

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2933 Disciplinary Docket No. 3
: :
Petitioner : No. 91 DB 2021
: :
v. : Attorney Registration No. 40997
: :
: (Allegheny County)
: :
RICHARD HULINGS LUCIANA, : :
: :
Respondent :

ORDER

PER CURIAM

AND NOW, this 8th day of March, 2023, upon consideration of the Report and Recommendations of the Disciplinary Board, Richard Hulings Luciana is suspended from the Bar of this Commonwealth for a period of one year and one day. Respondent shall comply with the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 03/08/2023

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 91 DB 2021
	:	
v.	:	Attorney Registration No. 40997
	:	
RICHARD HULINGS LUCIANA, Respondent	:	(Allegheny 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 December 8, 2021, Office of Disciplinary Counsel, Petitioner, charged Richard Hulings Luciana, Respondent, with violations of the Pennsylvania Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement arising out of allegations concerning his representation of estate matters. Respondent was served with the Petition for Discipline by personal service on December 12, 2021, but failed to file an Answer.

By Notice from the Board Prothonotary, the parties were advised of the dates for the prehearing conference and disciplinary hearing. Following the prehearing conference on March 15, 2022, at which Respondent participated, a District IV Hearing Committee (“Committee”) conducted the disciplinary hearing on April 26, 2022. Respondent failed to appear. The Committee determined that Respondent received timely notice of the hearing. Thereafter, Petitioner offered twelve exhibits, which were admitted into evidence, and presented the testimony of two witnesses.

On June 21, 2022, Petitioner filed a post-hearing brief to the Committee and requested that the Committee recommend to the Board that Respondent be suspended for a period of not less than three years. Respondent did not file a post-hearing brief.

By Report filed on September 8, 2022, the Committee concluded that Petitioner met its burden to establish that Respondent violated the rules as charged in the Petition for Discipline, and recommended that Respondent be suspended for a period of one year and one day. The parties did not take exception to the Committee’s Report.

The Board adjudicated this matter at the meeting on October 19, 2022.

II. FINDINGS OF FACT

The Board makes the following findings:

1. All facts set forth in paragraphs 2-92, *infra*, were pleaded in the Petition for Discipline (PE8) and are deemed admitted under Pa.R.D.E. 208(b)(3) due to Respondent’s failure to respond.
2. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the

Pennsylvania Rules of Disciplinary Enforcement, with the power and the 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.

3. Respondent is Richard Hulings Luciana, born in 1956 and admitted to practice law in the Commonwealth of Pennsylvania on October 15, 1984. Respondent's attorney registration mailing address is 504 Maryland Avenue, Oakmont, PA 15139-1604. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.
4. Respondent has no record of prior discipline.
5. Respondent's law firm, through Respondent and his father before him, in various capacities, represented Robert C. Kuba as Executor of the Estate of James Kuba, (D.O.D 4/6/1997), which was opened in the Register of Wills of Allegheny County at case file 02-1997-02965.
6. Pursuant to the terms of James Kuba's Will, his estate was to be divided equally among the following: Robert C. Kuba (brother), Viola Kuba (sister-in-law), Frank David Kuba (brother), Debbie Kuba (niece), Donna Kuba [Chatlos] (niece), and Keith Kuba (nephew), with Robert, Viola and Frank being germane parties in this complaint.
7. By Decree dated September 22, 1998, after the beneficiaries of the Estate of James Kuba each received their 1/6 share of the Estate, in

the amount of \$21,695.61, the Estate was closed.

8. On January 17, 2010, Robert C. Kuba died.
9. On February 24, 2010, Letters Testamentary were granted to Jaqueline Kaminsky, who was named to serve as Executrix of the Estate of Robert C. Kuba, and the estate was opened in the Register of Wills of Allegheny County at case file 02-2010-01137.
10. Respondent is counsel for Ms. Kaminsky.
11. Pursuant to the terms of Robert C. Kuba's Will, his estate was to go to his wife; however, as she had predeceased him, his will directed that his estate be divided as follows:
 - a. One-half to Frank Kuba (brother), Debbie Kuba, (niece), Donna Chatlos (niece) and Keith Kuba (nephew), in equal shares;
 - b. One-half to William Anderson (brother-in-law), Lucille Peli (sister-in-law), Helen Chapman (sister-in-law), Agnes Royer (sister-in-law) and Barbara Kantorski (sister-in-law), in equal shares;
 - c. In the event that any of the persons in any of the above list of beneficiaries predecease decedent then the share of the predeceased person shall go to his or her issue surviving decedent, per stirpes and if no issue survives then said share will go to the other beneficiaries named in each of the subparagraphs.
12. On October 15 and 21, 2010, respectively, Respondent filed an Inventory and Supplemental Inventory for the Robert C. Kuba Estate listing the assets of the estate as an S&T Bank Checking Account in the amount of \$26,261.72 and a Highmark Health Insurance Premium Refund in the amount of \$241.49, for a total of \$26,603.21.
13. On December 28, 2010, Respondent filed the Pennsylvania

