

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2306 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 9 DB 2015
	:	
v.	:	Attorney Registration No. 90668
	:	
WILLIAM C. KERR, III,	:	(Clearfield County)
	:	
Respondent	:	

**ORDER**

**PER CURIAM**

AND NOW, this 14<sup>th</sup> day of December, 2016, upon consideration of the Report and Recommendations of the Disciplinary Board, Respondent William C. Kerr, III, is suspended from the Bar of this Commonwealth for a period of one year, to be followed by a one-year period of probation, subject to the following conditions:

1. Respondent shall continue treatment for diabetes and any other health problems;
2. Respondent shall cooperate with the directions of his supervising physician, take medications as prescribed, and engage in therapy and counseling as directed;
3. During the period of probation, Respondent's physician shall make quarterly written reports, including medication and dosage prescribed, the nature and frequency of recommended therapy, the identity of health service providers, and an assessment of Respondent's health. Such

reports shall be forwarded to the Secretary of the Disciplinary Board and the Office of Disciplinary Counsel; and

4. Respondent shall provide written reports to the Secretary of the Disciplinary Board and the Office of Disciplinary Counsel related to clients' files in his former law office, reflecting that he has identified all files he currently possesses, notified the clients of that fact, and indicated whether the client has requested and/or received the return of the file.

Respondent is directed to comply with all the provisions of Pa.R.D.E. 217 and shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola  
As Of 12/14/2016

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 9 DB 2015
Petitioner	:	
	:	
v.	:	Attorney Registration No. 90668
	:	
WILLIAM C. KERR, III	:	
Respondent	:	(Clearfield 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 July 14, 2015, Office of Disciplinary Counsel charged William C. Kerr, III with violations of the Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E.") arising from allegations that he failed to notify his clients, opposing counsel, and the courts of his administrative suspension and prejudiced the administration of justice. Respondent failed to file an Answer to Petition.

A prehearing conference was held on October 16, 2015. A disciplinary hearing was held on December 7, 2015, before a District IV Hearing Committee comprised of Chair Michele S. Haggerty, Esquire and Members M. Christina Sharp, Esquire and Anne N. John, Esquire. Respondent appeared *pro se*.

Following the submission of a Memorandum of Law by Petitioner, the Hearing Committee filed a Report on May 12, 2016, concluding that Petitioner violated the rules as charged in the Petition for Discipline and recommending that he be suspended for a period of one year and one day.

The parties did not file Briefs on Exceptions.

The Disciplinary Board adjudicated this matter at the meeting on July 23, 2016.

## II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."), 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.

2. Respondent is William C. Kerr, III. He was born in 1974 and was admitted to practice law in the Commonwealth of Pennsylvania in 2003. His attorney

registration mailing address is 154 W. Long Ave., DuBois PA 15801-2104. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a record of prior discipline consisting of an Informal Admonition administered on December 17, 2012, for violations of RPC 1.3, RPC 1.4(a)(3), RPC 1.4(a)(4), RPC 8.4(d), and Pa.R.D.E. 203(a)(7). Respondent failed to file a brief with the Superior Court for an appeal of his client's criminal conviction, which resulted in the dismissal of the appeal. He also failed to inform his client of the dismissal of the appeal or respond to requests for information regarding the status of the case. Respondent failed to respond to Office of Disciplinary Counsel's letter of inquiry.

4. By Supreme Court Order dated August 2, 2012, effective September 1, 2012, pursuant to Rule 111(b) of the Pennsylvania Rules of Continuing Legal Education, Respondent was administratively suspended from the practice of law for failure to satisfy the required Continuing Legal Education ("CLE") credits.

5. By letter dated August 2, 2012, the Disciplinary Board advised Respondent, via certified mail to his attorney registration address, that by Supreme Court Order, he was administratively suspended from the practice of law, effective September 1, 2012. Petitioner's Exhibit ("PE") 1 at ¶¶3, 4.

6. When the certified mail was returned as unclaimed, the Disciplinary Board resent the correspondence on August 31, 2012, via first class mail, to the same address. The notice was not returned to the Board. PE 1 at ¶¶5, 6.

