

IN THE SUPREME COURT OF PENNSYLVANIA

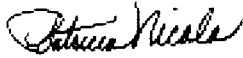
OFFICE OF DISCIPLINARY COUNSEL, : No. 2687 Disciplinary Docket No. 3  
: :  
Petitioner : No. 240 DB 2018  
: :  
v. : Attorney Registration No. 54506  
: :  
ALEXANDER Z. TALMADGE, JR., : (Philadelphia)  
: :  
Respondent :

**ORDER**

**PER CURIAM**

**AND NOW**, this 24th day of March, 2020, having failed to respond to a Rule to Show Cause dated February 19, 2020, Alexander Z. Talmadge, Jr., is suspended from the Bar of this Commonwealth for a period of five years. He shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy, Patricia Nicola  
As Of 03/24/2020

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 240 DB 2018
Petitioner	:	
	:	
v.	:	Attorney Registration No. 54506
	:	
ALEXANDER Z. TALMADGE, JR.	:	
Respondent	:	(Philadelphia)

REPORT AND RECOMMENDATIONS OF  
THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES  
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania (“Board”) herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on December 17, 2018, Petitioner, Office of Disciplinary Counsel, charged Respondent, Alexander Z. Talmadge, Jr., with violations of the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement in three separate matters. Respondent filed an Answer to Petition on January 28, 2019.

Following prehearing conferences on March 18, 2019 and April 11, 2019, a District I Hearing Committee (the “Committee”) conducted a disciplinary hearing on May 20, 2019 and May 21, 2019. Petitioner introduced, without objection, exhibits ODC-1

through ODC-50, P-1 through P-9, Joint Stipulations of Fact and Law, and Joint Stipulations in Lieu of Testimony. Petitioner presented the testimony of four witnesses. Respondent appeared pro se and presented the testimony of two fact witnesses and two character witnesses. Respondent did not testify on his own behalf.

On June 26, 2019, Petitioner filed a brief to the Committee and requested that the Committee recommend to the Board that Respondent be suspended for not less than two years.

Respondent did not file a post-hearing brief.

By Report filed on September 12, 2019, the Committee concluded that Respondent violated the rules as changed in the Petition for Discipline and recommended that Respondent be suspended for a period of two years.

The parties did not take exception to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on October 17, 2019.

## II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at PA Judicial Center, Suite 2700, 601 Commonwealth Avenue, Harrisburg, PA 17106-2485, is invested pursuant to Rule 207, Pa.R.D.E. 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 of Disciplinary Enforcement.

2. Respondent is Alexander Z. Talmadge, Jr., born in 1959 and admitted to practice law in the Commonwealth of Pennsylvania in 1988.

3. Attorney registration records state that Respondent maintains an office for the practice of law at 7018 Ardleigh Street, Philadelphia, PA 19119.

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

### **CHARGE I: DMITRIY V. LITVINOV**

5. On June 22, 2012, a jury convicted Dmitriy V. Litvinov (Litvinov) of multiple counts of kidnapping, robbery, burglary, simple assault, receiving stolen property, and related offenses in a consolidated trial before the Honorable Thomas King Kistler of Centre County. ***Commonwealth v. Dmitriy V. Litvinov***, CP Nos. 14-CR-462-2010, 1090-2010, 1139-2010, 1157-2010, 1158-2010, 1159-2010, 1161-2010, 1162-2010, 1163-2010, 1164-2010, and 364-2011. ODC-1; Joint Stipulations of Fact and Law (“Stip.”) 10.

6. On July 4, 2012:

- a. Respondent gave Litvinov’s family a written fee agreement (ODC-2) for Respondent’s handling of “***Commonwealth v. Dmitriy V. Litvinov***” that provided: Respondent’s fee was \$17,000 plus \$200 an hour; Respondent’s fee was deemed earned upon signing the fee agreement; and the terms of the fee agreement could not be altered “unless we agree in writing”;
- b. Litvinov’s father, Veniamin Litvinov, signed the fee agreement; and

- c. Respondent received \$17,000 from Mr. Veniamin Litvinov for the representation.

Stip. 11.

7. On July 24, 2012, the Department of Homeland Security issued an immigration detainer to hold Litvinov, a native of Kazakhstan, in custody for 48 hours.

ODC-3; Stip. 12.

8. On September 21, 2012, Judge Kistler sentenced Litvinov to an aggregate term of imprisonment of 39 years and 4 months to 78 years and 8 months of imprisonment. ODC-1; Stip. 13.

9. On September 24, 2012, Litvinov met with the Chief Public Defender of Centre County, David C. Crowley, who agreed to file post-sentence motions on Litvinov's behalf. ODC-4, pp. 8-9; Stip. 14.

10. On October 1, 2012, Mr. Crowley filed timely post-sentence motions on behalf of Litvinov. ODC-1; Stip. 15.

11. On October 18, 2012:

- a. Respondent went to the Centre County Public Defender's Office, met with Mr. Crowley, and obtained Litvinov's complete criminal file (ODC-4, p. 10);
- b. Respondent and Mr. Crowley executed a Praecipe for Substitution of Appearance whereby Mr. Crowley withdrew his appearance and Respondent requested the entry of his appearance in Litvinov's criminal matter (ODC-5);

- c. Respondent entered his appearance on behalf of Litvinov in ***Commonwealth v. Litvinov*** (ODC-1); and
- d. Respondent filed a Notice of Appeal to the Superior Court from the trial court's judgment of sentence. (ODC-6)

Stip. 16.

12. Respondent erred in filing the Notice of Appeal because the filing was premature under Pa.R.Crim.P. 720(A)(2). Stip. 17.

13. Respondent erred in not promptly withdrawing the Notice of Appeal as timely post-sentence motions had been filed pursuant to Pa.R.Crim.P. 720(A)(1). Stip. 18.

