office accepted delivery of the Nieviarovskis' August 6, 2010 letter. (Pet. 67; ODC-14)

54. On August 31, 2010, the Nieviarovskis and their adult sons traveled from New York to Respondent's office in Fort Washington, Pennsylvania, for the 11:00 a.m. meeting. (Pet. 68) Respondent did not arrive for the meeting until approximately 2:00 p.m. (Pet. 69)

55. Upon Respondent's belated arrival:

a. Respondent opened the August 6, 2010 certified letter from the Nieviarovskis in front of them;

b. Respondent apologized for her repeated failure to provide the weekly status reports that she had committed to provide at the outset of the representation;

c. Respondent committed to provide weekly status reports going forward;

d. Respondent explained that the materials she had sent to the Nieviarovskis were draft interrogatories to be directed to all banks concerned;

e. Respondent represented that she was supervising two law students who were already working to revise the draft interrogatories to cut

down on their number and to put the draft interrogatories into the format or style of a New York preliminary pleading;

f. Respondent assured the Nieviarovskis that she would serve interrogatories to the banks by the end of the following week, to be answered within approximately 60 days, and that she would prepare and file complaints within approximately 6 weeks using the information obtained in response to the interrogatories;

g. Respondent expressed for the first time that it would be difficult to obtain modifications of their mortgages if their payments were not delinquent;

h. Respondent stated that she had changed offices in June, enacted a new system. and that since that date all notes and files were accessible on her computer system to enable her assistant to respond to questions posed by clients;

i. Respondent acknowledged that she had not provided periodic updates, but claimed that she did not recall many emails concerning the engagement to which she had not responded;

j. Respondent attempted to justify her failure to initiate litigation by stating for the first time to the Nieviarovskis that it was her policy to collect a substantial portion of her fee upfront, before initiating litigation, in an effort to secure payment from clients who may go bankrupt after the start of the engagement;

k. Respondent stated that she came to understand only as a result of the August 31, 2010 meeting that the Nieviarovskis wanted litigation undertaken before the total payment of $40,000 had been made;

l. Respondent expressed to them for the first time that her ex-partners did continue to do mortgage modification work, but that Respondent did not do modifications because she did not find that approach to be effective;

m. Respondent told the Nieviarovskis that they were an exception among Respondent's clients in the sense that Respondent does defensive litigation as opposed to offensive litigation;

n. Respondent stated that she was not licensed to practice law in New York, but that she would be handling the engagement through some form of sponsorship by Wilfredo Pesante, a licensed New York lawyer;

o. Respondent stated that Mr. Pesante worked out of a Washington, D.C. office and that he was opening an office in New York;

p. Respondent was unable or chose not to provide to her clients a New York office address or any other contact information for Mr. Pesante; and

q. Respondent told her clients that she was handling five other cases pending in court in New York.

(Pet. 70)

56. Prior to August 31, 2010, Respondent claims she sent qualified written requests, obtained information for audits and looked at New York case law for possible causes of action. Respondent indicated that she had sent follow-ups at some point on the

qualified written request because she did not get all the responses. (N.T. 133, 136) Respondent indicated litigation was a long way off and the goal of the audit and information gathering was to obtain leverage on the bank. (N.T. 95, 113) Respondent only described having "directed" the fifteen hours billed for work on discovery requests. (N.T. at 105)

57. The Nieviarovskis expressed dissatisfaction and demanded a refund of unearned fees. (Pet. 71)

58. In response, Respondent referenced the purported "accounting" she had supplied to the Nieviarovskis and stated that if the Nieviarovskis chose to terminate the engagement, they would be in default of the Litigation Legal Services Agreement and that Respondent would look at hours expended, calculate them based upon the hourly rate of $450, and refund the difference, if any, between that figure and the amount paid to date. (Pet. 72; ODC-18; ODC-19)

