IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2303 Disciplinary Docket No. 3
Petitioner	:	No. 39 DB 2015
v.	:	Attorney Registration No. 34446
PAUL J. McARDLE,	:	(Allegheny County)
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 22nd day of November, upon consideration of the Report and Recommendations of the Disciplinary Board, the Petition for Review, and the response thereto, Paul J. McArdle 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's Applications for Relief are denied. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 11/22/2016

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 39 DB 2015
v.	:	Attorney Registration No. 34446
PAUL J. McARDLE Respondent	:	(Allegheny County)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on June 29, 2015, Office of Disciplinary Counsel charged Paul J. McArdle, Respondent, with violations of the Rules of Professional Conduct ("RPC"). Respondent filed his Answer to Petition on July 24, 2015, and an Amended Answer to Petition on August 3, 2015. Petitioner filed amendments to the Petition on September 23, 2015.

A prehearing conference was held on September 22, 2015, before Hearing Committee Chair Leonard J. Marsico, Esquire, at which time the Chair heard oral argument on third parties' motions to quash subpoenas issued by Respondent. Chair Marsico, following review of Respondent's subpoenas, third parties' motions to quash and Respondent's response, granted all of the motions to quash.

On September 24, 2015, Petitioner filed a Motion *in Limine* to preclude Respondent from introducing any evidence at the hearing on the merits of Respondent's allegations raised in the civil actions underlying the disciplinary proceedings. By determination dated October 6, 2015, the Hearing Committee granted the Motion *in Limine*.

On October 13, 2015, Respondent filed a Motion for Recusal of Hearing Committee Chair Marsico and Member Jennifer R. Andrade, Esquire and for reconsideration of the Committee's October 6, 2015 grant of Petitioner's Motion *in Limine*. Petitioner filed an answer to the Motion for Recusal and reconsideration on October 15, 2015. By determination dated October 21, 2015, the Hearing Committee denied Respondent's Motion for Recusal and reconsideration.

A disciplinary hearing was held on October 23, 2015 and November 3, 2015, before a District IV Hearing Committee comprised of Chair Marsico and Members Andrade and Richard T. Ting, Esquire. Respondent appeared *pro se*. Petitioner offered exhibits but no witness testimony. Respondent offered exhibits and testified on his own behalf.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on March 2, 2016, concluding that Respondent committed professional

misconduct and recommending that he be suspended for a period of one year and one day.

On April 12, 2016, Respondent filed a Brief on Exceptions and request for oral argument.

On April 26, 2016, Petitioner filed a Brief Opposing Exceptions.

Oral argument was held before a three-member panel of the Disciplinary Board on July 14, 2016.

This matter was adjudicated by the Disciplinary Board at the meeting on July 23, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Ave., P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent was born in 1955 and was admitted to practice law in the Commonwealth of Pennsylvania in 1981. His attorney registration address is 601 Avery St., Pittsburgh, PA 15212. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no record of prior discipline.

The First Action

4. On November 1, 2010, Respondent filed a *pro se* petition for pre-complaint discovery pursuant to Pennsylvania Rule of Civil Procedure ("Pa.R.C.P.") 4003.8 in the Court of Common Pleas of Allegheny County, in a matter docketed at GD 10-20409 and captioned *In re Enquiry into Matter of Trespass, Conversion, and Defamation, Inter Alia* ("First Action"). Petitioner's Exhibit ("PE") 1; PE 2.

5. Respondent's petition for pre-complaint discovery pertained to an alleged breach of security and theft from Respondent's law office. PE 3.

6. Respondent sought the issuance of subpoenas upon eighteen persons who would eventually become defendants. He deposed five of those persons and the others resisted via motions to quash and requests for protective orders. Administrative Exhibit ("AE") I; AE III; PE 1.

7. On December 3, 2010, the trial court quashed all subpoenas without prejudice. AE I; AE III; PE 1.

8. On December 10, 2010, Respondent filed a petition for allowance of pre-complaint discovery, which the trial court granted. AE I; AE III; PE 1.