7. Respondent fulfilled the necessary CLE credits by October 10, 2012. PE 1 at ¶7.

8. On October 10, 2012, the Disciplinary Board advised Respondent, via letter to his attorney registration address, that in order to be reinstated to practice, he needed to pay the current annual fee for 2012-2013, a late payment penalty, and a reinstatement fee, totaling \$600.00. PE 1 at ¶¶8, 9.

9. Respondent did not pay his 2012-2013 annual fee, late payment penalty, and reinstatement fees until September 13, 2013, approximately eleven months after the Disciplinary Board advised him of the monies due prior to reinstatement. Following payment, Respondent was reinstated to practice law on September 13, 2013. PE 1 at ¶¶10, 11.

10. Thereafter, Respondent did not pay his annual 2013-2014 registration fee and by Supreme Court Order dated September 19, 2014, effective October 19, 2014, Respondent was administratively suspended. PE 1 at ¶23.

11. To date, Respondent remains on administrative suspension.

12. Subsequent to Respondent's first administrative suspension in September 2012, he was listed as attorney of record in nine matters, four before the Court of Common Pleas in Clearfield County, and five matters before the Court of Common Pleas in Jefferson County. PE 1 at ¶12. Eight of the nine matters were criminal and one was civil.

13. Respondent did not notify any of the individuals he represented, opposing counsel, or the courts of his administrative suspension. PE 1 at ¶13.

14. Respondent claimed that he did not know he was administratively suspended until he was informed by Clearfield County President Judge Fred Ammerman. The record is not clear when this occurred. N.T. 14, 15.

15. After being made aware of his status, Respondent did not send letters to his clients or withdraw his appearance in any of the nine cases for which he was attorney of record. PE 1 at ¶¶ 14, 15; N.T. 23.

16. One of the Jefferson County clients was Cindy O'Shell. On October 2, 2012, Ms. O'Shell was charged with. *inter alia*, involuntary manslaughter. Shortly thereafter, Ms. O'Shell paid Respondent \$4,000.00 to defend her against the charges. PE 1 at ¶¶ 18, 19.

17. Respondent claimed he did not know he was administratively suspended at the time he accepted Ms. O'Shell's fee. N.T. 14.

18. By Order of the Court of Common Pleas of Jefferson County dated October 15, 2012, Respondent was ordered to provide a complete accounting of the \$4,000.00 paid to him by or on behalf of Ms. O'Shell. PE 1 at ¶20.

19. Respondent failed to provide an accounting of the fee received in the O'Shell matter. PE 1 at ¶21.

20. There is no evidence of record that Respondent refunded Ms. O'Shell's monies.

21. Judge John Foradora, President Judge of Jefferson County, held a court proceeding to appoint substitute counsel for the five criminal matters in that county where Respondent was listed as attorney of record. N.T. 21–24. The record is not clear when this proceeding was held.

22. Respondent's nine clients named in the Petition for Discipline obtained other counsel. N.T. 23.

23. Aside from being listed as counsel of record, there is no evidence of record that Respondent appeared on behalf of any client, filed pleadings on behalf of

any client, or otherwise practiced law during his first period of administrative suspension, which lasted from the effective date of October 19, 2014 until he was reinstated to active status on September 13, 2013.

24. There is no evidence of record that Respondent has engaged in the practice of law during his current period of administrative suspension.

25. Respondent offered credible testimony at the disciplinary hearing.

26. During the period of the misconduct, Respondent was a sole practitioner with a general practice of law, concentrating in criminal defense. N.T. 30. He did not employ a secretary or other support staff. N.T. 15.

27. At the time of the disciplinary hearing, Respondent was unemployed and living at his brother's house. N.T. 19.

28. Respondent suffers from health issues, including diabetes since approximately 2010. Respondent's diabetes is severely out of control, resulting in temporary blindness and three eye surgeries in the past two to three years. N.T. 14, 25, 26.

29. Respondent experiences severe bouts of depression from time to time. However, he cannot afford psychiatric treatment, although he has consulted with his family practice doctor. N.T. 28.