59. The "accounting" referenced 44 total hours of purported legal work which at Respondent's $450 hourly rate, totaled $19,800. (Pet. 73. The Nieviarovskis had paid Respondent exactly $19,800 as of Respondent's acceptance and negotiation of their August 6, 2010 monthly payment and decided at the August 31, 2010 meeting not to terminate the engagement based upon Respondent's position that if they did so, Respondent would retain the entire $19,800 they had paid to date. (Pet. 74-75)

60. The "accounting" Respondent produced in advance of the August 31, 2010 meeting was the only purported record of time Respondent ever supplied to the Nieviarovskis, and is unsupported by any contemporaneous time records. (Pet. 76; N.T. 63, 64, 106, 107, 146-148, 155-160; ODC-F)

61. The work done on the Nieviarovskis matter and the draft discovery prepared by two law students, at a rate of $450 per hour, was useless to the Nieviarovskis,

and the "accounting" was prepared to justify excessive and unearned fees Respondent had already taken from them. (Pet. 77; ODC-18)

62. At the conclusion of the August 31, 2010 meeting, Respondent committed to take meaningful steps in pursuit of her clients' interest to include finalizing discovery, sending the Nieviarovskis an outline of next steps, and filing complaints in New York. Respondent also tentatively agreed to a meeting to take place on October 26, 2010. (Pet. 78)

63. Following the August 31, 2010 meeting, the Litigation Legal Services Agreement was never terminated but Respondent discontinued virtually all communication with her clients, who continued to send Respondent written requests for information. She conveyed nothing to indicate that Respondent, Wilfredo Pesante, or any other attorney was taking any action to pursue mortgage modifications and/or litigation on behalf of the Nieviarovskis. (Pet. 79; ODC-14; N.T. 116-118)

64. By email dated September 27, 2010, George Nieviarovski requested a "detailed written progress report." (Pet. 80) Respondent received the September 27, 2010 email, but made no response. (Pet. 81)

65. On October 15, 2010, Mrs. Nieviarovski called Respondent's office to ask about Respondent's progress in putting the draft discovery request into final form. (Pet. 82) Respondent refused to accept the call because it was not yet October 26, 2010, the date discussed for a meeting. (Pet. 83)

66. By email dated November 5, 2010, the Nieviarovskis sent Respondent another request for a status report. In that email, the Nieviarovskis specifically requested that Respondent send them copies of anything filed on their behalf. (Pet. 84) Respondent received the November 5, 2010 email, but made no response. (Pet. 85)

67. By emails dated November 11, 2010, November 18, 2010, November 24, 2010, and November 28, 2010, the Nieviarovskis made several more attempts to prompt some communication. (Pet. 86, 88) Respondent received the emails, but made no response. (Pet. 87,89)

68. On or about December 2, 2010, the Nieviarovskis sent a letter to Respondent with their monthly $1,400 payment, again requesting documentation and information to establish that Respondent was taking action on their behalf. (Pet. 90) Respondent received the December 2, 2010 letter, but made no response. (Pet. 91)

69. In January 2011, Respondent stopped negotiating the Nieviarovskis' monthly $1,400 checks, with the exception of the March 2011 check, which was randomly deposited into an operating account Respondent maintained at Citibank. (Pet. 92; ODC-17; ODC-14) Respondent did so without telling her clients she would stop work on their matter and refuse further payments. (Pet. 93)

70. Respondent's claim that she discontinued negotiating the Nieviarovskis' checks because she had learned at that time they were dissatisfied is not credible, in light of Respondent's discontinuance of all communications with her clients following the August 31, 2010 meeting. (Pet. 79-91) Respondent discontinued negotiating the checks at the same time she claims her purported prospective partnership with New York attorney Wilfredo Pesante fell apart and well after the Nieviarovskis' dissatisfaction began. (N.T. 92-94)

71. The Nieviarovskis, though puzzled by Respondent's discontinued negotiation of their checks, continued to mail Respondent monthly checks to avoid any claim by Respondent that they defaulted. (Pet. 94)

72. On or about January 2, 2011, the Nieviarovskis sent a letter to Respondent with their monthly $1,400 check repeating their request for documents and expressing that they were "extremely concerned that [Respondent] was just taking [their] money" without having any intention of performing services for them. (Pet. 95; ODC-14) Respondent received the January 2, 2011 letter, but made no response. (Pet. 96; ODC-14)

