

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2502 Disciplinary Docket No. 3
: :
Petitioner : No. 65 DB 2017
: :
v. : Attorney Registration No. 201352
: :
BRET KEISLING, : (Dauphin County)
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 30th day of August, 2018, upon consideration of the Report and Recommendations of the Disciplinary Board, Respondent Bret Keisling is suspended from the Bar of this Commonwealth for a period of one year and one day, 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 08/30/2018

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 65 DB 2017
Petitioner	:	
	:	
v.	:	Attorney Registration No. 201352
	:	
BRET KEISLING	:	
Respondent	:	(Dauphin 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 April 24, 2017, Petitioner, Office of Disciplinary Counsel, charged Respondent, Bret Keisling, with violations of the Rules of Professional Conduct (“RPC”) and Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”), related to his representation of the Chesapeake Bay Foundation, Inc. (“CBF”) and his failure to respond to Petitioner’s requests. Respondent failed to file an Answer to Petition for Discipline.

Following a prehearing conference on June 27, 2017, a disciplinary hearing was held on August 3, 2017, before a District III Hearing Committee. Petitioner presented three witnesses and introduced 12 exhibits into evidence. Respondent was represented by counsel. He testified on his own behalf and called no other witnesses.

Petitioner filed a Brief to the Hearing Committee on October 3, 2017, recommending a suspension for one year and one day; Respondent did not file a brief.¹ The Hearing Committee filed a Report on December 21, 2017, concluding that Respondent violated the rules as 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 take exception to the Hearing Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on April 11, 2018.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62625, Harrisburg, PA 17106-2625, 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.

¹ Respondent's counsel withdrew her appearance on November 6, 2017.

2. Respondent is Bret Keisling, born in 1963 and admitted to practice law in the Commonwealth in 2005. His registered attorney address is 17 South 2nd Street, Suite 301, Harrisburg, Pennsylvania 17101. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no prior history of professional discipline.

The CBF Matter

4. On or about August 6, 2013, CBF vacated a building at 614 North Front Street, Harrisburg, Pennsylvania 17106, due to alleged dangerous and unhealthy conditions that had resulted in the City of Harrisburg deeming the building unfit for human habitation. Petitioner's Exhibit ("ODC") -1 at 5.

5. Mann Realty Associates, Inc. ("Mann Realty") was CBF's landlord for the lease of the building. ODC-1 at 6.

6. On or about August 2, 2013, CBF retained Respondent related to potential litigation involving the lease with Mann Realty. ODC-1 at 7.

7. On or about August 2, 2013, Respondent forwarded an email to a CBF representative, Mary Todd Winchester, stating that CBF should commence placing the monthly rent payments related to its disputed lease into his IOLTA Account. ODC-1 at 7, 8.

8. At that time, and up until late 2015 or early 2016, Respondent maintained an IOLTA Account with Susquehanna Bank. ODC-1 at 9.

9. CBF made monthly rent payments, which Respondent placed into his IOLTA account. ODC-1 at 10; N.T. 18. In or about late 2015 or early 2016, Respondent

moved his IOLTA accounts to BB&T Bank and placed CBF's escrowed funds into an IOLTA account at that institution. ODC at 11.

10. During its initial communication with Respondent, CBF requested proof of malpractice insurance and thereafter would periodically request this documentation, which Respondent assured CBF that he would supply even though Respondent did not carry malpractice insurance at any point during his representation of CBF. Respondent failed to inform CBF that he did not carry malpractice insurance. ODC-1 at 12, 13, 14.

11. On November 20, 2013, Mann Realty filed suit against CBF in the Dauphin County Court of Common Pleas, in which Mann Realty claimed CBF defaulted on its five-year lease with Mann Realty. ODC-1 at 15.

12. Respondent entered his appearance in that action on December 13, 2013, and on December 30, 2013, he filed an Answer on behalf of CBF, in which he asserted defenses and a counterclaim. ODC-1 at 16, 17.

13. On February 10, 2014, Mann Realty served Respondent with Requests for Admissions, to which Respondent was required to respond within thirty days, under Pa.R.C.P. 4014(b). ODC-1 at 18.

14. Respondent failed to timely respond to the Requests for Admissions and failed to promptly inform CBF that he received the Requests for Admissions or that he failed to timely respond to same. ODC-1 at 19, 20.