9. Respondent issued new subpoenas to various persons, and after their failure to appear, Respondent filed petitions for issuance of a rule to show cause why the witnesses resisting his subpoenas should not be held in contempt. AE I; AE III; PE 1.

10. Counsel for those subpoenaed persons filed motions to quash subpoenas and for protective orders. AE I; AE III; PE 1.

11. On March 9, 2011, the Court of Common Pleas entered an order quashing Respondent's outstanding subpoenas and discovery requests based upon the

witnesses' claims that their lack of knowledge of information about which Respondent wanted to depose them would not advance the preparation of the complaint. The court barred Respondent from conducting any pre-complaint discovery directed to certain individuals. PE 1; PE 3.

12. On March 16, 2011, Respondent filed a complaint in the First Action naming thirty (30) individuals as defendants, along with an unnamed John Doe and Jane Roe defendant. PE 4.

13. In his complaint, Respondent alleged, among other things, that in 2009, Respondent began investigating alleged damage to his professional reputation and alleged stolen files; Respondent believed that in 2010 files were taken from his office on two occasions. PE 4 at ¶¶47-53.

14. Respondent's complaint asserted causes of action for defamation, trespass and conversion. PE 4 at ¶¶91-106.

15. On July 8, 2011, the Court of Common Pleas dismissed Respondent's complaint as to all counts and all defendants. PE 6.

16. The Court of Common Pleas struck Respondent's cause of action for defamation "because the complaint fails to allege with any particularity the contents of the statements claimed to have been made or the identity of the person or persons making the statements, or the identity of persons to whom the statements were made, or the time and place at which any defamatory statements were made." PE 6 at 5.

17. The Court of Common Pleas dismissed Respondent's causes of action for trespass and conversion because the allegations in the complaint "do not set forth any facts essential to support the claim." PE 6 at 6.

18. With respect to Respondent's assertions that he could not plead any greater specificity without deposing the defendants, the Court of Common Pleas denied Respondent's request for post-complaint discovery because taking the defendants' depositions, some of whom had already been deposed, would "constitute unreasonable annoyance, embarrassment, oppression, burden or expense. " PE 6 at 7.

19. On July 19, 2011, Respondent filed a notice of appeal to the Superior Court of Pennsylvania, docketed at 1145 WDA 2011. PE 7.

20. On February 1, 2012, the Superior Court affirmed the trial court's denial of pre-complaint discovery, denial of post-complaint discovery, and dismissal of the complaint. PE 7; PE-10.

21. Regarding Respondent's defamation claim, the Superior Court agreed with the trial court that Respondent's complaint in the First Action failed to identify the substance of the defamatory statement and "failed to include specifically who made the statement and to whom the statement was made." PE 10 at 9.

22. As to Respondent's claims of trespass and conversion, the Superior Court explained:

> Reviewing [Respondent's] complaint as our standard of review requires, we observe that he does not indicate who allegedly trespassed onto his property, who took the files and papers in question, or the specific dates when the trespasses and conversions allegedly occurred. [Respondent] simply makes bald allegations of a conspiracy amongst the 32 Defendants to have an unnamed person or persons enter [Respondent's] office and remove unidentified files and papers.
>
> P-10 at 12.

23. Concerning denial of Respondent's request for post-complaint discovery, the Superior Court affirmed on the basis that taking the defendants'

depositions "would not materially assist [Respondent] in preparing his complaint, as all Defendants had already denied having any information pertaining to [Respondent's] causes of action." PE 10 at 18.

The Second Action

24. On February 7, 2012, Respondent filed a *pro se* complaint in the Court of Common Pleas of Allegheny County, docketed at GD 12-2610 and captioned *McArdle v. Hufnagel* ("Second Action"). PE 8; PE 9.

25. Respondent's complaint in the Second Action named the same thirty defendants that were named in Respondent's complaint in the First Action, along with an unnamed John Doe and Jane Roe defendant. PE 4; PE 9.