14. Respondent's Notice of Appeal did not include a request that the court reporter transcribe the notes of testimony for Litvinov's appeal. ODC-4, pp. 34, 44; Stip. 19.

15. On October 23, 2012, the Superior Court docketed the appeal at No. 1842 MDA 2012 (ODC-7) and sent Respondent a docketing statement to be completed and returned within ten days. ODC-8; Stip. 20.

16. Respondent received the docketing statement from the Superior Court. Stip. 21.

17. Respondent failed to complete and return the docketing statement to the Superior Court within ten days as required by Pa.R.A.P. 3517, which provides, in pertinent part, that when a notice of appeal is filed in the Superior Court, the Prothonotary shall send a docketing statement form to the appellant to be completed and returned

within ten days, and that appellant's failure to file a docketing statement may result in the dismissal of the appeal. ODC-8; Stip. 22.

18. On November 1, 2012, Respondent participated in a telephone conference with Judge Kistler and Assistant District Attorney Nathan Boob (ODC-4, pp. 11-12), during which time Respondent stated that:

- a. the Notice of Appeal to the Superior Court had been prematurely filed; and
- b. Respondent planned to withdraw the Notice of Appeal so that the trial court could first decide the post-sentence motions that had been filed by the Commonwealth and Litvinov.

Stip. 23.

19. On or about November 6, 2012, Respondent spoke to Mr. Crowley (ODC-4, p. 12), during which time Respondent:

- a. informed Mr. Crowley that the post-sentence motion was beyond the scope of Respondent's representation;
- b. requested that Mr. Crowley re-enter his appearance for the limited purpose of arguing the post-sentence motions before Judge Kistler; and
- c. stated that he was withdrawing the Notice of Appeal so that the trial court could rule on the post-sentence motions.

Stip. 24.

20. On October 26, 2012, Judge Kistler ordered that Respondent file a concise statement of matters complained of on appeal pursuant to Pa.R.A.P. 1925(b). ODC-1.

- a. Respondent received Judge Kistler's 1925(b) Order.
- b. Respondent failed to comply with Judge Kistler's Order. (ODC-1)

Stip. 26.

21. By *Per Curiam* Order dated November 26, 2012, the Superior Court ordered that Respondent comply with Pa.R.A.P. 3517 no later than December 6, 2012.

ODC-9Stip. 27.

22. Respondent received the Superior Court's November 26, 2012 Order. Stip. 28.

23. By letter from Respondent to Mr. Crowley dated December 9, 2012 (ODC-10), Respondent wrote that he:

- a. "was hired to file and argue the appeal in this matter only";
- b. thought that because Mr. Crowley had filed the post-trial motions, it would be prudent for Respondent to withdraw his appearance and request that Mr. Crowley re-enter his appearance for the January 3, 2013 argument on the post-trial motions;
- c. would ask the Superior Court to withdraw Litvinov's appeal until the post-trial motions have been argued and decided; and



- d. “thereafter,” would “refile [his] appearance and refile the appeal.”

Stip. 29.

24. By *Per Curiam* Order dated December 11, 2012, the Superior Court dismissed Litvinov’s appeal because of Respondent’s failure to file the docketing statement required by Pa.R.A.P. 3517 and ordered that Respondent file a certification with the Court stating that he had notified his client of the entry of the Order. ODC-11;

Stip. 30.

25. On January 3, 2013, oral argument was held before Judge Kistler on the post-sentence motions; on January 4, 2013, Judge Kistler entered an order denying the motions. ODC-1; Stip. 31.

26. By letter to Respondent dated January 8, 2013 (ODC-12), Mr. Crowley:

- a. forwarded a copy of Judge Kistler’s Order to both Respondent and Litvinov; and
- b. requested that Respondent re-enter his appearance as Respondent had stated he would do.

Stip. 32.

27. At no time did Respondent ever (ODC-4, p. 15; Answer PFD ¶ 29):

- a. request that Mr. Crowley file a Notice of Appeal from the denial of post-sentence motions;
- b. advise Mr. Crowley or Mr. Litvinov that Respondent was not filing a Notice of Appeal; or
- c. return Litvinov’s criminal file to Mr. Crowley.

Stip. 33.

28. By letter dated January 11, 2013 (ODC-13), from Litvinov to Respondent, Litvinov wrote that:

- a. on January 4, 2013, Judge Kistler had denied post-verdict motions;
- b. Respondent had 30 days to file a Notice of Appeal;
- c. Respondent should notify him when Respondent had filed his appeal; and
- d. he needed to meet with Respondent because the telephones in the prison were monitored and conversations were recorded.

Stip. 34.

29. Respondent received Litvinov's letter. Stip. 35.

30. Respondent failed to advise Litvinov and Mr. Crowley that Respondent was not filing a Notice of Appeal with the Superior Court from the denial of Litvinov's post-sentence motions. ODC-4, pp. 15,16, 38, 43-44, 66-67; Joint Stipulations in Lieu of Testimony ("Stip. Testimony") 4-6.

31. On January 11, 2013, the Commonwealth filed a Notice of Appeal to the Superior Court challenging Litvinov's sentence; the Commonwealth's appeal of Litvinov's sentence was subsequently handled by Mr. Crowley. Stip. 36.

32. On January 21, 2013, Respondent met with Litvinov at SCI-Camp Hill (ODC-4, p. 39), during which time Litvinov informed Respondent that he wanted Respondent to proceed with Litvinov's direct appeal. 5/20/19 N.T 39; ODC-14.

33. Following Respondent's meeting with Litvinov on January 21, 2013, Litvinov wrote to Respondent and identified potential legal issues for Respondent to raise on direct appeal to the Superior Court and requested that Respondent provide him with copies of motions and documents. 5/20/19 N.T. 41-42; ODC-15.

34. On February 20, 2013, Immigration Judge Walter A. Durling ordered that Litvinov be removed from the United States and Litvinov waived his right to appeal from the Immigration Judge's removal order. ODC-16; Stip. 42.

