

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2717 Disciplinary Docket No. 3
: :
Petitioner : :
: : No. 30 DB 2021
v. : :
: :
CHRISTOPHER NICHOLAS URBANO, : Attorney Registration No. 91466
: :
Respondent : (Allegheny County)

ORDER

PER CURIAM

AND NOW, this 18th day of April, 2023, upon consideration of the Report and Recommendations of the Disciplinary Board, Christopher Nicholas Urbano is suspended from the Bar of this Commonwealth for a period of six months. 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 04/18/2023

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 30 DB 2021
	:	
v.	:	Attorney Registration No. 91466
	:	
CHRISTOPHER NICHOLAS URBANO, 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 September 16, 2021, Petitioner, Office of Disciplinary Counsel, charged Respondent, Christopher Nicholas Urbano, with violations of the Pennsylvania Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement arising out of Respondent's conviction of criminal contempt in violation of 42 Pa.C.S. § 4132 and his separate representation of a client. Respondent filed an Answer to Petition for Discipline on November 3, 2021.

Following a prehearing conference on January 27, 2022, a District IV Hearing Committee (“Committee”) held a disciplinary hearing on March 22 and March 23, 2022. Petitioner offered 17 exhibits, which were admitted into evidence. Petitioner called four witnesses, after which it rested its case. Respondent appeared pro so, testified on his own behalf, called no other witnesses, and offered no exhibits. After the Committee made a *prima facie* finding of at least one violation of the rules, the matter proceeded to the dispositional phase. After the hearing was concluded, Petitioner submitted an additional exhibit.

On May 16, 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 one year and one day. Respondent did not file a post-hearing brief.

By Report filed on September 12, 2022, the Committee concluded that Petitioner met its burden of proof as to the rule violations charged in the Petition for Discipline in Charge I, relating to the criminal conviction, and further concluded that Petitioner did not meet its burden of proof as to the rule violations charged in Charge II of the Petition, relating to Respondent’s representation of his client. The Committee 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. 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.

2. Respondent is Christopher Nicholas Urbano, born in 1976 and admitted to practice law in the Commonwealth of Pennsylvania on November 5, 2003.

3. Respondent's attorney registration mailing address is 500 Grant Street, Suite 2900, Pittsburgh, PA 15219. Respondent is on active license status.

4. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

5. Respondent has no record of prior discipline.

CHARGE I: THE CRIMINAL CONTEMPT FINDING
BY JUDGE COSTANZO

6. Respondent was counsel of record for Nicholas James Murphy in two criminal matters before the Court of Common Pleas of Washington County at case docket numbers CP-63-CR-000723-2017 and CP-63-CR-002906-2017. Judge Valerie Costanzo of the Court of Common Pleas of Washington County presided. PE 1, PE 4; N.T. 121.

7. Respondent, on behalf of Mr. Murphy, requested a jury trial for both cases. PE 4.

8. Jury selection was scheduled for March 19, 2018. PE 1, PE 3.

9. On January 30, 2018, Judge Costanzo entered a Case Management Order (CMO) for a final pre-trial conference to be held on March 8, 2018. PE 1; N.T. 124.

10. In addition to scheduling the conference, the clear and unambiguous language of the CMO, set forth in bold type face, read "Defendant shall be present at the Final Pre-Trial Conference. Defendant's failure to appear shall result in the issuance of a Bench Warrant." PE 1.

11. On the morning of March 8, 2018, Washington County Sheriff's Deputies transported Respondent's client, Mr. Murphy, to Judge Costanzo's courtroom from the correctional facility for the scheduled pre-trial conference. PE 3; N.T. 126.

12. When the Court convened the session and called the case, all parties and counsel except Respondent were present in Judge Costanzo's courtroom. N.T. 125.

13. Judge Costanzo inquired of Mr. Murphy if he knew of Respondent's whereabouts or had heard from Respondent. Mr. Murphy told Judge Costanzo that he did not know of Respondent's whereabouts and had not communicated with him for some time. N.T. 128.

14. Mr. Murphy's case was put to the end of the Court's list for the morning of March 8, 2018, in an attempt to give Respondent an opportunity to appear or communicate with Judge Costanzo's chambers. N.T. 126.

