

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL, : No. 2397 Disciplinary Docket No. 3  
: :  
Petitioner : No. 80 DB 2016  
: :  
v. : Attorney Registration No. 85270  
: :  
MARK DAVID JOHNS, : (Montgomery County)  
: :  
Respondent :

**ORDER**

**PER CURIAM**

**AND NOW**, this 6<sup>th</sup> day of September, 2017, upon consideration of the Report and Recommendations of the Disciplinary Board, Mark David Johns is disbarred from the Bar of this Commonwealth, 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 9/6/2017

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 80 DB 2016
Petitioner	:	
	:	
v.	:	Attorney Registration No. 85270
	:	
MARK DAVID JOHNS	:	
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 23, 2016, Office of Disciplinary Counsel charged Mark David Johns, Respondent, with violations of Rules of Professional Conduct (“RPC”) and Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”), arising out of his unauthorized practice of law while suspended from practice. Respondent was personally served with the Petition for Discipline on May 31, 2016, and failed to file an Answer.

By Notice dated July 22, 2016, the parties were advised of the dates, times, and locations of the prehearing conference and the disciplinary hearing. On August 4, 2016, the prehearing conference was held. Respondent did not appear. A disciplinary hearing was held on September 8, 2016, before a District II Hearing Committee comprised of Chair John P. McBlain, Esquire, and Members Jeffrey A. Krawitz, Esquire, and Guy A. Donatelli, Esquire. Respondent did not appear. Petitioner produced testimony from two witnesses and offered exhibits ODC-1 through ODC-36 and P-1 through P-13 into evidence.

Following the submission of a brief on behalf of Petitioner, the Hearing Committee filed a Report on January 5, 2017, concluding that Respondent violated the rules as charged in the Petition for Discipline, and recommending that he be disbarred from the practice of law.

The parties did not take exception to the Hearing Committee's Report and recommendation.

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

## II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is situated at Pennsylvania Juridical Center, 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania 17106, 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 the aforementioned Enforcement Rules.

2. Respondent is Mark David Johns. He was born in 1969 and was admitted to the practice of law in this Commonwealth in 2000. His registered public address is P.O. Box 842, Horsham, PA 19044. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior record of discipline:

a. An informal admonition was imposed in 2010 for violations of RPC 1.3, 1.4(a)(2), (3) and (4), and 1.4(b). Respondent took no steps to further his client's divorce action. He failed to communicate and failed to respond to numerous requests for a status update.

b. A private reprimand was imposed in in 2012 for violations of RPC 1.3, 1.4(a)(2), 1.4(a)(3), and 1.4(b). Respondent failed to respond to requests from opposing counsel for discovery and production of documents in a client's matter. Respondent's continued failure to respond resulted in the court issuing a rule to show cause.

c. By Order dated December 30, 2014, the Supreme Court suspended Respondent for a period of one year and one day. Respondent engaged in misconduct in two separate client matters involving neglect, lack of communication, and failure to refund unearned fees. Petition for Discipline ("Petition") ¶5

4. By letter dated December 31, 2014, the Secretary of the Disciplinary Board transmitted a certified copy of the Suspension Order to Respondent. as well as forms he would need to complete in order to comply with Pa.R.D.E. 217. The letter

directed Respondent to review his obligations as a suspended attorney under the rules. Petition ¶6.

5. Respondent failed to comply with any of the rules identified in the December 31, 2014 letter. Petition ¶7.

6. Respondent has been suspended since January 30, 2015, the effective date of the Suspension Order. Petition ¶8.

7. Respondent has not been reinstated to the practice of law by the Supreme Court of Pennsylvania.

#### The Unauthorized Practice of Law

8. Following his suspension, Respondent closed his post office box in Horsham, Pennsylvania, listed as his registered address with Attorney Registration. He did not notify the Attorney Registrar of his new address. Petition ¶13.

9. Court records, opposing counsel and former clients confirm that Respondent continued to practice law through at least January 2016. Petition ¶ 0; ODC-4; ODC-5; ODC-5a; ODC-9; ODC-9d; ODC-10a; ODC-11; ODC-11a; ODC-11b; ODC-12; ODC-12a; ODC-13; ODC-13a; ODC-14; ODC-15; ODC-16; ODC-17; ODC-18; ODC-19; ODC-20; ODC-21; ODC-22; ODC-23; ODC-24; ODC-25; ODC-34; P-1 through P-9h.