35. By letter from Litvinov to Respondent dated April 7, 2013, Litvinov:

- a. Requested copies of the Notice of Appeal and all other motions Respondent had filed;
- b. Complained that Litvinov had asked Respondent about his case in previous letters and Respondent "never responded";
- c. Explained that Litvinov needed to know that Respondent was doing what Respondent told Litvinov he would do; and
- d. Reiterated Litvinov's request for documents.

ODC-17.

36. By letter dated May 9, 2013, from Respondent to Litvinov (ODC-18), Respondent wrote that:

- a. he was "still reading and preparing [Litvinov's] case";
- b. the record was very long, complex, and tedious;
- c. he "need[ed] to review the record very carefully for legal issues" and Litvinov should bear with Respondent;

- d. Litvinov should feel free to continue to write to Respondent and provide information that he felt was important; and
- e. he would send him copies of his legal filings.

Stip. 44.

37. By letter dated May 13, 2013, from Respondent to Litvinov (ODC-19), Respondent:

- a. explained that Litvinov's father and sister had informed him that Litvinov would prefer to be deported than continue to be imprisoned;
- b. requested that Litvinov contact Respondent in writing and state whether this was his desire; and
- c. agreed to contact immigration authorities should Litvinov wish to proceed with deportation.

Stip. 46.

38. On August 27, 2013, the Superior Court vacated Litvinov's original sentence and remanded Litvinov's case back to the trial court for resentencing. ***Commonwealth v. Dmitriy V. Litvinov***, No. 193 MD 2013 (Pa. Super). ODC-20; Stip. 48.

39. On or about October 13, 2013, Litvinov, represented by Mr. Crowley, appeared via videoconferencing before Judge Kistler for resentencing in accordance with the Superior Court's Order. Stip. 49.

40. Following the resentencing, Mr. Crowley:

- a. spoke with Litvinov and was informed that Respondent "would be taking the case from here on out" (ODC-4, p. 16); and

- b. received an email from Respondent requesting Litvinov's address. (*Id.*)

Stip. 50.

41. From time to time, Litvinov's family would contact Respondent regarding the status of Litvinov's Superior Court appeal, during which time:

- a. Respondent "assured" Litvinov's family that the appeal process was going as planned (ODC-21(a) and ODC-21(b));
- b. Respondent explained to Litvinov's parents that appellate matters may take some time because there were many papers that had to be reviewed by the appellate court (ODC-21(a));
- c. Respondent never informed Litvinov's family members that Respondent had failed to file an appeal in the Superior Court (ODC-21(a) and ODC-21(b)); and

Stip. 51.

42. From time to time, Litvinov would speak to Respondent on the prison telephone about his appeal. (ODC-4, pp. 66-67)

- a. At no time during these telephone conversations did Respondent inform Litvinov that he was not pursuing Litvinov's criminal appeal. (*Id.*)

Stip. 53.

43. By letter dated February 13, 2015, from Litvinov to Respondent (ODC-22), Litvinov:

- a. wrote that he still did not have copies of transcripts, appeals, immigration documents, and anything else Respondent had done in his case; and
- b. requested that Respondent begin updating him directly about his legal matters.

Stip. 54.

44. Respondent received Litvinov's letter. Stip. 55.

45. By letter from Litvinov to Respondent dated May 13, 2015 (ODC-23)

Litvinov wrote:

- a. complaining that "for the third time" he was writing because Respondent had failed to respond to his earlier letters;
- b. stating that when Respondent met recently with Litvinov's father and brother, Respondent told Litvinov's father and brother that he would contact Litvinov;
- c. complaining that Respondent failed to contact Litvinov as Respondent said he would do;
- d. complaining that it had been over one year since Litvinov received any information from Respondent; and
- e. requesting that Respondent write "as soon as possible" because he was "without a clue about what is going on" with his legal matters.

Stip. 56.

46. Respondent received Litvinov's letter. Stip. 57.

47. Respondent failed to keep Litvinov reasonably informed about the status of his legal matters and respond to Litvinov's reasonable requests for information. ODC-22, -23; ODC-4, pp. 47, 78, 94-95; ODC-14; Stip. 58.

48. At no time did Litvinov advise Respondent that Respondent would no longer be representing Litvinov on his direct appeal to the Superior Court. 5/20/19 N.T. 40, 47, 48, 59; ODC-4, pp. 61, 64, 78.

49. At no time did Litvinov's family members authorize Respondent's abandonment of Litvinov's direct appeal. Stip. Testimony 7-9; ODC-21(a); ODC-21(b); ODC-4, p. 57.

50. At no time did Respondent inform Litvinov that Respondent had failed to pursue Litvinov's direct appeal to the Superior Court. 5/20/19 N.T. 40, 46, 50.

51. At no time did Respondent inform Litvinov's family that he had failed to pursue Litvinov's direct appeal to the Superior Court. 5/20/19 N.T. 52; Stip. Testimony 7-9.

52. Respondent led Litvinov to believe that Respondent was continuing to handle his direct appeal (5/20/19 N.T. 44-45; ODC-4, pp. 64-67, 88-89), including informing Litvinov:

- a. Respondent "had filed everything. I'm waiting on a decision. And [Litvinov should] just pretty much be patient and wait on appellate court to decide case" (5/20/19 N.T. 43);
- b. Litvinov's "appeal was in the court." (*Id.* 49).

53. When Litvinov discovered that Respondent had failed to pursue his direct appeal, Litvinov testified that he felt like his world "crashed" because he had trusted

Respondent to pursue his appeal and felt angry that Respondent lied to him about it.  
5/20/19 N.T. 58.

54. By letter dated July 21, 2015, from Litvinov to the Prothonotary of the Superior Court, Litvinov requested that the Superior Court send him docket entries for his direct appeal to the Superior Court. ODC-24; Stip. 59.

