

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2194 Disciplinary Docket No. 3
Petitioner :
 : No. 85 DB 2014
v. :
 : Attorney Registration No. 204779
JOSEPH A. RIZZO :
Respondent : (Northampton County)


ORDER

PER CURIAM:

AND NOW, this 21st day of September, 2015, upon consideration of the Report and Recommendations of the Disciplinary Board, Joseph A. Rizzo 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 9/21/2015

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 85 DB 2014
Petitioner	:	
v.	:	Attorney Registration No. 204779
JOSEPH A. RIZZO	:	
Respondent	:	(Northampton 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 May 29, 2014, Office of Disciplinary Counsel charged Respondent, Joseph A. Rizzo with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement arising out of Respondent's failure to appear for and meet conditions of an Informal Admonition in connection with a disciplinary complaint filed against him by a former client. Respondent failed to file an Answer to Petition for Discipline.

On September 4, 2014, a pre-hearing conference was held before Hearing Committee Chair Philip M. Hof, Esquire. Respondent failed to appear and failed to offer proposed exhibits or witnesses prior to the date of the disciplinary hearing.

A disciplinary hearing was held on October 15, 2014 before a District II Hearing Committee comprised of Chair Philip M. Hof, Esquire and Members Margaret J. Amoroso, Esquire and Dianne M. Nast, Esquire. Respondent failed to appear.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on January 22, 2015, concluding that Respondent violated the Rules as contained in the Petition for Discipline and recommending that he be suspended for a period of two years and one day and refund the sum of \$1,500.00 to his former client.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on April 23, 2015.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Joseph A. Rizzo. He was admitted to practice in 2007. His current attorney registration address is 190 Park Ridge Drive, Easton, Northampton County, Pennsylvania 18040. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent is currently on administrative suspension from the practice of law, effective September 1, 2011, for his failure to comply with the Pennsylvania Rules of Continuing Legal Education.

4. Respondent has no prior record of discipline.

5. A Petition for Discipline was filed against Respondent on May 29, 2014. Respondent failed to file an Answer. All factual allegations of the Petition are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E.

6. By letter dated February 12, 2014, Chief Disciplinary Counsel, Paul J. Killion, informed Respondent that:

a. Respondent had been previously advised of a complaint against him, alleging violations of the Rules of Professional Conduct and that the investigation into the complaint had been completed;

b. It had been determined that he should receive an Informal Admonition in File No. C2-13-639, for violations of Rules of Professional Conduct 1.3, 1.4(a)(2), (3) & (4), 1.15(e), 1.16(a) & (d), 5.5(a) & (b), and for violations of Rules of Disciplinary Enforcement 217(e), 217(j)(1), (4)(ii), (iv), (v), (vi), (ix) & (x), and 203(b)(7);

c. The Informal Admonition was conditioned upon Respondent providing to Office of Disciplinary Counsel documented proof that he had made a full refund to the complainant in the amount of \$1,500.00, and

returned to the complainant the materials the complainant had supplied to Respondent at the outset of the engagement; and

d. Respondent had the option of notifying the Secretary to the Disciplinary Board and the Office of Disciplinary Counsel, in writing, within twenty (20) days, that Respondent did not wish to receive an informal admonition with conditions and that he would like to have the question of his conduct determined by formal proceedings pursuant to Pa.R.D.E. 208(a)(6) and Disciplinary Board Rule §87.54.

(ODC – 9)

7. The rule violations determined in connection with File No. C2-13-639 were precipitated by a disciplinary complaint filed by Respondent's former client, Jessica E. Lee.

8. In April 2013, Mrs. Lee retained Respondent to assist her and her husband in connection with their purchase of a newly constructed home, paid Respondent a \$1,500.00 retainer, and later became dissatisfied because Respondent abruptly discontinued the provision of legal services and all communications with her. Upon a demand for an accounting and for the return of materials Mrs. Lee had supplied to Respondent, Respondent made no response. (ODC-4; ODC-9)

9. Mrs. Lee has sworn by affidavit that she has had no contact from Respondent since July 31, 2013, that Respondent has refunded no portion of the \$1,500.00 retainer she paid him at a time when she and her husband had a modest income and had made a substantial deposit to purchase their first home, that she and her husband found it necessary to hire another attorney to see them through the closing on the purchase of their home at an additional \$500.00 expense. (ODC-4)