Inheritance Tax Return for the Estate which listed the Beneficiaries of the Robert C. Kuba Estate as follows:

- a. Frank Kuba (brother), was to receive 12.5%, Debbie Kuba McCulloch (niece) was to receive 12.5%, Donna Kuba (niece) was to receive 12.5%, and Keith Kuba (nephew) was to receive 12.5%; and,
- b. 16 nieces and nephews, along with a sister-in-law were to receive 2.94% of the Estate.

14. On March 13, 2014, Respondent filed a Status Report for the Estate of Robert C. Kuba, reporting that the administration of the Estate was complete and there was no need for the Executrix, Ms. Kaminsky, to file a Final Accounting with the Court.

15. Sometime later in 2014, the Kuba brothers, James Kuba (deceased), Robert C. Kuba (deceased) and Frank Kuba were notified that they were beneficiaries of unclaimed property, in the form of a life insurance policy, owned by their sister, Isabel Ruth Nardozzi, who had died on August 7, 1985.

16. An estate had been previously opened for Isabel Ruth Nardozzi in the Register of Wills of Allegheny County at case file 02-85R3719 and Letters of Administration had been issued at that time to Robert C. Kuba.

17. As both Robert C. Kuba and James Kuba were deceased by the time the unclaimed property was discovered, the surviving beneficiary, Frank Kuba, retained the services of Karen Myers, Esquire, to represent him in the administration of the newly identified assets of the Estate of Isabel Ruth Nardozzi.

18. On October 8, 2014, Ms. Myers filed for issuance of Letters of Administration D.B.N., in the Register of Wills of Allegheny County at case file 02-85R3719 and Frank Kuba, surviving brother of Isabel Ruth Nardozzi, was appointed as the successor Administrator of her Estate.
19. By check dated December 9, 2014, made payable to the Estate of Isabel Nardozzi in the amount of \$131,671.36, the unclaimed proceeds of the life insurance policy were paid over to Ms. Myers, which proceeds she deposited into a Dollar Bank Estate Account ending 0892.
20. After deduction of fees and expenses the total amount to be distributed to the three beneficiaries, Robert C. Kuba, James Kuba, and Frank Kuba, or their survivors, was \$118,129.38.
21. On or about December 30, 2014, Ms. Myers filed an Inventory on the now reopened Estate of Isabel Ruth Nardozzi at case file 02-85R3719.
22. On February 5, 2015, Ms. Myers sent an email to Respondent in his capacity as counsel to Ms. Kaminsky, the Executrix of the Estate of Robert C. Kuba, in which she:
 - a. Forwarded a Receipt and Release for the Estate of Robert C. Kuba for signature by the Executrix, Ms. Kaminsky; and
 - b. Requested that Respondent have Ms. Kaminsky sign the Receipt and Release and return it to her so that she could distribute to the Estate of Robert C. Kuba its share of the proceeds of the unclaimed life insurance policy of Isabel Nardozzi.

23. On February 5, 2015, Ms. Myers sent a letter to Frank Kuba that included a similar Receipt and Release for him to sign and return to her so that she could distribute his share of the proceeds of the unclaimed life insurance policy of Isabel Nardozzi.

24. In March 2015, Ms. Myers received the Receipt and Release signed by Ms. Kaminsky, the Executrix for the Estate of Robert C. Kuba.

25. By letter dated March 2, 2015, Ms. Myers sent to Respondent a Dollar Bank Estate Account Check, Number 104, in the amount of \$39,376.46, payable to the Estate of Robert C. Kuba.