55. By letter to Respondent dated July 30, 2015, the Deputy Prothonotary advised Litvinov that he had no active appeal in the Superior Court in Litvinov's criminal matter and enclosed the docket sheets for No. 1842 MDA 2012. ODC-25; Stip. 60.

56. On August 21, 2015, Litvinov filed a pro se Application to Reinstate Appeal Nunc Pro Tunc with the Superior Court. ODC-7; Stip. 61.

57. By *Per Curiam* Order dated August 28, 2015, the Superior Court denied Litvinov's Application. ODC-7; Stip. 62.

58. On December 10, 2015, Litvinov filed a pro se PCRA petition with the Centre County Court of Common Pleas; on December 23, 2015, Judge Kistler appointed Marc Andrew Decker, Esquire, to represent Litvinov in his PCRA matter. ODC-1; Stip. 63.

59. On January 6, 2016, Mr. Decker spoke to Respondent about obtaining a copy of Litvinov's criminal file, during which time Respondent advised Mr. Decker that the file consisted of three boxes and Respondent would need the weekend to review and forward the file to Mr. Decker. ODC-26; Stip. 64.

60. By email to Respondent dated January 7, 2016, sent at 10:03 a.m. (ODC-26), Mr. Decker confirmed his January 6, 2016 telephone conversation with



Respondent and attached a letter to Respondent requesting that Respondent forward Litvinov's files to Mr. Decker. ODC-27; Stip. 65.

61. Respondent received Mr. Decker's email and letter. Stip. 66.

62. Respondent failed to provide Mr. Decker with Litvinov's file as Respondent had agreed he would do. Stip. 67.

63. By email to Respondent sent at 4:05 p.m. on January 15, 2016, with the January 6, 2016 letter attached thereto, Mr. Decker informed Respondent that he had not received Litvinov's file, reiterated his request for the file, and advised Respondent that Litvinov's Amended PCRA petition was due on January 20, 2015. ODC-26; Stip. 68.

64. Respondent received Mr. Decker's email and attachment. Stip. 69.

65. Respondent failed to provide Mr. Decker with Litvinov's file upon termination of Respondent's representation. Stip. 70.

66. On January 20, 2016, Mr. Decker filed a Second Amended PCRA Petition on behalf of Litvinov alleging Respondent's ineffective assistance of counsel and requesting that Litvinov's appellate rights be reinstated. ODC-28; Stip. 71.

67. By letter from Mr. Decker to Respondent dated February 9, 2016, sent via First Class Mail and email, with a carbon copy to Litvinov (ODC-29), Mr. Decker advised Respondent that:

- a. this was "**Your third notice**" (double emphasis in original) from Mr. Decker requesting a copy of Litvinov's file that Respondent had received from the Centre County Public Defender's Office;
- b. Litvinov's PCRA conference was scheduled for March 1, 2016; and

- c. Mr. Decker would like a copy of the file prior to the scheduled conference.

Stip. 72.

68. Respondent received Mr. Decker's letter. Stip. 73.

69. Respondent failed to provide Mr. Decker with Litvinov's file upon termination of Respondent's representation. Stip. 74.

70. As a result of Respondent's failure to surrender Litvinov's file to Mr. Decker, on May 19, 2016 Judge Kistler issued an Order (ODC-30):

- a. directing Respondent to deliver to Mr. Decker within thirty days a copy of the original criminal file that Respondent had received from the Centre County Public Defender's Office;
- b. directing Respondent to deliver to Mr. Decker Respondent's original files from Respondent's handling of Litvinov's criminal case in Centre County;
- c. stating that in the event that Respondent no longer had the original criminal files from Centre County, Respondent was to provide a written explanation of the whereabouts of the file to Judge Kistler with a carbon copy to Mr. Decker and the Centre County District Attorney's Office; and
- d. requesting Respondent to provide the name and contact information for Respondent's practice monitor.

Stip. 75.

71. On June 17, 2016, Respondent mailed Litvinov's file to Mr. Decker (Answer PFD at ¶ 71); on June 21, 2016, Mr. Decker received Litvinov's file from Respondent. Stip. 77.

72. On July 13, 2016, Petitioner personally served Respondent with a DB-7 Request for Statement of Respondent's Position (ODC-31); on September 19, 2016, Respondent filed his DB-7 Answer. ODC-32; Stip. 78.

73. On September 8, 2017, Judge Kistler held an evidentiary hearing on Litvinov's PCRA petition. ODC-4; Stip. 79.

74. On September 21, 2017, Litvinov filed Findings of Fact and Conclusions of Law in his PCRA matter. ODC-33; Stip. 80.

75. On November 3, 2017, Judge Kistler issued an Opinion and Order (ODC-34), in which Judge Kistler:

- a. found that Litvinov retained Respondent to file a direct appeal (*id.* at pp. 7-8);
- b. found that Respondent's testimony at the PCRA hearing was not credible (*id.* at pp. 9, 10);
- c. concluded that Respondent was ineffective for failing to: file an entry of appearance with the Superior Court (*id.* at p. 8); file a direct appeal after being retained to do so (*id.* at pp. 8-9); and advise Litvinov that the Superior Court had dismissed his appeal. (*id.* at p. 10); and
- d. granted Litvinov's PCRA petition and reinstated Litvinov's right to direct appeal. (*id.* at p. 11)

Stip. 81.

76. On November 14, 2017, the Commonwealth filed a Notice of Appeal from Judge Kistler's Opinion and Order to the Superior Court. No. 1771 MDA 2017 (Pa. Super.) ODC-35; Stip. 82.