10. At the time that Mrs. Lee retained Respondent in 2013, Respondent had been administratively suspended effective September 1, 2011, and was prohibited from practicing law. (ODC – 9)

11. Included among the rule violations determined in connection with File No. C2-13-639 was the violation of Pa.R.D.E. 203(b)(7). Respondent had received the August 26, 2013 DB-7 Request for Statement of Respondent's Position, which Petitioner sent to Respondent by certified mail, return receipt requested, but Respondent failed to submit any response. (ODC-4; ODC-5; ODC-6; ODC-7; ODC-8; ODC-9)

12. Respondent was sent the February 12, 2014 letter concerning the determination that he should receive an Informal Admonition by certified mail, return receipt requested, and by first class mail, addressed to his registered mailing address of 190 Park Ridge Drive, Easton, Pennsylvania 18040. (ODC-9)

13. On or about February 15, 2014, Respondent received the February 12, 2014 letter, which had been sent to him by certified mail and signed and returned the Domestic Return Receipt. The copy of the February 12, 2014 letter sent to Respondent by first class mail was not returned to Petitioner. (ODC-9; ODC-10)

14. By Notice to Appear dated March 20, 2014, Chief Disciplinary Counsel advised Respondent that his Informal Admonition had been scheduled for Wednesday, April 2, 2014, at 11:45 a.m. in ODC's District II office at 820 Adams Avenue, Suite 170, Trooper, Pennsylvania 19403. (ODC-11)

15. Respondent was sent the March 20, 2014 Notice to Appear by certified mail, return receipt requested, and by first class mail, addressed to his

registered mailing address of 190 Park Ridge Drive, Easton, Pennsylvania 18040.
(ODC-11)

16. Respondent did not claim the certified mailing for the March 20, 2014 Notice to Appear and the first class mailing was not returned to Petitioner. (Pet. ¶ 11)

17. Respondent received the March 20, 2014 Notice to Appear. (Pet. ¶ 12)

18. Respondent failed to contact either the Secretary to the Disciplinary Board or the Office of Disciplinary Counsel to inform them that:

a. He did not wish to receive the Informal Admonition;

b. He wished to institute formal proceedings before a Hearing Committee; or

c. He was unable to satisfy the condition and attend the Informal Admonition on April 2, 2014.

19. Respondent failed to satisfy the condition and failed to attend the Informal Admonition on April 2, 2014. (ODC-4; ODC-12)

20. By letter dated April 4, 2014, Chief Disciplinary Counsel:

a. Advised Respondent that pursuant to §87.52(b) of the Disciplinary Board Rules, the "neglect or refusal of the respondent-attorney to appear for the purpose of informal admonition without good cause shall as provided by Enforcement Rule 203(b)(2), constitute an independent act of professional misconduct";

b. Requested Respondent to inform Chief Disciplinary Counsel within five days of his receipt of the April 4, 2014 letter if there was any

reason he wished to offer for not appearing at the time set forth for the Informal Admonition which might represent good cause; and

c. Notified Respondent that in the absence of receiving any advice from him which may serve as an acceptable explanation for his failure to appear for the Informal Admonition on April 2, 2014, further disciplinary action would be taken.

(ODC-12)

21. The April 4, 2014 letter was sent to Respondent by first class mail, addressed to his registered mailing address of 190 Park Ridge Drive, Easton, Pennsylvania 18040. (ODC-12)

22. The first class mailing was not returned to Petitioner. (Pet. ¶ 17)

23. Respondent received Chief Disciplinary Counsel's April 4, 2014 letter. (Pet. ¶ 18)

24. Respondent failed to make any response to Chief Disciplinary Counsel's April 4, 2014 letter. (Pet. ¶ 19)

25. On April 25, 2014, Disciplinary Counsel directed a letter to Respondent, which enclosed copies of the February 12, 2014 letter from Chief Disciplinary Counsel, the March 20, 2014 Notice to Appear, and the April 4, 2014 letter from Chief Disciplinary Counsel, requesting that Respondent contact Disciplinary Counsel within ten (10) days of his receipt of the April 25, 2014 letter. (ODC-13)

26. The April 25, 2014 letter stated, in part, that if Respondent failed to contact Disciplinary Counsel within ten (10) days, a petition for discipline would be filed promptly. (ODC-13)

