

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL, : No. 2725 Disciplinary Docket No. 3  
: :  
Petitioner : No. 67 DB 2019  
: :  
v. : Attorney Registration No. 309909  
: :  
JOSEPH JOHN ASHTON, III : (Philadelphia)  
: :  
Respondent :

**ORDER**

**PER CURIAM**

**AND NOW**, this 27<sup>th</sup> day of July, 2020, upon consideration of the Report and Recommendations of the Disciplinary Board, Joseph John Ashton, III, is suspended from the Bar of this Commonwealth for 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 07/27/2020

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 67 DB 2019
Petitioner	:	
	:	
v.	:	Attorney Registration No. 309909
	:	
JOSEPH JOHN ASHTON, III	:	
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 March 29, 2019, Petitioner, Office of Disciplinary Counsel, charged Respondent, Joseph John Ashton, III, with abandoning his clients, abandoning his law practice, failing to communicate with clients and with subsequently retained counsel, failing to protect his clients’ interests, and failing to surrender client files and documents. Respondent failed to file an Answer to the Petition for Discipline.

The Board appointed a District I Hearing Committee ("Committee") to consider this matter. On August 26, 2019, a prehearing conference was held before the Committee Chair, which was attended by Petitioner and Respondent. Pursuant to the Pre-Hearing Order dated August 26, 2019, Respondent was directed to advise the Chair, in writing, by August 30, 2019, of any good cause for his failure to timely file an Answer to the Petition for Discipline. Respondent failed to file a response.

On October 1, 2019, the Committee conducted a hearing. Respondent failed to appear. Petitioner presented the testimony of four witnesses. ODC Exhibits 1-10, 19 and 21 were admitted into evidence. After the hearing and with approval of the Committee, Petitioner introduced ODC Exhibits 22 and 23, after which the record was closed.

On November 6, 2019, Petitioner filed a brief to the Committee and recommended that Respondent be suspended for a period of one year and one day. Respondent did not file a brief to the committee.

On January 21, 2020, the Committee filed a Report, in which it concluded that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline and recommended to the Board that he be suspended for a period of one year and one day.

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

The Board adjudicated this matter at the meeting on April 22, 2020.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, Harrisburg, PA 17106-2485, 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 the aforesaid Rules.

2. Respondent is Joseph John Ashton, III, born in 1975 and admitted to practice law in the Commonwealth in 2010. Respondent's last known office address is 1515 Market Street, Suite 1200, Philadelphia, PA 19102. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. By Order of the Supreme Court of Pennsylvania dated November 20, 2019, Respondent was placed on administrative suspension due to his failure to comply with Continuing Legal Education rules and regulations.

4. Respondent has no prior history of discipline.

5. On March 29, 2019, Petitioner filed a Petition for Discipline in this matter. ODC-5.

6. On April 10, 2019, personal service of the Petition for Discipline was attempted at Respondent's Ocean View, New Jersey address. A woman named "Denise" answered the door but it was determined that Respondent was not present. The woman

did not want to provide an address or telephone number for Respondent to the process-server, but stated that she would contact Respondent. ODC-6, Exhibit A.

7. Respondent never contacted the process-server or Petitioner.

8. On April 18, 2019, personal service of the Petition for Discipline was attempted by Petitioner's Investigator, Ted A. Bugda, at Respondent's registered residence. ODC-6, Exhibit B; N.T. 48-49.

9. After knocking on the door and ringing the doorbell several times with no response, Investigator Bugda slid the envelope with the Petition for Discipline and related documents inside the door mail slot. ODC-6, Exhibit B; N.T. 49.

10. At some time prior to April 18, 2019, Investigator Bugda attempted to telephonically contact Respondent and left a voicemail message but received no call back prior to visiting the property. ODC-6, Exhibit B.

11. Additionally, Investigator Bugda was able to contact Respondent's brother, who verified that Respondent still resided at the registered residence property and stated that he would try to have Respondent contact Investigator Bugda. N.T. 49-50.

12. Respondent never contacted Investigator Bugda. N.T. 50.

13. On May 31, 2019, service of the Petition for Discipline was made by substitute service, in accordance with Rule 212, Pa.R.D.E., due to Respondent's unavailability. The Petition for Discipline was mailed to Respondent's registered law office address via first class mail and certified mail, return receipt requested. Both were returned to Petitioner, stamped, "RETURN TO SENDER ATTEMPTED – NOT KNOWN UNABLE TO FORWARD." ODC-6.