77. By Memorandum Opinion and Order dated January 16, 2019 (ODC-36), the Superior Court:

- a. noted that the PCRA court "found Talmadge not credible" (*id.* at p. 10);
- b. found that "[u]ncontroverted evidence established a lawyer/client relationship between Litvinov and Talmadge inasmuch as Litvinov paid Talmadge a \$17,000 retainer to represent him on direct appeal" (*id.*);
- c. concluded that the "evidence of record supports the PCRA court's findings" that "Talmadge abandoned Litvinov" (*id.*); and
- d. ordered that Litvinov's direct appeal rights be reinstated. (*Id.* at pp. 10, 11)

Stip. 83.

78. Respondent's course of conduct in handling the Litvinov matter was prejudicial to the administration of justice in that it delayed the resolution of Litvinov's criminal matter and needlessly expended the court system's limited time and resources.

Stip. 84.

79. Respondent failed to refund his unearned fee at the termination of the representation. 5/20/19 N.T. 60, 67.

80. Dimitriy Litvinov testified credibly at the disciplinary hearing.

## CHARGE II: FAILURE TO COMPLETE CONDITION OF PROBATION

81. On June 14, 2012, the Supreme Court issued a *per curiam* order in the matter of ***Office of Disciplinary Counsel v. Alexander Z. Talmadge, Jr.***, No. 55 DB 2011 (S.Ct. Order 6/14/2012) (ODC-37):

- a. granting a Joint Petition in Support of Discipline on Consent for Respondent's violation of RPC 1.3; 1.4(a)(3); 1.5(b); 8.4(c); and 8.4(d);
- b. ordering that Respondent receive a Public Censure and one-year of probation with conditions; and
- c. imposing conditions, including that Respondent obtain a practice monitor, take eight hours of PaCLE on the topic of law practice management, and provide the Board with certificates of PaCLE attendance at least ten days prior to the expiration of Respondent's period of probation.

Stip. 86.

82. By letter dated October 13, 2013, from Elaine M. Bixler, Secretary of the Disciplinary Board, to Respondent (ODC-38), Ms. Bixler wrote that:

- a. Respondent's one year period of probation had been completed;
- b. explained that Respondent was required to file an Application for Termination of Probation in accordance with D.Bd. Rules § 89.294;

- c. stated that she had enclosed a copy of the rule together with a sample Application for Termination of Probation; and
- d. upon receipt of Respondent's completed Application, the Disciplinary Board would take action to terminate the matter.

Stip. 87.

83. Respondent received Ms. Bixler's letter. Stip. 88.

84. Respondent did not file an Application for Termination of Probation with the Disciplinary Board as required by former D.Bd. Rule § 89.294 (ODC-39) and requested by Ms. Bixler. ODC-38; Stip. 89.

85. Respondent failed to obey the Supreme Court's June 14, 2012 Order and complete the condition of his probation requiring Respondent to take 8 hours of PaCLE courses on law office management during the one-year term of his probation. ODC-40, -41; PFD Answer at ¶ 81; Stip. 90.

86. Respondent's failure to complete the condition of his probation was without good cause. Stip. 91.

### **CHARGE III: RUBY LADSON**

87. On the morning of June 22, 2015, Ruby Ladson, a frail, 69-year-old, four-time stroke victim, called the Philadelphia Police Department to report that she had been seriously assaulted by her long-term partner, Gill Sanders. ODC-42, -43, Answer 11; Stip. 93.

88. At 6:55 a.m. on June 22, 2015, the police arrived at Ms. Ladson's house (ODC-42), at which time:

- a. Ms. Ladson informed the police that Sanders had pushed her down the stairs and struck her on the left side of the face with a handgun;
- b. the police observed that Ms. Ladson was crying, frightened, in pain, and had swelling to the left side of her face;
- c. the police transported Ms. Ladson to the hospital for treatment of her injuries; and
- d. the police completed a Domestic Violence Report recording their observations.

Stip. 94.

89. On or about June 23, 2015, Ms. Ladson was released from the hospital and returned to her home. Stip. 95.

90. At the time of the release, Ms. Ladson “was still a lot battered and bruised and very afraid,” had an ace bandage around her waist because of “some fractures,” and suffered a “swollen eye and stuff.” 5/20/19 N.T. 79.

91. Ms. Ladson lost the sight of her eye as a result of the beating. *Id.*

92. On or about June 24, 2015, Sanders retained Respondent to represent him on possible criminal and domestic abuse charges arising from the assault on Ms. Ladson. Stip. 96.

93. During the morning of June 24, 2015, Respondent and Sanders went to Ladson’s house purportedly to retrieve Sanders’ possessions. ODC-44, Answer 82; Stip. 97.

94. Ms. Ladson was sitting in her living room when Sanders entered the front door of the house with a key (5/20/19 N.T. 80, 85-94, 104) at which point Ms. Ladson “looked up” and saw Sanders “and the guy [Respondent] coming in.” *Id* at 83-84.

95. Respondent and Sanders then walked through the enclosed porch and into the living room where Ms. Ladson was sitting (ODC-45; 5/20/19 N.T. 80, 85-88) during which time:

- a. Ms. Ladson repeatedly told Respondent and Sanders to leave the house (*id.* at 86, 88, 69, 108-110, 113);
- b. Respondent and Sanders failed to comply with Ms. Ladson’s repeated requests to leave her house (*id.* at 86, 89, 91, 110, 113);
- c. Respondent and Sanders shouted at Ms. Ladson (*id.* at 98, 122, 133); and
- d. Respondent wrote his name and telephone number on an envelope on Ms. Ladson’s living room table, and instructed Ms. Ladson to give his contact information to her lawyer. (*id.* at 86, 105).

96. Respondent’s conduct intimidated and frightened Ms. Ladson and placed her in fear of immediate serious bodily injury. 5/20/19 N.T. 89-90, 95, 98, 110, 114.

97. Ms. Ladson wanted assistance in removing Respondent and Sanders from the house and called Darryl Taylor, her neighbor, who heard Respondent screaming, Sanders cursing at Ms. Ladson, and Ms. Ladson asking Respondent and Sanders to leave the house. 5/20/19 N.T. 88, 91, 111, 121-124, 132-133.