15. At the end of the Court's March 8, 2018, morning docket, Mr. Murphy's case was recalled, and Respondent had:

(a) failed to appear for the scheduled pre-trial conference;

(b) not communicated with the Court the day of the pre-trial conference that he would not, or could not attend; and,

(c) never communicated to the Court, prior to the scheduled pre-trial conference, why he could not attend the pre-trial conference on March 8, 2018.

PE 4

16. As a result of Respondent's non-appearance at the March 8, 2018, pre-trial conference:

(a) Mr. Murphy was remanded back to the custody of the Washington County Sheriff and returned to the Washington County Prison; and,

(b) Judge Costanzo scheduled a hearing for March 22, 2018, to determine whether Respondent should be held in criminal contempt for his non-compliance with the January 30, 2018 CMO, and nonappearance at the March 8, 2018, pre-trial conference. PE 3, PE 4; N.T.136.

17. The hearing on the contempt citation was assigned a new case docket number of CP-63-MD-0000318-2018. PE 3.

18. In order to address the contempt matter, Mr. Murphy's scheduled jury selection and jury trial, then listed for March 19, 2018, was postponed by the Court until the May criminal trial term on a date to be determined by the Court. PE 4.

19. On March 22, 2018, Judge Costanzo convened a criminal contempt hearing at which Respondent was present and represented by counsel. PE 3.

20. At the March 22, 2018 hearing, Respondent presented no evidence that he had been involved in an emergency situation or had other in-court commitments at the

same time as the scheduled pre-trial conference, which could have explained his non-appearance on March 8, 2018. PE 3, PE 4; N.T. 159, 164.

21. When he addressed the Court on March 22, 2018, Respondent:

- (a) offered his sincere apologies;
- (b) initially tried to explain that he had not seen the CMO and that a staff person in his office placed it in the file;
- (c) later testified he had "noticed" the deadline dates in the CMO;
- (d) testified he was under the impression he was not required to appear for the pre-trial conference because he was of the opinion that after the last meeting with the Court there were no further pre-trial matters to discuss;
- (e) did not think extra *voir dire* questions were necessary as he was already aware of the dates;
- (f) attributed his failure to attend the pre-trial conference to his having to manage too large of a caseload and attend too many court dates as a sole practitioner;
- (g) acknowledged that, in November of 2017, when Mr. Murphy's case was on the docket of Judge Lucas, Respondent had also failed to appear for a scheduled conference, for which Judge Lucas set a contempt hearing; and, after listening to Respondent's reasons and apologies, Judge Lucas discharged the matter and did not hold Respondent in contempt;¹ and,

¹ This matter was referenced by Judge Costanzo in her Rule 1925(a) opinion to the Superior Court on Respondent's appeal of his criminal contempt conviction.

(h) further explained that although he had hired new staff and adopted new computer case management systems since he missed the November 30, 2017 conference before Judge Lucas, it had taken a long time to integrate both the staff and systems.

PE 3, PE 18.

22. Following the hearing, Judge Costanzo determined the Commonwealth had satisfied its burden of proof, and found Respondent guilty of criminal contempt, in violation of 42 Pa.C.S § 4132. PE 3(a), PE 4.

24. Respondent was immediately sentenced to pay a fine of \$200, and the Court advised him, on the record, of his appellate rights. PE 3(a). Respondent filed a timely Notice of Appeal to the Superior Court of Pennsylvania. PE 6.

25. The appeal to the Superior Court of Pennsylvania was assigned case docket number 569 WDA 2018. PE 6. In response to Respondent's appeal, Judge Costanzo wrote a Rule 1925(a) Opinion explaining her rationale and her conclusions for finding Respondent guilty of direct criminal contempt. PE 4.