26. At that time, Respondent was entrusted with the sum of \$39,376.46 representing the estate's share of the unclaimed proceeds of the Nardozzi life insurance policy available for distribution to the beneficiaries of the Robert C. Kuba Estate.

27. By letter dated March 10, 2015, Ms. Myers:

- a. Informed Respondent that she was retaining the Nardozzi life insurance policy proceeds in the amount of \$39,376.46 for the beneficiaries of the James Kuba Estate; and,
- b. Requested that Respondent advise her of the developments in the Estate of James Kuba, as Respondent had previously represented Robert C. Kuba as the Executor of the James Kuba Estate, and since Robert C. Kuba was now deceased, Respondent had taken no action to have a successor administrator appointed to receive the \$39,376.46 of unclaimed proceeds for the Nardozzi life insurance policy on behalf of the Estate of James Kuba.

28. Respondent did not inform Ms. Myers that he did not intend to act to have a successor administrator appointed in the James Kuba Estate, nor did he, by any manner, dispel the fact that he was Counsel for

Ms. Kaminsky, the Executrix for Robert Kuba's Estate.

29. By a Dollar Bank Estate Account Check, Number 103, dated March 2, 2015, Frank Kuba received his share of the unclaimed proceeds from the Nardozzi life insurance policy in the amount of \$39,376.46.
30. On June 17, 2015, Ms. Myers sent an email to Respondent again requesting an update on the status of the James Kuba Estate as she wanted to make distribution of that share of the Nardozzi insurance policy proceeds from the Isabel Nardozzi Estate.
31. Thereafter, Respondent provided no reply to Ms. Myers nor did she receive any information from Respondent or direction as to what to do with the \$39,376.46 of life insurance policy proceeds that were maintained in the Dollar Bank Estate Account and designated for beneficiaries of the James Kuba Estate.
32. Ms. Myers sought direction from Respondent as he had been counsel for Robert C. Kuba, the Executor of the James Kuba Estate, and as Robert C. Kuba was now deceased there was no personal representative for the James Kuba Estate to whom Ms. Myers could distribute the estate's share of the Nardozzi life insurance policy proceeds.
33. On numerous occasions after Ms. Myers distributed a one-third share of the Nardozzi proceeds to Respondent, designated for the beneficiaries of the Robert C. Kuba Estate, Frank Kuba, the surviving brother and a beneficiary of both the James Kuba Estate and the Robert C. Kuba Estate, along with his wife, Catherine Brown-Kuba

attempted to contact Respondent to find out when Mr. Kuba would be receiving his share of the \$39,376.46 from both of these estates.

34. Frank Kuba or his wife attempted to contact Respondent on at least 23 occasions between April 5, 2016, and September 16, 2019. When they did communicate with someone in Respondent's office, they requested the status of receiving Frank's share of the unclaimed proceeds of the Nardozzi life insurance policy from the Isabel Nardozzi Estate that were payable to the Estates of James Kuba and Robert C. Kuba.

35. When Respondent, or someone in Respondent's office would answer the telephone, they promised to handle this matter and disburse the funds to the beneficiaries.

36. No disbursements were made.

37. On March 7, 2020, Frank Kuba died.

38. Thereafter, the Executrix of Frank Kuba's Estate, his wife, Catherine Brown-Kuba, continued to inquire as to when the Estate of Frank Kuba would be receiving its share of the Nardozzi life insurance policy proceeds that were payable to the Robert C. Kuba Estate and the James Kuba Estate and ultimately to her late husband as a beneficiary of those Estates.

39. Respondent did not reply to the various requests for information about the status of the funds, prompting Catherine Brown-Kuba to submit a complaint to Office of Disciplinary Counsel.

40. Moreover, Respondent did not provide information as to the

\$39,376.46 previously disbursed to him on behalf of the Estate of Robert C. Kuba, nor did he advise Ms. Myers of the name of the successor administrator for the Estate of James Kuba so that she could distribute, to the appointed successor, the \$39,376.46 of the Nardozzi life insurance policy proceeds designated for the beneficiaries of that Estate.

41. After Ms. Myers provided Petitioner with a copy of the March 2, 2015 check she had sent to Respondent, Petitioner determined that the check had been negotiated at a Citizens Bank branch, but Petitioner was unable to ascertain into what type of account the proceeds were deposited or if they were even deposited.