98. Ms. Ladson called the police after she called Mr. Taylor. 5/20/19 N.T.

111.

99. When Mr. Taylor arrived at the house, he found Ms. Ladson “huddled in the corner” and “shaking.” 5/20/19 N.T. 122.

100. On June 26, 2015, Sanders was arrested and charged with aggravated assault, possessing an instrument of crime, terroristic threats, simple assault, and reckless endangerment. ***Commonwealth v. Gill Sanders***, MC-51-CR-0019736-2015. ODC-47; Stip. 102.

101. On July 13, 2015:

- a. Respondent entered his appearance on behalf of Sanders (ODC-48); and
- b. the Honorable Patrick F. Dugan scheduled Sanders’ trial for September 4, 2015. (ODC-49)

Stip. 103.

102. Ms. Ladson appeared for the September 4, 2015 preliminary hearing in Sanders’ criminal case, during which time:

- a. Assistant District Attorney Meghan Goddard observed that Ms. Ladson “immediately became visibly upset,” “scared,” and “nervous” when she saw Respondent;
- b. Ms. Ladson explained to Ms. Goddard that Respondent made her “nervous, scared, and apprehensive” because he had come to her house with Sanders after her assault and she did not want them at her house; and

- c. Ms. Goddard had concerns about Respondent's continuing to represent Sanders and requested informally that Respondent recuse himself; and
- d. Respondent refused to recuse himself.

5/20/19 N.T. 154-157.

103. On September 4, 2015 (ODC-49):

- a. the Commonwealth discovered that Respondent might be a possible fact witness for Sanders at Sanders' criminal trial;
- b. the Commonwealth requested that Judge Dugan remove Respondent from representing Sanders;
- c. Judge Dugan granted the Commonwealth's request for a continuance so that Sanders could hire new private counsel; and
- d. Sanders' case was continued until October 2, 2015, for a status listing on Sanders' retention of new counsel.

Stip. 104.

104. On October 2, 2015, the Honorable William Austin Meehan, Jr., removed Respondent from Sanders' case and continued Sanders' case until November 2, 2015, for the Court to appoint new counsel (ODC-49); on October 5, 2015, Michael Hagarty, Esquire, was appointed to represent Sanders. Stip. 105.

105. On January 5, 2016, Sanders was held for court on all charges, and on January 7, 2016, the Commonwealth filed Bills of Information. ***Commonwealth v. Sanders***, CP-51-CR-0000085-2016. ODC-50; Stip. 107.

106. Sanders died prior to trial, and on October 7, 2016, Sanders' criminal case was abated. ODC-50; Stip. 108.

107. The testimony at the disciplinary hearing of Ms. Ladson, Mr. Taylor and Ms. Goddard was credible.

108. Respondent presented the testimony of Augustus Baxter, regarding Mr. Baxter's purported observations of what happened at Ms. Ladson's house on the morning of June 24, 2015. Mr. Baxter, a long-time friend of Respondent and a convicted felon, testified that he drove Respondent and Sanders to Ms. Ladson's house. 5/21/19 N.T. 13-14.

109. Mr. Baxter did not know who opened the door to the house, did not see Ms. Ladson on the telephone, did not hear Sanders cursing at Ms. Ladson, did not observe Ms. Ladson's face, and did not see Respondent hand anything to Ms. Ladson. 5/21/19 N.T. 51-52, 55, 57, 60.

110. Mr. Baxter's testimony is not credible.

111. Respondent presented the testimony of Rashid Abdul Lee Sanders, the son of Sanders, relating to Ms. Ladson's recovery from her 2010 stroke. 5/21/19 N.T. 65, 75, 77.

112. Mr. Sanders' testimony is not credible.

113. Respondent presented the testimony of two character witnesses, Thomas Noble and Joseph Magid, both of whom are convicted felons and who had been Respondent's clients.

114. The testimony of Mr. Noble and Mr. Magid is not credible.

115. Respondent did not testify.

116. Respondent has a prior record of discipline:

- a. In 2003, a Private Reprimand was administered for violations of RPC 1.1, 1.3, 1.4(a), 1.4(b), 1.5(b), 1.16(d), and 3.2. Respondent failed to provide a written fee agreement, failed to diligently pursue his client's EEOC matter and failed to communicate with his client. His neglect resulted in the judge dismissing the client's case and the client losing her right to a hearing;
- b. In 2005, an Informal Admonition was administered for violations of RPC 1.1, 1.3, 1.4(a), 1.15(b), and 8.4(d). Respondent failed to diligently handle a client's EEOC matter, failed to communicate with his client and failed to refund the unearned fee upon termination of representation;
- c. In 2009, an Informal Admonition was administered for violations of RPC 1.4(a)(3), 1.4(a)(4), 5.5(a), and Pa.R.D.E. 203(b)(3) relating to Respondent's failure to communicate with his client and engaging in the unauthorized practice of law while on inactive status; and
- d. By Order dated June 14, 2012, a Public Censure with Probation for One Year and conditions on consent was imposed for violations of RPC 1.3, 1.4(a)(3), 1.5(b), 8.4(c) and 8.4(d) for failing to provide a written fee agreement, failing to submit documents to the court, failing to appear at a court hearing, failing to act with diligence, and failing to inform his

client that her case had been dismissed. Respondent's prior disciplinary record was found to be an aggravating factor.

117. Respondent has unsatisfied liens and judgments against him totaling \$53,938.48. P-7.

118. Respondent is a named defendant in 57 lawsuits, including 53 seeking payment for unpaid taxes, mortgages, rent, gas service, and court reporting services. P-8.

119. Respondent served as a Disciplinary Board Hearing Committee member from 1997 to 2003. P-9.

120. Although Respondent denied any misconduct in his DB-7 response and Answer to Petition or Discipline, at the disciplinary hearing, he recognized his wrongdoing and expressed remorse for his misconduct in the Litvinov matter. 5/20/19 N.T. 19-22, 84.