26. In support of the Court finding Respondent guilty of direct criminal contempt, Judge Costanzo cited to the following factors:

(a) Respondent's history of failing to appear at scheduled hearings, once before Judge Lucas of Washington County in the same Murphy case and earlier in a separate, unrelated matter in Allegheny County; (PE 5; N.T. 132)

(b) Respondent's prior failure to appear before Judge Lucas was for very similar reasons; and, although Judge Lucas did not hold him in contempt, Respondent's repeated behavior exhibited to the Court that Respondent

did not learn from his past experience with Judge Lucas; (PE 4; N.T. 132-133)

(c) the Court's determination that Respondent's statements of allocution were not sincere as they were the same or similar to statements Respondent had made to Judge Lucas just three months earlier; (PE 4; N.T. 132-133)

(d) during the March 22, 2018 Hearing, the Court noted that the CMO purposely included two sentences written in bold so that this particular portion of the Court's CMO "jumps out at the reader"; (PE 3, PE 4; N.T. 123)

(e) by the language of the CMO alone, Respondent should have been reasonably aware that his failure to appear was wrongful; (PE 4)

(f) as Respondent had been aware of other dates in the CMO, his excuses and/or explanations were not credible; (N.T. 132-133) and,

(g) Respondent's misconduct obstructed the administration of justice as Mr. Murphy's jury trial was rescheduled to the Court's May trial term and Defendant Murphy was remanded back to the custody of the Sheriff for transport back to the correctional facility. PE 4; N.T. 136.

28. The Court's Rule 1925(a) Opinion, filed with the Superior Court, asserted that the following, among other reasons, were why the Superior Court should affirm the conviction:

- (a) the January 30, 2018, CMO was definite, clear and specific;
- (b) Respondent had notice of the Order;
- (c) Respondent's conduct was committed with the intent to obstruct

justice necessitating the Court's rescheduling of jury selection and a jury trial;

(d) Respondent was required to attend the pre-trial conference;

Respondent willfully chose not to appear at 9:30 the morning of March 8, 2018, for the scheduled pre-trial conference; and,

(e) even if the Commonwealth had not established the requisite intent for criminal contempt under § 4132(2), the Commonwealth proved Respondent had a reckless disregard for the directions of the Court.

PE 4.

29. By Memorandum Opinion dated May 8, 2019, the Superior Court affirmed the trial court's decision by specifically incorporating, and basing its affirmance on, Judge Costanzo's June 12, 2018 Opinion. PE 7.

30. Respondent filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania, which was assigned a case docket number of 169 WAL 2019. PE 8.

31. By *Per Curiam* Order dated October 1, 2019, the Supreme Court of Pennsylvania denied Respondent's Petition for Allowance of Appeal. PE 8.

32. Respondent paid the assessed \$200 fine in full.

33. Through his counsel, Respondent timely notified the Office of Disciplinary Counsel of his conviction. PE 9.

34. Respondent's failure to appear for a scheduled pre-trial conference disrupted the judicial process of Judge Costanzo's courtroom, caused Respondent's client's trial to be postponed and rescheduled, and necessitated the Court to convene a contempt hearing, which Judge Costanzo described as unnecessary and a waste of the Court's resources. N.T. 129, 136.

CHARGE II: THE INEFFECTIVE ASSISTANCE OF
COUNSEL FINDING BY JUDGE IGNELZI

35. By a Criminal Information filed on November 5, 2015 (Amended on November 20, 2015), Rosendo Homelio Perez-Scott was charged with one count each of Aggravated Indecent Assault Without Consent, Indecent Assault Without Consent, Criminal Trespass, and two counts of Harassment. (The charge of Aggravated Indecent Assault Without Consent replaced, with leave of Court, a charge of Involuntary Deviate Sexual Intercourse.) PE 11.

38. The Criminal Information was filed in the Court of Common Pleas of Allegheny County at case docket number CP-02-CR-0011957- 2015. PE 11.

39. On November 19, 2015, Respondent entered his appearance as counsel for Mr. Perez-Scott. PE 11.

40. On October 27, 2016, the case proceeded to a bench trial before Allegheny County Court of Common Pleas Judge Philip A. Ignelzi. PE 11, PE 12.

41. At the conclusion of the trial, Mr. Perez-Scott was found guilty on the charges of Indecent Assault Without Consent, Aggravated Indecent Assault Without Consent, and two Counts of Harassment. Mr. Perez-Scott was found not guilty of Criminal Trespass. PE 11, PE 12.

