

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2745 Disciplinary Docket No. 3
Petitioner : No. 147 DB 2019
v. : Attorney Registration 21317
FRANK C. ARCURI, : (York County)
Respondent :

ORDER

PER CURIAM

AND NOW, this 6th day of October, 2020, upon consideration of the Report and Recommendation of the Disciplinary Board, Frank C. Arcuri is suspended from the Bar of this Commonwealth for one year and one day, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 10/06/2020

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL | : | No. 147 DB 2019 |
| Petitioner | : | |
| | : | |
| v. | : | Attorney Registration No. 21317 |
| | : | |
| FRANK C. ARCURI | : | |
| Respondent | : | (York 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 August 9, 2019, Petitioner, Office of Disciplinary Counsel, charged Respondent, Frank C. Arcuri, with violations of the Rules of Professional Conduct in multiple client matters. Respondent filed an Answer to Petition on September 17, 2019.

Following a prehearing conference on October 11, 2019, a District III Hearing Committee (“Committee”) conducted a disciplinary hearing on December 5, 2019. At the hearing, Petitioner presented Exhibits ODC-1 through ODC-12.

Respondent, who was represented by counsel, presented exhibits R-1 and R-2, testified on his own behalf, and presented the testimony of four additional witnesses.

On January 22, 2020, Petitioner filed a Brief to the Committee and requested that the Committee recommend to the Board that Respondent be suspended for one year and one day.

On February 6, 2020, Respondent filed a Brief to the Committee and requested that the Committee recommend to the Board that he be publicly censured, or in the alternative, a suspension be imposed for less than one year and one day, with all or part of the suspension stayed.

By Report filed on April 22, 2020, the Committee concluded that Respondent violated Rules of Professional Conduct 1.1, 1.3, and 8.4(d) and recommended that he be suspended for one year and one day.

The parties did not file exceptions to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on July 23, 2020.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62625, Harrisburg, PA 17106-2625, is vested pursuant to Pennsylvania Rule of Disciplinary Enforcement 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute

all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Frank C. Arcuri, born in 1948 and admitted to practice law in the Commonwealth of Pennsylvania in 1975. When this proceeding commenced, Respondent's registered address was in York, Pennsylvania. Respondent's current registered address is P.O. Box 384, Brigantine, New Jersey 08203. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a prior history of discipline:

a. One year suspension on consent imposed on April 7, 2006, for neglecting court-appointed criminal cases and criminal matters on appeal - reinstated to active status on June 6, 2007;

b. Private Reprimand in 2005 for failing to keep the client informed of the status of a matter and failing to explain the matter to the client, dividing a fee with a lawyer not in Respondent's firm without advising the client, and failing to return the client's file and refund the unearned fee within a reasonable time;

c. Private Reprimand in 2004 for failing to act with reasonable diligence and promptness, failing to keep the client informed of the status of the matter, and failing to have a written fee agreement; and

d. Private Reprimand in 1998 for misconduct in three separate matters involving court-appointed criminal matters.

The Saltzer Matter

4. In or about October 2015, Loriann Saltzer retained Respondent to file divorce proceedings. Pet. for Disc., at ¶ 4; Stipulations, at ¶ 5.

5. On or about October 15, 2015, Ms. Saltzer executed the Divorce Complaint, which included an equitable claim; however, Respondent did not file the Divorce Complaint until December 10, 2015. ***Loriann Saltzer v. Raymond Richard Hammaker, Jr.***, 2015-FC-001863-02 (York C.P.). Pet. for Disc., at ¶ 5, Stipulations, at ¶ 6; ODC-2.

6. On or about August 27, 2016, the parties entered into a Partial Marital Settlement Agreement (“PMSA”). Pet. for Disc., at ¶ 11; Stipulations, at ¶ 7; ODC-3.

7. Therein, the parties agreed that “they ha[d] not yet reached an agreement as to an equitable distribution of the equity and debt associated with the marital residence” and “ha[d] not fully and completely disclosed to each other all information of a financial nature and unresolved matters between the parties [to] include: the equitable distribution of other marital debts and property including the marital residence, bank accounts, investment accounts, pension or retirement accounts, etc., and the parties’ claims for alimony pendent lite, alimony, counsel fees, and court costs.” Pet. for Disc., at ¶ 11; Stipulations, at ¶ 8; ODC-3.

8. The PMSA recognized that the parties were jointly listed as borrowers on a mortgage with Fulton Bank dated November 14, 2008, in the amount of \$180,000.00, which was secured by the marital home. Stipulations, at ¶ 9; ODC-3.

9. The parties explicitly agreed that the “Partial Agreement and all of its provisions shall be incorporated into a decree of divorce in one of the aforementioned divorce actions,¹ either directly or by reference.” Pet. for Disc., at ¶ 12; Stipulations, at ¶ 10; ODC-3.

10. On or about May 15, 2017, the PMSA was filed of record in the divorce action. Pet. for Disc., at ¶ 12; Stipulations, at ¶ 11; ODC-2.

11. On or about November 21, 2017, Respondent filed:

a. an Affidavit of Service of the 3301(d) Affidavit and Counter Affidavit and the Notice of Intent to Request Entry of Divorce Decree, listing a service date of October 4, 2017;

b. an Amended Affidavit of Service for the Divorce Complaint, stating that the Complaint was personally served on the defendant on January 11, 2017; and

c. a Praeclipe to Transmit Record, wherein he stated that no economic claims were raised by either party.