121. Respondent did not file a post-hearing brief and did not take exceptions to the Committee's Report and recommendation.

### III. CONCLUSIONS OF LAW

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

#### Charge I

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;

3. PRC 1.4(a)(3) – A lawyer shall keep the client reasonable informed about the status of the matter;

4. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information;

5. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;

6. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law;

7. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

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

### Charge II

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

2. Pa.R.D.E. 203(b)(4) – Failure by a respondent-attorney without good cause to comply with any order under the Enforcement Rules of the Supreme Court, the Board, or a hearing committee or special master, shall be grounds for discipline.

Charge III

1. RPC 4.4(a) – In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person; and

2. 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

This matter is before the Board on a three-count Petition for Discipline charging Respondent with violations of the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement in two client matters and in Respondent's probation matter. Petitioner bears the burden of proving ethical misconduct by a preponderance of evidence that is clear and satisfactory. *Office of Disciplinary Counsel v. John T. Grigsby, III*, 425 A.2d 730, 732 (Pa. 1981). Upon review of this record, we conclude that Petitioner met its burden to prove that Respondent violated the charged rules.

The facts demonstrate that in the Litvinov matter, Respondent received \$17,000 to represent his client on direct appeal to the Superior Court from his criminal convictions in Centre County. Respondent failed to act with competence and diligence in filing a notice of appeal to the Superior Court. In addition, Respondent failed to comply with

Litvinov's reasonable requests for information about the status of his direct appeal and provide Litvinov with requested court documents. To the extent that Respondent communicated with Litvinov, he engaged in deceit and misrepresentation when he misled his client to believe that the appeal was pending in the Superior Court. Even though both the PCRA court and Superior Court concluded that Respondent had abandoned Litvinov, which conclusion Respondent did not dispute at the disciplinary hearing, Respondent failed to refund the unearned portion of the legal fee upon termination of representation. This misconduct prejudiced the administration of justice in that it expended the resources of the criminal justice system and delayed resolution of Litvinov's matter.

In the probation violation matter, in conjunction with the public censure imposed upon Respondent by Order of the Court dated June 14, 2012, he was ordered to serve a one year term of probation with a practice monitor and conditions. One of the conditions required him to take eight hours of Continuing Legal Education on law office practice management and submit proof to the Board. Respondent failed to fulfill this condition, thereby failing to comply with the Court's order.

Lastly, in the Ladson matter, Respondent conducted himself in a manner that had no substantial purpose other than to burden, harass and intimidate a third party. Respondent agreed to represent Sanders on charges related to Sanders' assault of Ms. Ladson. In the days following the assault, Sanders, accompanied by Respondent, returned to the house he shared with Ms. Ladson, used his key to open the door, entered the house with Respondent, and proceeded into the living room, which was occupied by Ms. Ladson. Ms. Ladson credibly testified that she was "scared to death" (5/20/19 N.T. 87) upon seeing Sanders and Respondent, who was a stranger to her, and asked them to leave the house.



Respondent and Sanders refused to leave, even after repeated requests by Ms. Ladson. Rather, Respondent and Sanders yelled and cursed at Mr. Ladson, intimidating her and rendering Ms. Ladson fearful, so that she called her neighbor and the police for assistance. Respondent ultimately left the house, but not before writing down his name and telephone number and telling Ms. Ladson to have her attorney call him.

When it became apparent to ADA Goddard at the preliminary hearing that Respondent had interacted with Ms. Ladson and that she was fearful of him, ADA Goddard asked Respondent to recuse himself as a potential fact witness. When Respondent refused to do so, Ms. Goddard requested a sidebar with the judge, who agreed that Respondent should recuse himself, after which time Sander's preliminary hearing was continued for four months.

Having concluded that Respondent committed professional misconduct, this matter is ripe for the determination of discipline. The Hearing Committee recommended a suspension for a period of two years. The parties did not take exception to this recommendation. After reviewing the Committee's Report, and after considering the nature and gravity of the misconduct, as well as the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4<sup>th</sup> 115 (2004), we conclude, for the following reasons, that a suspension for a period of two years is the appropriate discipline.

Respondent is a seasoned legal practitioner, having practiced law in the Commonwealth since 1988, and having served as a Disciplinary Board Hearing Committee member for a six-year period in the late 1990s. However, this legal background is punctuated by four episodes of professional misconduct: a private reprimand in 2003 for neglect of a client's matter; an informal admonition in 2005 for

neglect of a client's matter; an informal admonition in 2009 for failing to communicate with a client and engaging in the unauthorized practice of law while on inactive status, whereby Respondent failed to send written notice to his clients concerning his status and failed to discontinue the operation of his law office; and a public censure in 2012 with one year of probation for failing to provide a written fee agreement, failing to submit a memorandum to the court, failing to appear at a hearing, failing to act with diligence in a client matter, and failing to inform a client that her case had been dismissed. Respondent consented to the public censure and probationary period and was ordered to comply with certain conditions. Respondent's failure to complete CLE credit hours was the basis for one of the instant charges against him.

Reviewing this abysmal history of discipline, it can be discerned that Respondent's instant misconduct bears similarities to the prior episodes of misconduct. Respondent's latest encounter with the disciplinary system demonstrates that he did not heed the seriousness of the three instances of private discipline and one instance of public discipline and failed once again to conduct his legal practice in conformity with the ethical rules. Indeed, upon review of the instant acts of misconduct, including severely neglecting Mr. Litvinov's matter, lying to him about the status of his appeal, intimidating and frightening Ms. Ladson, and failing to comply with a court-ordered condition of probation, it can be concluded that Respondent has not only continued to engage in conduct similar to his prior acts, but has increased the seriousness of the nature of his transgressions, thereby underscoring his intent to practice outside the ethical boundaries of the profession.