14. Respondent failed to file an Answer to the Petition for Discipline. N.T. 15-16.

15. On August 26, 2019, the Committee Chair held a Pre-Hearing Conference. Respondent appeared and stated that he had received a copy of the Petition for Discipline and that he had not filed a timely response. PHC 6-7.

16. By Pre-Hearing Conference Order dated August 26, 2019, Respondent was permitted the opportunity to provide good cause for his failure to file a timely response to the Petition for Discipline. Respondent failed to do so.

17. Due to Respondent's failure to file an Answer to the Petition for Discipline, all factual averments contained in the Petition for Discipline are deemed admitted by Respondent, pursuant to Rule 208(b)(3), Pa.R.D.E.

#### **Leone/Maurer Matter**

18. Lisa Leone and Jennifer Maurer were involved in a dispute with the builder of a house they purchased, the realtors involved in the transaction, and the home inspection company. Plaintiffs retained Lee M. Shlamowitz, Esquire who filed a lawsuit captioned ***Lisa Leone and Jennifer Maurer v. Daniel Schempp, et al.***, Court of Common Pleas, Montgomery County, Pennsylvania, No. 2015-05672. Petition for Discipline ("P for D") ¶ 3.

19. Mr. Shlamowitz subsequently referred the case to Respondent and on March 4, 2016, Respondent entered his appearance in the matter on behalf of the plaintiffs. P for D ¶¶ 3-4.

20. On December 2, 2016, sellers' agent, Keller Williams Realty, and related defendants, filed Preliminary Objections to Plaintiffs' Second Amended Complaint and a Motion to Preclude Plaintiffs from Filing Any Further Amended Complaints. P for D ¶ 5.

21. Although Respondent was served with a copy of the Preliminary Objections and the Motion, he failed to file an Answer to the Preliminary Objections or respond to the Motion. P for D ¶¶ 6-7.

22. On December 22, 2016, Respondent filed a Third Amended Complaint. P for D ¶ 8.

23. On January 6, 2017, the same defendants filed Preliminary Objections to the Third Amended Complaint. P for D ¶ 9.

24. By Order dated January 20, 2017 and docketed on January 23, 2017, the court granted the motion prohibiting plaintiffs from filing any further amended complaints and directed plaintiffs to respond to defendants' Preliminary Objections to the Second Amended Complaint within twenty days. P for D ¶ 10.

25. Although the court served Respondent with a copy of the Order, Respondent failed to inform his clients of the court's January 20, 2017 Order and failed to take any action to comply with the court's Order. P for D ¶¶ 12-14.

26. By Order dated June 30, 2017 and docketed on July 7, 2017, the court sustained the preliminary objections to the Third Amended Complaint and dismissed the complaint. P for D ¶ 15.

27. By Order dated March 28, 2018 and docketed on March 30, 2018, with the defendants' Preliminary Objections to the Second Amended Complaint still outstanding, the court sustained the preliminary objections in part as to several objections and dismissed the remaining objections as moot. P for D ¶ 17.

28. Although the court served Respondent with a copy of the Order, Respondent failed to inform either Ms. Leone or Ms. Maurer of the court's March 28, 2018 Order. P for D ¶¶ 18-19.

29. Moreover, Respondent failed to communicate with his clients or to respond to any of their attempts to obtain information from Respondent about their case during the course of several months. P for D ¶ 20.

30. After experiencing a prolonged period of complete neglect and abandonment by Respondent, Ms. Leone and Ms. Maurer retained new counsel, Vincent M. Vangrossi, Esquire, who entered his appearance on June 18, 2018 to represent Ms. Leone and Ms. Maurer. P for D ¶ 21; ODC-22, ¶ 4.

31. Through Mr. Vangrossi, Ms. Leone and Ms. Maurer learned that a defendant in their case had been dismissed from the case due to Respondent's failure to respond to Preliminary Objections and that a defense motion to preclude plaintiffs from filing additional amended complaints had been granted due to Respondent's failure to file any response to the motion. ODC-22, ¶¶ 8-9.

32. After entering his appearance, Mr. Vangrossi sent three letters to Respondent dated June 18, 2018, July 9, 2018, and April 29, 2019; each sent to Respondent via fax and First Class Mail to Respondent's registered law office address. In each letter, Mr. Vangrossi notified Respondent of his representation and of Respondent's discharge, asked Respondent to withdraw his appearance, and requested that he send to Mr. Vangrossi the client file. Respondent failed to reply to any of these letters. ODC-22, ¶¶ 11-12.