10. At the time of the disciplinary hearing on September 8, 2016, Respondent continued to advertise on social media. Petition ¶ 0; ODC-4; ODC-5; ODC-5a; ODC-9; ODC-9d; ODC-10a; ODC-11; ODC-11a; ODC-11b; ODC-12; ODC-12a; ODC-13; ODC-13a; ODC-14; ODC-15; ODC-16; ODC-17; ODC-18; ODC-19; ODC-20; ODC-21; ODC-22; ODC-23; ODC-24; ODC-25; ODC-34; P-1 through P-P-9h.

11. Following the entry of the Suspension Order, Respondent's name appeared in various court dockets as an attorney with the Law Firm of Joel J. Kofski, 1500 John F. Kennedy Blvd, #1050, Philadelphia, PA 19102. At other times, Respondent used his home address at 9 Greenwoods Drive, Horsham, PA, or his father's address at 374 Monument Avenue, Wyoming PA 18644. ODC-9; ODC-12; ODC-13; P-9.

12. By DB-7 Letter of Inquiry ("DB-7") dated July 29, 2015, Petitioner notified Respondent about his unauthorized practice of law and disregard of the Suspension Order. Petitioner mailed the DB-7 to Respondent's registered address. Petition ¶¶11 and 12.

13. On December 4, 2015, the DB-7 was sent to Respondent's home address by first class mail and certified mail, return receipt requested. Respondent did not claim the certified mailing. Petition ¶¶14 and 15.

14. Respondent did not respond to the DB-7 or contact Petitioner. Petition ¶16.

15. By letter dated January 7, 2016, Petitioner mailed another copy of the DB-7 to Respondent at 374 Monument Ave., Wyoming, PA 18644, by first class mail and certified mail, return receipt requested. Petition ¶¶ 17, 28, 42, 57; P-2b; P-2c; P-10; ODC-6; ODC-17; ODC-26; ODC-29.

16. The return receipt card was signed "Milton Johns." Petition ¶¶18, 29, 43, 58.

17. Respondent did not respond to the DB-7 letters. Petition ¶16.

18. After receiving the DB-7, which reiterated the content of the Board Secretary's letter dated December 31, 2014, Respondent continued to disregard the

Suspension Order and his obligations under the Disciplinary Enforcement Rules and the Disciplinary Board Rules. Petition ¶20.

19. After the effective date of the Suspension Order, Respondent failed to withdraw his appearance in pending matters and continued to accept new client matters. Petition ¶21.

20. Respondent held himself out as an attorney in good standing to judges, court personnel, the district attorney assigned to each case, and his clients by:

- a. Using his law firm letterhead and law firm email address when communicating about the cases listed in the Petition;
- b. Using his law firm letterhead when filing pleadings, summary appeals, motions, and entering his appearance;
- c. Appearing in court for guilty pleas, ARDs, sentencing proceedings, and trials;
- d. Providing legal advice to clients;
- e. Engaging in negotiations with various district attorneys;
- f. Receiving payment for services; and
- g. Handling client funds. Petition ¶22.

21. While suspended, Respondent continued to represent four clients in the Bucks County courts during the time frame February 2015 through May 2015 by providing legal advice and appearing in court. Petition ¶23.

22. While on suspension, Respondent continued to represent two clients in the Lancaster County Court of Common Pleas by providing legal advice and appearing in court. Petition ¶ 23.

23. While suspended, Respondent continued to represent three clients in the Montgomery County Courts, by providing legal advice and appearing in court. Petition ¶ 23.

24. While suspended, Respondent continued to represent one client in the Northampton County Court of Common Pleas by filing legal documents. Petition ¶ 23.

#### The Maykranz Matter

25. By DB-7 dated July 22, 2015, Petitioner notified Respondent of the complaint filed by George Maykranz. Petition ¶ 24.

26. On December 4, 2015, Petitioner sent the DB-7 to Respondent's home address by first class and certified mail, return receipt requested. Petition ¶ 25.

27. Respondent did not claim the certified mailing and did not respond to the DB-7 or contact Petitioner. Petition ¶¶ 25 and 26.

28. By letter dated January 7, 2016, Petitioner mailed the DB-7 to Respondent at his father's address of 374 Monument Ave., Wyoming PA 18644, by first class mail and certified mail, return receipt requested. The return receipt card was signed "Milton Johns." Petition ¶¶ 28 and 29.

29. Mr. Maykranz retained Respondent to represent him in a DUI matter in the Somerset County Court of Common Pleas. Petition ¶ 25.