73. Through November 2011, the Nieviarovskis continued, on a monthly basis, to mail letters to Respondent (attaching their monthly payments), complaining about Respondent's failure to perform and failure to communicate with them. (Pet. 97-98; ODC-14)

74. In addition to letters, Mr. Nieviarovski made repeated phone calls, speaking with Respondent's receptionist and leaving voicemail messages asking that Respondent return calls. Respondent received but failed to respond to these repeated phone messages. (Pet. 98-99)

75. Throughout 2011, Respondent never advised her clients that the agreement was terminated or that she had stopped negotiating the checks. (N.T. 117-118)

76. On or about September 2011, the Nieviarovskis demanded a full refund of the payments they had made to Respondent. (Pet. 102)

77. Respondent made no refund to her clients, did not hold the amount the Nieviarovskis claimed separate pending resolution of the dispute, and retained the monthly checks the Nieviarovskis continued to mail to Respondent through November 2011, at which point the payments totaled the $40,000 capped fee. (Pet. 103)

78. Respondent claimed she never intended to "rip off" her clients and would have continued to cash checks if that was her intent. She also admitted, however, that the clients did not get what they paid for and should be refunded. (N.T. 24).

Respondent acknowledged that there were many things she did wrong. (N.T. 25) She specifically stated that "[I]n this particular case, things went very wrong, much of it on my end." (N.T. 191) She faulted her own communication in the matter and acknowledged being inattentive to her clients. (N.T. 213, 224, 239) She indicated she was very good at arguing and the law but not bookkeeping. (N.T. 191-192) She wished the matter went differently and expressed a desire to repay the funds through a payment plan, as she did not want the money if her clients were not happy. (N.T. 199, 210-211).

79. In total, Respondent took $26,800 from the Nieviarovskis. Respondent held the remaining checks without negotiating them. (Pet. 104)

80. On May 3, 2011, the Pennsylvania Lawyers Fund for Client Security notified Respondent that the Nieviarovskis had filed a claim against Respondent and that Respondent had 30 days to submit her response. Respondent declined all communication with the Fund. (Pet. 105-107, 110-11; ODC-25)

81. Respondent received multiple letters from the Fund concerning the Nieviarovskis' claim to the Fund, but made no response. To date, Respondent remains in possession of the $26,800 she took from her clients despite her receipt of Notice from the Fund of its determination to reimburse the Nieviarovskis for the loss they incurred by reason of Respondent's "dishonest conduct". (Pet 106-107)

82. On or about May 1, 2012, the PA Lawyers Fund issued a check to the Nieviarovskis in the amount of $26,800 as reimbursement for the losses they suffered. (ODC-25)

83. Respondent indicated that she has been sanctioned in the State of New Jersey, where she is licensed, on at least one occasion, failed to pay the sanction in a timely fashion and became the subject of a disciplinary complaint. (N.T. 200-203)

84. Respondent filed successive bankruptcy petitions in the United States Bankruptcy Court for the Eastern District of Pennsylvania, each of which was dismissed due to Respondent's failure to file required documents. The Bankruptcy Court ultimately prohibited Respondent for a period of time from initiating additional bankruptcy proceedings without prior court permission. (ODC-J)

85. Respondent presented one character witness, Reverend Jeremiah Cousins, Jr., who was a prior client and was very satisfied with Respondent's representation. (N.T. 174-184)

86. Respondent indicated that her difficulty forming a partnership, moving offices, software problems and insufficient staffing contributed to her circumstances. (N.T. 237-41)

III. CONCLUSIONS OF LAW

By her 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. 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 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

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

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

6. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decision regarding the representation.

7. RPC 1.5(a) – A lawyer shall not enter into an agreement for charge, or collect an illegal or clearly excessive fee.

8. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

9. RPC 1.15(f) – When in possession of funds or property in which two or more persons, one of whom may be the lawyer, claim an interest, the funds or property shall be kept separate by the lawyer until the dispute is resolved. The lawyer shall promptly distribute all portions of the funds or property, including Rule 1.15 Funds, as to which the interests are not in dispute.