33. Additionally, Mr. Vangrossi telephoned Respondent many times and left messages, requesting that Respondent send the client file to him. Respondent failed to respond to any of the letters or telephone calls, failed to withdraw his appearance and failed to produce the client file to Mr. Vangrossi. ODC-22, ¶¶ 13-14.

34. On May 7, 2019, Mr. Vangrossi noticed Respondent's



deposition and sent a subpoena for his deposition, scheduled for May 31, 2019, to Respondent's registered office address. On May 29, 2019, Mr. Vangrossi sent the Notice and subpoena to Respondent's email address listed on Respondent's website, and also notified him by telephone message the same day. ODC-22, ¶¶ 15-16.

35. Respondent failed to appear at the deposition and failed to contact Mr. Vangrossi with any explanation or request to reschedule. ODC-22, ¶ 17.

36. On June 11, 2019, Mr. Vangrossi filed a "Motion to Compel Directed at Joseph John Ashton, III, To Produce File" seeking an order to compel Respondent to produce Ms. Leone's and Ms. Maurer's client file to him. Respondent's response was due to be filed on or before July 15, 2019 but he failed to file any response. ODC-22, ¶¶ 18-19.

37. By Order dated July 17, 2019, the court granted the Motion to Compel and ordered Respondent to produce the client file to Mr. Vangrossi's office within twenty days of the date of the Order. Under cover of letter dated July 19, 2019, Mr. Vangrossi notified Respondent of the Order and mailed a copy of the Order to Respondent's registered residence address. ODC-22, ¶¶ 21-22.

38. Respondent failed to comply with the Order. ODC-22, ¶ 23.

39. Ms. Leone and Ms. Maurer require their file to pursue their case as the file contains copies of emails, text messages and photographs, some that are not reproducible, and their absence is prejudicial to their case. Additionally, to date Respondent has failed to withdraw from their case. ODC-22, ¶¶ 24-25.

40. On September 4, 2018, Petitioner sent Respondent a DB-7 Request for Statement of Respondent's Position by certified mail, return receipt requested, to Respondent's registered law office address. ODC-2.

41. The certified mail return receipt from the DB-7 letter sent to Respondent's registered office was returned marked, "Not at Address." *Id.*

42. On September 19, 2018, Investigator Ted Bugda attempted personal service of the DB-7 at Respondent's registered office. N.T. 47.

43. A receptionist at that location informed Mr. Bugda that Respondent was no longer at that office, that he had been gone longer than a month, and that he had left no information about how or where to locate him. N.T. 48.

44. On September 20, 2018, Petitioner sent copies of the DB-7 Letter to Respondent's registered residence address and to an address in Ocean View, New Jersey. ODC-2.

45. The return receipt from Respondent's registered residence address was returned unsigned and the receipt from the Ocean View, New Jersey address was returned with a signature, "Joseph J. Ashton." ODC-2.

46. Respondent did not provide a response to the letter of inquiry or communicate with the Office of Disciplinary Counsel in any way regarding this matter.

### **The Lizette Guenther Matter**

47. In or around 2012, Lizette Guenther met Respondent at his office where she retained Respondent to represent her in a personal injury case involving a motor vehicle accident in Philadelphia that occurred on July 15, 2012 in which Ms. Guenther's 20-year-old son was killed and her other son was injured. P for D ¶ 32.

48. On July 13, 2015, Respondent commenced a civil action by filing a Writ of Summons in the Court of Common Pleas, Philadelphia County, docketed at ***Guenther et al. v. Tierra Colombiana, Inc., et al.***, No. 150701330. P for D ¶ 33.

49. On November 22, 2017, Respondent filed a Motion to file under seal a Petition for leave to settle a wrongful death and survival action on behalf of Ms. Guenther, individually and as administrator of the estate of her son, Charles Edward Wingfield, III. P for D ¶ 34.

50. On January 12, 2018, the Honorable John Milton Younge granted Respondent's Motion. However, Respondent failed to file the Petition, as permitted by the court's January 12, 2018 Order. P for D ¶¶ 35-36.

51. After receiving the favorable ruling on Respondent's motion, Respondent failed to initiate any further contact with Ms. Guenther. P for D ¶ 37.