15. On August 6, 2014 and August 11, 2014, Mann Realty filed Motions to Deem Requests for Admissions Admitted based on Respondent's failure to respond, which Motion was denied *sua sponte* by the Court. On August 15, 2014, Mann Realty provided Respondent with an advance copy of the Amended Motion to Deem Requests

for Admissions Admitted in accordance with the Dauphin County Local Rules of Civil Procedure. Respondent failed to oppose the Motion. ODC-1 at 21, 22, 23, 24.

16. On August 22, 2014, Respondent hand-delivered his untimely Response to Plaintiff's Request for Admissions, but failed to promptly inform CBF that the Response was untimely. ODC-1 at 25, 26.

17. On September 19, 2014, Mann Realty sought to strike the untimely Response to Requests for Admissions. Respondent failed to inform his client of the Motion and failed to oppose the Motion to Strike. Petition 27-28.

18. By Order of February 5, 2015, the court granted Mann Realty's Motion. Respondent failed to promptly inform CBF or explain to CBF the impact the Order had on the case. Respondent filed a Motion to Reconsider the February 5, 2015 Order, which the court denied on February 26, 2015. ODC-1 at 29, 30, 31, 32.

19. On March 9, 2015, Respondent filed a second Motion for Reconsideration of the Order dated February 5, 2015. The court denied this Motion by Order dated March 19, 2015. Respondent failed to promptly inform his client of the Order or explain its impact on the case. ODC-1 at 33, 34, 35, 36.

20. On February 24, 2015, Mann Realty filed a Motion for Summary Judgment and a supporting brief. The Motion was scheduled for argument on July 9, 2015. ODC-1 at 38, 40.

21. Respondent failed to timely inform CBF that the Motion for Summary Judgment was filed or scheduled for argument. Respondent failed to file a response to the Motion. ODC-1 at 39, 41.

22. On July 9, 2015, the date scheduled for argument on the Motion for Summary Judgment, Judge Bruce Bratton held an in-chambers conference and stated

his intention to continue the hearing for thirty days. Mann Realty's counsel argued that no hearing was required since Respondent failed to timely file a brief in opposition to the Motion. At the conference, Respondent presented a Brief in Opposition to the Motion for Summary Judgment, which he had filed approximately 30 minutes prior to the time scheduled for argument. ODC-1 at 42, 43, 44, 46, 47, 48.

23. Argument on the Motion was never held, and by Order dated September 2, 2015, the court granted partial Summary Judgment in favor of Mann Realty as to the claim that CBF breached the lease, but denied Summary Judgment as to damages. ODC-1 at 49, 50.

24. On October 2, 2015, Respondent filed a Motion for Reconsideration of the September 2, 2015 Order stating, among other things, that no hearing was held on July 9, 2015, and that a meritorious defense existed which he was prepared to present at the July 9, 2015 hearing. The Court denied CBF's Motion by Order dated October 30, 2015. ODC-1 at 51, 53.

25. Respondent failed to promptly advise CBF of the Court's Order or explain the impact that the partial Summary Judgment would have on his client's case. ODC-1 at 51, 53, 54.

26. On November 6, 2015, Mann Realty filed a Motion to Have Monies Paid for Rent Deposited into Prothonotary's Rent Escrow Account, with a hearing scheduled on February 3, 2016. ODC-1 at 55, 57.

27. Respondent failed to inform CBF that a hearing was scheduled. ODC-1 at 59.

28. Following argument, by Order dated February 15, 2016, the Court ordered that "all monies paid for rent and currently being held by counsel, Bret Keisling,

or any other party shall be forthwith deposited into the Prothonotary's Rent Escrow Account pending further Order of Court." ODC-1 at 59.

29. On February 18, 2016, the Court issued an Order that revised the previous Order to permit Respondent to retain the monies in his IOLTA Account. ODC-1 at 60.

30. Respondent failed to promptly advise CBF of either of these Orders. ODC-1 at 61.

31. A Status Conference was scheduled for February 26, 2016. Respondent failed to file a Status Conference Memorandum, and did not advise CBF of his omission. ODC-1 at 62, 63.

32. The Status Conference was held on February 26, 2016, at which Judge Bratton indicated that CBF could still introduce evidence of problems with the leased premises, Mann Realty's failure to correct those problems, and what actions CBF took and costs it incurred to correct any alleged problems. Judge Bratton further directed Respondent to disclose and list his witnesses along with the substance of their testimony by March 7, 2016. ODC-1 at 64, 65.