Stipulations, at ¶ 12; ODC-2.

12. By letter dated November 29, 2017, the Case Review Officer notified Respondent that the following corrections were required prior to the entry of a divorce decree:

¹ Mr. Saltzer had also filed a divorce action in Cumberland County.

- The Divorce Complaint does not contain language as required under Pa.R.C.P. 1920.12(6) regarding grounds (i.e., irretrievably broken) and 1920.72 (a).
- The Amended Affidavit of Service (of the Divorce Complaint) filed on November 21, 2017 contains a date of service a year later than the complaint, which does not meet the requirements of service of the Divorce Complaint.
- The Affidavit of Service of the 3301(d) Affidavit, Counter Affidavit and Notice of Intent states service was made on October 4, 2017 but the documents served were not filed of record and available for service until October 5, 2017.
- The Notice of Intention to Request Entry of a 3301(d) Divorce cannot be served until 20 days after service of the 3301(d) Affidavit and Counter Affidavit.
- The Notice of Intention to Request Entry of a 3301(d) Divorce does not contain a Proposed Praecept to Transmit Record as required by Pa.R.C.P. 1920.42(d) (1).
- Paragraph #4 of the Praecept to Transmit Record has an incorrect date of service of the Plaintiff's Affidavit of Separation (considering the date given in the Affidavit of Service as listed above).
- Paragraph #5 of the Praecept to Transmit Record states no economic claims were raised, which is incorrect. They were raised in the Divorce Complaint.

Pet. for Disc., at ¶ 6; Stipulations, at ¶ 13; ODC-2.

13. On or about December 8, 2017, Respondent filed:

- a. an Amended Divorce Complaint, which contained a Notice of Intent to Withdraw Economic Claims; and
- b. a Second Amended Affidavit of Service (of the Divorce Complaint), listing a service date of January 11, 2015.

Stipulations, at ¶ 15; ODC-2.

14. Respondent did not file an Affidavit of Service for the Amended Divorce Complaint. Pet. for Disc., at ¶ 10; Stipulations, at ¶ 15; ODC-2.

15. On or about January 3, 2018, Respondent filed a Praeclipe to Transmit Record,² wherein he stated that “economic claims were raised by either [sic] Plaintiff but withdrawn by motion.” Stipulations, at ¶ 16; ODC-2.

16. The following day, Respondent filed a Praeclipe to Withdraw Claims seeking the withdrawal of Ms. Saltzer’s claims for Equitable Distribution, Counsel Fees, Court Costs and Alimony, and an Affidavit of Service of the Praeclipe. Pet. for Disc., at ¶ 13; Stipulations, at ¶ 17; ODC-2.

17. By letter dated January 12, 2018, the Case Review Officer notified Respondent that the following corrections were required prior to the entry of a divorce decree:

- The Second Amended Affidavit of Service (of the Divorce Complaint) filed on December 8, 2017 contains a date of service prior to the filing date of the Complaint.³
- The Affidavit of Service of the 3301(d) Affidavit, Counter Affidavit and Notice of Intent states service was made on October 4, 2017 but the documents served were not filed of record and available for service until October 5, 2017. This has still not been corrected.
- The Notice of Intention to Request Entry of a 3301(d) Divorce filed December 8, 2017, does not contain a blank counter-affidavit as required by Pa.R.C.P. 1920.42(d)(1).
- There is no proof of service filed of the Notice of Intention to Request Entry of 3301(d) Divorce Decree.
- Paragraph #2 of the Praeclipe to Transmit Record has an incorrect date of service of the Divorce Complaint.
- Paragraph #4 of the Praeclipe to Transmit Record has an incorrect date of service of the 3301(d) Affidavit and Counter Affidavit, based on the Affidavit of Service currently filed (see above).

Pet. for Disc., at ¶6; Stipulations, at ¶18; ODC-2.

²This filing was in fact an Amended Praeclipe to Transmit Record.

³The Second Amended Affidavit of Service was for the original Divorce Complaint, not the Amended Divorce Complaint.

18. On or about January 18, 2018, Respondent filed:
- a. a Third Amended Affidavit of Service of Divorce Complaint, listing a service date of January 11, 2016;
 - b. an Affidavit of Service of Counter-Affidavit to Section 3301(d) and Notice of Intent to Transmit Record, listing a service date of December 8, 2017; and
 - c. an Amended Praecipe to Transmit Record,⁴ wherein Respondent again stated that economic claims were raised but removed by petition and failed to include the December 8 service date.

Stipulations, at ¶ 19; OCD-2.

19. By letter dated January 22, 2018, the Case Review Officer notified Respondent that the following corrections were required prior to the entry of a divorce decree:

The Affidavit of Service of the 3301(d) Affidavit, Counter Affidavit and Notice of Intent states service was made on October 4, 2017 but the documents served were not filed of record and available for service until October 5, 2017. This has still not been corrected.

Pet. for Disc., at ¶ 6; Stipulations, at ¶ 20; ODC-2.

20. The filing further stated, “Attempts to reach [Respondent] by phone (at both numbers previously provided) were unsuccessful as both mailboxes were full and no message could be left.” Stipulations, at ¶ 21.

⁴This filing was in fact a Second Amended Praecipe to Transmit Record.

21. On or about January 25, 2018, Respondent filed a Second Amended Praecipe to Transmit Record,⁵ which contained identical information and errors as in the Amended Praecipe to Transmit Record. *Id.* at ¶ 22; ODC-2.