52. Ms. Guenther attempted to contact Respondent by phone on numerous occasions by calling a cell phone number Respondent had provided to her and on which Respondent had previously received calls from her. P for D ¶ 38.

53. Respondent neither answered nor returned any of her calls. P for D ¶ 39.

54. During August and September 2018, Ms. Guenther placed approximately three to four calls daily to Respondent's office phone number and left many messages requesting a response. Respondent received at least some of the phone messages from Ms. Guenther, but failed to respond to any of Ms. Guenther's many attempts to contact him by phone. P for D ¶¶ 40-42.

55. In or around August 2018, Ms. Guenther personally went to Respondent's office and attempted to meet with him. P for D ¶ 43.

56. Respondent's secretary told Ms. Guenther that Respondent was not in the office at that time and the secretary texted Respondent to inform him of Ms. Guenther's presence in his office. Respondent received this text message but failed

to respond to it. P for D ¶¶ 44-46.

57. In or around September 2018, Ms. Guenther again went to Respondent's office and attempted to meet with him, but she was informed that Respondent no longer rented space at his office for the practice of law and no one there could provide any contact information for him. P for D ¶ 47.

58. Respondent moved from his office and failed to inform Ms. Guenther of a new address where she could contact him. P for D ¶ 48.

59. Subsequently, Ms. Guenther retained new counsel, Kevin Weinstein, Esquire who entered his appearance on October 24, 2018. P for D ¶¶ 49-50; N.T. 34-35.

60. When Mr. Weinstein met Ms. Guenther, she brought with her a copy of the disciplinary complaint she had filed against Respondent. She was distressed, was not working, had no money, had lost most of her possessions in a fire and was hoping to obtain funds from the civil case to get her life back in order. N.T. 38.

61. Mr. Weinstein also attempted to locate and communicate with Respondent. He sent letters to Respondent's registered Philadelphia law office, his registered New Jersey residence address, and a former Philadelphia address. Mr. Weinstein filed Freedom of Information Act ("FOIA") requests pertaining to all addresses that were associated with Respondent, both past addresses and present. Mr. Weinstein received no information that led to identifying Respondent's whereabouts. N.T. 36-38.

62. Mr. Weinstein was able to determine that Respondent and his wife still owned the house on Mt. Vernon Avenue in Haddonfield, New Jersey that was his registered residence. N.T. 37.

63. On December 31, 2018, Mr. Weinstein sent a letter via

certified mail to that address that was subsequently returned and another to Respondent's registered office address that was returned as undelivered. *Id.*

64. Mr. Weinstein has been unsuccessful in locating Respondent and unable to obtain Ms. Guenther's file. N.T. 39, 42.

65. Mr. Weinstein enlisted the assistance of counsel for the defendant in Ms. Guenther's civil matter to reconstruct as much of the file as was possible so that he could file the petition to have the settlement approved that was granted by the court's Order of January 12, 2018. N.T. 39.

66. Mr. Weinstein filed the petition and was able to have the case settled and approved and has made partial distribution with full distribution pending. N.T. 39-40.

67. Under cover of letter dated April 24, 2019, Mr. Weinstein mailed copies of "Plaintiff's Petition for Compromise of Wrongful Death and Survival Action," which was filed on March 7, 2019, to Respondent via regular and certified mail, to both Respondent's registered office and residence addresses. ODC-23, pp. 1-2.

68. Respondent did not respond to Mr. Weinstein's letters and did not file any objection to the petition or proposed allocation of funds. *Id.*

69. On November 2, 2018, Petitioner sent Respondent a DB-7 Letter by certified mail, return receipt requested, to the Ocean View, New Jersey address from which a signed receipt had previously been obtained when serving the DB-7 Letter related to the Leone/Maurer matter. ODC-3.

70. The return receipt was returned signed, "Joseph Ashton." *Id.*

71. To date, Respondent has failed to provide a response to the DB-7 letter.

### **The Jose Figueroa Matter**

72. In 2016, Kenneth M. Kitay, Esquire referred his client, Jose Figueroa, to Respondent to represent him in an action involving personal injuries Mr. Figueroa sustained in a motor vehicle accident. Respondent accepted the referral and representation of Mr. Figueroa and signed a fee agreement with him. P for D ¶ 54.