33. Respondent failed to advise CBF of Judge Bratton's decisions regarding admissible evidence, and failed to advise CBF of the deadline for submitting a witness list. ODC-1 at 66, 67.

34. On March 11, 2016, Mann Realty served Respondent with a second set of Requests for Production of Documents seeking documents concerning CBF's negotiation of a lease with Campus Square Partners, CBF's then-current landlord. Respondent failed to respond, failed to provide documents, failed to promptly advise CBF

of his receipt of the Requests, and failed to inform CBF that he did not timely respond. ODC-1 at 71, 72, 73.

35. On March 29, 2016, twenty-two days after the witness list was due, Respondent informed counsel for Mann Realty that he was working on his list of witnesses and the substance of their testimony and stated it would be provided the following day, but Respondent failed to provide the list to Mann Realty's counsel. ODC-1 at 68, 69, 70.

36. On March 21, 2016, Ms. Winchester, CBF representative, emailed Respondent and stated that she had not "heard anything from [Respondent] and would like to get this case wrapped up" and requested an update. ODC-1 at 74.

37. Respondent failed to provide the requested update. ODC-1 at 75, 76.

38. By email dated April 13, 2016, Ms. Winchester requested that Respondent make arrangements for the return of the escrowed funds and on April 14, 2016, Respondent apologized for the delay, promised to provide an update by April 18, 2016, and provided an update on April 20, 2016. ODC-1 at 77, 78, 79.

39. By Order of June 29, 2016, the Court scheduled a non-jury trial for August 9 and 10, 2016, to decide the issue of damages. Respondent failed to advise CBF of the non-jury trial. ODC-1 at 81.

40. By email dated August 2, 2016, a representative of CBF named Ms. Dunn requested an update from Respondent. Respondent failed to reply. ODC-1 at 86.

41. Respondent appeared at the non-jury trial on August 9 and 10, 2016, but no CBF representative was present, due to Respondent's failure to inform his client. Respondent presented argument and raised objections. ODC-1 at 83, 84.

42. By email dated August 16, 2016, Ms. Dunn again requested an update from Respondent. ODC-1 at 87, 88.

43. Respondent replied to Ms. Dunn by email dated August 19, 2016, at which time he informed Ms. Dunn that he was working on a “comprehensive litigation memorandum” discussing the steps to appeal and the expected time frame and stated that same would be completed by August 22, 2016. ODC-1 at 90, 91.

44. By Order dated August 25, 2016, the court entered judgment in favor of Mann Realty and against CBF in the amount of \$132,100.10, which amount represented \$117,187.35 in damages and \$14,912.75 in prejudgment interest. Respondent failed to promptly inform CBF of the judgment filed against them or advise of the appeal deadline of September 26, 2016. ODC-1 at 92, 93, 94, 95.

45. When Respondent eventually informed CBF of the judgment, he explained that the judgment was entered on a procedural basis that required the filing of an appeal. N.T. 19.

46. On September 2, 2016, Respondent was served with a copy of Interrogatories related to his possession of CBF’s escrowed funds and Mann Realty’s attempt to collect on the judgment, but Respondent failed to respond, failed to seek additional time to respond, and failed to notify CBF of his receipt of said Interrogatories. ODC-1 at 96, 97, 98.

47. On September 7, 2016, pursuant to a praecipe filed by Mann Realty, the court entered a Writ of Execution and Attachment directing the Dauphin County Sheriff to levy upon CBF’s property and to attach CBF’s property in Respondent’s possession for the purpose of satisfying the debt created by the judgement. Respondent failed to inform CBF of the Writ or take any action thereto as to CBF’s escrowed funds. ODC-1 at 99, 100; ODC-9.

48. On September 12, 2016, Ms. Dunn advised Respondent via email that CBF received a copy of the judgment and noted that it still had not received Respondent's "comprehensive litigation memorandum." ODC-1 at 101.

49. By email dated September 13, 2016, Respondent provided the "comprehensive litigation memorandum," which consisted of an approximately one-half page, four-paragraph summary of the appeal process. ODC-1 at 103; ODC-10.