27. On April 25, 2014, Office of Disciplinary Counsel Investigator Stephen J. Schmitt hand-delivered Disciplinary Counsel's April 25, 2014 letter to Respondent's registered mailing address. (ODC-14; N.T. at 21)

28. Investigator Schmitt hand-delivered the April 25, 2014 letter by physically handing the letter, which was in a sealed envelope addressed to Respondent, to Respondent's wife, Ettienne Rizzo. (ODC-14; N.T. at 22)

29. Respondent received the Disciplinary Counsel's April 25, 2014 letter. (Pet ¶ 24)

30. Respondent failed to make any response to Disciplinary Counsel's April 25, 2014 letter. (Pet. ¶25) Respondent never informed ODC of any good cause for his failure to appear for the Informal Admonition.

31. On May 29, 2014, Disciplinary Counsel filed the Petition for Discipline. (ODC-1)

32. On June 6, 2014, Investigator Schmitt personally served Respondent with a copy of the Petition for Discipline, Notice to Plead and cover letter from Disciplinary Counsel. (ODC-2; N.T. at 23) Investigator Schmitt handed the materials directly to Respondent, observed Respondent open the envelope and read the materials, and suggested to Respondent that he "open a line of communication" with Disciplinary Counsel. (N.T. at 24)

33. Respondent failed to answer the Petition for Discipline and failed to make any contact with Petitioner. (N.T. at 25)

34. On July 30, 2014, Marcee D. Sloan, Assistant Secretary to the Board, sent Respondent a copy of the Notice of Disciplinary Hearing in this matter by first class mail and certified mail to Respondent's residence at 190 Park Ridge Drive.

(ODC-19) Ms. Sloan used Respondent's registered residence address because the office address Respondent supplied to Attorney Registration through his PA Attorney Registration Form for the 2010-2011 year was no longer valid. (ODC-19; ODC-20)

35. On August 25, 2014, Investigator Schmitt hand-delivered a copy of the Notice of Disciplinary Hearing to Respondent. Because no one answered the door and it appeared no one was home, Investigator Schmitt left the materials at the front door of Respondent's residence. (ODC-15; N.T. at 25)

36. Respondent failed to appear for the September 4, 2014 prehearing conference without offering any explanation for his absence.

37. On September 4, 2014, Ms. Sloan mailed to Respondent a copy of the September 4, 2014 Prehearing Order, which the Chair had entered at the prehearing conference. (ODC-19) The September 4, 2014 Prehearing Order required the parties to exchange proposed exhibits and witness lists on or before September 25, 2014 and objections on or before October 2, 2014. (ODC-18)

38. On September 10, 2014, Investigator Schmitt hand-delivered to Respondent's registered address an envelope containing a copy of the September 4, 2014 Prehearing Order and a cover letter from Disciplinary Counsel. (ODC-16; ODC-17; N.T. at 27-28) Because the electricity to the home appeared to have been shut off on September 4, 2014, based upon a shut-off notice taped to the front door, Investigator Schmitt suspected that the residence was no longer occupied. (N.T. at 28-29) Although a neighbor informed Investigator Schmitt that Respondent and his family had moved in August 2014, Respondent did not register a new address with Attorney Registration and Investigator Schmitt's investigation has uncovered no new address. (N.T. at 29-30; 32)

39. On September 16, 2014, Ms. Sloan mailed a copy of a September 16, 2014 Memorandum concerning the availability of the transcript of the September 4, 2014 Prehearing Conference to Respondent's registered address. (ODC-19)

40. On that same date, Disciplinary Counsel directed an email to Respondent at two email addresses obtained through Investigator Schmitt's investigation, attaching copies of Ms. Sloan's September 16, 2014 Memorandum, the Notice of Disciplinary Hearing, the materials hand-delivered to Respondent's registered address on September 10, 2014 and a September 15, 2014 letter Disciplinary Counsel had directed to the Hearing Committee Chair regarding Respondent's failure to notify ODC or Attorney Registration of a new address. (ODC-18)

41. Petitioner's September 16, 2014 email, directed to two email addresses used by Respondent for at least some period of time, were not returned to Disciplinary Counsel as undeliverable. (N.T. at 43-44)

42. On October 15, 2014, Respondent failed to appear for the disciplinary hearing without offering any explanation for his absence. (N.T. at 5)

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Disciplinary Enforcement:

1. Pa.R.D.E. 203(b)(2) – Willful failure to appear before Disciplinary Counsel for the informal admonition shall constitute misconduct and shall be grounds for discipline.