10. RPC 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 difference manner.

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

12. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges of professional misconduct filed against Respondent. Petitioner has the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). The factual allegations set forth in the Petition, which are deemed admitted pursuant to Pa.R.D.E. 208(b)(3), as well as the exhibits introduced at the hearing, prove that Respondent violated twelve Rules of Professional Conduct: 1.1, 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.4(b), 1.15(a), 1.15(b), 1.15(f), 1.15(i), 1.15(m), and 3.2.

This disciplinary matter stems from a complaint made by Leslav and Diana Nieviarovski. In January 2010, the Nieviarovskis retained Respondent regarding mortgages on four of their properties. The Nieviarovskis provided a $10,000 retainer and made monthly payments to Respondent of $1,400. The funds were not placed in a trust account. Limited work was completed for the Nieviarovskis over the following months and very limited communication was engaged in with the clients. Respondent stopped cashing monthly checks from the Nieviarovskis after $26,800 had already been retained.

The record conclusively establishes that Respondent violated Rules 1.1, 1.3 and 3.2. Respondent failed to provide diligent and competent representation. Respondent did none of the work the Nieviarovskis retained her to perform. Respondent admits that she did not prepare and send demand letters to the banks and did not initiate and pursue litigation against the banks. From January 2010 through the remainder of the engagement, the only work performed consisted of form letters sent to banks and draft discovery prepared for a non-existent case.

In addition, Respondent admitted that she had never undertaken offensive litigation or mortgage modification when a client was current on the payments, and there was no evidence to suggest that she attempted to learn these new areas of law. It appears she planned to rely on alliances with other attorneys, the formation of which were not successful. Considering that Respondent had only recently returned to the practice of law in 2009, shortly before her representation of the Nieviarovskis began, it appears she was wholly unprepared to undertake this representation.

The record conclusively establishes that Respondent violated Rule 1.4(a)(2),(a)(3),(a)(4), and 1.4(b), as she failed to adequately communicate with her clients. The record is replete with efforts by the Nieviarovskis to communicate with Respondent, by email, letter and telephone, with no response by Respondent. Further, Respondent had agreed to provide status updates on a weekly basis which created an expectation on the part of the clients, and increased their frustration with Respondent when those expectations were not met. Respondent simply engaged in very little communication. In particular, following the August 31, 2010 meeting, Respondent admittedly refused to read written correspondence from her clients by which they expressed their dissatisfaction with her services and demanded a full refund, and refused to accept their calls. Respondent essentially abandoned her clients.

The record conclusively establishes that Respondent violated Rule 1.5(a), as she negotiated and took an excessive fee. The Nieviarovskis entered into a Litigation Legal Services Agreement with Respondent, which on its face required that the Nieviarovskis pay an hourly rate of $450 to be capped at a total fee of $40,000. This was to review the clients' mortgage loan documents, make demands, negotiate with the current mortgage lenders to seek modifications, determine potential causes of action against the mortgage

lenders, and proceed with litigation. Respondent had no license to practice law in New York, had never undertaken a matter such as the Nieviarovskis, and had less than a single year of consistent experience practicing law in foreclosure defense. Under these circumstances, the rate of $450 per hour was completely unreasonable, as she based the rate on a market that she was not working in or licensed to practice in, and on the experience another attorney might possess. Moreover, the $26,800 in fees taken by Respondent is totally inconsistent with the time spent or results obtained. In fact, Respondent took no action of substance and obtained no results.

The record conclusively establishes that Respondent violated Rules 1.15(b),(f),(i) and (m), as she mishandled client funds. The record is clear that an hourly billing was intended, and not a flat fee. The Litigation Legal Services Agreement contained no language whereby the Nieviarovskis consented that legal fees and expenses paid in advance would not be deposited in a Trust Account, to be withdrawn by Respondent only as the fees were earned or expenses incurred. Respondent had no right or authority to deposit any of the fees her clients paid to her into an account other than an IOLTA Account. Upon the Nieviarovskis' repeated demands for a refund, Respondent was obligated to promptly distribute the funds and to hold the remainder separate from her own funds until any dispute was resolved. Respondent did neither.