26. Respondent's complaint asserted causes of action for trespass, conversion, trespass to chattels, and defamation. PE 9 at ¶¶54-102.

27. On May 1, 2012, the Court of Common Pleas dismissed Respondent's complaint pursuant to Pa.R.C.P. 233.1, addressing dismissal of *pro se* complaints alleging the same or related claims raised and resolved in a prior action. PE 11.

28. In dismissing Respondent's complaint, the Court of Common Pleas compared Respondent's complaint in the Second Action to his complaint in the First Action, finding:

> In summary, I dismissed the lawsuit at GD – 10-020409 [First Action] because the complaint did not link any defendant with any factual allegations relating to the break-ins and defamatory statements. Nothing has changed in the GD-12-002610 [Second Action] lawsuit. In the complaint filed in this action, the only difference is that the complaint includes additional allegations referring to additional break-ins. However, once again there are no allegations linking an individual defendant with any alleged wrongdoing. Consequently, the *pro se* plaintiff is alleging

claims related to those he raised in the prior action against the same defendants.
PE 11 at 2-3.

29. On May 7, 2012, Respondent filed a notice of appeal to the Superior Court of Pennsylvania, docketed at 733 WDA 2012. PE 12.

The Third Action

30. On April 13, 2012, Respondent filed a *pro se* petition for pre-complaint discovery in the Court of Common Pleas of Allegheny County, captioned *In re Enquiry Upon the Corruption of Witnesses and Upon Causes of Action for Defamation* and docketed at GD 12-6759 ("Third Action"). PE 13; PE 14.

31. Respondent served subpoenas upon Dennis Welsch, William Morgan and Kathleen Morgan, all previously named defendants, to appear for depositions; these individuals did not appear for the depositions. AE 1; AE III.

32. Respondent served upon these individuals petitions for issuance of a rule to show cause why they should not be found in contempt for not appearing for depositions. AE I; AE II, AE III.

33. The individuals responded by filing motions for protective order and sought a court order to relieve them from complying with any subpoenas. AE I; AE II; AE III; PE 13; PE 15.

34. By Memorandum and Order dated July 25, 2012, the Court of Common Pleas granted the motions for protective order and dismissed with prejudice Respondent's petition for pre-complaint discovery. PE 15.

35. On July 31, 2012, Respondent filed a notice of appeal to the Superior Court of Pennsylvania, docketed at 1175 WDA 2012. PE 26.

The Fourth Action

36. On May 3, 2012, Respondent filed a *pro se* complaint in the Court of Common Pleas of Allegheny County, docketed at GD 12-7883 ("Fourth Action"). PE 16; PE 17.

37. In Respondent's complaint in the Fourth Action, he named the same thirty defendants that were named in his complaints in the First Action and the Second Action, along with an unnamed John Doe and Jane Roe defendant. PE 4; PE 9; PE 17.

38. Like Respondent's complaint in the Second Action (PE 9), Respondent's complaint in the Fourth Action asserted causes of action for trespass, conversion, trespass to chattels, and defamation. PE 17.

39. Respondent's complaint in the Fourth Action was nearly identical to Respondent's complaint in the Second Action, except the complaint in the Fourth Action alleged additional, more recent trespasses into Respondent's law office. PE 17 at ¶¶72, 84.

40. On July 5, 2012, Respondent filed an amended complaint in the Fourth Action. PE 19.

41. Respondent's amended complaint added allegations of additional trespasses into Respondent's law office following initiation of the Fourth Action. PE 19 at ¶¶73, 81, 83, 85.

42. On July 25, 2012, the Court of Common Pleas dismissed Respondent's complaint pursuant to Pa.R.C.P. 233.1, noting that Respondent's complaint in the Fourth Action "is virtually identical to the complaint filed at GD-12-002610 [Second Action]." PE 22.