73. On May 2, 2016, Respondent filed a Complaint on behalf of Mr. Figueroa and his wife, Ramona Figueroa, in the Court of Common Pleas in Philadelphia County, docketed at ***Figueroa-Menendez et al. v. Jenkins et al.***, No. 160500241. P for D ¶ 56.

74. On July 22, 2016, defendants filed Preliminary Objections. P for D ¶ 57.

75. On August 11, 2016, Respondent filed an Amended Complaint on behalf of plaintiffs. P for D ¶ 58.

76. On August 17, 2016, the court deemed the Preliminary Objections moot. P for D ¶ 59.

77. On August 31, 2016, defendants filed Preliminary Objections to plaintiffs' Amended Complaint. P for D ¶ 60.

78. On September 22, 2016, Respondent filed an Answer in Opposition to the Preliminary Objections. P for D ¶ 61.

79. On September 23, 2016, the court issued a Rule to Show Cause why the Preliminary Objections as to venue should not be granted. P for D ¶ 62.

80. By Order dated November 16, 2016, the Honorable Arnold L. New granted defendants' Preliminary Objections as to venue, and transferred the matter to the Berks County Court of Common Pleas. P for D ¶ 63.

81. On December 20, 2016, the court transmitted the record to Berks County. P for D ¶ 65.

82. On January 12, 2018, a Praecipe to Reinstate the Complaint was filed in the Berks County Court of Common Pleas. P for D ¶ 66.

83. On January 22, 2018, defendants filed a Motion for Judgment of Non-Prosecution and a Memorandum in Support Thereof. Defendants served the Motion on Respondent, but Respondent failed to file a response. P for D ¶¶ 67-69.

84. On July 17, 2018, the court, *inter alia*,

a. issued a Rule to Show Cause why the defendants' Motions for Judgment Non Pros should not be granted;

b. ordered Respondent as plaintiffs' counsel to file an Answer within 30 days of the date of the Order; and

c. scheduled an evidentiary hearing and argument for October 1, 2018 to address defendants' Motions for Judgment Non Pros.

P for D ¶ 70.

85. On July 18, 2018, copies of the Order and notice of the show cause hearing were sent to all parties. P for D ¶ 71.

86. Respondent received this Order and notice but failed to file an Answer within 30 days as ordered by the court and Respondent failed to appear at the show cause hearing and argument on October 1, 2018. P for D ¶¶ 72-74.

87. By order dated October 1, 2018, the Honorable Madelyn S. Fudeman granted defendants' Motions for Judgment Non Pros and dismissed the Complaint with prejudice. P for D ¶ 75.

88. Judge Fudeman's Order specifically stated, in part, "AND

NOW, on this 1<sup>st</sup> day of October, 2018 upon consideration of defendants Michael Richard Grab, Grab-A-Cab, Inc., and Devine Jenkins and Co-defendant Eugenio Hernandez's Motions for Judgment of Non Pros, and any response thereto, and failure of plaintiff's counsel to appear, it is hereby ORDERED and DECREED that said Motions are GRANTED." P for D ¶ 76.

89. Judge Fudeman inserted the portion of the Order that noted Respondent's failure to appear at the show cause hearing in a hand-written addition to the Order. P for D ¶ 77.

90. By this same Order, Judge Fudeman dismissed plaintiffs' Complaint with prejudice. P for D ¶ 78.

91. Respondent's failure to oppose the Motions for Judgment Non Pros and failure to appear at the show cause hearing were contributing factors to the court's decision to grant the motions and to dismiss the Complaint. P for D ¶ 79.

92. Respondent received the October 1, 2018 order but failed to notify Mr. Figueroa about the order. P for D ¶¶ 80-81.

93. Respondent failed to communicate with Mr. Figueroa at all and failed to return any of his multiple phone calls and attempts to communicate with Respondent for many months. P for D ¶ 82.

94. On October 17, 2018, Mr. Figueroa went to visit Mr. Kitay at his office to report the fact that he did not know the status of his case due to Respondent's extended period of non-communication with him. P for D ¶ 83; N.T. 22-23.

95. Mr. Kitay checked the Berks County docket and discovered the court's Order of October 1, 2018. P for D ¶ 84; N.T. 23-24.

96. Mr. Kitay attempted to communicate with Respondent,



through telephone calls, texts and emails, regarding Respondent's failure to litigate Mr. Figueroa's case. However, Mr. Kitay never received any response from Respondent. P for D ¶¶ 85-86; N.T. 24-25.