50. Therein, Respondent stated that, due to Judge Bratton's retirement and resulting inability to write a 1925(a) Opinion in support of his decision, upon filing an appeal, "I think there is a real possibility ... [that the court] will simply remand [the matter] back to the county court, assign a whole new judge, and order a new hearing, which will be exactly what we want anyway. In other words, the path I laid our [sic] above, with the appeal, writing briefs, and argument, may be rendered moot by the judge's retirement." ODC-1 at 104; ODC-10.

51. Respondent further noted that he "hope[d] to have clarity about the effect of Judge Bratton's retirement in the next 24 hours." ODC-1 at 106; ODC-10.

52. By email dated September 18, 2016, Ms. Dunn noted that Respondent had not provided an update as to the effect of Judge Bratton's retirement and stated her understanding that the appeal deadline was October 7, 2016. ODC-1 at 108. In fact, the appeal deadline was September 26, 2016, but Respondent failed to correct Ms. Dunn's misapprehension. ODC-1 at 109.

53. By email dated September 19, 2016, Respondent advised that he still did not know how the court would handle the appeal in light of Judge Bratton's retirement, but he would have the notice of appeal prepared and ready for Ms. Winchester's signature by September 23, 2016. ODC-1 at 110.

54. By email dated September 23, 2016, Ms. Winchester requested an update as to the status of the matter. ODC-1 at 111.

55. Respondent replied on September 26, 2016, advised that he would send a draft of the appeal notice to Ms. Winchester for review the following morning, and requested a time within the next two days to speak with Ms. Winchester. ODC-1 at 112.

56. As noted above, the deadline for filing the appeal was September 26, 2016. ODC-1 at 113.

57. Although Ms. Winchester provided times when she was available, Respondent failed to communicate with Ms. Winchester or any other CBF representative concerning the appeal. ODC-1 at 114.

58. By email dated October 6, 2016, Ms. Winchester stated, "Please move forward on the appeal of the [Mann Realty] case." ODC-1 at 115.

59. Respondent failed to respond to the communication or to advise CBF of the passage of the appeal deadline and his failure to file an appeal. ODC-1 at 116.

60. As a result of Respondent's failure to communicate with CBF thereafter, CBF did not know and was not informed that:

a. A second Writ of Execution was filed on October 17, 2017 and Respondent was served with Interrogatories in Aid of Execution;

b. On October 25, 2016, Mann Realty filed a Motion for Enforcement of Court Order based on Respondent's failure to respond to Interrogatories;

c. On October 28, 2016, the court ordered Respondent to show cause why the \$107,232.71 paid by CBF into Respondent's IOLTA account

should not be paid to the Prothonotary or Mann Realty's counsel to be credited as Judgment;

- d. Respondent failed to respond to the Rule to Show Cause;
- e. On November 2, 2016, Mann Realty filed a Praecipe for Entry of Default Judgment based on Respondent's failure to respond to Interrogatories;
- f. By Order dated November 2, 2016, the court entered default judgement against Respondent;
- g. On November 4, 2016, Mann Realty filed a Motion for Assessment of Damages Against Garnishee and requested a hearing for assessment of damages against Respondent;
- h. The court scheduled a hearing for the assessment of damages for December 29, 2016, which was continued upon Mann Realty's request to March 3, 2017;
- i. Mann Realty filed a Motion to Make Rule Absolute based on Respondent's failure to respond to the Rule to Show Cause, which Respondent failed to oppose, and that the Rule was made absolute by Order dated November 16, 2016, at which time Respondent was ordered to deposit the sum of \$107, 232.71 either with the Prothonotary or with Mann Realty's counsel by November 18, 2016;
- j. Respondent failed to comply with the court's Order and, as a result, Mann Realty filed a Motion for Contempt;
- k. On November 30, 2016, Respondent was served with a Notice of Deposition requiring his presence on December 13, 2016, for the

taking of his deposition for the purpose of identifying and executing on assets to satisfy the Judgment; and

I. Respondent failed to appear for the deposition.

ODC-1 at 118 to 137.

61. On December 5, 2016, Ms. Winchester emailed Respondent on behalf of CBF with an attached document entitled "Mann Deposition" and informed Respondent that this was not what she had expected and needed an immediate update since it was CBF's understanding that the case was going to be appealed. ODC-1 at 138.

62. On December 15, 2016, Respondent emailed Ms. Winchester that he was "still working on" the lien and that there was no direct correlation between the lien and the appeal, but did not inform CBF that the appeal deadline had passed and that he had failed to file an appeal. ODC-1 at 140, 141.