42. On January 25, 2017, Mr. Perez- Scott was sentenced to serve a 2 to 5-year term of incarceration at a State Correctional Facility, followed by 5 years of probation on the charge of Aggravated Indecent Assault Without Consent. PE 11, PE 12.

43. No further penalty was imposed on the remaining counts. PE 11, PE 12.

44. On February 6, 2017, Mr. Perez-Scott's successor counsel, Thomas N. Farrell, Esquire filed a timely Post-Sentence Motion, and Brief in support thereof, on

behalf of Mr. Perez-Scott. PE 12.

45. The Post-Sentence Motion alleged that Respondent failed to provide Mr. Perez-Scott with effective assistance of counsel when Respondent:

- (a) improperly advised Mr. Perez-Scott that he should not testify based upon his limited English proficiency;
- (b) failed to properly prepare Mr. Perez-Scott to testify; and,
- (c) failed to advise Mr. Perez-Scott that the victim's testimony alone, if believed by the fact finder in the non-jury trial, was sufficient to convict him.

PE 12.

46. Respondent was served with a copy of the Post-Sentence Motion. PE 12.

47. On May 26, 2017, a hearing was held before Judge Ignelzi on the Post-Sentence Motion. PE 13.

48. During the hearing, Respondent was:

- (a) called as a witness;
- (b) sworn in; and,
- (c) questioned and provided testimony in response to the allegations contained in the Motion.

PE 13.

49. On July 3, 2017, the Court's findings and decision were placed on the record in open court. PE 14.

50. In those findings, the Court, among other things, determined that during the May 26, 2017 Hearing, Respondent's testimony was vague, nonspecific, incredible, and unworthy of belief. PE 14; N.T. 42-44.

51. The Court pointed to Respondent's failure to:

- (a) properly advise Mr. Perez-Scott that the testimony of the victim alone, if believed by the fact finder, would be sufficient to find him guilty;
- (b) take necessary steps to preserve physical evidence of the victim, namely the shorts she wore;
- (c) call witnesses to establish and demonstrate to the Court as the fact finder that Mr. Perez-Scott did not speak or clearly understand English, and was not proficient in the language even though his defense at trial was that a language barrier caused miscommunication between Mr. Perez-Scott and the victim; and,
- (d) provide competent professional advice to Mr. Perez-Scott regarding whether he should testify, his failure to properly prepare him to testify and his misguided advice that the Court would not believe him because he would be using an interpreter.

PE 14.

53. Following the hearing on the Post-Sentence Motion, the Court determined that Respondent did not:

- (a) competently represent Mr. Perez-Scott;
- (b) adequately communicate with Mr. Perez-Scott; and,
- (c) provide Mr. Perez-Scott with information upon which he could make an informed decision.

PE 14, PE 15

54. The Court Ordered that Mr. Perez-Scott receive a new trial. PE 15.

55. Thereafter, the January 25, 2017 sentence imposed on Mr. Perez-Scott was vacated. PE 15.

56. On February 16, 2018, Mr. Perez-Scott was retried before a jury and was found guilty of Harassment. He was found not guilty of the felony count of Aggravated Indecent Assault Without Consent, the misdemeanor count of Indecent Assault Without Consent of Other, and the summary count of Criminal Trespass/Simple Trespasser. PE 11, PE 16.

57. Immediately after the jury verdict, Mr. Perez-Scott was sentenced to time served plus payment of all fees and costs. PE 11.

OTHER FINDINGS

58. Petitioner's witnesses credibly testified at the disciplinary hearing.

59. Respondent credibly testified at the disciplinary hearing.

60. As to the contempt conviction, Respondent testified that he genuinely did not intend to not appear at the scheduled pretrial conference. N.T. 311.

61. Respondent testified that he is very sorry for what happened in the contempt matter. N.T. 302.

62. Respondent acknowledged that his office received the scheduling order and although he believed he did not see it, he acknowledged he was responsible. N.T. 316, 342-343.