2. Pa.R.D.E. 204(b) – Failure to comply with a condition attached to an informal admonition shall be grounds for reconsideration of the matter and prosecution of formal charges.

As a result of Respondent's failure to demand the institution of formal proceedings, Respondent is conclusively deemed to have violated the following Rules of Professional Conduct and Rules of Disciplinary Enforcement in connection with the disciplinary complaint filed by Jessica E. Lee:

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

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

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 1.15(e) – A lawyer shall promptly deliver to the client any property, including but not limited to Rule 1.15 Funds, that the client is entitled to receive and, upon request by the client, shall promptly render a full accounting regarding the property.

6. RPC 1.16(a)(1) – A lawyer shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.

7. 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.

8. 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.

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. Pa.R.D.E. 217(e) - Within ten days after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing that the provisions of the order and the rules have been fully complied with, and 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.

11. Pa.R.D.E. 217(j)(1) – All law-related activities of the formerly admitted attorney shall be conducted under the supervision of a member in good standing of the Bar of this Commonwealth who shall be responsible for ensuring that the formerly admitted attorney complies with the requirements of Pa.R.D.E. 217(j). If the formerly admitted attorney is engaged by a law firm or other organization providing legal services, whether by employment or other relationship, an attorney for the law firm or organization shall be designated by the firm or organization as the supervising attorney for purposes of Pa.R.D.E. 217(j)(1).

12. Pa.R.D.E. 217(j)(4)(ii) – A formerly admitted attorney is specifically prohibited from performing any law related services from an office that is not staffed by a supervising attorney on a full-time basis.

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

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

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

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

17. Pa.R.D.E. 217(j)(4)(x) – A formerly admitted attorney is specifically prohibited from receiving, disbursing or otherwise handling client funds.

18. 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 Disciplinary Board Rules, §87.7(b) for a statement of the respondent-attorney's position shall be grounds for discipline.

IV. DISCUSSION

Petitioner bears the burden of proving, by a preponderance of evidence that is clear and satisfactory, that Respondent's actions constitute professional misconduct. *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441 (Pa. 2000). Petitioner has met that burden by virtue of the facts pled in the Petition for Discipline, which are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E, due to Respondent's failure to file an Answer to Petition.

In connection with the disciplinary complaint filed against Respondent by Jessica E. Lee, Respondent received a DB-7 Request for Statement of Respondent's Position on August 26, 2013, informing him that Petitioner had received a complaint, detailing the nature of the complaint and the potential rule violations, and requiring a response. Mrs. Lee had retained Respondent to assist her and her husband in connection with the purchase of a home and paid Respondent a \$1,500.00 retainer. Respondent abruptly discontinued the provision of legal services and ceased communication with Mrs. Lee, thereby forcing Mrs. Lee to demand an accounting and the return of her case file. Respondent never responded to Mrs. Lee's demand and never refunded the unearned portion of her fee or returned her documents. Unbeknownst to Mrs. Lee, at the time she retained Respondent in April 2013, Respondent was administratively suspended from the practice of law effective September 1, 2011 and was prohibited from representing Mrs. Lee.

Respondent ignored efforts on the part of Petitioner to resolve the matter. Despite being served with the DB-7 letter of inquiry which advised Respondent that he

was required to respond, Respondent chose not to respond, in violation of Rule 203(b)(7), Pa.R.D.E.

Respondent's misconduct continued to escalate. He received a letter of February 12, 2014 from Petitioner, informing him that it was determined that he should receive an Informal Admonition with the condition that he make a full refund to Mrs. Lee in the amount of \$1,500.00, and return to Mrs. Lee the materials she had supplied to Respondent at the outset of the engagement. Thereafter, by Notice to Appear dated March 20, 2014, Chief Disciplinary Counsel advised Respondent that his Informal Admonition had been scheduled for Wednesday, April 2, 2014 at 11:45 a.m. in the District II office in Trooper, Pennsylvania. Respondent failed to appear for the Informal Admonition, failed to provide proof of compliance with the conditions attached thereto, and failed to show good cause for his nonappearance.

Respondent's failure to appear and failure in any way to correspond with Petitioner ultimately resulted in the filing of the Petition for Discipline. Consistent with his earlier lack of response and despite extensive notice, Respondent failed to answer the Petition and failed to attend both the prehearing conference and the disciplinary hearing before the Hearing Committee.