63. On December 15, 2016, a second Motion for Contempt was filed by Mann Realty, based on Respondent's failure to transfer funds from his IOLTA Account pursuant to the November 16, 2016 Order and for his failure to appear for the December 13, 2016 deposition. Respondent did not inform CBF of the Motion. ODC-1 at 142, 143.

64. On December 22, 2016, Ms. Winchester requested from Respondent a copy of "all paperwork regarding [CBF's] appeal of the lower court decision[.]" Respondent failed to provide the requested documents, but spoke to Ms. Winchester by telephone and requested that CBF wire approximately \$25,000.00 to his IOLTA account, which represented the remaining judgment amount. Ms. Winchester refused to forward the monies, stating that CBF would not authorize payment of the Judgment until it had documentation evidencing the filing of an appeal ODC-1 at 144, 148.

65. On that same day, Respondent emailed CBF confirming his telephone conference with Ms. Winchester and stated he would “assemble all relevant documents and provide a memorandum discussing procedure, where things are and where they’ll go” before noon on December 26, 2016. ODC-1 at 149.

66. Also on December 22, 2016, Louie Agee, a representative of CBF, forwarded an email to Respondent, stating that CBF “will not release the additional money to escrow until we see the actual appeal...” to which Respondent replied that he understood and would send the appeal documents that evening or first thing the following morning. ODC-1 at 150, 151.

67. Also on December 22, 2016, Attorneys Bryan Shook and John Cunningham, counsel for Mann Realty, personally appeared at Respondent’s office to address his failure to transfer the funds pursuant to the Court’s November 16, 2016 Order and his failure to appear at the December 13, 2016 deposition. At that time Respondent falsely claimed to Mann Realty’s attorneys that he had authorization from CBF to transfer the escrowed fund to Mann Realty and that CBF would wire the remainder of the funds needed to satisfy the Judgment to Mann Realty’s counsel the following day. ODC-1 at 153,154.

68. Respondent then went with counsel for Mann Realty to BB&T bank and, in direct contravention of CBF’s instructions, by certified check made out to the law firm of Cunningham Chernicoff, withdrew \$107,000.00 of CBF’s funds from his IOLTA Account. Respondent failed to inform CBF of his actions relative to CBF’s escrowed funds. ODC-1 at 156, 157.

69. On December 26, 2016, Mr. Agee emailed Respondent noting that Respondent had yet to produce the requested appeal paperwork and again requested

that Respondent provide said paperwork or inform Mr. Agee of the process of retrieving same from the court. ODC-1 at 158.

70. On December 27, 2016, Respondent spoke with Mr. Agee by telephone, during which conversation Respondent admitted that he had not filed an appeal, did not appear for post-verdict depositions, and did not carry malpractice insurance. Respondent further revealed that he struggled with depression and other medical issues, and also that he expected CBF to report him to the Disciplinary Board. Respondent further stated that he intended to self-report to the Disciplinary Board, but did not do so. ODC-1 at 159, 160, 162.

71. Respondent did not inform Mr. Agee that he transferred the \$107,000.00 in escrowed funds to Mann Realty. ODC-1 at 161.

72. CBF thereafter retained successor counsel, Kristi Buchholz, Esquire. ODC-1 at 163; N.T. 40.

73. On or about December 29, 2016, Respondent advised Attorney Buchholz that he transferred the \$107,000.00 in escrowed funds to Mann Realty. ODC-1 at 164.

74. Attorney Buchholz requested that Respondent provide a copy of CBF's file and the remaining \$232.71 of escrowed funds by January 3, 2017, which Respondent failed to do, and he failed to further communicate with Ms. Buchholz. ODC-1 at 165-168.

75. By letter to Respondent dated February 27, 2017, Attorney Buchholz noted Respondent's failure to respond to her attempt to communicate with him by telephone and email and again requested CBF's file and the return of the remaining escrow funds. ODC-1 at 167.

DB-7 Letter Matter

76. On January 31, 2017, Disciplinary Counsel Kristin Wells forwarded to Respondent a DB-7 letter Request for Statement of Respondent's Position related to his representation of CBF via first class mail and certified mail, which certified mail was accepted by Respondent on February 1, 2017. Respondent's response was due by March 2, 2017. ODC-1 at 169, 170, 171.