63. Since the contempt matter, Respondent has not had other incidents of being late or missing dates before Judge Costanzo. N.T. 134.

64. As to the Perez-Scott matter, Respondent testified that there was preparation and meetings with the client as well as a strategy for his client's trial and "[w]e made the best call we could." N.T. 260, 262-266, 268-269, 351.

65. Respondent apologized to the Committee for some of his comments at the disciplinary hearing and explained that he sometimes makes comments that are a “little extreme.” N.T. 350.

66. In mitigation, Respondent testified that he has implemented procedures and policies in his office to prevent the occurrences of the issues present in this matter and his impression is that things have been much better. N.T. 368.

67. Respondent testified that he has an electronic calendar system that he identified as “My Case” that he has been using for a few years. N.T. 369. This system was not in place during his issues with Judge Ignelzi and Judge Lucas, but may have been in use during the issue with Judge Costanzo. Respondent testified that he and his staff have “really figured it out in the past year and a half.” N.T. 372, 373.

68. Respondent testified that clients can make contact through the calendar system, and he has a staff person at his office who helps with the calendar system. N.T. 368, 369.

69. Respondent further testified that he and his staff watch for all dates that come in the mail and monitor the court docketing system for dates. Respondent writes down dates while in court and takes photos of the dates in order to put the information on the calendar system. N.T. 369, 370.

70. Respondent reduced his caseload and handles all matters himself, and no longer requests other attorneys to cover for him. This has alleviated the issue of Respondent being scheduled in multiple places at the same time. N.T. 368-369.

71. There is no evidence of record that Respondent has engaged in contempt of court since his conviction in 2018.

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 8.4(b) - It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness, or fitness as lawyer in other respects.
2. RPC 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.
3. Pa.R.D.E. 203(b)(1) - Conviction of a crime shall also be grounds for discipline.

Petitioner failed to meet its burden of proof by clear and satisfactory evidence that Respondent violated the following rules:

1. RPC 1.1 - A lawyer shall provide competent representation to a client.
2. RPC 1.4(b) - A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

IV. DISCUSSION

This matter commenced with a Petition for Discipline alleging Respondent's violation of the Pennsylvania Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement related to two separate matters: Respondent's conviction of criminal contempt in violation of 42 Pa.C.S. § 4132; and his conduct in the representation

of Mr. Perez-Scott that resulted in a finding by Judge Ignelzi that Respondent engaged in ineffective assistance of counsel. Petitioner bears the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. *Office of Disciplinary Counsel v. John T. Grigsby, III*, 425 A.2d 730, 732 (Pa. 1981). After considering the evidence, the Committee concluded that Petitioner met its burden of proof as to the first charge involving the criminal conviction, but failed to meet its burden as to Respondent's alleged violation of the rules in his representation of Mr. Perez-Scott. The Committee recommended that Respondent be suspended for a period of one year and one day. Neither party objected to the Committee's Report and recommendation; nevertheless, this Board undertakes an independent review of the record under Pa.R.D.E. 208(d).

From the evidence adduced at the hearing, we agree with the Committee that sufficient support exists to establish by clear and satisfactory evidence that Respondent's conviction for criminal contempt violated Pennsylvania Rule of Disciplinary Enforcement 203(b)(1) and Rules of Professional Conduct 8.4(b) and 8.4(d). Respondent's conviction is an independent basis for the imposition of discipline under Pa.R.D.E. 203(b)(1). The court records from Respondent's conviction in the Court of Common Pleas of Washington County constitute conclusive evidence of his commission of the crime of criminal contempt. *See, Office of Disciplinary Counsel v. Anthony C. Cappuccio*, 48 A.3d 1231 (Pa. 2012). Respondent by his Answer to the Petition for Discipline and through his testimony to the Committee acknowledged and admitted that he could not dispute the averments in the Petition for Discipline.