22. By letter dated February 2, 2018, the Case Review Officer notified Respondent that the following corrections were required prior to the entry of a divorce decree:

The Affidavit of Service of the 3301(d) Affidavit, Counter Affidavit and Notice of Intent states service was made on October 4, 2017 but the documents served were not filed of record and available for service until October 5, 2017. This has still not been corrected.

Pet. for Disc. at ¶ 6; Stipulations, at ¶ 23; ODC-2.

23. On February 2, 2018, Respondent filed:

a. a Supplemental Affidavit of Service of Affidavit pursuant to 3301(d) and Counter Affidavit, listing a service date of October 5, 2017; and

b. a Third Supplemental Paecipe to Transmit Record,⁶ again stating that all economic claims had been removed by petition.

Stipulations, at ¶ 24; ODC-2.

24. On February 6, 2018, the Court entered a Divorce Decree. Stipulations, at ¶ 25; ODC-2.

25. The Divorce Decree made no mention of the PMSA or any of the information contained therein. Pet. for Disc., at ¶ 15; Stipulations, at ¶ 26.

26. By letter dated March 13, 2018, sent to Respondent's then-registered address, opposing counsel informed Respondent that, although Respondent's

⁵This filing was in fact a Third Amended Praecipe to Transmit Record.

⁶This filing was in fact a Fourth Amended Praecipe to Transmit Record.

Third Supplemental Praeclipe to Transmit Record alleged that there were no economic claims pending, it was obvious that there continued to be a significant number of economic claims as evidenced by the PMSA. Stipulations, at ¶ 27; ODC-4.

27. Opposing counsel further requested that Respondent provide information concerning the balance owed on the marital home mortgage and any other marital loans or debts for purposes of preparing an Inventory. Pet. for Disc. at ¶ 16; Stipulations at ¶ 28; ODC-4.

28. Respondent did not respond to this communication. Pet. for Disc., at ¶ 17; Stipulations, at ¶ 29.

29. On or about April 18, 2018, opposing counsel served a Request for Production of Documents on Respondent by first-class mail to his then-registered address. Stipulations, at ¶ 30; ODC-5.

30. Respondent did not respond to the Request for Production of Documents. Stipulations, at ¶ 31.

31. On or about May 21, 2018, opposing counsel filed a Motion to Open and/or Vacate Divorce Decree, wherein he claimed that Mr. Saltzer had never been properly served with numerous filings and, if he had been served with those filings, he would have objected to the entry of the Divorce Decree due to the unresolved economic claims. Pet. for Disc., at ¶ 18; Stipulations, at ¶ 32; ODC-6.

32. Opposing counsel served Respondent with the Motion to Open and/or Vacate Divorce Decree by first-class mail to his then-registered address. Stipulations, at ¶ 33; ODC-6.

33. On or about June 13, 2018, Respondent withdrew as counsel for Ms. Saltzer. Stipulations, at ¶ 34.

34. Following a hearing on the Motion to Open and/or Vacate Divorce Decree, by Order dated August 10, 2018, the Court struck the Divorce Decree, noting “there were some issues related to notice of the withdrawal of claims for equitable distribution.” Pet. for Disc., at ¶ 19; Stipulations, at ¶ 35; ODC-2.

35. Judge Kathleen Pendergast presided over Ms. Saltzer’s divorce matter and filed a complaint with ODC based on her concern with Respondent’s conduct in that and other divorce matters. Pet. for Disc., at ¶ 33; Stipulations, at ¶ 53.

The Walters Matter

36. In or about November 2016, Preston Walters engaged Respondent to file a Post-Conviction Relief Act (“PCRA”) Motion in his criminal matter, docketed at ***Commonwealth v. Preston Wayne Walters***, CP-22-CR-2967-2014 (Dauphin C.P.). Pet. for Disc., at ¶ 20; Stipulations, at ¶ 36.

37. On or about November 30, 2016, Respondent filed a PCRA Motion on Mr. Walters’ behalf alleging that his trial counsel was ineffective. Pet. for Disc., at ¶ 21; Stipulations, at ¶ 37; ODC-7.

38. By Memorandum Opinion and Order dated November 21, 2017, the Court denied the PCRA Motion. Pet. for Disc., at ¶ 21; Stipulations, at ¶ 38; ODC-7.

39. Mr. Walters subsequently engaged successor counsel, Michael Palermo, who entered his appearance on Mr. Walters’ behalf. Pet. for Disc., at ¶ 22; Stipulations at ¶ 39; ODC-7.

40. On or about December 26, 2017, without Attorney Palermo’s knowledge, Respondent filed a Notice of Appeal to the Superior Court. Pet. for Disc., at ¶ 23; Stipulations, at ¶ 40; ODC-7; ODC-8.

41. On January 11, 2018, the Superior Court issued a docketing statement. Stipulations, at ¶41; ODC-8.

42. Respondent thereafter failed to complete and file the docketing statement within 10 days, as required by Pa.R.A.P. 3517. Pet. for Disc., at ¶ 24; Stipulations, at ¶ 42; ODC-8.

43. By Order dated February 13, 2018, the Superior Court noted Respondent's failure to timely file the docketing statement and directed that he do so by February 23, 2018, noting that failure to file the docketing statement by that date would lead to dismissal of the appeal. Stipulations, at ¶ 43; ODC-8.