42. Lacking information about the disposition of the \$39,376.46 which Respondent received on behalf of the estate of Robert C. Kuba, Petitioner, pursuant to Rule 207(b)(2), Pa.R.D.E., placed Respondent on notice of allegations of possible violations of the Rules of Professional Conduct by a Request for Statement of Respondent's Position (DB-7) dated February 8, 2021.

43. The DB-7 requested that Respondent, in addition to providing his response, provide financial records and information as to the location and maintenance of the \$39,376.46 in funds Respondent previously received from Karen Myers, Esquire on behalf of the Estate of Robert C. Kuba.

44. On February 8, 2021, the DB-7 Request for Statement of Respondent's Position was sent to Respondent by both regular U.S.

mail and certified U.S. mail, return receipt requested.

45. The regular U.S. mailing was not returned to sender and the certified mailing was signed for on February 10, 2021.

46. Respondent failed to submit his statement of position by the March 10, 2021 due date.

47. By letter dated March 19, 2021, Disciplinary Counsel reminded Respondent of his failure to submit a statement of position and placed him on notice that if he failed to do so by March 30, 2021, his failure would be grounds for the imposition of discipline pursuant to Rule 203(b)(7), Pa.R.D.E.

48. The March 19, 2021, letter was sent by certified U.S. mail, postage prepaid and pre-addressed, return receipt requested to Respondent at his attorney registration address.

49. On March 23, 2021, Respondent telephoned Disciplinary Counsel, left a voice mail message requesting a return call and left his cell phone number.

50. After several attempts, Disciplinary Counsel spoke to Respondent by telephone on March 29, 2021, at which time Respondent represented that:

- a. Ms. Kaminsky, the Executrix of the Robert C. Kuba Estate, is elderly and living in an assisted care home in Oakmont;
- b. The proceeds of the Nardozzi life insurance policy that were paid to the Estate of Robert C. Kuba are in an estate account held at the Citizens Bank Oakmont branch;
- c. Respondent would submit his statement of position on or before April 2, 2021; and,

d. Respondent had not been successful in meeting with Ms. Kaminsky because of COVID restrictions.

51. Respondent did not provide his Statement of Position by April 2, 2021.

52. By email to Respondent dated April 12, 2021, sent to his email address of record with the Attorney Registration Office, Disciplinary Counsel reminded Respondent that he had not provided his statement of position by April 2, 2021, as he had promised.

53. On April 29, 2021, due to Respondent's repeated failure to respond to the DB-7 Request for Statement of Respondent's Position and his failure to provide the requested financial documentation to verify the maintenance of the Nardoizzi insurance proceeds amounting to \$39,376.46, Petitioner obtained a Subpoena Duces Tecum directed to Respondent pursuant to Rule 213, Pa.R.D.E.

54. The Subpoena and its attachment directed Respondent to provide:

- a. "For the time period beginning March 1, 2015, through and including to the present date, an identification of any and all bank account(s) or other depository of any nature in which you maintained the funds in the amount of \$39,376.46 entrusted to you on behalf of the Estate of Robert C. Kuba, including the account title or caption for each,
- b. the account number(s), the name(s) of the depository institution(s), and name(s) of the person(s) authorized to draw upon such account(s)";
- c. "Provide the periodic statements for the above noted account(s) for the time period beginning March 1, 2015, to the present date showing you maintained the \$39,376.46 you were entrusted with on behalf of the Estate of Robert C. Kuba";

- d. "Provide the client ledger for the account(s) and any and all reconciliations of individual client trust ledger(s) to the monthly balance(s) of fiduciary account(s), which account for the funds entrusted to you on behalf of clients/third parties for the above noted period, including but not limited to the \$39,376.46 you were entrusted with on behalf of the Estate of Robert C. Kuba for the above noted period and disbursements made therefrom"; and,
- e. "Copies of any and all documents and correspondence which were created or came into your possession by virtue of or in regard to your position and function as attorney for the Estates of Robert C. Kuba and/or James Kuba."

55. Disciplinary Counsel spoke with Respondent by telephone on April 29, 2021, to arrange service of the subpoena at which time Respondent indicated he was not a signatory on the Estate account into which the \$39,376.46 was deposited and purportedly maintained at Citizens Bank, and that Ms. Kaminsky was the sole signatory on the account.