As to the underlying facts of his conviction, Respondent, as counsel of record to Nicholas Murphy, failed to appear at a final pre-trial conference scheduled in

the Murphy matter on March 8, 2018, before Washington County Court of Common Pleas Judge Valerie Costanzo. Due to Respondent's failure to appear, and the resultant inability to move forward in the matter, the court rescheduled Mr. Murphy's jury selection and jury trial, listed in March 2018, until the May 2018 term. As a further consequence of Respondent's failure to appear, Judge Costanzo held a hearing to determine whether to hold Respondent in contempt. Respondent appeared with counsel for the hearing, after which Judge Costanzo held Respondent in criminal contempt. In support of finding Respondent guilty, Judge Costanzo cited Respondent's prior instances of failing to appear at scheduled hearings, once in 2017 before Washington County Court of Common Pleas Judge Lucas in the same Murphy case and once in a separate, unrelated matter in 2018 before Allegheny County Court of Common Pleas Judge Ignelzi.² Judge Costanzo further found that Respondent was not sincere in his explanations and should have been aware of the dates when he was required to appear, so his excuses were not credible. Respondent unsuccessfully appealed the trial court's decision and ultimately paid the assessed \$200.00 fine in full.

Respondent's conduct of committing a crime violated RPC 8.4(b), as that criminal act reflected adversely on his honesty, trustworthiness, or fitness as a lawyer in other respects. Respondent's failure to appear for the scheduled pre-trial conference prejudiced the administration of justice in violation of RPC 8.4(d), as his nonappearance disrupted the judicial process of Judge Costanzo's courtroom, caused Respondent's client's trial to be postponed and rescheduled for two months later, and necessitated the

² As to the 2017 Washington County matter, following a hearing, Judge Lucas did not hold Respondent in contempt. As to the 2018 Allegheny County matter, Judge Ignelzi found Respondent in criminal contempt and later vacated that finding in favor of a finding of civil contempt.

court to convene a contempt hearing, which Judge Costanzo described as a waste of the court's resources.

As to the charges related to Judge Ignelzi's finding that Respondent was ineffective in his representation of Mr. Perez-Scott, we concur with the Committee's well-reasoned conclusion that Petitioner did not meet its burden by clear and satisfactory evidence that Respondent violated RPC 1.1 and RPC 1.4(b). In post-sentence proceedings, Judge Ignelzi found that Respondent's overall representation of his client in the criminal matter warranted a new trial. Judge Ignelzi credibly testified at the disciplinary hearing as to his findings, and while we in no way question his findings, we agree with the Committee that as to a determination of whether Respondent's actions violated the Rules of Professional Conduct, a majority of the decisions made by Respondent in his representation of Mr. Perez-Scott may be attributed to Respondent's trial strategy. On the record before us, we cannot conclude that Respondent's trial decisions and handling of the Perez-Scott matter violated RPC 1.1 and RPC 1.4.³

Having concluded that Respondent engaged in unethical conduct based on his conviction for criminal contempt, the Board's task is to determine the degree of discipline to be imposed, 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), and to "examine the underlying facts involved in the criminal charge to weigh the impact of the conviction upon the measure of discipline." *Office of Disciplinary Counsel v. Frank Troback*, 383 A.2d 952, 953 (Pa. 1978). Despite the fact-intensive nature of the

³ Petitioner did not take exception to the Committee's conclusion that it did not meet its burden of proof in the Perez-Scott matter.

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).

Before the Board is the Committee’s recommendation for a one year and one day period of suspension, which recommendation is identical to that advocated by Petitioner in its post-hearing brief to the Committee.⁴ With respect for the Committee’s thoughtful Report, upon this record and for the following reasons, we recommend that Respondent be suspended for a period of six months.

Our decision to deviate from the Committee’s recommended one year and one day term of suspension lies in our analysis of the facts of this matter and the case precedent. The discipline imposed in prior matters involving conviction of criminal contempt or sanctions for violating court orders ranges from public reprimand to suspension for more than one year. Precedent reveals that greater discipline is reserved for attorneys who engage in multiple instances of contempt or who commit unrelated misconduct coupled with the criminal contempt, which acts warrant removing the attorney’s license for a period that requires the attorney to undergo a formal reinstatement proceeding.