43. The court's order dismissing the complaint included the following provisions:

> (2) plaintiff, unless represented by counsel, is barred from pursuing additional litigation against the same or related defendants as those in the present proceeding if such litigation raises the same or related claims; and (3) if plaintiff pursues additional litigation against any of the defendants in this litigation in violation of paragraph (2), the Department of Court Records, upon praecipe filed by any of the persons who are defendants in these proceedings, shall dismiss the complaint as to all defendants.

PE 22.

44. On August 1, 2012, Respondent filed a notice of appeal to the Superior Court of Pennsylvania docketed at 1179 WDA 2012. PE 27.

45. On December 19, 2012, the Superior Court issued a memorandum affirming the Court of Common Pleas in the Second Action, the Third Action, and the Fourth Action. PE 28.

46. Therein, the Superior Court found that the legal insufficiency of Respondent's complaint in the First Action was not cured in Respondent's complaints in the Second Action and the Fourth Action and that the Court of Common Pleas' dismissal of the complaint in the First Action (affirmed by the Superior Court) resolved Respondent's claims against the defendants. PE 28 at 10-11.

47. Referring to the Superior Court's opinion affirming dismissal of the First Action (PE 10), the Superior Court also explained that despite Respondent's added allegations of additional events of trespass, conversion and trespass to chattels, the complaints in the Second Action and Fourth Action "still have not: 1) 'identif[ied] the substance of the defamatory statement such that the trial court would be able to determine the defamatory meaning of the statement...'; 2) 'include[d] specifically who

made the statement and to whom the statement was made'; 3) nor set forth 'who allegedly trespassed onto his property, who took the files and papers in question, or the specific dates when the trespasses and conversions allegedly occurred.'" PE 28 at 13 (quoting PE 10) (alterations in original).

48. Further, the Superior Court affirmed dismissal of Respondent's petition for pre-complaint discovery in the Third Action, concluding that Respondent failed to show "that his actions [were] not unreasonably annoying, embarrassing, oppressive, burdensome, and expensive to the Defendants." PE 28 at 23.

The Fifth Action

49. On July 31, 2012, Respondent filed a *pro se* petition for pre-complaint discovery in the Court of Common Pleas of Allegheny County, captioned *In re Enquiry Upon the Corruption of Witnesses and Upon Causes of Action for Defamation* and docketed at GD 12-13337 ("Fifth Action"). PE 23; PE 24.

50. This was Respondent's third petition for pre-complaint discovery.

51. Respondent served subpoenas on William Morgan and Kathleen Morgan to appear for deposition; they failed to appear.

52. On August 13, 2012, Respondent filed a petition for issuance of a rule to show cause why William Morgan and Kathleen Morgan should not be held in contempt for failure to appear for deposition. PE 23; PE 25.

53. On October 2, 2012, the Court of Common Pleas denied Respondent's petition for issuance of rule to show cause and ordered that "there will be no discovery directed to Mr. and Mrs. Morgan unless permitted by court order after the pleadings are closed." PE 25.

The Sixth Action

54. On December 27, 2012, Respondent filed a *pro se* complaint in the United States District Court for the Western District of Pennsylvania docketed at 1:12-cv-326 ("Sixth Action"), naming the same thirty defendants identified in Respondent's complaints in the First Action, the Second Action and the Fourth Action, along with four additional individuals and an unnamed John Doe and Jane Roe defendant. PE 29; PE 30.

55. In this complaint, Respondent asserted causes of action for conspiracy to interfere with civil rights under 42 U.S.C. §1985, trespass, conversion, trespass to chattels, and defamation. PE 30.

56. The matter was assigned to a United States Magistrate Judge. On February 27, 2013, the judge issued a Report and Recommendation recommending dismissal of all counts of Respondent's complaint. PE 31.

57. The United States Magistrate Judge found that Respondent's allegations regarding "violation of law office premises" failed to state a plausible cause of action for conspiracy under 42 U.S.C. § 1985, and that the United States District Court did not have subject matter jurisdiction over Respondent's remaining state law tort claims. PE 31.