56. Respondent represented to Disciplinary Counsel that he had in his possession some bank statements from the Citizens Bank account through approximately 2018, which would show the deposit of the check from Attorney Myers, as well as verify the fact that he was not receiving the statements and did not have access to the information since he was not on the account.

57. Disciplinary Counsel requested that Respondent provide those bank statements to Petitioner.

58. Respondent then requested additional time to provide the previously requested information to Petitioner and to avoid issuance of the subpoena.

59. Disciplinary Counsel informed Respondent that the subpoena had already been issued, but as Respondent was claiming he was not a signatory on the account, he may not be in a position to obtain documentation requested in paragraphs A, B and C of the attachment, but nevertheless he was to provide the information requested in paragraph D of the attachment **and the previously referenced bank account statements** (emphasis added).

60. Respondent agreed to accept service of the subpoena from Petitioner, and would upon receipt of the mailing, execute the enclosed Acceptance of Service and return it to Petitioner.

61. The subpoena was sent, along with an Acceptance of Service and a self-addressed return envelope, by certified U.S. mail, return receipt requested, to Respondent at his attorney registration address.

62. The mailing was delivered and a return receipt card was signed.

63. Respondent did not execute or return the Acceptance of Service as he represented to Petitioner that he would do.

64. Respondent did not at any time challenge the subpoena pursuant to Rule 213, Pa.R.D.E.

65. The subpoena was returnable on May 13, 2021.

66. In addition to issuing a subpoena to Respondent, on April 29, 2021, Petitioner also obtained and served a Subpoena Duces Tecum on Dollar Bank requesting documents and information pertaining to or indicating the disposition of the Dollar Bank Check Number 104 drawn on the Estate of Isabel Nardozi, dated March 9, 2015, in the

amount of \$39,376.46, and made payable to the Robert C. Kuba Estate, which was forwarded to Respondent by Karen Myers, Esquire.

67. Dollar Bank, as the financial institution from which that check was drawn on, was not able to provide any information and/or documentation indicating the financial institution at which this check was negotiated and/or deposited.

68. At that time, Petitioner was unable to verify through Dollar Bank that the \$39,376.46 in proceeds payable to the Robert C. Kuba Estate from the Isabel Nardoizzi Estate, and forwarded to Respondent, were deposited into an estate account at Citizens Bank as Respondent represented to Petitioner.

69. Respondent made several additional requests for extensions of time to answer the DB-7 due to the Executrix of the Robert Kuba Estate residing in a care home that, because of the COVID-19 pandemic, was closed to visitors and therefore he could not meet with her.

70. Despite the verbal and written reminders from Disciplinary Counsel, Respondent did not answer the February 8, 2021, DB-7 Request for Statement of Respondent's Position letter, nor did he provide any of the requested financial records and/or bank statements he claimed to have in his possession and which he promised he would supply to Disciplinary Counsel.

71. As a result of Respondent's failure to comply with the May 13, 2021 return date for the Subpoena Duces Tecum, Petitioner drafted a

Petition for Issuance of a Rule to Show Cause Why Respondent Should Not Be Suspended Pursuant to Rule 208(f)(5), Pa.R.D.E. for Failure to Comply with Subpoena (“the Petition”).

72. On June 25, 2021, Petitioner served Respondent, by personal service, with a copy of the Petition along with notice that if he did not comply and produce the requested financial records, Petitioner would file the Petition with the Disciplinary Board.

73. Respondent did not comply or respond to Petitioner.

74. On June 30, 2021, Petitioner filed the Petition based upon Respondent's failure to comply with the Subpoena Duces Tecum dated April 29, 2021.

75. The Board, upon consideration of the Petition, by and through the Board Chair, issued an Order and Rule to Show Cause dated July 6, 2021, directing Respondent to show cause why he should not be temporarily suspended for failure to comply with the Subpoena Duces Tecum.

76. By letter dated July 7, 2021, from Marcee D. Sloan, Board Prothonotary, a copy of the Order and Rule to Show Cause was sent to Respondent at his attorney registration address by both regular first class and certified mail, return receipt requested.