30. Respondent addresses his depression by "trying to have a better support network." N.T. 21.

31. Respondent was the primary caregiver for his father, who was critically ill for two years and died the week prior to the December 7, 2015 disciplinary hearing. N.T. 19, 21.

32. Respondent is the caregiver for his mother. N.T. 21.



33. Respondent experienced problems at his law office when a water pipe burst and damaged many of his client files. This occurred three or four weeks after he was informed of his administrative suspension by Judge Ammerman. Respondent moved the files to a different area of his office to avoid further damage. N.T. 18, 19, 29.

34. Respondent's computer was damaged by the burst pipe and he did not maintain a backup for his files. N.T. 18, 35.

35. Respondent did not keep a separate list of files maintained in his office. N.T. 34.

36. Respondent did not believe that he had any active or pending cases and believed all of the files in his office related to closed cases. N.T. 30, 31.

37. Although Respondent was unsure of the status of cases in his office, he did not take any action to confirm the posture of the matters. N.T. 34.

38. Prior to the disciplinary hearing on December 7, 2015, Respondent had not been in his office for at least four months. N.T. 34.

39. Respondent does not have malpractice insurance, but informed his clients of this fact in the client fee agreements. N.T. 35.

40. Respondent explained that the difficulties he experienced in his personal life "got on top of him" and he made "terrible errors." N.T. 14, 15.

41. Respondent admitted that his misconduct resulted in a waste of time and resources for the Jefferson County Court. N.T. 16.

42. Respondent expressed sincere remorse and stated "I hurt people that I was trying to help, and [I] regret it intensely...I let things get away from me [and] there was no excuse for that, and I did not have the mechanisms in place in my practice to shore that up." N.T. 16.

43. Respondent apologized for his misconduct. N.T. 16.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rule of Professional Conduct and Rule of Disciplinary Enforcement:

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

2. Pa.R.D.E. 217(b) – A formerly admitted attorney shall promptly notify or cause to be promptly notified, 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 disbarment, suspension, administrative suspension or transfer to inactive status and 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. The notice to be given to the client shall advise the prompt substitution of another attorney or attorneys in place of the formerly admitted attorney. In the event the client does not obtain substitute counsel before the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status, 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.

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. Robert B. Surrick*, 749 A.2d 441, 444 (Pa. 2000). Petitioner met that burden by virtue of 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 a response to the Petition for Discipline. Further, Respondent admits that his conduct constitutes grounds for the imposition of discipline.

Effective September 1, 2012, Respondent was administratively suspended from the practice of law for failure to obtain the required CLE credits. He was not reinstated until September 13, 2013. During that time, he was counsel of record in four matters filed in the Court of Common Pleas in Clearfield County and five matters filed in the Court of Common Pleas of Jefferson County. In none of these cases did he withdraw his appearance or notify his clients, opposing counsel and the courts of his inability to practice law, pursuant to his administrative suspension. In Jefferson County, the court found it necessary to hold a special court session for the purpose of appointing substitute counsel for Respondent's clients. Respondent claims he did not know he was administratively suspended. However, notice of the Supreme Court Order of his administrative suspension was mailed to his registration address, and Respondent admitted that he was personally advised of his suspension by the Clearfield County President Judge. In spite of receiving personal notice from the court, Respondent failed to take any action on his clients' behalf.

One of the Jefferson County clients was Cindy O'Shell. She retained Respondent and paid him \$4,000.00 to represent her on involuntary manslaughter and related charges. Respondent was retained while he was administratively suspended and prohibited from practicing law. The Jefferson County Court ordered Respondent to provide a complete accounting of the fee that had been paid. Respondent never

complied with the order and no evidence was presented that Respondent refunded Ms. O'Shell's monies.

Respondent has a prior history of discipline. He received an Informal Admonition on December 17, 2012, for his lack of diligence in pursuing a client's matter and for failure to refund an unearned fee. This discipline was imposed during the time period of the events that gave rise to the instant Petition.