While Respondent expressed remorse for his actions in the Litvinov matter, he failed to show any acceptance of responsibility or remorse for his other acts of

misconduct and has not demonstrated that he understands his role as an attorney and an advocate. Respondent's limited acknowledgement of wrongdoing cannot justify or excuse Respondent's harmful actions. We find no other circumstances of record to mitigate the sanction in this matter.

A fundamental principle of Pennsylvania's attorney disciplinary system is that there is no *per se* discipline for attorney misconduct. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186 (Pa. 1983). Each case is considered individually on its facts and circumstances. ***Office of Disciplinary Counsel v. Daniel Chung***, 695 A.2d 405, 407 (Pa. 1997) However, prior similar cases guide the Board's recommendation of the appropriate sanction, so as to ensure consistency in discipline. ***Lucarini*** at 190. We conclude, after review of prior cases, that a suspension of two years is appropriate, when, as here, Respondent's neglect of his client's matter, misrepresentation, failure to refund an unearned fee, failure to fulfill court-ordered probationary conditions, and his troubling acts in relation to intimidating a third person, viewed in the context of an ongoing pattern of discipline over the years, would likely pose a danger to the public if he continued to practice law.

In the matter of ***Office of Disciplinary Counsel v. Melanie D. Naro***, No. 212 DB 2011 (D. Bd. Rpt. 7/19/2012) (S. Ct. Order 12/6/2012), the Court suspended Naro for two years for her neglect of a client's divorce matter, wherein she failed to provide a written fee agreement, failed to forward answers to discovery to opposing counsel, failed to communicate on many occasions with her client, and failed to return her client's file, despite repeated requests. Naro's misconduct was severely aggravated by her extensive history of discipline, which consisted of an informal admonition, a private reprimand, and a suspension for a period of six months with probation for one year, the latter misconduct

consisting of nearly identical practice problems. The Board concluded that Naro's previous instances of discipline had not impacted her practice in a positive way, as she continued to engage in similar unprofessional acts. Although Naro acknowledged her misconduct, the Board concluded that a license suspension was warranted.

In the matter of ***Office of Disciplinary Counsel v. F. Lee Lewis***, No. 117 DB 2005 (D. Bd. Rpt. 1/26/2007) (S. Ct. Order 4/13/2007), the Court suspended Lewis for a period of two years for engaging in misconduct in six separate client matters, wherein Lewis neglected matters by failing to comply with court orders and attend meetings, failing to communicate, failing to provide written fee agreements, and failing to return client files and/or refund advance payment of fees that were not earned. Lewis had a prior disciplinary record of an informal admonition and a private reprimand with probation and a practice monitor. The misconduct that resulted in the prior discipline was similar to the misconduct that resulted in Lewis' two-year suspension. Lewis expressed genuine remorse and cooperated with Office of Disciplinary Counsel.

In the matter of ***Office of Disciplinary Counsel v. Richard J. McCague***, No. 64 DB 2005 & No. 107 DB 2005 (D. Bd. Rpt. 7/17/2006) (S. Ct. Order 11/30/2006), the Court suspended McCague for two years for his neglect and mishandling of two separate client matters. In the first matter, McCague failed to turn over a client's file to successor counsel in a criminal matter. In the second matter, McCague failed to timely file a notice of appeal and a concise statement of matters complained of on appeal. He failed to communicate with his client and did not refund the unearned portion of the fee. McCague did not testify on his own behalf and offered no character evidence. Further, the Board found that McCague did not acknowledge his conduct or apologize for it. Notably, McCague had a prior history of discipline consisting of an informal admonition and a public censure, which

prior record weighed heavily in the Board's consideration of appropriate discipline. The Board found that McCague had not shown improvement from his past encounters with the disciplinary system, which necessitated a more severe sanction.

In the matter of ***Office of Disciplinary Counsel v. Michael Mayro***, No. 144 DB 2001 D. Bd. Rpt. 10/27/2003) (S. Ct. Order 2/3/2004), the Court suspended Mayro for two years for his neglect in four separate client matters, including failing to expedite litigation, failing to respond to motions and discovery, and failing to communicate with clients. Mayro had a prior history of discipline consisting of two informal admonitions, a private reprimand, and a private reprimand with probation. Considering these facts, the Board concluded that the private discipline had not had the desired effect in deterring Respondent's unprofessional conduct, and a more severe sanction was necessary to underscore the seriousness of the misconduct and the need to protect the public.

Like the respondent-attorneys in ***Naro, Lewis, McCague, and Mayro***, Respondent has not conformed his behavior to the ethical rules that govern the legal profession, despite being given the chance to do so through the imposition of three private sanctions and a public sanction that permitted him to continue practicing law. Similar to the above respondent-attorneys, Respondent has continued to engage in client neglect, along with other troubling activity that harmed the public, the courts and the integrity of the legal system. And like the respondent-attorneys in the above cited matters, Respondent's recidivism necessitates that this matter be dealt with by a license suspension.

The primary purpose of the disciplinary system in Pennsylvania is not punitive in nature but is to protect the public from unfit attorneys and to preserve public confidence in the legal system. ***Office of Disciplinary Counsel v. Anthony Cappuccio***, 48 A.3d 1231, 1238 (Pa. 2012). The evidence produced by Petitioner convincingly proved that

Respondent is not fit to practice law, and is a danger to the public and the profession itself.

The nature of Respondent's misconduct in conjunction with his extensive record of discipline involving similar misconduct calls for severe discipline. The progressive discipline that has been imposed on Respondent over the past years has not served to deter his repeated acts of misconduct. A suspension of two years is warranted to comply with the guiding decisions reviewed above, and will require that Respondent prove at a future reinstatement proceeding that he has rehabilitated himself and is fit to practice law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Respondent, Alexander Z. Talmadge, Jr., be Suspended for two years 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:

  
James C. Haggerty, Vice-Chair

Date: 12/17/19