44. On March 1, 2018, the Superior Court issued a briefing Schedule. *Id.* at ¶ 44; ODC-8.

45. By Order dated March 2, 2018, the Superior Court dismissed the appeal based on Respondent's failure to file the required docketing statement. Pet. for Disc., at ¶ 25; Stipulations, at ¶ 45; ODC-8.

46. Thereafter, Respondent contacted the Court via telephone to inquire when a briefing schedule would be issued and was informed that the matter had been dismissed. Pet. for Disc., at ¶ 26; Stipulations, at ¶ 46.

The Tomasso Matter

47. In or about November 2016, Respondent was retained to represent Mr. Tomasso in his uncontested divorce matter. Pet. for Disc., at ¶ 27; Stipulations, at ¶ 47.

48. On or about December 20, 2016, Respondent filed a Divorce Complaint on Mr. Tomasso's behalf, initiating ***Guy Allen Tomasso v. Nicole Marie Tomasso***, FC-FD-2016-00302 (Perry C.P.). Pet. for Disc., at ¶ 28; Stipulations, at ¶ 48; ODC-9.

49. Respondent failed to indicate in the Divorce Complaint the section under which the parties were filing for divorce. Pet. for Disc., at ¶ 29; Stipulations, at ¶ 49.

50. From at least June 2018 through October 2018, Respondent neglected Mr. Tomasso's divorce matter and failed to respond to Mr. Tomasso's communications. Pet. for Disc., at ¶ 30; Stipulations, at ¶ 50.

51. Respondent further did not respond to inquiries from Mrs. Tomasso, who was unrepresented in the proceedings. Pet. for Disc., at ¶ 31; Stipulations, at ¶ 51.

52. Following contact from Office of Disciplinary Counsel, in or about November 2018, Respondent met with Mr. Tomasso and provided him with the necessary forms for the divorce. Stipulations, at ¶ 52.

The Bollinger Matter

53. On or about August 5, 2014, Respondent filed an Answer and Counterclaim, which included a claim for equitable distribution, on Mr. Bollinger's behalf in a divorce action docketed at ***Elizabeth L. Bollinger v. Christopher D. Bollinger***, 2014-PC-001081-02 (York C.P.). Stipulations, at ¶ 68; ODC-12.

54. On or about September 21, 2016, Respondent filed a Praeclipe to Transmit Record, wherein he stated that no economic claims were raised by either party. Pet. for Disc., at ¶ 39; Stipulations, at ¶ 69; ODC-12.

55. By letter dated September 23, 2016, the Case Review Officer notified Respondent that the following corrections were required prior to the entry of a divorce decree:

Attorney for Defendant was informed that Paragraph 4 of the Praeclipe to Transmit is incorrect in stating that "no economic claims were raised by either party." On 8/5/14 Defendant filed an Answer to Complaint in Divorce and Counterclaim with an equitable distribution claim that has not been resolved. If Defendant desires to withdraw the equitable distribution claim counsel should review Rule 1920.17(b).

Stipulations, at ¶ 70; ODC-12.

56. On or about October 3, 2016, Respondent filed:

- a. a "Stipulation to Withdraw Equitable Claim"; and
- b. an Amended Praeclipe to Transmit Record, wherein he again stated that no economic claims were raised by either party.

Pet. for Disc., at ¶ 39; Stipulations, at ¶ 71; ODC-12.

57. By letter dated October 5, 2016, the Case Review Officer notified Respondent that the following corrections were required prior to the entry of a divorce decree:

Attorney for Defendant was informed that Paragraph 4 of the Praeclipe to Transmit is still incorrect in stating that "no economic claims were raised by either party." As the parties filed Stipulations to Withdraw Equitable Claim on 10/3/16, Defendant's Counterclaim with an equitable distribution claim is resolved. This paragraph should state specifically how the claims were resolved.

Stipulations, at ¶ 72; ODC-12.

58. Respondent thereafter filed a Second Amended Praeclipe to Transmit Record that contained the correct information, and a Divorce Decree was entered.
Stipulations, at ¶ 73; ODC-12.

The Grove Matter

59. On or about November 20, 2014, Respondent initiated ***Amy Laurie Grove v. Colin McClean Grove***, 2014 FC-002091-02 (York C.P.), by filing a Divorce

Complaint on Ms. Grove's behalf pursuant to Section 3301(c). Stipulations, at ¶ 63; ODC-11.

60. On or about March 6, 2015, Respondent filed Ms. Grove's Affidavit of Consent, which listed Section 3301(d) as the subsection under which the divorce was filed. Stipulations, at ¶ 64; ODC-11.

61. On or about March 13, 2015, Respondent filed a Praecept to Transmit Record. Stipulations, at ¶ 65; ODC-11.

62. By letter dated March 17, 2015, the Case Review Officer notified Respondent that the following corrections were required prior to the entry of a divorce decree:

Counsel needs to amend complaint or "redo" affidavits to coincide w[ith] a "C" or "D" divorce.

Pet. for Disc., at ¶ 37; Stipulations, at ¶ 66; ODC-11.

63. Respondent thereafter filed amended Affidavits of Consent and an Amended Praecept to Transmit Record and a Divorce Decree was entered. Stipulations, at ¶ 67; ODC-11.

The Wright Matter

64. On or about September 2, 2015, Respondent initiated **Danny Lee Wright v. Jasmin Jane Porcare Yu, et al**, 2015-FC-001689-02 (York C.P.), by filing a Divorce Complaint on Mr. Wright's behalf pursuant to Section 3301(d). Stipulations, at ¶ 55; ODC-10.