The evidence of record leaves no doubt that Respondent was aware of the efforts to contact him. He received notice of each stage of the proceedings by either certified and first class mail or by personal service. The evidence of record demonstrates that Respondent's registered address is no longer a viable address. According to the testimony of Investigator Schmitt, it appears Respondent no longer resides at the residence at 180 Park Ridge Drive in Easton. Respondent did not provide a new address to the Attorney Registration Office, as required by the Rules of

Disciplinary Enforcement, and as of the time of the hearing, Respondent's whereabouts were unknown.

It is well-established by the evidence of record that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This matter is ripe for the determination of discipline. Petitioner has recommended that Respondent be suspended for a period of one year and one day. The Hearing Committee has recommended that Respondent be suspended for a period of two years and one day. Both recommendations are accompanied by the requirement that Respondent make a full refund of \$1,500.00 to his former client. After considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D & c. 4th 115 (2004), the majority of the Board is persuaded that disbarment is the appropriate discipline.

In evaluating professional discipline, each case must be decided on its own unique facts and circumstances. *Office of Disciplinary Counsel v. Lucarini*, 427 A.2d 186 (Pa. 1983). The Board is ever 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. Czmus*, 889 a.2d 117 (Pa. 2005).

Although Respondent's underlying misconduct in connection with his representation of Mrs. Lee was isolated and relatively minor, as reflected by the original disposition of an Informal Admonition, Respondent's misconduct has been significantly aggravated by his failure to appear for the Informal Admonition, and thereafter by his utter failure to participate in the disciplinary process. The only mitigating factor is that Respondent has no prior history of discipline. We do not find this factor particularly

weighty, as Respondent was admitted to the bar in 2007 and by 2011 was already administratively suspended for failing to comply with Continuing Legal Education requirements.

By Respondent's failure to participate in the process, he has exhibited a total lack of respect for his professional duties and for the disciplinary process in general. He has made no effort to confront and address his disciplinary issues and has provided no evidence that he values his privilege to practice law. He has forfeited any meaningful opportunity to accept responsibility and express remorse. Furthermore, Respondent has absconded with Mrs. Lee's funds and has made himself unavailable to the disciplinary system by failing to provide his current address.

Disbarment is a severe sanction which is reserved for only the most egregious ethical violations and serious cases of misconduct because the consequence is a termination of an attorney's license to practice without promise of its future restoration. *Office of Disciplinary Counsel v. Keller*, 506 a.2d 872 (Pa. 1986). In a recent disciplinary matter very similar to the instant matter, *Office of Disciplinary Counsel v. John Michael Biondi*, No. 196 DB 2012 (2014), Mr. Biondi was disbarred after he ignored communications with the Court of Common Pleas in Butler County and related court offices, failed to file an Answer to a Petition for Discipline charging him with violations in connection with his lack of communications, and failed to appear at the prehearing conference and disciplinary hearing, despite receiving notification of all proceedings against him. Similar to the instant Respondent, Mr. Biondi was administratively suspended at the time of the disciplinary proceedings and had no prior record of discipline. Although the Board recommended that Mr. Biondi be suspended for four years, the Supreme Court rejected this recommendation and imposed

disbarment, which was the recommendation put forth by both the Hearing Committee and Office of Disciplinary Counsel.

In light of such case precedent, disbarment must apply here.¹ Had Respondent evidenced a scintilla of interest in his privilege to practice, such as a telephone call or email to Petitioner to discuss his situation, perhaps this would not be a disbarment matter. As it stands, in order to protect the public and maintain the integrity of the legal system, we recommend disbarment.

¹ The Hearing Committee and Petitioner cited the following cases in support of suspension: *Office of Disciplinary Counsel v. Campbell*, 81 DB 2009 (2010) and *Office of Disciplinary Counsel v. Walsh*, 73 DB 2005 (2006). The attorneys therein were suspended for a period of one year and one day for failing to appear for an informal admonition and the subsequent disciplinary hearing. While the facts are similar to the instant matter, these cases are more remote in time than *Biondi*.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Joseph A. Rizzo, be Disbarred from the bar of 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: 
Tracey McCants Lewis, Board Member

Date: July 20, 2015

Board Chair Rosenberg and Board Members Hart, Cali, Kelly, Cordisco and Haggerty dissent and would recommend a two year suspension.