77. Copies of the Petition, the July 6, 2021 Order and Rule to Show Cause, along with the July 7, 2021 letter from Ms. Sloan were served by personal service on July 10, 2021, upon a woman who identified herself to Pennsylvania State Constable Margareth Sweeney as

Respondent's mother and who agreed to accept service on his behalf.

78. The Rule was returnable within ten (10) days from the date of service.

79. On July 16, 2021, Disciplinary Counsel received a telephone call from Respondent, who informed Disciplinary Counsel that he was obtaining the bank statements from the Estate Account which would verify that all of the money received from the Nardozzi insurance proceeds was being maintained in the account and that Jacqueline Kaminsky, the Executrix for the Estate of Robert C. Kuba, was the sole signatory authority on the account.

80. By letter dated July 19, 2021, and received on July 21, 2021, Disciplinary Counsel received copies of the Citizens Bank account statements for the Estate of Robert C. Kuba account ending in 644-2.

81. The statements produced included the period from March 13, 2015 through May 25, 2021, and reflected the deposit of \$39,376.46.

82. The only withdrawal in the account was a debit of \$9.99 for checks in March 2015. There have been no other withdrawals.

83. In Respondent's July 19, 2021 letter to Petitioner, Respondent again represented that he would provide a "fuller response in this case" and also represented that he planned to meet with the Executrix that week and could distribute checks to the heirs within a week or so.

84. To date, Respondent has not provided any further response, nor has

he made any distribution of the Nardozzi insurance proceeds to the heirs of the Robert C. Kuba Estate.

85. Respondent did not provide any other document, record, or correspondence as requested in paragraph D of the attachment to the Subpoena Duces Tecum to demonstrate what work, if any, he had performed with regard to the Estates of Robert C. Kuba or James Kuba.

86. By letter to Respondent dated July 22, 2021, Disciplinary Counsel informed Respondent that he did not fully comply with the Subpoena Duces Tecum, specifically paragraph D of the attachment, and he had until July 31, 2021 to do so.

87. Disciplinary Counsel's July 22, 2021 letter was sent to Respondent, at his attorney registration address, by both regular first-class mail and certified United States mail.

88. The certified mailing was delivered, and a return receipt card was signed.

89. To date, despite the efforts of Petitioner to seek Respondent's full compliance with the April 29, 2021 Subpoena Duces Tecum for which Respondent has only provided the bank statements, Respondent has not fully complied with the April 29, 2021 Subpoena Duces Tecum, and he has not filed any response to the July 6, 2021 Board Order directing him to show cause.

90. Respondent has willfully and repeatedly ignored the demand by Petitioner to provide a Statement of Position in response to the

February 8, 2021, Form DB-7 Request for Statement of Respondent's Position.

91. By Order of the Supreme Court of Pennsylvania dated August 11, 2021, Respondent was administratively suspended pursuant to Rule 219, Pa.R.D.E., with the suspension taking effect 30 days after the date of the Order.

92. To date, Respondent remains on administrative suspension.

93. On December 8, 2021, Petitioner filed a Petition for Discipline endorsed with a Notice to Plead within twenty days. PE 8.

94. Constable Daniel Sweeney personally served Respondent with the Petition for Discipline on December 12, 2021. PE 8(a).

95. The prehearing conference was held on March 15, 2022. Both Petitioner and Respondent participated, with the Chair permitting Respondent to participate by telephone.

96. Respondent acted in a belligerent manner by interrupting the Chair repeatedly during the prehearing conference, and improperly blamed the Chair for interrupting him. NT PHC p. 15-18.

97. A Prehearing Conference Order dated March 15, 2022, established deadlines applicable to the April 26, 2022 disciplinary hearing.

98. Petitioner complied with the March 15, 2022, Prehearing Conference Order; Respondent did not comply. NT pp. 10, 12, 13.

99. The April 26, 2022 disciplinary hearing was scheduled to be held remotely. NT p. 12.

100. The Board scheduled a test run for April 21, 2022, for the

purposes of ensuring the parties' and witnesses' communication equipment was operable and compatible for the April 26, 2022 hearing.