30. Respondent continued to represent Mr. Maykranz after the effective date of the Suspension Order. Petition ¶¶ 28-31.

31. On February 10, 2015, while in court, Respondent represented to Somerset County President Judge John M. Cascio, Mr. Maykranz, Assistant District Attorney Hannah Myers, and others that he had reviewed the written guilty plea colloquy



with Mr. Maykranz, initialed each item as required by the Court, and that he and his client had signed it. (N.T. 44) Based upon Respondent's representations to the Court, Judge Cascio accepted Mr. Maykranz's guilty plea. Petition ¶¶30; N.T. 45.

32. Respondent did not communicate the fact that he was a suspended lawyer to the court, his client, or Ms. Myers. N.T. 45.

33. On April 27, 2015, Respondent and Mr. Maykranz appeared before Judge Cascio for Mr. Maykranz's sentencing. Petition ¶¶31.

34. Respondent was not familiar with the court's procedure or that he needed to submit an acknowledgment of the defendant's right to file a post-sentence motion within 10 days after sentencing and an appeal within 30 days. N.T. 47.

35. After sentencing, the court reporter asked Ms. Myers for Respondent's address. Ms. Myers checked the Disciplinary Board's website and learned that Respondent was a suspended attorney. Ms. Myers immediately informed Judge Cascio of Respondent's suspension. Petition ¶¶32; N.T. 48-49.

36. The District Attorney's Office and Judge Cascio agreed that Ms. Myers would notify Petitioner of Respondent's misconduct and that Judge Cascio would contact Mr. Maykranz about the issue caused by Respondent's suspended license. N.T. 49-50.

37. On May 7, 2015, Judge Cascio held a hearing on the Motion to Vacate Mr. Maykranz's guilty plea. The Court vacated the guilty plea and sentence "because of the fact that the defendant was represented by an attorney who is under suspension." Petition ¶¶34; N.T. 52.

38. Subsequently, the District Attorney *nolle prossed* the charges against Mr. Maykranz because he had complied with the court's directives and had appeared for each court proceeding. N.T. 52-53.

#### The Burgos Matter

39. By DB-7 dated July 17, 2015, Petitioner notified Respondent of the complaint filed by Annette Burgos. Petition ¶¶38; ODC-26.

40. Because Respondent closed his post office box without notice to the Attorney Registrar, on December 4, 2015, Petitioner mailed the DB-7 to Respondent's home address by first class mail and certified mail return receipt requested. Petition ¶¶39.

41. Respondent did not claim the certified mailing and did not respond to the DB-7 or contact Petitioner. Petition ¶¶ 40 and 41.

42. By letter dated January 7, 2016, Petitioner mailed the DB-7 to Respondent at his father's address at 374 Monument Ave., Wyoming PA 18644, by first class and certified mail, return receipt requested. The return receipt card was signed 'Milton Johns.'" Petition ¶¶ 42 and 43.

43. In September 2014, Respondent met with Annette Burgos and orally agreed to handle her pending divorce. Respondent charged Ms. Burgos a flat fee of \$850.00. Ms. Burgos paid Respondent in full before leaving the meeting. Petition ¶¶ 44 and 45.

44. Respondent did not communicate to Ms. Burgos, in writing, the basis or rate of his fee before or within a reasonable time after commencing the representation. Petition ¶46.

45. Respondent did not obtain Ms. Burgos's informed consent, confirmed in writing, to handle the \$850.00 advance payment of legal fees in a manner different than required by RPC 1.15(i), which requires that fees paid in advance be deposited into a Trust Account and withdrawn as earned. Petition ¶¶47.

46. After Respondent accepted the fee, he did not enter his appearance in Ms. Burgos's divorce action in the Lehigh County Court of Common Pleas and did no work on her matter. Petition ¶¶ 44, 45, 48; ODC-27.

47. Respondent failed to communicate with Ms. Burgos about her divorce until telephoning her on or about January 28, 2015. Respondent informed Ms. Burgos that he could not represent her but did not offer any explanation. Petition ¶¶49 and 50.

48. During their telephone conversation, Ms. Burgos requested a refund. Respondent agreed. Respondent also agreed to the refund in text messages he exchanged with Ms. Burgos through February 2015. However, Respondent kept the unearned fee. Petition ¶¶51 and 52; ODC-28.

49. On April 25, 2015, Ms. Burgos filed a Statement of Claim with the Pennsylvania Lawyers Fund for Client Security. ODC-26, DB-7.