97. Mr. Kitay contacted Respondent's brother, who is also an attorney, in an attempt to locate and contact Respondent, but Respondent's brother was unable to help Mr. Kitay. N.T. 27-29.

98. Mr. Kitay had a long-standing professional relationship with Respondent, beginning in 2011, where Mr. Kitay, who had an administrative law practice, would refer personal injury cases to Respondent. N.T. 21.

99. As the years progressed, Respondent became less responsive to Mr. Kitay's attempts to communicate with him. N.T. 25.

100. In 2017, Mr. Kitay took back a case he had previously referred to Respondent due to his unresponsiveness and the fact that Respondent was not moving the case forward and the client was very unhappy. N.T. 26.

101. By 2017, Mr. Kitay ceased referring cases to Respondent as he was not happy about Respondent's lack of communication with him as well as with his clients. N.T. 26-27.

102. On December 10, 2018, Petitioner sent Respondent a DB-7 Letter pertaining to the allegations in the Figueroa matter by certified mail, return receipt requested, to Respondent's registered residence address and to the Ocean View, New Jersey address. The return receipt from Respondent's registered residence address was returned unsigned and the receipt from the Ocean View, New Jersey address was returned with a signature, "Joseph J. Ashton." ODC-4.

103. To date, Respondent has failed to provide a response to the

DB-7 Letter.

**Failure to appear for Disciplinary Hearing**

104. Respondent's disciplinary hearing was scheduled for October 1, 2019.

105. Respondent received notice of the date, time, and place of the hearing. ODC-21.

106. Respondent failed to appear for the disciplinary hearing. N.T. 6.

107. Respondent failed to accept responsibility for his misconduct and failed to demonstrate remorse.

III. **CONCLUSIONS OF LAW**

By his actions as set forth above, Respondent violated the following Rules of Professional Conduct ("RPC"):

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)(3) – A lawyer shall keep the client reasonably informed about the status of the matter;

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

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 1.16(d) – Upon termination of representation a lawyer shall take steps to the extent reasonably practicable to protect a client’s interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, 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. The lawyer may retain papers relating to the client to the extent permitted by other law; and

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

#### IV. DISCUSSION

Herein, the Board considers the Committee’s unanimous recommendation to suspend Respondent for a period of one year and one day based on his misconduct in three separate client matters. For the following reasons, the Board recommends that Respondent be suspended for a period of two years.

Upon the record before us, we conclude that Petitioner met its burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). Petitioner served Respondent with the Petition for Discipline; however, Respondent failed to timely

respond and failed to establish good cause for his lack of response. Factual allegations in the Petition are deemed admitted if an answer to the Petition is not timely filed, pursuant to Pa.R.D.E. 208(b)(3). The factual allegations, witness testimony, and Petitioner's exhibits prove that Respondent engaged in professional misconduct. Respondent did not appear at the disciplinary hearing to present a case or to offer mitigating evidence.

The record establishes that Respondent engaged in serious misconduct by neglecting and ultimately abandoning his clients in three separate matters and refusing to participate in the disciplinary process. In the Leone/Maurer matter, Respondent undertook the representation of Ms. Leone and Ms. Maurer in a lawsuit filed against the builder of a house they purchased, the realtors involved in the transactions, and the home inspection company. After entering his appearance, Respondent failed to file an Answer to the defendants' Preliminary Objections to Plaintiff's Second Amended Complaint and Motion to Preclude Plaintiffs from Filing Any Further Amended Complaints; failed to take any action to comply with the court's order to respond to defendant's Preliminary Objections to the Second Amended Complaint; and failed to inform his clients' of the court's order.

Subsequently, the court sustained the defendants' preliminary objections in part; precluded plaintiffs from filing further amended complaints; and granted a defendant's request for dismissal. Again, Respondent failed to inform his clients of the court's order and further failed to respond to his clients' attempts to obtain a status update; failed to respond to successor counsel's repeated requests for Respondent to withdraw his appearance; failed to forward plaintiffs' file to successor counsel; failed to appear for a properly noticed deposition; and failed to comply with a court order directing him to produce the clients' file.