77. Respondent failed to respond to the DB-7 letter. By letter dated March 8, 2017, Disciplinary Counsel Wells directed Respondent to respond by March 20, 2017. ODC-1 at 172, 173.

78. On March 20, 2017, Respondent contacted Disciplinary Counsel Wells by telephone, requesting until March 22, 2017, to provide a response, which request was granted, but Respondent failed to respond by March 22, 2017. ODC-1 at 174-176.

79. On March 27, 2017, Respondent acknowledged his failure to respond and promised to respond by March 29, 2017, to which Disciplinary Counsel Wells gave Respondent until April 6, 2017 to respond, but stated that if no response was received by that date, the matter would be presented in a request for formal charges. ODC-1 at 177-178.

80. Respondent failed to provide a response to the DB-7 or further communicate with Petitioner regarding the DB-7. ODC-1 at 179.

81. Respondent failed to respond to the Petition for Discipline filed on April 24, 2017.

82. At the hearing, Petitioner presented the testimony of Mary Todd Winchester, Louie Agee and Kristi Buchholz, Esquire. This testimony was credible.

Miscellaneous

83. Respondent testified on his own behalf.

84. Respondent did not dispute the charges against him and admitted that he violated the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement. N.T. 91.

85. Respondent expressed sincere remorse and contrition for his actions and apologized to CBF. Regarding his representation of CBF, Respondent testified that they were not well served by him. N.T. 61, 70.

86. Respondent testified that his failure to respond to the requests for admissions was a strategic decision that he made which was wrong. N.T. 78.

87. Respondent testified that “the long game was to get the judgment [against CBF], file an appeal.” Respondent believed he could win on appeal; however, Respondent never filed an appeal. N.T. 79.

88. Respondent testified that he did not provide the remaining funds in his IOLTA Account belonging to CBF even though requested several times because he “shut down” and it was “the tail end of the depression and anxiety in terms of bottoming out.” N.T. 87.

89. Respondent admitted that he was aware that the ethics rules required him to disclose in writing to clients that he did not carry malpractice insurance and in fact that he did not carry the required minimum in legal malpractice insurance. N.T. 102.

90. In January 2013, prior to being retained in the CBF matter, Respondent’s wife indicated she wanted a divorce. Respondent tried to resolve this situation for approximately 10 months, which included marriage counseling, but he ended

up moving out of the marital home. Although the marriage ended, Respondent continues to see the counselor for personal therapy. N.T. 51.

91. Respondent's relationship with his two children, both in their twenties, suffered as a result of the marital situation. N.T. 52.

92. Sometime in 2013, Respondent's mother fell and ended up being diagnosed with a stroke, and in or around 2015, his mother was placed in a nursing home. N.T. 51

93. Respondent was power of attorney for his mother and had to coordinate information regarding his mother's issues with his six siblings. N.T. 52.

94. There were periods of time in November of 2014 when Respondent did not get out of bed due to depression and anxiety and did not go to his office. N.T.50, 51.

95. Respondent is a recovering alcoholic and drug addict and has been in recovery for approximately twenty-seven years. N.T. 52.

96. Respondent was diagnosed with Attention Deficit Disorder nearly twenty years ago and has taken Ritalin for twelve or thirteen years. N.T. 59, 60.

97. In February 2017, Respondent was at a low point with his mental health issues and began seeing a psychiatrist, Dr. Anita Nayyar. As of the date of the disciplinary hearing on August 3, 2017, Respondent had met with his psychiatrist five or six times. N.T. 58, 59.

98. During the first meeting with Dr. Nayyar, Respondent informed her that he "has this Disciplinary Board matter that is probably going to come up" but the psychiatrist informed him that she would not testify before the Disciplinary Board. N.T. 61, 62.

99. Respondent testified that Dr. Nayyar prescribed him the anti-depressant Vibryd, and since taking the medication he testified that he feels normal and his anxiety has abated. N.T. 65, 78, 88.

100. Respondent testified that Dr. Nayyar has not yet ascertained the appropriate dosage of Vibryd and it might take “eight or ten months” before the proper dosage is found. N.T. 58, 78.

101. Respondent testified that he does not yet have an official diagnosis. N.T. 65.

102. Respondent testified that he did not respond to the Petition for Discipline because he was focused on getting better. N.T.64.

103. From 2012 to 2014, Respondent had other attorneys under his supervision in his office, but by 2015 he did not have any other attorneys in his office. N.T. 71, 72.