The Committee cited two matters in its Report that resulted in suspension for one year and one day. We examine these cases, as well as other cases of a similar nature, to understand the type of misconduct that warrants a license suspension of one year and one day. In the matter of *Office of Disciplinary Counsel v. Michael Elias Stosic*, No. 65 DB 2015 (D. Bd. Rpt. 6/23/2016) (S. Ct. Order 9/14/2016), cited by the Committee,

⁴ Petitioner’s recommendation in its brief for a one year and one day suspension was based on its position that Respondent violated ethical rules in both the criminal conviction matter and the ineffective assistance of counsel matter.

the Court suspended Stosic for one year and one day. Therein, Stosic was held in contempt on three separate occasions. In the January 2013 contempt matter, Stosic failed to appear for three court listings on behalf of a juvenile client in custody. In the May 2012 contempt matter, Stosic failed to appear for his client's criminal trial. In the January 2012 contempt matter, Stosic was tardy in his appearance before the court. In addition to his contempt, which prejudiced the administration of justice, Stosic engaged in misconduct in five separate client matters that involved his failure to communicate with clients, failure to provide clients with competent and diligent representation, and providing false and misleading information about his professional liability coverage on his attorney registration forms on five separate occasions. The Board found that Stosic shrugged off his contempt convictions as insignificant and a "cost of conducting business" (D. Bd. Rpt. at p. 23), and failed to demonstrate that the disorganization that he claimed contributed to his contempt citations and other misconduct had been addressed by him and that he had instituted procedures to safeguard against similar misconduct in the future.

In *Office of Disciplinary Counsel v. Kevin Mark Wray*, 19 DB 2017 (S. Ct. Order 7/6/2017) (consent discipline), cited by the Committee, Wray was convicted of criminal contempt after he failed to appear for jury selection and trial in his client's criminal matter and subsequently failed to report his conviction to Office of Disciplinary Counsel. In addition to his criminal conviction, Wray engaged in misconduct in six separate client matters involving serial neglect, failing to communicate, retaining unearned fees, failing to take steps to remedy his neglect, and failing to respond to disciplinary authorities. In aggravation, Wray had a history of discipline consisting of an informal admonition. On these facts, the Court granted the Joint Petition in Support of Discipline on Consent and imposed a one year and one day suspension.

Other disciplinary matters predicated on criminal contempt convictions and separate client misconduct have resulted in one year and one day periods of suspension. In the matter of *Office of Disciplinary Counsel v. Benjamin Gerjoy Perez*, No. 15 DB 2017 (D. Bd. Rpt. 3/1/2019) (S. Ct. Order 5/8/2019), the Court suspended Perez for one year and one day for his conduct in two matters. In one matter, Perez was convicted of direct criminal contempt after he left the courtroom and refused to represent his client at the client's scheduled preliminary hearing. Perez failed to notify Office of Disciplinary Counsel of his conviction. In another matter, Perez was scheduled to appear before the Board for a public reprimand to address his misconduct in four client matters and failed to appear. In the matter of *Office of Disciplinary Counsel v. Joseph P. Maher*, No. 4 DB 2018 (D. Bd. Rpt. 12/14/2018) (S. Ct. Order 2/25/2019), Maher was convicted of criminal contempt on two occasions: once for failing to appear for a scheduled hearing and once for disregarding a court order. In the second contempt matter, Maher failed to pay the imposed \$500 fine. Maher failed to report either conviction to Office of Disciplinary Counsel. The Board considered in aggravation that Maher had previous discipline consisting of two informal admonitions, one of which was imposed based on Maher's failure to appear on behalf of his client at a scheduled criminal trial. Further, the Board found that Maher lacked contrition and failed to take responsibility for his conduct. Based on this record, the Court adopted the Board's recommendation and suspended Maher for one year and one day.