65. On or about June 7, 2018, Respondent filed a Praecept to Transmit Record. Stipulations, at ¶ 56; ODC-10.

66. By letter dated June 19, 2018, the Case Review Officer notified Respondent that the following corrections were required prior to the entry of a divorce decree:

- The date of separation alleged in the divorce complaint and the date of separation alleged in Plaintiff's Affidavit of Separation differ by one year. These should be the same date.
- There is no proof of service of the Plaintiff's Affidavit of Separation and blank counter-affidavit to Defendant, other than having been served on 5/3/18 with the Notice of Intention. This does not meet requirements under Pa.R.C.P. 1920.42(a)(2) and (d)(2). There is a waiting period after this date of service.
- Two Notices of Intent were filed but both were deficient, both in time period and in content. The first one filed in October 2017, was filed before the Plaintiff's Affidavit of Separation and blank counter-affidavit were served, and did not include the Proposed Praeclipe to Transmit Record. The second one filed 5/3/18 was served at the same time as the Plaintiff's Affidavit of Separation and blank counter-affidavit, which does not meet time requirements, and it did not contain the blank counter-affidavit.
- Paragraph #6 of the Praeclipe to Transmit Record is missing the date of service of the Notice of Intent to Request Divorce Decree.

Pet. for Discipline, at ¶ 36; Stipulations, at ¶ 57; ODC-10.

67. Respondent thereafter filed a Praeclipe to Correct Date of Separation and a corrected Notice of Intent. Stipulations, at ¶ 58; ODC-10.

68. On or about August 15, 2018, Respondent filed a Praeclipe to Transmit Record, which listed Section 3301(c) as the subsection under which the divorce was filed, rather than Section 3301(d) as pled in the Divorce Complaint. Pet. for Discipline, at ¶ 36; Stipulations, at ¶ 59; ODC-10.

69. Respondent failed to list the Defendant's name in the caption. Pet. for Discipline, at ¶ 36; Stipulations, at ¶ 60; ODC-10.

70. By letter dated August 27, 2018, the Case Review Officer notified Respondent that the following corrections were required prior to the entry of a divorce decree:

Plaintiff has not filed an Affidavit of Consent nor a Waiver of Notice as required to finalize under a 3301(c) divorce.

Pet. for Discipline, at ¶ 36; Stipulations, at ¶ 61; ODC-10.

71. Respondent thereafter filed Mr. Wright's Affidavit of Consent and a Second Amended Praeclipe to Transmit Record, and a Divorce Decree was entered. Stipulations, at ¶ 62; ODC-10.

Additional Findings

72. Respondent testified on his own behalf and accepted responsibility for his misconduct in each of the six matters and expressed remorse. He further admitted that his misconduct violated Rule of Professional Conduct 1.1 involving competence, Rule 1.3 involving diligence, and Rule 8.4(d) involving conduct prejudicial to the administration of justice. N.T. 103, 119-120.

73. Respondent testified that he has learned from his experience that he needs to be more diligent, to act faster, and to get help if he needs it, or perhaps refer the case to another attorney. N.T. 120.

74. At the disciplinary hearing, Respondent testified in detail concerning his various health problems and their impact on his practice of law and offered a timeline of his physical difficulties and those of his wife. R-2.

75. Respondent suffered a heart attack in 2005. His heart problems became more serious when he was diagnosed with leukemia in 2016. Respondent testified his health declined drastically and he began chemotherapy in January of 2018. He stated he had no energy and had difficulty performing his legal work. N.T. 86, 88-89; R-2.

76. Respondent's wife was diagnosed with serious medical problems in 2015. In February 2016, Respondent broke his ribs and suffered contusions while preventing his wife from falling. In February 2016, Respondent's wife had surgery and there was a precancerous condition. In February 2016, Respondent had severe viral and bronchial symptoms. He was admitted on March 19, 2016 to York Hospital for irregular heartbeats and bronchitis. He was then diagnosed with leukemia and also given shock treatments to restore his heart rhythm. In June 2016, Respondent's wife had surgery that resulted in complications. R-2.

77. From April through September 2016, Respondent had numerous primary care and cancer physician consults and received steroid treatment for his leukemia. In November 2016, Respondent's wife had hernia surgery. In June 2017, Respondent's wife had surgery due to pulmonary emboli, and since then she has had difficulty walking and can no longer drive a car. From January 2018 through September 2018, Respondent had numerous doctor visits and was receiving chemotherapy approximately once a month for six to seven months. In October 2018, Respondent was admitted to York County Hospital, intensive care unit, for eight days with pneumonia, irregular heartbeat and diabetic complications. N.T. 90 – 93; R-2.

78. Respondent testified that at the time of the disciplinary hearing, his health was improved and he was feeling better. N.T. 93, 99.

79. Respondent's wife is disabled and as her primary caretaker, he is responsible for taking her to all of her medical appointments. Mrs. Arcuri's health issues in part prompted Respondent's decision to step away from his law practice in York and move to New Jersey. Respondent and his wife currently reside in Brigantine. N.T. 93-95.

80. Respondent is not admitted to the practice of law in New Jersey, but testified that he would use his home address in New Jersey for any future representations he might accept in Pennsylvania. N.T. 75, 134-136.

81. At the time of the disciplinary hearing, Respondent was in the process of selling his house in York, Pennsylvania. N.T. 95.

82. Respondent's last law office address was 1154 Mount Rose Avenue in York, Pennsylvania. Respondent testified he has completely closed down that law office. N.T.95.