50. By DB-7 dated July 17, 2015, Petitioner notified Respondent of the complaint filed by Tina Mazaheri, Esquire. Petition ¶¶53.

51. Petitioner mailed the DB-7 to Respondent's home address by first class mail and certified mail, return receipt requested. Petition ¶¶54.

52. Respondent did not claim the certified mailing and did not respond to the DB-7 or contact Petitioner. Petition ¶¶55 and 56.

53. By letter dated January 7, 2016, Petitioner mailed the DB-7 to Respondent at 374 Monument Av., Wyoming PA 18644, by first class mail and certified mail, return receipt requested. The return receipt card was signed "Milton Johns." Petition ¶¶57 and 58.

#### The Christiansen Matter

54. In 2012, Respondent orally agreed to represent Robert B. Christiansen in a divorce action in the Bucks County Court of Common Pleas. Petition ¶59.

55. For three years, Respondent did almost no work to further Mr. Christiansen's divorce. However, on January 9, 2015, Respondent provided to Mr. Christiansen a draft letter setting forth a settlement proposal of the equitable distribution claim. Petition ¶¶60 and 61.

56. Respondent did not advise Mr. Christiansen about Respondent's suspension or that Mr. Christiansen should retain a new attorney. Petition ¶62.

57. By letter dated April 22, 2015, Tina Mazaheri, Esquire, wrote to Respondent to obtain Mr. Christiansen's file and secure Respondent's signature on a Praecipe for Entry and Withdrawal of Appearance. Petition ¶63; ODC-30.

58. On April 23, 2015, Ms. Mazaheri's paralegal left a telephone message for Respondent requesting Mr. Christiansen's file. Petition ¶ 64; ODC-31.

59. By letter dated and faxed to Respondent on April 24, 2015, Ms. Mazaheri again wrote to Respondent requesting Mr. Christiansen's file and the signed Praecipe for Entry and Withdrawal of Appearance. Petition¶ 65; ODC-31.

60. Although Respondent executed the Withdrawal of Appearance, he did not transfer Mr. Christiansen's file to Ms. Mazaheri. Petition ¶¶66.

61. By letter dated May 4, 2015, Ms. Mazaheri explained to Respondent the efforts she and her paralegal had made in April 2015, requesting Mr. Christiansen's file and explaining that she would report him to the Disciplinary Board if he did not transfer the file. Petition ¶¶67; ODC-32.

62. Respondent made no effort to comply with the Suspension Order.

63. Respondent did not participate in the formal proceedings against him, despite having been personally served with the Petition for Discipline and having received notice of the prehearing conference and the disciplinary hearing.

64. Respondent has not accepted responsibility for his misconduct.

65. Respondent has not shown remorse.

66. Respondent has no regard for the integrity of the legal system.

### III. CONCLUSIONS OF LAW

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

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

2. 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.

3. RPC 1.5(b) – When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

4. 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 different manner.

5. RPC 1.16(a)(1) – An attorney must withdraw from an existing representation if the representation will result in violation of the rules of professional conduct or other law.

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...surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expenses that has not been earned or incurred.

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

8. RPC 5.5(b)(1) – A lawyer who is not admitted to practice in this jurisdiction shall not: except as authorized by these Rules, Pa.B.A.R. 302 or other law, establish an office or other systematic and continuous presence in this jurisdiction for the practice of law.

9. RPC 5.5(b)(2) – A lawyer who is not admitted to practice in this jurisdiction shall not: hold out to the public or otherwise represent that the lawyer is admitted to practice law in this jurisdiction.

10. RPC 7.1 – A lawyer shall not make a false or misleading communication about the lawyer or the lawyer’s services. A communication is false or misleading if it contains a material misrepresentation of fact or law, or omits a fact necessary to make the statement considered as a whole not materially misleading.

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

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

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

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

15. Pa.R.D.E. 217(a) – A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension, administrative suspension or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status and shall advise said clients to seek legal advice elsewhere.

16. Pa.R.D.E. 217(b) – A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients who are involved in pending litigation or administrative proceedings, and the

attorney or attorneys for each adverse party in such matter or proceeding, of the ...suspension...and consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the...suspension...The notice to be given to the client shall advise the prompt substitution of another attorney in place of the formerly admitted attorney. In the event the client does not obtain substitute counsel before the effective date of the suspension, it shall be the responsibility of the formerly admitted attorney to move in the court or agency in which the proceeding is pending for leave to withdraw. The notice to be given to the attorney for an adverse party shall state the place of residence of the client or the formerly admitted attorney.