101. Respondent failed to participate in the April 21, 2022 test run.

102. Respondent failed to appear at the April 26, 2022 disciplinary hearing. NT p. 13.

103. At the hearing, Petitioner presented the credible testimony of Catherine Brown-Kuba, the complainant in this matter, and Karen Myers, Esquire.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Pennsylvania Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."):

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
2. RPC 8.1(b) – In connection with a disciplinary matter, a lawyer shall not knowingly fail to respond to a lawful demand for information from a disciplinary authority.
3. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.
4. Pa.R.D.E. 203(b) - The following shall also be grounds for discipline:
 - a. Rule 203(b)(3) – Willful violation of any other provision of the Enforcement Rules;

- b. Rule 203(b)(4) – Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court and the Board;
- c. Rule 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.

IV. DISCUSSION

Here, the Board considers the Committee’s unanimous recommendation to suspend Respondent for one year and one day for his violations of RPC 1.3, RPC 8.1(b) and RPC 8.4(d) and Pa.R.D.E. 203(b)(3), (b)(4) and (b)(7), based on Respondent’s severe lack of diligence in his representation of estate matters and his disregard for disciplinary procedures.

Petitioner filed a Petition for Discipline charging Respondent with professional misconduct and effectuated personal service on Respondent on December 12, 2021. Respondent failed to respond to the Petition and accordingly, the factual allegations contained therein are deemed admitted under Pa.R.D.E. 208(b)(3). These admissions, Petitioner’s exhibits, the testimony of Petitioner’s two witnesses, and the reasonable inferences from all of the foregoing, demonstrate that Petitioner met its burden of proof by clear and satisfactory evidence that Respondent violated the rules charged in the Petition for Discipline. *Office of Disciplinary Counsel v. John T. Grigsby, III*, 425 A.2d 730, 732 (Pa. 1981).

The record established that Respondent delayed for seven years in taking certain actions on behalf of the Estates of Robert Kuba and James Kuba. As of the date of the disciplinary hearing, Respondent had failed to distribute funds with regard to a life insurance policy to the rightful beneficiaries of the Robert Kuba Estate and had failed to have a successor administrator appointed in the James Kuba Estate so that funds could be distributed to those beneficiaries. Respondent was unresponsive to both Attorney Myers and the Kubas, who continuously attempted to resolve the matters during the seven year time period. The beneficiaries have suffered the consequences of Respondent's utter lack of diligence or effort in these matters, as they were deprived of the benefit of the funds to which they were entitled and not able to utilize or invest the funds. Unfortunately, beneficiaries died during this seven year period where Respondent took no action. By his conduct, Respondent demonstrated a thorough lack of diligence, which casts doubt upon his fitness to practice law.

Respondent further demonstrated his lack of fitness throughout these disciplinary proceedings. He has been willfully nonresponsive and absent starting with his failure to provide a Statement of Position in response to Petitioner's DB-7 Letter of Inquiry sent to Respondent on February 8, 2021, and continuing with his failure to fully and timely comply with a subpoena issued on April 29, 2021. Petitioner took the step of obtaining the subpoena due to Respondent's repeated failure to respond to the DB-7 Letter and his failure to provide requested financial documentation to verify the maintenance of the insurance proceeds. While the record shows there was some communication between Respondent and Petitioner during this time frame whereby Respondent represented that he would submit a statement of position and provide required information, Respondent never fully complied with the subpoena and

significantly, never distributed the funds to the Kuba heirs. He had numerous opportunities to conduct himself in a professional and responsible manner, and to explain his position, yet inexplicably failed to do so. Respondent subsequently failed to file an Answer to the Petition for Discipline. Thereafter, although Respondent participated in the prehearing conference on March 15, 2022, and was aware of the timetable for the disciplinary hearing and the dates by which to submit exhibits and witness lists, Respondent failed to comply with the prehearing order and, without explanation or good cause, failed to appear at the disciplinary hearing one month later, despite full and adequate notice.

Having determined that Respondent committed professional misconduct, the Board's task is to determine the appropriate sanction, bearing in mind that the recommended discipline must reflect facts and circumstances unique to the case, including circumstances that are aggravating or mitigating. *Office of Disciplinary Counsel v. Joshua Eilberg*, 441 A.2d 1193, 1195 (Pa. 1982). Despite the fact-intensive nature of the endeavor, consistency is required so that similar misconduct "is not punished in radically different ways." *Office of Disciplinary Counsel v. Robert S. Lucarini*, 472 A.2d 186, 190 (Pa. 1983).