83. Respondent has several clients left. He indicated two of the clients involved estates where tax returns had to be filed, and one where there was a need for court permission to sell some property. He is also representing a psychologist in a licensing hearing in Harrisburg. N.T. 95, 96.

84. Respondent stated there was also one other case involving a civil lawsuit where someone was struck by a drunk driver, which case was on the verge of settling. N.T. 96.

85. Respondent currently does not have professional liability insurance and believes he stopped carrying it somewhere around 2006 or 2007, after his suspension. N.T. 122.

86. Respondent testified it was not his intention to practice law for the next year or two because of his medical condition and that of his wife, and the need to be his wife's caretaker. N.T. 93, 97, 98.

87. Respondent testified he would like to maintain his law license.

"I would like to maintain the law license just in case something super interesting comes in, like you know, a first amendment case or something like that that I'm particularly interested in. Or...and, I know that one or two friends or relatives are going to have questions for me." (N.T. 98).

88. Although he expressed interest in practicing law in the future, Respondent testified that he does not intend to obtain professional liability insurance. N.T. 136.

89. Respondent testified he is not ruling out some day practicing again, as from a physical standpoint, his cancer is in remission and his heart issues and diabetes are controlled now with medication and a better diet. N.T. 99.

90. Respondent testified that intellectually he feels he is on top of his game from a legal standpoint. He has continued to read cases in the advance sheets or on the computer. N.T. 99.

91. Respondent presented a letter from his physician, indicating that Respondent is physically fit to continue to practice law. R-1.

92. Respondent's taxes have been filed timely and he only owes the Commonwealth of Pennsylvania \$31.00. N.T. 99, 100.

93. Respondent has no outstanding judgments against him nor is there litigation against him. N.T. 100.

94. Respondent has had no professional liability suits filed against him. N.T. 100.

95. Respondent testified as to his work at Penn State University, York Campus. He has taught history courses over the years to senior citizens and the general public. Respondent only recently stopped teaching upon his move to New Jersey. N.T. 101, 102.

96. Muriel Crabbs, Esquire credibly testified on Respondent's behalf. She was admitted to practice in the Commonwealth in 1984 and has known Respondent since 1985, when she began practicing law in York County, originally as an Assistant District Attorney. She currently practices with her husband in the law firm of Crabbs and Crabbs. N.T. 18, 19.

97. Ms. Crabbs testified that Respondent had expressed remorse and reform for his past misconduct, which resulted in his suspension. Ms. Crabbs knows people in the community who know Respondent, and his reputation is excellent as a peaceful and law-abiding person and as a truthful and honest person. N.T. 23.

98. Ms. Crabbs indicated many of these people were aware of his prior suspension. N.T. 21, 22.

99. Patricia Arcuri is Respondent's wife and credibly testified on his behalf. Mrs. Arcuri was a newspaper reporter and editor earlier in her career, and worked as Respondent's legal secretary from 1995 through about 2006. N.T. 31-32.

100. Mrs. Arcuri confirmed her husband's serious health issues during the last three years, and her health issues. She indicated they take turns helping each other. She confirmed that Respondent prepares the family meals and drives her to doctor's appointments. N.T. 34-36.

101. Mrs. Arcuri confirmed the leukemia chemotherapy treatments that Respondent was receiving in 2018, and noted this treatment resulted in a very difficult

time for him. She stated he was in bed many days all day and he had very little energy. N.T. 37.

102. Mrs. Arcuri confirmed that in 2019, Respondent was getting better and his physical strength and energy have returned. She confirmed that his intellect was still sharp and excellent. N.T. 36-38.

103. Mrs. Arcuri testified she and her husband have moved to New Jersey and Respondent closed his law office. N.T. 38, 39.

104. Mrs. Arcuri testified that Respondent has an excellent reputation in the community for being a truthful and honest person and for being a peaceful and law-abiding person. N.T. 41.

105. Mrs. Arcuri testified that her husband has been very remorseful about his prior suspension and misconduct, and has tried to do what he could to make amends. She indicated that the only problem in recent years has been Respondent's health issues, which made it sometimes difficult for him to fully and timely represent his clients. N.T. 42.

106. Marakay Rogers, Esquire credibly testified on behalf of Respondent. Ms. Rogers was admitted to practice law in 1985 and has known Respondent since approximately 2000. Ms. Rogers testified that Respondent's reputation in the community as a truthful and honest person and as a peaceful and law-abiding person was good and as a lawyer, Respondent was held in good esteem in the legal community. N.T. 54, 55.

107. Ms. Rogers testified that Respondent is fit and capable and competent to practice law. N.T. 57, 58.

108. Walter Trayer credibly testified on behalf of Respondent. Mr. Trayer has known Respondent since 1994 and worked as a Certified Legal Assistant for

Respondent from July 1999 until early 2006. Mr. Trayer considered Respondent to be a mentor. N.T. 60, 61.

109. Mr. Trayer testified that members of the community who knew Respondent spoke very highly of Respondent. N.T. 63. Mr. Trayer confirmed Respondent's reputation in the community as a truthful and honest person and as a peaceful and law-abiding person. N.T. 64.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct ("RPC"):

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client; and
3. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

IV. DISCUSSION

In this matter, the Board considers the Committee's unanimous recommendation to suspend Respondent for one year and one day for incompetence, lack of diligence, and actions prejudicial to the administration of justice in six client matters. The parties did not take exception to the Committee's recommendation.