58. On March 14, 2013, the United States District Court adopted the United States Magistrate Judge's Report and Recommendation as to the opinion of the court and dismissed all counts of Respondent's complaint in the Sixth Action. PE 32.

59. On March 28, 2013, Respondent filed a notice of appeal to the United States Court of Appeals for the Third Circuit, docketed at 13-1841. PE 33.

60. On October 16, 2014, the United States Court of Appeals affirmed the United States District Court's dismissal of Respondent's claims. PE 34.

61. Thereafter, Respondent sought a rehearing and on November 6, 2014, the United States Court of Appeals denied Respondent's petition for rehearing. PE 35.

The Seventh Action

62. On December 10, 2014, Respondent filed a *pro se* complaint in the Court of Common Pleas of Allegheny County, docketed at GD 14-22519 ("Seventh Action"). PE 36; PE 37.

63. Respondent's complaint in the Seventh Action named the same defendants and asserted the same causes of action that were asserted in Respondent's complaint in the Sixth Action. PE 30; PE 37.

64. On December 12, 2014, the Allegheny County Department of Court Records dismissed the complaint with prejudice, pursuant to the July 25, 2012 order issued in the Fourth Action. PE 36 at 11; PE 22.

65. Additionally, on December 23, 2014, the Court of Common Pleas dismissed the complaint with prejudice, as to all defendants, pursuant to the July 25, 2012 order issued in the Fourth Action. PE 36 at 11; PE 22.

66. On December 29, 2014, Respondent filed a "Motion to Strike Docket Entry of 'Dismissed with Prejudice'" wherein he sought to have the court strike the entry placed upon the docket. PE 38.

67. In Respondent's motion to strike, he acknowledged the provisions of the July 25, 2012 order issued in the Fourth Action, but argued that the order "was invalid." PE 38 at 4.

68. On December 29, 2014, the Court of Common Pleas denied Respondent's motion to strike. PE 36 at 10.

69. On January 2, 2015, Respondent filed a second "Motion to Strike Docket Entry of 'Dismissed with Prejudice'," again seeking to have the notation on the docket removed. PE 36 at 10.

70. On January 29, 2015, the Court of Common Pleas denied Respondent's second motion to strike. PE 39.

71. On February 12, 2015, Respondent filed an application for extraordinary relief in regard to the denial of the motion to strike the docket entry with the Supreme Court of Pennsylvania, docketed at 12 WM 2015. PE 45.

72. On March 20, 2015, the Supreme Court denied Respondent's petition for extraordinary relief. PE 46.

73. On January 29, 2015, the Court of Common Pleas issued an order striking Ten Day Notices served by Respondent on the defendants, and prohibiting Respondent from attempting to enter default judgment against the defendants. PE 36 at 8-9; PE 40 at 6.

74. On February 5, 2015, Respondent filed a "Motion to Vacate or Reform Order of Court of January 29, 2015." PE 40.

75. Respondent asked the court to vacate or reform the court's January 29, 2015 order regarding default judgments, arguing that the court's July 25, 2012 order

in the Fourth Action did not apply to the four defendants who were not defendants in the Fourth Action but were named as defendants in the Seventh Action. PE 40.

76. On February 6, 2015, Respondent filed a Praecipe for Judgment seeking default judgment against William and Kathleen Morgan, two of the defendants who were not defendants in the Fourth Action. PE 42. Default judgment was entered against Mr. and Mrs. Morgan. PE 44.

77. On February 18, 2015, the Court of Common Pleas denied Respondent's motion to vacate or reform the court's January 29, 2015 order, finding that the court's January 29, 2015 order applied to all defendants, including defendants not named in previous actions. PE 41.

78. On March 2, 2015, William and Kathleen Morgan filed motions to strike default judgment and for sanctions. AE I; AE II; AE III; PE 36.