In addition to Respondent's conduct in the representation of her clients, we note that she completely ignored communications from the Pennsylvania Lawyers Fund for Client Security. The Fund made numerous attempts to contact Respondent concerning the Nieviarovskis' claim, to no avail. To date, Respondent remains in possession of the $26,800 she took from her clients, though she did acknowledge at the hearing that her

clients did not "get what they bargained for" (N.T. 221) and a refund was due. Respondent expressed her willingness to enter into a payment plan.

We further note Respondent's misconduct in two client matters which resulted in the imposition of an Informal Admonition in February of 2011. In the first case, Respondent was retained to assist a client in modifying two mortgages. Respondent failed to take action and engaged in a pattern of depositing her own funds into her escrow account which held client funds. In the second case, Respondent was retained to obtain a mortgage modification and failed to reasonably explain the basis or rate of her fee, and failed to provide a written fee agreement to her client.

The primary purpose of the disciplinary system is to protect the public from unfit attorneys and to maintain the integrity of the legal system. Office of Disciplinary Counsel v. Stern, 526 A.2d 1180 (Pa. 1987). In assessing discipline, the Board is guided by the results of prior similar matters, with consideration given to any aggravating and mitigating circumstances. Office of Disciplinary Counsel v. Francis P. Eagen, No. 102 DB 2003, 73 Pa. D. & C. 4th 217 (2004). Discipline is imposed on a case-by-case basis in light of the totality of facts presented. Office of Disciplinary Counsel v. Cappuccio, 48 A.3d 1231 (Pa. 2012).

The Hearing Committee has recommended a suspension of one year and one day. Our review of the case law finds support for this position. Respondent's wholesale neglect of her clients' matter, her lack of communication and the aggravating factors of her prior discipline and unpaid obligation to the Lawyers Fund for Client Security necessitate a sanction whereby Respondent must apply for reinstatement and prove her fitness as a lawyer. Office of Disciplinary Counsel v. Jonah Daniel Levin, 124 DB 2004 (Pa. 2006); Office of Disciplinary Counsel v. Melanie D. Naro, 212 DB 2011 (Pa. 2012); Office

of Disciplinary Counsel v. Stanley Fudor, 179 DB 2007 (Pa. 2009); Office of Disciplinary Counsel v. Allan G. Gallimore, 147 DB 2007 (Pa. 2008).

We conclude that the public would not be well-served by Respondent's continuing presence as a practicing lawyer, as there is a likelihood that Respondent will repeat her misconduct without some oversight of her practice and its finances. We share the Hearing Committee's concern that Respondent does not appear to appreciate the gravity of her responsibility to her clients.

For the above reasons, the Board recommends that Respondent be suspended for a period of one year and one day, followed by a one year period of probation with a financial monitor.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Cheri S. Williams Robinson, be Suspended from the practice of law for a period of one year and one day, to be followed by a one year period of probation with a financial monitor, subject to the following conditions:

1. Respondent shall select a financial monitor, subject to the approval of the Office of Disciplinary Counsel.

2. The financial monitor shall be an attorney admitted to practice law in this Commonwealth, in good standing.

3. The financial monitor shall do the following during the period of Respondent's probation:

   a. Meet with the Respondent at least monthly to examine Respondent's office and escrow accounts, client ledgers and other financial records to ensure that all such records are being properly maintained and that fiduciary and non-fiduciary funds are being properly segregated, handled and disbursed in accordance with Rule of Professional Conduct 1.15

   b. File quarterly written reports on a Board approved form with the Secretary of the Board; and

   c. Shall immediately report to the Secretary any violations of the Respondent of the terms and conditions of probation.

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:_____
Douglas W. Leonard, Board Member

Date: May 13, 2014