104. Since approximately 2013, Respondent has been a partner in a business providing trustee services to employee-owned companies, which does not require a law license. N.T. 65-66.

105. Respondent testified that he maintains a law office and has four or five clients, which include several estate matters and a civil matter. N.T. 75.

106. Respondent is on the Board of Pennsylvania Lawyers Concerned for Lawyers and speaks at various law schools regarding his history of substance abuse and recovery. N.T. 67.

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 representative 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), (3), and (4) – A lawyer shall:... (2) reasonably consult with the client about the means by which the client’s objectives are to be accomplished; (3) keep the client reasonably informed about the status of the matter; and (4) promptly comply with reasonable requests for information.

4. RPC 1.4(a)(5) – A lawyer shall consult with the client about any relevant limitation on the lawyer’s conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law.

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

6. RPC 1.4(c) - A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer’s professional liability insurance drops below either of those amounts or the lawyer’s professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client.

7. RPC 1.5(e) - Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

8. 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.

9. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests such as...surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

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

11. RPC 8.1(b) – A lawyer in connection with a disciplinary matter shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from a disciplinary authority.

12. RPC 8.2(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

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

14. Pa.R.D.E. 203(b)(7) – The following shall also be grounds for discipline: 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.

IV. DISCUSSION

Petitioner must establish, by a preponderance of clear and satisfactory evidence, that Respondent's actions constitute professional misconduct. ***Office of Disciplinary Counsel v. Robert Surrick***, 749 A.2d 441, 444 (Pa. 2000). Petitioner met its burden by virtue of the facts pled in the Petition for Discipline, which are deemed admitted pursuant to Pa.R.D.E. 208(b)(3), due to Respondent's failure to file an Answer to Petition. Additionally, the testimony and evidence presented by Petitioner and Respondent's own testimony fully support the conclusion that Respondent committed ethical misconduct.

The evidence established that Respondent's misconduct began at the outset of his representation of CBF by his failure to disclose that he did not carry professional liability insurance. Over the course of approximately three years, Respondent neglected CBF's litigation, resulting in the entry of a \$132,100.10 judgment against CBF. Beyond his neglect of the matter, Respondent failed to communicate with his client, including, among other things, his failure to inform CBF of the date of the non-jury trial. On various occasions when he did communicate, Respondent made

misrepresentations to CBF representatives, including false assurances that an appeal was timely filed. Respondent's misrepresentations regarding the filing of the appeal were further compounded by his failure to defend CBF in connection with opposing counsel's efforts to enforce the judgment. Respondent repeatedly failed to respond to opposing counsel's request for information and various motions in connection with the judgment. Significantly, Respondent then turned over \$107,000.00 of CBF's funds from his IOLTA account to Mann Realty without CBF's knowledge and in direct contravention to CBF's directives. Even after his termination as CBF's counsel, Respondent continued to neglect his responsibilities. Despite requests from successor counsel, Respondent failed to remit the remainder of CBF's escrowed funds, totaling \$232.11, or provide a copy of its file. Although Respondent testified that he would remit the monies (N.T. 87), to date he has not done so, nor has he provided a copy of CBF's file to successor counsel.

Respondent's neglect of important matters is further evidenced by his failure to answer Petitioner's DB-7 letter requesting Respondent's position on the matter, failure to file a response to the Petition for Discipline, and failure to file a post-hearing brief to the Hearing Committee.

After reviewing the recommendations of Petitioner and the Hearing Committee for a suspension of one year and one day, and after reviewing the case precedent and considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, we recommend that Respondent be suspended from the practice of law for a period of one year and one day.

It is well-settled that because attorney discipline is imposed on a case-by-case basis, 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. Peter Quigley, 161 A.3d 800, 807 (Pa. 2017). 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). The Board is mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the court and deter unethical conduct. ***Office of Disciplinary Counsel v. Akim Czmus***, 889 A.2d 117 (Pa. 2005).