79. On March 5, 2015, the Court of Common Pleas held a hearing on the motions filed by Mr. and Mrs. Morgan. PE 43.

80. On March 23, 2015, the Court of Common Pleas granted Mr. and Mrs. Morgan's motions to strike default judgment and for sanctions. PE 44.

81. In the court's order granting Mr. and Mrs. Morgan's motions, the court ordered Respondent to pay the Morgans "$500.00 as a sanction for their belated and improper inclusion in the instant lawsuit in defiance of the order entered on July 25, 2012 at GD 12-7883 [Fourth Action] and the taking of a default judgment in defiance of the various orders of Judges Folino and McCarthy entered in this action." PE 44 at ¶1.

82. The court also permitted Mr. and Mrs. Morgan to petition for reasonable counsel fees incurred for Respondent's "dilatory, obdurate and vexatious conduct during the pendency of the instant action." PE 44 at ¶2.

83. The court ordered that any further violations of the court's order by Respondent would result in a sanction of $500.00 per document. PE 44 at ¶3.

84. On April 6, 2015, Respondent filed "Objections to Order of March 23, 2015, and Memorandum," objecting to the various aspects of the court's March 23, 2015 order, as well as repeating objections to prior court orders in prior actions, including the July 25, 2012 order in the Fourth Action. PE 47.

85. On April 10, 2015, the Court of Common Pleas ordered Respondent to pay Mr. and Mrs. Morgan $1,015.00 for reimbursement of counsel fees they were forced to incur due to Respondent's "obdurate and vexatious conduct." PE 48.

86. On April 20, 2015, the Court of Common Pleas dismissed with prejudice Respondent's complaint with respect to defendants Dennis and Mary Welsch, "in furtherance of four (4) previous Orders of Court entered by members of this Court dismissing the above action." PE 49.

87. On June 17, 2015, the Court of Common Pleas further ordered Respondent to pay defendants Daniel and Mary Cusick $3,248.40 and defendants Dennis and Mary Welsch $910.00 "for their continued defense of the improper filings against them." PE 50.

88. On July 15, 2015, Respondent filed a notice of appeal to the Superior Court of Pennsylvania, docketed at 1056 WDA 2015. PE 51.

89. On September 9, 2015, the Superior Court quashed Respondent's appeal as to all of the Court of Common Pleas' orders except for the June 17, 2015 Order. PE 51 at 12.

90. On September 24, 2015, the Court of Common Pleas issued an opinion regarding Respondent's appeal. PE 56.

91. The court in its September 24, 2015 opinion noted:

> All the orders [in the Seventh Action] were the result of Plaintiff's inability to accept that a decision of the Pennsylvania Superior Court is binding on lower courts such as ours even though it is designated "non-precedential" and is issued *per curiam*. In addition, he insists that only the entry of a judgment after a trial is a basis for an appeal. He has repeatedly refused to accept the consequences of an order entered in 2012 by the Honorable R. Stanton Wettick, Jr., now a Senior Judge, in a case which involved all but four of the defendants named here. (Those four were not sued until the instant case was filed. Judge Wettick's order, however, applied to people in their position as well as the original thirty defendants). The order contained a somewhat unusual, but not improper, directive, in the nature of a sanction directed at Plaintiff that led to the dismissal of this action. Judge Wettick's order was appealed by Plaintiff and was affirmed by the Superior Court.

PE 56 at 1-2.

92. The court also noted that after the Court's December 29, 2014 order denying Respondent's Motion to Strike Docket Entry of Dismissed with Prejudice, "[a]t that point there could be no doubt that the entire case had been dismissed with prejudice, rightly or wrongly." PE 56 at 10.

93. The court further noted:

> It is also axiomatic that there must be finality to every dispute at some point. When people in a civil society lose in court they are expected to get past the defeat and move on to other endeavors. Instead, plaintiff has allowed his belief that defendants are evildoers to cloud his judgment regarding the Rules of Court and the related case law. As a result he long ago destroyed whatever possibility there was of pleading and proving his claims against the defendants and now seeks to blame the judges of this Court for the consequences of his own mistakes. Furthermore, it is evident that the judges of this Court have been exceedingly patient with Plaintiff in the face of years of disregard for the rules that keep courts functioning. At this point his disregard has

> become so disruptive that it must no longer be accepted with the excess of patience our court has exhibited for years.
>
> PE 56 at 12.