Other matters that involved an attorney's contempt of court have been dealt with in a less severe fashion. The attorney in *Office of Disciplinary Counsel v. James T. Marsh*, No. 52 DB 2017 (D. Bd. Order 4/24/2017) received a public reprimand for his misconduct in two matters. In the first matter, Marsh appeared at jury selection with his

client and made misrepresentations to the judge and the assistant district attorney that his client was on active duty and permitted to wear his military uniform, when in fact, the client was not on active duty. Because the jurors saw the client in his military uniform, the judge dismissed all of the jurors and a new jury had to be selected, which caused a delay in the trial. Marsh was found guilty of direct criminal contempt and fined \$500. In the second matter, Marsh engaged in misleading conduct when he forwarded to a former client a civil complaint, which had not been filed in court, in an attempt to deceive the former client into believing that Marsh had initiated a civil action for unpaid fees. Marsh had no record of discipline. On these facts, the Board determined that a public reprimand was appropriate discipline.

The Court imposed a public censure in the matter of *Office of Disciplinary Counsel v. Marc Alan Weinberg*, No. 30 DB 2011 (S. Ct. Order 7/12/2011) (consent discipline), as a result of Weinberg's sanction and fine of \$1,000 by the Fulton County Court of Common Pleas for violating a court order requiring him to obtain leave of court if he were going to cancel a deposition. Weinberg continuously failed to appear at scheduled depositions. In aggravation, Weinberg had a prior informal admonition. In *Office of Disciplinary Counsel v. Gary Scott Silver*, Nos. 56 DB and 178 DB 2003 (D. Bd. Rpt. 1/7/2005) (S. Ct. Order 4/6/2005), the Court imposed a suspension for six months followed by twelve months of probation with a practice monitor on Silver, who was found guilty of criminal contempt for failing to comply with three court orders, and in a separate matter, misused client funds.

Upon review of the precedent, we conclude that the cited matters imposing a one year and one day suspension are not analogous to the instant matter. The suspensions imposed in the cited cases are based on more serious facts and compelling

aggravating circumstances. Here, the sole matter before us is Respondent's conviction of one instance of criminal contempt, after which he satisfied the fine imposed by the court and timely reported his conviction to Office of Disciplinary Counsel. While the record demonstrated that prior to the incident that resulted in the criminal conviction, Respondent had a history of nonappearance before Judge Lucas and Judge Ignelzi, he had not been found guilty of criminal contempt related to those nonappearances. In mitigation, Respondent has no record of prior discipline since his admission to practice in 2003. He presented evidence that he took steps to alleviate his practice problems and safeguard his clients. For instance, Respondent utilizes an online calendar system with backup safeguards, has reduced his caseload in order to avoid scheduling conflicts, and no longer relies on other attorneys to cover for him. Respondent credibly conveyed that he did not intend to not appear before Judge Costanzo, and acknowledged his responsibility for his acts which resulted in his conviction of criminal contempt. We also note that Respondent has remained on active status since his criminal conviction in 2018 and this record contains no evidence of further similar misconduct.

We compare the facts of the instant matter to the cited cases imposing a one year and one day suspension and find that unlike the respondents in *Stosic* and *Maher*, the instant Respondent was not convicted of more than one incident of criminal contempt, though he had a history with the courts of nonappearance for scheduled proceedings. Unlike in *Wray*, *Perez*, and *Maher*, Respondent timely reported his criminal conviction to disciplinary authorities. As opposed to *Maher*, the instant Respondent satisfied his fine in full. Unlike the respondents in *Stosic*, *Wray*, *Perez*, and *Maher*, Respondent did not engage in additional client misconduct. And unlike in *Wray* and *Maher*, the instant Respondent does not have a history of discipline. In *Stosic*, the Board

found in aggravation that the respondent had not taken steps to remediate the conduct that led to the disciplinary issues. Here, Respondent put forth evidence that he has taken such steps. The misconduct in *Stosic*, *Wray*, *Perez*, and *Maher* is simply much more serious than the misconduct present in the case at bar.

The goals of the attorney disciplinary system include protecting the public from unfit attorneys, maintaining the integrity of the bar, and upholding respect for the legal system. *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986). Here, the decisional law supports a suspension for less than one year and one day. On this record, the objectives of the disciplinary system are served by imposing a six month term of suspension, which is consistent with the range of discipline imposed in prior similar matters.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Christopher Nicholas Urbano, be Suspended for six months from the practice of law in this Commonwealth.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

Hon. Robert L. Repard, Member

Date: 2/1/2023

Members Dee and Rafferty recused.