Respondent has practiced law in the Commonwealth since 2005 with no record of discipline. Respondent did not provide expert testimony, but credibly testified on his own behalf regarding struggles he experienced during the time frame of the misconduct. Respondent has mental health issues, a result of which caused significant problems in his life, both professionally and personally. Respondent’s marriage disintegrated, his relationship with his two adult children suffered, and he began treating with a marriage counselor in an attempt to address these issues. In early 2017, Respondent reached a low point with his mental health and sought the assistance of a psychiatrist, who placed Respondent on medication for depression and anxiety. In addition, Respondent testified he has Attention Deficit Disorder, for which has taken medication for some 13 years. Respondent acknowledged that he is “mentally not well,” N.T. 76, “has[s]n’t been able to process why [his misconduct] happened,” N.T. 91, and “d[id]n’t know yet what current [sic] dosage of the antidepressant is going to end up being for [him,]” N.T. 58, although Respondent testified that with medication, he now “feel[s] normal.” N.T. 65. Respondent further revealed that he has been a recovering alcoholic and drug addict for twenty-seven years and actively participates in Lawyers Concerned

for Lawyers as member of that board, doing speaking engagements at law schools and sharing his story of substance abuse and recovery.

Respondent did not dispute the charges against him and acknowledged his misconduct. At the hearing, he demonstrated remorse by apologizing for his actions, credibly testifying that CBF was not well-served by him. Although Respondent initially indicated that he doesn't practice law anymore, he subsequently testified that he has approximately five clients and maintains a law office. Respondent maintains non-legal employment providing trustee services to employee-owned companies.

Prior disciplinary cases support the conclusion that serious neglect of one client matter warrants suspension of one year and one day. In ***Office of Disciplinary Counsel v. Perry L. Flaugh***, No. 112 DB 2015 (D. Bd. Rpt.6/15/2016) (S. Ct. Order 8/12/2016), the Supreme Court accepted the Disciplinary Board's recommendation of a suspension for one year and one day. Respondent Flaugh's lack of diligence and communication in his representation of his client over a period of eight years culminated with his abandonment of his client and her claims. Flaugh mishandled approximately \$1,000.00 of funds entrusted to him by converting those funds to his own use and later misrepresented to Office of Disciplinary Counsel that the funds were properly distributed. In aggravation, Flaugh did not reimburse his client despite his testimony at the disciplinary hearing that he was willing to do so. In mitigation, Flaugh had no history of discipline. Similar to the instant Respondent, Flaugh presented his own testimony regarding struggles in his personal life but did not provide expert testimony to show that these problems caused the misconduct. Unlike Respondent herein, Flaugh did not show sincere remorse, although Flaugh admitted that he had "missed a few things." Bd. Rpt. at 13. In ***Flaugh***, the Board discussed prior cases of serious neglect that resulted in more

severe sanctions than a one year and one day suspension, but upon the record before it, concluded that Flaugh's conduct did not warrant greater discipline than a one year and one day suspension.

In *Office of Disciplinary Counsel v. Michael J. Viscuso*, No. 108 DB 2016 (S. Ct. Order 4/27/2017), the Supreme Court approved on consent a suspension for one year and one day, retroactive to the date of Respondent Viscuso's temporary suspension. Viscuso failed to satisfy a settlement obligation despite his client providing \$2,500.00 to do so. Viscuso failed to respond to his client's repeated requests for an update regarding the matter. Approximately nine months later, a Petition to Enforce Settlement was filed and granted. Viscuso received the Petition and Order, but failed to respond or advise his client of the filings, and further failed to comply with the Order. Due to Viscuso's repeated failures to comply, two Motions for Sanctions were filed and granted, imposing a total sanction of \$1,000.00. Viscuso failed to advise his client of the Motions for Sanctions, the resulting court orders, or his failure to comply therewith. Viscuso later failed to cooperate with Petitioner by failing to respond to the DB-7 letter, failing to answer the Petition for Discipline and failing to appear for the pre-hearing conference. In mitigation, Viscuso had no prior record of discipline and demonstrated acceptance of responsibility by consenting to discipline.

Respondent admitted that he failed to competently and diligently represent his client, and attributed his misconduct to ongoing mental health issues, for which he is undergoing treatment. Despite his assurances that he does not intend to practice law, Respondent still maintains a law office and a handful of clients. Upon this record, we conclude that Respondent is not fit to practice law. A one year and one day suspension removes Respondent from practice and thereby protects the public, fulfilling the

predominant mission of the disciplinary system. If Respondent desires to practice law in the future, he will be required to prove his fitness by clear and convincing evidence.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Bret Keisling, be Suspended for 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: 

John P. Goodrich, Member

Date: June 19, 2018