17. Pa.R.D.E. 217(c)(2) – A formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or transfer to inactive status by registered or certified mail, return receipt requested: all other persons with whom the formerly admitted attorney may at any time expect to have professional contacts under circumstances where there is a reasonable probability that they may infer that he or she continues as an attorney in good standing. The responsibility of the formerly admitted attorney to provide the notice required by this subdivision shall continue for as long as the formerly admitted attorneys is disbarred, suspended or on inactive status.

18. Pa.R.D.E. 217(c)(3) – a formerly admitted attorney shall promptly notify, or cause to be notified, of the disbarment, suspension, administrative suspension or transfer to inactive status by registered or certified mail, return receipt requested to any other tribunal, court, agency or jurisdiction in which the attorney is admitted to practice.

19. Pa.R.D.E. 217(d) – Orders imposing suspension, disbarment, administrative suspension or transfer to inactive status shall be effective 30 days after



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

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

21. Pa.R.D.E. 217(i) – A formerly admitted attorney shall keep and maintain records of the various steps taken by such person under these rules so that, upon any subsequent proceeding instituted by or against such person, proof of compliance with these rules and with the...suspension order will be available.

22. Pa.R.D.E. 217(j)(4) – A formerly admitted attorney may not engage in any form of law-related activities in this Commonwealth except in accordance with the following requirements: Without limiting the other restrictions in this subdivision (j), a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (i) performing any law-related activity for a law firm, organization or lawyer if the formerly admitted attorney was associated with that law firm, organization or lawyer on or after the date on which the acts which resulted in the disbarment or suspension occurred, through and including the effective of the...suspension; (ii) performing any law-related

services from an office that is not staffed by a supervising attorney on a full-time basis; (iii) performing any law-related services for any client who in the past was represented by the formerly admitted attorney; (iv) representing himself or herself as lawyer or person of similar status; (v) having any contact with clients either in person, by telephone, or in writing, except as provided in paragraph (3); (vi) rendering legal consultation or advice to a client; (vii) appearing on behalf of a client in any hearing or proceedings or before any judicial officer, arbitrator, mediator, court, public agency, referee, magistrate, hearing officer or any other adjudicative person or body; (viii) appearing as a representative of the client at a deposition or other discovery matter; (ix) negotiating or transacting any matter for or on behalf of a client with third parties or having any contact with third parties regarding such a negotiation or transaction; (x) receiving, disbursing or otherwise handling client funds.

23. Pa.R.D.E. 219(e) - Upon receipt of a form, or notice of change of information contained therein, filed by an attorney in accordance with the provisions of subdivision (d) of this rule and of payment of the required annual fee to practice law in this Commonwealth, receipt thereof shall be acknowledged on a certificate or license.

#### IV. DISCUSSION

The uncontroverted evidence demonstrates that Respondent ignored the Suspension Order and continued to practice law after the effective date of his suspension. Respondent's practice of law involved neglect of client matters, failure to communicate, failure to provide services for which he was paid, and failure to refund unearned fees.

Respondent's flagrant disregard for the authority of the Supreme Court, the disciplinary process and the legal system shows that disbarment is the only appropriate sanction.

Petitioner must establish by a preponderance of clear and satisfactory evidence, that Respondent's actions constitute professional misconduct. ***Office of Disciplinary Counsel v. Robert B. Surrick***, 749 A.2d 441, 444 (Pa. 2000). The record in this disciplinary proceeding consists of: the undisputed factual allegations in the Petition, unchallenged testimony from Petitioner's two witnesses, 48 unopposed exhibits admitted in Petitioner's case-in-chief, and 36 unopposed exhibits admitted during the dispositional phase of the disciplinary hearing. The record overwhelmingly demonstrates that Petitioner has met its burden.

Having concluded that Respondent violated the rules, this matter is ripe for the determination of discipline. 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. John J. Keller***, 506 A.2d 872, 875 (Pa. 1986). In protecting the public from unfit attorneys, the disciplinary system decides each matter on the totality of the facts presented, while being mindful of precedent and the need for consistency in the rules. ***Office of Disciplinary Counsel v. Robert S. Lucarini***, 472 A.2d 186, 190 (Pa. 1983).