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). Upon review, the Board concludes that Petitioner met its burden of proof. Petitioner's evidence, in the nature of the joint stipulations and Petitioner's exhibits, proves the facts and circumstances of the ethical violations and demonstrates Respondent's troubling pattern of incompetent representation and lack of diligence, which prejudiced the administration of justice. For the following reasons, the Board recommends that Respondent be suspended for a period of one year and one day.

Respondent stipulated to the facts demonstrating his misconduct in the six client matters at issue and further stipulated that his actions violated RPCs 1.1, 1.3 and 8.4(d). Respondent engaged in a pattern of misconduct over the course of approximately three and one-half years, by which he incompetently represented his clients, failed to diligently pursue their matters, and prejudiced the administration of justice by requiring courts to engage in additional work to notify Respondent of his errors.

Respondent mishandled five divorce matters, committing similar misconduct in each matter. In the Saltzer divorce matter, Respondent delayed in filing the divorce complaint, and despite the fact that there were economic claims, filed multiple incorrect praecipes to transmit the record, where it stated that no economic claims were

raised by either party, or misstated that economic claims were withdrawn by motion. Respondent also failed to respond to opposing counsel's communications and failed to respond to a request for production of documents. Respondent's conduct in this matter prompted the presiding judge to file a complaint with Office of Disciplinary Counsel.

In the Tomasso divorce matter, Respondent failed to indicate in the divorce complaint the proper section of the divorce code under which the parties were filing for divorce and failed to respond to client communications. Likewise, in the Wright divorce matter, Respondent filed a praecipe to transmit the record which listed the wrong divorce code section and failed to list the defendant's name in the caption. Respondent further failed to file, until after notification by the court, an affidavit of consent and a waiver of notice, and incorrectly listed the applicable divorce code section under which the divorce was filed.

The Grove and Bollinger matters involved misconduct similar to Respondent's misconduct in the Saltzer, Tomasso, and Wright matters. In the Grove divorce matter, Respondent filed an affidavit of consent which listed the incorrect section of the divorce code under which the divorce was filed. It was only after the case review officer notified Respondent that corrections needed to be made, did Respondent file an amended affidavit of consent and an amended praecipe to transmit record. In the Bollinger divorce matter, Respondent filed multiple incorrect praecipes to transmit record, which had to be corrected by the case review officer.

In the Walters PCRA matter, Respondent failed to timely file a docketing statement, causing the Superior Court to dismiss the appeal.

Respondent, who was 71 years of age at the time of the disciplinary hearing, has practiced law in Pennsylvania since 1975. Respondent credibly acknowledged his

pattern of repeated misconduct in the six client matters and has accepted full responsibility for his unprofessional actions. Respondent cooperated by stipulating to many of the facts and violations of the rules. He expressed genuine remorse for the manner in which he handled his clients' matters, and explained that he has learned from his experiences that he needs to act faster, or get help on client matters if he cannot promptly and diligently proceed.

Respondent credibly testified that his health circumstances, including a heart condition and leukemia, impacted his practice of law for some of the time frame of his misconduct. Although Respondent is feeling better both physically and intellectually, his wife is disabled due to her physical health problems, which circumstances necessitated their move to New Jersey, where they exclusively reside. Respondent has shut down his physical law office in York, Pennsylvania, does not maintain professional liability insurance, and does not intend to open another law practice in the future. Respondent does, however, maintain a few client files and indicated he has not ruled out practicing in the future should an interesting case come to his attention. When questioned about this intention, Respondent further explained that he did not plan to obtain professional liability insurance under such circumstances, and also noted in his testimony that he is not a member of the New Jersey bar.

In support of his claim for mitigation, Respondent presented four character witnesses, including his wife, two attorneys, and a former legal assistant, each of whom testified credibly to Respondent's good reputation in the community as a truthful, honest, peaceable and law abiding citizen in his community. Respondent also noted his many years teaching a history class for senior citizens at Penn State York.

Respondent's law practice through the years has not been without its professional difficulties, having been subject to past scrutiny by the disciplinary authorities and punctuated by instances of public and private discipline. Respondent's disciplinary issues began in the late 1990s, when he was privately reprimanded for his misconduct in three separate matters involving neglecting court-appointed criminal cases and failing to communicate in a divorce matter. Respondent received two more private reprimands in the mid-2000s related to his neglect of client matters. Significantly, in 2006, Respondent consented to a one year suspension on consent for neglect, incompetence, and failure to communicate in two criminal matters wherein he failed to timely file appeals, resulting in the quashal of those appeals. After serving his suspension, Respondent was reinstated in 2007.

While there is no *per se* discipline in Pennsylvania, the Board is mindful of precedent and the need for consistency. *Office of Disciplinary Counsel v. Robert Lucarini*, 472 A.2d 186, 189-91 (Pa. 1983). Herein, we conclude that a one year and one day suspension is commensurate with the totality of the facts and circumstances of record in this matter. While the instant misconduct in six client matters is troubling in its repetitive nature of incompetence and neglect, the Board is equally concerned with the significance of Respondent's prior history of discipline. This prior discipline has afforded Respondent multiple opportunities to remediate his practice habits and conform his conduct to the ethical standards required of the legal profession in this Commonwealth. Notwithstanding these opportunities, Respondent is before this Board once again, the prior discipline having had no appreciable beneficial impact on his conduct. While we acknowledge that Respondent's health problems posed an obstacle to his sound execution of responsibilities in some of the current client matters, the similarities in Respondent's

misconduct over the breadth of his various disciplinary matters cannot be ignored and expose his tenuous grasp on the rules of conduct.