In the Lizette Guenther matter, Respondent represented his client in a personal injury case arising out of a motor vehicle accident in which Ms. Guenther's son was killed and her other son injured. Respondent filed a Writ of Summons and on November 22, 2017, Respondent filed a Motion to file under seal a Petition for leave to settle the wrongful death and survival action on behalf of Ms. Guenther. Although the court granted the Motion, Respondent failed to file the Petition; failed to initiate any further contact with his client; failed to respond to Ms. Guenther's attempts to contact him; failed to appear for meetings with his client in his office; and moved out of his office without providing a new address to Ms. Guenther. Ms. Guenther subsequently retained new counsel, who entered his appearance on October 24, 2018. Similar to his dealings with Ms. Guenther, Respondent failed to respond to successor counsel's attempts to communicate with him; failed to provide successor counsel with Ms. Guenther's file; and failed to withdraw his appearance despite repeated requests.

Following a referral by Kenneth Kitay, Esquire, Respondent represented Jose Figueroa in a personal injury action and filed a complaint on his client's behalf on May 2, 2016. On November 16, 2016, the matter was transferred from Philadelphia to Berks County after defendants' Preliminary Objections challenging venue were granted. On January 12, 2018, a Praecipe to Reinstate the Complaint was filed and on January 22, 2018, defendants' filed a Motion for Judgment of Non-Prosecution. Respondent failed to file a response to the motion; failed to comply with a court order directing him to file a response; and failed to appear at the show cause hearing and argument.

On October 1, 2018, the court dismissed plaintiff's complaint with prejudice. Respondent failed to advise his client of the court's order; failed to communicate with his client; and failed to respond to his client's multiple attempts to contact him. On October

17, 2018, frustrated with his inability to communicate with Respondent, Mr. Figueroa contacted Attorney Kitay and advised him that he had been unable to obtain the status of his case. Upon review of the court docket, Mr. Kitay discovered that the case had been non-crossed and he attempted to contact Respondent. As was his pattern in the Leone/Maurer and Guenther matters, Respondent failed to respond to Mr. Kitay's telephone calls, texts, and emails.

Petitioner sent DB-7 letters requesting Respondent's position in each of these matters, but Respondent failed to respond or otherwise communicate with Petitioner. Likewise, Respondent failed to respond to the Petition for Discipline. Although Respondent appeared at the prehearing conference, he failed to appear at the disciplinary hearing, thus completing full circle his lack of participation in this matter.

Respondent's conduct in all three client matters evidenced a troubling pattern of noncommunication and neglect that had a profound and adverse effect on his clients, as Respondent inexplicably abandoned his clients and took no steps to protect their interests. Respondent's neglect included failing to file critical pleadings, failing to inform his clients of court orders essential to their matters, and failing to take action to comply with the court orders. Each of the clients was forced to retain successor counsel, who spent time and resources in a fruitless effort to contact Respondent and retrieve the clients' files.

Moreover, relative to these disciplinary proceeding, but for his appearance at the prehearing conference, Respondent elected not to cooperate with Petitioner or participate in the disciplinary hearing, which factors aggravate this matter. Consequently, we find that Respondent failed to provide any explanation for his actions, failed to accept responsibility, and failed to exhibit any remorse at any time for the shoddy treatment of

his clients. Respondent's actions have harmed the reputation of the legal profession and demonstrate that he is unfit to practice law. Although Respondent has no prior history of discipline, we note that he practiced law for only a short period of time before shirking his professional responsibilities; thus, we accord no mitigation for Respondent's lack of prior discipline.

Having determined that Respondent committed professional misconduct, we turn to the question of appropriate discipline. Recognizing that there is no per se discipline in Pennsylvania, upon reviewing the totality of the facts and circumstances of this record, and after considering these important goals and the established precedent to ensure the application of consistent discipline, we conclude that Respondent's misconduct warrants a two year period of suspension. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186, 190 (Pa. 1983); ***Office of Disciplinary Counsel v. Melvin V. Richardson***, No. 35 DB 1988, 8 Pa. C. & C. 4<sup>th</sup> 344, 355 (1990).

Precedent supports a suspension of at least one year and one day as appropriate for attorneys who engage in multiple instances of neglect; fail to communicate with clients; abandon clients by failing to provide them with updated contact information; fail to properly protect clients' interests upon termination of representation by failing to return client property; fail to cooperate with disciplinary authorities; and fail to appear at the disciplinary hearing.