Respondent testified credibly at the disciplinary hearing that since the imposition of his first administrative suspension in September 2012, he has suffered from personal difficulties. These included caring for his ill father, who died approximately a week before the hearing in this matter, and caretaking responsibilities for his mother. Respondent suffers from severe diabetes, which was first diagnosed approximately five years ago. In the two or three years prior to the disciplinary hearing, Respondent had three surgeries on his eyes to help preserve his eyesight, which had been damaged due to the disease. Respondent has experienced recurring bouts of depression and is seeking help from his primary physician, but cannot afford psychiatric care. At the time of the disciplinary hearing, Respondent was not employed and was living at his brother's house.

In addition to these physical and personal issues, Respondent's law office was damaged when a pipe burst. This occurred some three to four weeks after he was notified of his administrative suspension. Many of Respondent's client files were affected, although he was able to move the rest to a safe area. Respondent also reported that his computer was damaged and he did not maintain backup files; therefore, he has no existing list of the files that were maintained in his office. Furthermore, Respondent had not been at his office for at least four months prior to the

disciplinary hearing on December 7, 2015. Respondent does not believe that he has any active cases, but has no concrete way to make that determination. He admits that he never sent notice to his clients of his administrative suspension and never withdrew his appearance from any cases.

After the misconduct which is the subject of this matter and his subsequent reinstatement to active status on September 13, 2013, Respondent was administratively suspended effective October 19, 2014, for failure to pay his annual attorney registration fee. Respondent remains on administrative suspension.

Having concluded that Respondent committed professional misconduct, this matter is ripe for the determination of discipline. The Hearing Committee has recommended a suspension for one year and one day. Neither party objected to this recommendation, although Petitioner's Memorandum of Law to the Committee recommended a suspension for one year and one day, stayed in its entirety, with probation for a period of two years, subject to conditions.

The 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. Robert W. Costigan***, 584 A.2d 296, 300 (Pa. 1990). The appropriate discipline for each case is determined by the totality of the circumstances unique to the case, with careful consideration given to prior similar cases. ***Office of Disciplinary Counsel v. Robert S. Lucarini***, 472 A.2d 186, 190 (Pa. 1983).

In making its recommendation to the Board, the Hearing Committee relied on a well-established line of cases that a suspension period of one year and one day is appropriate for attorneys who practice law while on inactive status or administrative suspension. In the matter of ***Office of Disciplinary Counsel v. Harry Curtis Forrest***,

72 Pa. D. & C. 4<sup>th</sup> 339, 351-352 (2004), Forrest was transferred to inactive status because of his failure to fulfill the required CLE credits. Thereafter, he represented two clients, appearing in court and filing pleadings. Forrest used his legal letterhead in correspondence to a judge and failed to advise his clients, opposing counsel, or the judges of his inactive status. As a result, Forrest was suspended for one year and one day. See also, **Office of Disciplinary Counsel v. Chauncey Harris**, 150 DB 2002 (D. Bd. Rpt. 4/16/04) (S. Ct. Order. 7/15/04) (suspension for one year and one day where respondent-attorney received notice that he was on inactive status due to CLE deficiencies, but continued to represent one client, accepted a fee for legal services and obtained a date for a court hearing, and maintained an office sign holding himself out as a lawyer); **Office of Disciplinary Counsel v. James Edward Harvin**, No. 108 DB 2008 (D.Bd. Rpt. 3/5/10) (S. Ct. Order 6/16/10) (suspension of one year and one day where respondent-attorney was transferred to inactive status for failing to pay the annual attorney registration fee, continued to represent his client, filed pleadings, and failed to advise his client, opposing counsel or the court of his inability to practice law; aggravating factor was a prior informal admonition).