When evaluating professional discipline, the Board is cognizant that the primary purpose of the lawyer disciplinary system in Pennsylvania is to protect the public, preserve the integrity of the legal system, and deter unethical conduct. *Office of Disciplinary Counsel v. Akim Czmus*, 889 A.2d 1197 (Pa. 2005). Upon review of the totality of the circumstances present in this matter, we conclude that a suspension of one year and one day is warranted.

Respondent's actions, or lack thereof, throughout these disciplinary proceedings demonstrated a complete lack of respect for his professional duties and for the disciplinary process in general. Respondent made no genuine effort to acknowledge his disciplinary issues and by his nonappearance at the disciplinary hearing, forfeited any meaningful opportunity to accept responsibility, express remorse and convey to this Board and the Court that he values his privilege to practice law. In our view, Respondent's nonappearance at his own disciplinary hearing signifies the ultimate lack of interest in his professional license and weighs heavily in aggravation. See, *Office of Disciplinary Counsel v. Lon VanDusen Hughes*, No. 128 DB 2021 (D. Bd. Rpt. 8/22/2022) (S. Ct. Order 10/25/2022); *Office of Disciplinary Counsel v. Frederick Seth Lowenberg*, No. 9 DB 2017 (D. Bd. Rpt. 11/1/2017) (S. Ct. Order 12/26/2017).

In mitigation, we observe that Respondent has practiced law in the Commonwealth since 1984, more than three decades, with no history of professional discipline. While this is normally a compelling factor, we accord it less weight in the instant case, due to Respondent's troubling failure to participate in these proceedings.

Case precedent supports the position that when a respondent has engaged in a lack of diligence or other neglect and displayed a disregard for the disciplinary system, a suspension of at least one year and one day is warranted. In *Office of Disciplinary Counsel v. John Joseph Ashton, III*, No. 67 DB 2019 (D. Bd. Rpt. 5/20/2020) (S. Ct. Order 7/27/2020), the Board found that Ashton engaged in a troubling pattern of neglecting three separate client matters and essentially abandoning his clients by failing to communicate with them. Like the instant Respondent, Ashton failed to participate in the disciplinary proceedings, except for appearing at the prehearing conference. While the instant Respondent had a long and unblemished legal career prior to the events at issue, Ashton

had only practiced law for a short time before engaging in misconduct, and for that reason the Board concluded that mitigation for Ashton's lack of prior discipline was not appropriate. The Board recommended a two year suspension, which the Court adopted. In comparing the instant case with *Ashton*, we find the instant facts to be less serious such that a suspension longer than one year and one day is not warranted.

In the matter of *Office of Disciplinary Counsel v. Franchot A.S. Golub*, No. 162 DB 2016 (D. Bd. Rpt. 2/14/2018) (S. Ct. Order 4/24/2018), the Court suspended Golub for one year and one day for misconduct that involved his failure to distribute funds in the amount of \$6,000 to a client, despite the client's many attempts to communicate with Golub to secure the funds. This misconduct was exacerbated by Golub's complete failure to participate in the disciplinary proceedings, including nonappearance at the disciplinary hearing. Similar to Respondent, Golub had no prior discipline during a lengthy legal career spanning five decades. In another suspension matter, the Court imposed a suspension for one year and one day on a respondent who engaged in misconduct involving, *inter alia*, neglect and failure to communicate in three client matters. *Office of Disciplinary Counsel v. Carol Chandler*, No. 10 DB 2010 (D. Bd. Rpt. 2/15/2011) (S. Ct. Order 8/17/2011). Like Respondent here, Chandler failed to answer the Petition for Discipline or appear at her disciplinary hearing, and had no prior discipline in her 30 years of admission to the Pennsylvania bar.

In reviewing the totality of the circumstances, we conclude that Respondent's misconduct, coupled with his failure to participate in these proceedings, requires a one year and one day suspension. This term of suspension fulfills the goals of the disciplinary system to protect the public and maintain the integrity of the courts and

the profession, while promoting deterrence. Upon this record, we conclude that a one year and one day suspension is appropriate and consistent with the decisional law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Richard Hulings Luciana, be Suspended for one year and one day from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

A handwritten signature in black ink, appearing to read "Jerry M. Lehocky", written in a cursive style.

By: _____
Jerry M. Lehocky, Chair

Date: 12/12/2022

Member Ellsworth recused.