The attorneys in the following cases, who engaged in misconduct similar to Respondent's repeated lack of competence and diligence and who had prior discipline, received suspensions for one year and one day: ***Office of Disciplinary Counsel v. Mark David Johns***, No. 95 DB 2013 (D. Bd. Rpt. 10/2/2014) (S. Ct. Order 12/30/2014), where Johns engaged in neglect of two client matters, aggravated by his prior discipline of an informal admonition and a private reprimand; ***Office of Disciplinary Counsel v. Lee Eric Oesterling***, No. 18 DB 2014 (S. Ct. Order 5/23/2014) (consent discipline), where in seven client matters spanning three years, Oesterling incompetently handled a bankruptcy matter, accepted client fees, commenced work on matters, and failed to communicate with clients, aggravated by a prior informal admonition, and mitigated by Oesterling's remorse and his numerous health-related and personal problems; ***Office of Disciplinary Counsel v. Richard Patrick Reynolds***, No. 179 DB 2011 (D. Bd. Rpt. 11/19/2013) (S. Ct. Order 3/31/2014), where Reynolds neglected a client's appeal, failed to communicate and abandoned a client after accepting representation, aggravated by his two prior informal admonitions for similar misconduct, and mitigated by his remorse and acceptance of responsibility and the need for discipline; ***Office of Disciplinary Counsel v. Lawrence E. Brinkmann, Jr.***, No. 157 DB 2008 (D. Bd. Rpt. 12/15/2009) (S. Ct. Order 3/26/2010), where Brinkmann neglected his clients and failed to communicate with them, aggravated by two informal admonitions and a public censure, as well as a lack of remorse.⁷

⁷ The Court rejected the Board's recommendation to suspend Brinkmann for a period of two years in favor of a one year and one day suspension.

Similar to these matters, Respondent's misconduct is aggravated by his extensive prior discipline and mitigated by his cooperation, acceptance of responsibility, remorse, and health problems.

In the recent matter of *Office of Disciplinary Counsel v. William James Helzlsouer*, No. 197 DB 2018 (D. Bd. Rpt. 11/18/2019) (S. Ct. Order 1/23/2020), the Court suspended Helzlsouer for one year and one day where Helzlsouer engaged in misconduct in three separate client matters involving neglect, mishandling of his IOLTA account, failing to promptly refund unearned fees, and engaging in the unauthorized practice of law. This misconduct was aggravated by Helzlsouer's extensive prior record of private and public discipline consisting of a private reprimand, a three month stayed suspension and a separate three month suspension. Generally, the misconduct in these prior matters involved Helzlsouer's neglect, lack of diligence, and failure to communicate. The Board also considered in aggravation Helzlsouer's lack of remorse and failure to accept full responsibility for his actions.

Similar to Helzlsouer, the instant Respondent has a record of private and public discipline and engaged in a pattern of repeated misconduct. However, Respondent's misconduct is less egregious than that of Helzlsouer, and unlike Helzlsouer, who had no mitigating evidence, Respondent is entitled to mitigation for his cooperation, remorse, and acceptance of responsibility for his actions.

As evidenced by the above cited cases, the Court casts a dim view on recidivist disciplinary offenders, particularly those with prior instances of public discipline. See also, *Office of Disciplinary Counsel v. Alexander Z. Talmadge, Jr.*, No. 240 DB 2018 (D. Bd. Rpt. 12/17/2019) (S. Ct. Order 3/24/2020) (Talmadge engaged in misconduct in three separate matters; prior disciplinary history of two informal

admonitions, a private reprimand, and a public censure; Talmadge failed to express remorse, the Board recommended a two year suspension, the Court imposed a five year suspension); *Office of Disciplinary Counsel v. Craig B. Sokolow*, No. 83 DB 2018 (D. Bd. Rpt. 9/4/2019) (S. Ct. Order 12/11/2019) (Sokolow, who had a prior history of discipline consisting of a disbarment on consent imposed some two decades prior to his current misconduct and a more recent informal admonition, engaged in misconduct that involved making false statements to a court and to disciplinary authorities; the Board recommended a two year suspension, which the Court imposed).

In the instant matter, arguably Respondent's current misconduct standing alone might not warrant a one year and one day suspension, as it did not involve dishonest conduct or mishandling of entrusted funds; however, Respondent as a recidivist disciplinary offender, must be sanctioned to the degree that will require him to prove his fitness and competency if he desires to resume the practice of law.

As well, Respondent's stated intentions for his practice of law in the future are of concern to the Board and bolster the need for a one year and one day suspension. Respondent has closed down his law office in Pennsylvania and resides virtually exclusively in New Jersey, where he is not admitted to practice, yet he indicated he would use his home address in New Jersey for any Pennsylvania representations he might accept in the future. Respondent made clear that in any event, he does not intend to obtain professional liability insurance. A reinstatement proceeding will require Respondent to address the intended structuring of his legal practice to ensure the protection of future clients.

It is well-established that 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). Upon this record, considering the totality of the facts and aggravating and mitigating circumstances, we conclude that a suspension for one year and one day is appropriate, as it removes Respondent from practice, requires him to undergo a rigorous reinstatement process, and protects the public, fulfilling the predominant mission of the disciplinary system.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Frank C. Arcuri, 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

By: S/Jerry M. Lehocky
Jerry M. Lehocky, Member

Date: August 20, 2020