We are cognizant of the sanctions meted out in the above-cited cases; however, we conclude that a shorter term of suspension is appropriate in this particular matter. Short terms of suspension have been determined to be appropriate where the unauthorized practice has not been significant enough to require a respondent-attorney to petition for reinstatement. See, **Office of Disciplinary Counsel v. Paul Charles Quinn**, 39 DB 2006 (D. Bd. Rpt. 6/14/07) (S.Ct. Order 10/19/07) (respondent-attorney repeatedly failed to timely complete CLE requirements, engaged in the practice of law while on inactive status; mitigation due to attorney's personal circumstances;

suspension for three months); ***Office of Disciplinary Counsel v. Julie Ann Marzano***, 46 DB 2006 (D. Bd. Rpt. 5/16/07) (S. Ct. Order 8/1/07) (nine month period of suspension after three incidents of unauthorized practice representing family or friends; respondent-attorney expressed sincere remorse and apologized; no prior record of discipline); ***Office of Disciplinary Counsel v. Timothy Shawn Gordon***, No. 197 DB 2009 (D.Bd. Rpt. 3/31/11) (S. Ct. Order 8/11/11) (one year suspension, stayed in its entirety, with probation for one year resulting from respondent-attorney's unauthorized practice of law for approximately eight and one-half months; respondent-attorney expressed genuine remorse and provided other mitigating evidence).

A one year period of suspension is within the range of discipline imposed on attorneys with a prior disciplinary history who have engaged in misconduct similar in severity to Respondent's misconduct. In this case, Respondent was counsel of record in nine matters and failed to notify his clients, the courts and opposing counsel of his administrative suspension, which lasted for approximately one year. Respondent never took action to obtain substitute counsel for his clients and failed to withdraw from the cases, forcing the court to take action in five matters to ensure that the clients had representation. Exacerbating this misconduct was Respondent's failure to comply with a court order directing him to account for funds paid to him by a client. Troublingly, we find no evidence of record that Respondent refunded the fee to his client. While this misconduct is serious, the record is devoid of evidence that Respondent actually appeared in court, filed pleadings or otherwise engaged in the practice of law following his notification of administrative suspension, or engaged in deceptive conduct designed to mislead clients, the courts and others that he was an active attorney permitted to practice law in the Commonwealth. Comparing Respondent's misconduct with that in

the cited cases, we conclude that Respondent's actions were not significant enough to require a suspension for more than one year.

In *Quinn*, *Marzano*, and *Gordon*, the respondent-attorneys demonstrated mitigating circumstances that supported a short suspension. Herein, Respondent offered credible evidence of serious health issues and their negative effects on his life, as well as difficult personal circumstances surrounding the caretaking of his parents and property damage to his law office. Respondent was candid about his failure to fulfill his responsibilities to his clients and to the profession. Respondent was genuinely remorseful and apologetic for his actions and was honest in his testimony before the Hearing Committee. As such, it is appropriate that he be suspended for a period of one year, with probation for one year to follow the suspension period. The Board further recommends that Respondent be subject to conditions during the probation period, to ensure that he remains fit to practice law and that the public is protected from unprofessional conduct. Unlike *Gordon*, we are not recommending that all or a portion of the suspension be stayed. Respondent must serve the full one year suspension in order to call appropriate attention to his misconduct.



V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, William C. Kerr, III, be Suspended from the practice of law for a period of one year and that he be placed on Probation for a period of one year, subject to the following conditions:

1. Respondent shall continue treatment for diabetes and other health problems.
2. Respondent shall cooperate with directions of the physician supervising his treatment for diabetes, take medications as prescribed and engage in therapy and counseling sessions as directed by his physician.
3. Respondent shall cause the physician supervising his treatment for diabetes to make written reports directed to the Office of the Secretary and Disciplinary Counsel on a quarterly basis during his probation.
4. The written reports shall include the identity and dosage of medications being currently prescribed, the nature and frequency of any recommended therapy sessions engaged in since any prior report, and the identity of the health services agency or agent providing the same, and an assessment of Respondent's health at that time.
5. Respondent shall provide written reports directed to the Office of the Secretary and to Disciplinary Counsel concerning the files currently in his former law office, reflecting that he has identified all clients whose files he is currently in possession, his notifications to those clients of

that fact, and whether the client has requested and received the return of the file.

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: 

Brian John Cali, Board Member

Date: 9/28/16

Board Members Penny, Porges and Hart recused.

Board Member Cordisco did not participate in the adjudication.