In ***Office of Disciplinary Counsel v. Tangie Marie Boston***, 99 DB 2018 (D. Bd. Rpt. 12/10/2019) (S. Ct. Order 2/12/2020), Boston was suspended for one year and one day for engaging in multiple instances of neglect; failure to communicate; failure to properly protect clients' interests upon termination of representation; and conduct prejudicial to the administration of justice. The record established that Boston responded

to the Petition for Discipline, appeared at the disciplinary hearing, had no prior discipline, and exhibited genuine remorse for her misconduct, unlike the instant Respondent, who did not respond to the charges against him, failed to appear at the disciplinary hearing, and showed no remorse.

In ***Office of Disciplinary Counsel v. Lek Domni***, 98 DB 2015 (D. Bd. Rpt. 5/3/16) (S. Ct. Order 6/27/16), Domni was suspended from the practice of law for one year and one day after he failed to withdraw from eight client matters when he was on administrative suspension; failed to advise the court and his clients of his administrative suspension; failed to communicate with clients; and failed to surrender case files to counsel who had referred several matters to him and who requested the client files, thus forcing referring counsel to reconstruct client files. Domni also failed to appear at scheduled court hearings and to respond to various pleadings which resulted in the dismissal of some client matters and the deferral of others. Additionally, similar to the instant Respondent, Domni failed to respond to the Petition for Discipline, and failed to attend the prehearing conference<sup>1</sup> and the disciplinary hearing. At the time of the misconduct, Domni had practiced law in Pennsylvania for approximately thirty years with no prior discipline.

Likewise, in the matter of ***Office of Disciplinary Counsel v. Sterling Artist***, No. 153 DB 2005 (D. Bd. Rpt. 4/27/2007) (S. Ct. Order 7/18/2007), the Court suspended Artist for one year and one day for neglect and incompetence in three client matters; lack of communication; failure to return client files; and misrepresentation. Unlike the instant Respondent, Artist answered the Petition for Discipline, appeared at the

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<sup>1</sup> Respondent appeared for the prehearing conference.



disciplinary hearing, and admitted his wrongdoing. At the time of the misconduct, Artist had practiced law for two decades and had no prior discipline.

The Court imposed a two year period of suspension in ***Office of Disciplinary Counsel v. Paula M. Lappe***, 76 Pa. D. & C. 4<sup>th</sup> 115 (2005), after she neglected two clients in separate matters; failed to communicate with her clients or respond to clients' reasonable requests for case information; failed to respond to Office of Disciplinary Counsel's communications; failed to return client papers and unearned fees; failed to advise clients of her transfer to inactive status; engaged in the unauthorized practice of law; and failed to appear at the disciplinary hearing. Similarly, the instant Respondent neglected the matters of three clients and abandoned his representation, failed to cooperate with disciplinary authorities, and failed to appear at the disciplinary hearing.

In the matter of ***Office of Disciplinary Counsel v. Robert A. Krug***, 89 DB 2014 (S. Ct. Order 12/30/14), the Court granted a Joint Petition in Support of Discipline on Consent and imposed a suspension on consent for a period of three years, where Krug neglected clients in four separate estate matters in which he accepted fees, performed some work, but then ceased to have contact with the clients. Unlike the instant Respondent, who has no prior discipline, Krug had a history of discipline that included a Private Reprimand in 2002 for neglect of a client and a Public Censure in 2008, also for neglect. However, the Board found that in mitigation, unlike Respondent, Krug admitted his misconduct, cooperated with Office of Disciplinary Counsel and accepted the imposition of discipline, and was remorseful and embarrassed.

Having analyzed the case precedent in the context of the Committee's

recommended discipline, we are not satisfied that a one year and one day suspension is adequate under these particular circumstances. Respondent's abandonment of his clients in three matters is evidence of his complete and utter abdication of responsibility to those clients who depended upon him to provide legal counsel. Respondent essentially disappeared, leaving his clients with the task of obtaining new counsel and picking up the pieces of their matters as best they could without their files. Respondent's failure to cooperate with Petitioner or participate in the disciplinary process is evidence that he does not respect his privilege to practice law.

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 courts, and deter unethical conduct. ***Office of Disciplinary Counsel v. Akim Czmus***, 889 A.2d 1197, 1204 (Pa. 2005). Respondent has repeatedly demonstrated a lack of fitness to practice law and must be prohibited from representing clients until he can prove his fitness to do so. A two year period of suspension is the most appropriate sanction to protect the public and maintain the integrity of the courts and the legal profession.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Joseph John Ashton, III, be Suspended for two years 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: \_\_\_\_\_

5/20/20