Attorneys who practice law while their license is suspended are subject to strict discipline. ***Office of Disciplinary Counsel v. Harry C. Jackson***, 637 A.2d 615 (Pa. 1994). By Order of March 8, 1982, the Supreme Court suspended Jackson from the practice of law for a period of five years. Despite the order of suspension, Jackson continued to practice law. The Court held

Such a flagrant violation of our order cannot and will not be tolerated. Disbarment is an extreme response to an ethical violation and only will be imposed in the most egregious situations. ... This case presents such a situation. Here, we have a lawyer who was ordered by this Court to cease practicing law for a five-year period. We also provided him with literature to advise him of what he was permitted to do while under suspension. Notwithstanding, Jackson undertook a deliberate course of conduct in violation of our order which involved deceit and dishonesty. For such conduct, there is no other sanction available which will impress upon him the seriousness of his action except disbarment.

*Id.* at 619.

The Supreme Court has considered more recent cases of attorneys practicing law while suspended. In the matter of ***Office of Disciplinary Counsel v. Thomas J. Turner, III***, No. 136 DB 2008 (D. Bd. Rpt. 9/28/2009) (S. Ct. Order 12/16/2009), the Court disbarred Turner following his unauthorized practice of law while on suspension for a period of two years. The record demonstrated that Turner had direct communication with clients, solicited new clients, received fees from clients, offered legal advice, and misrepresented his identity to others. In addition, Turner managed the law practice of another attorney, supervised a legal associate; engaged in misconduct before the bankruptcy court, and violated orders issued by that court. Although Turner did not answer the Petition for Discipline, he appeared at the disciplinary hearing, where he showed himself to be unrepentant and unapologetic.

Suspensions have been imposed on attorneys who engage in the unauthorized practice of law while their law license is suspended. In the matter of ***Office of Disciplinary Counsel v. Malcolm P. Rosenberg***, No. 156 DB 2012 (D. Bd. Rpt. 1/19/16) (S. Ct. Order 3/17/2016), Rosenberg was suspended for a period of one year and one day. While suspended, Rosenberg represented a client in a real estate

transaction. For several months, Rosenberg misrepresented facts about his license status to his client and opposing counsel. Rosenberg demonstrated a total disregard for the integrity of the legal system by claiming that his actions were merely a favor to a friend. This, together with Rosenberg's lack of remorse and failure to accept responsibility, were aggravating factors in the determination of discipline. However, the Board found that Rosenberg's unauthorized practice occurred in a single matter over a short period of time. The Board recommended a three years period of suspension, which the Court imposed.

In the matter of *Office of Disciplinary Counsel v. Louis S. Criden*, No. 48 DB 1997, 42 Pa. D. & C. 4<sup>th</sup> 254 (1999), Criden continued to represent a client for twelve months after being suspended by Order of the Supreme Court for three years. During the twelve month period, Criden held himself out as an attorney in filings and in other forms of communication, and failed to inform opposing counsel that he was a suspended attorney. The Court suspended Criden for a period of four years.

The instant matter is an extremely egregious occurrence of the unauthorized practice of law. Petitioner established that for at least one year, Respondent, a suspended attorney, unabashedly continued to practice law across the Commonwealth, from Somerset County in the western part of the state to Northampton County in the northeast portion of the state, as if he had never been suspended. As a result of Respondent's deceitful behavior, Respondent tricked dozens of clients into retaining him, only to provide substandard or no service.

Respondent had multiple opportunities to cooperate with the disciplinary system, before and after he was served with the Petition and the hearing notices. He chose to disregard all communications with Petitioner and absented himself from the hearing process. Respondent's actions evidence a complete disdain for the Court's

authority and the disciplinary process. An attorney's failure to participate in the disciplinary process is a significant aggravating factor. See ***Office of Disciplinary Counsel v. John Klinger Mort***, 110 DB 2015 (D. Bd. Rpt. 5/10/2016) (S. Ct. Order 6/30/2016); ***Office of Disciplinary Counsel v. James Paul Carbone***, No. 71 DB 2014 (Bd. Rpt. 6/17/2015) (S. Ct. Order 8/12/2015).

The facts of this case support disbarment. Respondent's suspended status in no way deterred him from practicing law. Any further suspension order likely would have little impact on Respondent's future activities, particularly in light of that fact that he has not had any contact with the disciplinary system. Although the Board recognizes that disbarment will take away Respondent's privilege to practice law without guarantee of restoration, under these circumstances, disbarment accomplishes the goals of protecting the public from unfit attorneys and maintaining the integrity of the bar. Disbarment is warranted to comply with the decisional law and to call appropriate attention to Respondent's prolonged and serious unauthorized practice of law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Mark David Johns, be Disbarred 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: 

Stefanie B. Porges, Member

Date: 7/12/17