94. On October 9, 2015, Respondent filed a Petition for Allowance of Appeal in the Supreme Court of Pennsylvania, docketed at 406 WAL 2015. Respondent's Exhibit ("RE") 48.

95. On February 22, 2016, the Supreme Court denied Respondent's Petition for Allowance of Appeal.

Disciplinary Proceedings

96. On January 18, 2013, Petitioner sent Respondent a letter of inquiry informing Respondent of Petitioner's investigation of possible violations of RPC 3.1, RPC 4.4(a) and RPC 8.4(d) with respect to Respondent's conduct in the First through Fifth Actions. PE 52.

97. On January 30, 2013, Respondent responded via letter. PE 54.

98. In his January 30, 2013 response, Respondent referred to the trial court's dismissal of his petition for pre-complaint discovery in the Third Action and the Superior Court's affirmance of the trial court's dismissal in the Second, Third and Fourth Actions as "rotten." PE 54 at ¶¶54, 58.

99. On February 19, 2013, Petitioner sent to Respondent a supplemental letter of inquiry informing Respondent of Petitioner's investigation of possible violations of RPC 3.1 and RPC 8.4(d) with respect to Respondent's initiation of the Sixth Action. PE 53.

100. On February 21, 2013, Respondent responded via letter to Petitioner's February 19, 2013 letter. PE 55.

101. In his February 21, 2013 letter, Respondent stated: "No one is bound to accept the mis-rulings of a common pleas judge. Nor is anyone bound to accept an erroneous 'Non Precedential Decision' of the Superior Court of Pennsylvania." PE 55 at 3.

102. On June 29, 2015, Petitioner filed a Petition for Discipline at No. 39 DB 2015, charging Respondent with violations of RPC 3.1, RPC 4.4(a) and RPC 8.4(d). Administrative Exhibit ("AE") I.

103. On July 24, 2015, Respondent filed an Answer to Petition for Discipline. AE III.

104. On August 3, 2015, Respondent filed Amendments to Answer to Petition for Discipline. AE IV.

105. On September 23, 2015, Petitioner filed amendments to the Petition for Discipline. AE II.

III. CONCLUSIONS OF LAW

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

1. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

2. 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.

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

Disciplinary proceedings against Respondent were instituted by Office of Disciplinary Counsel by way of a Petition for Discipline filed on June 29, 2015. The Petition charged Respondent with professional misconduct arising from his initiation and maintenance of seven separate *pro se* court actions, each regarding the same or related causes of action against thirty-four defendants. Generally, Respondent alleged in his court actions that various defendants made defamatory statements about him, and in 2009, Respondent began investigating damage to his professional reputation. Respondent further alleged that thereafter defendants or their agents began unlawfully entering Respondent's law office to remove files of his investigation. Respondent filed an Answer to Petition on July 24, 2015, in which he denied engaging in any misconduct.

Pennsylvania disciplinary law has established that "evidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof of such conduct is clear and satisfactory." ***Office of Disciplinary Counsel v. Lawrence J. DiAngelus***, 907 A.2d 452, 456 (Pa. 2006). Petitioner is not required to meet its burden through direct evidence. "The ethical violations may be

proven solely by circumstantial evidence." ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981).

The genesis of this matter is Respondent's initiation of a *pro se* petition for pre-complaint discovery filed on November 1, 2010, in the Court of Common Pleas of Allegheny County. Respondent deposed several witnesses, with others resisting subpoenas via motions to quash and for protective orders. By a Memorandum and Order of Court dated March 9, 2011, the outstanding subpoenas and discovery requests were quashed and denied based upon the witnesses' claims that their lack of knowledge of information about which Respondent wanted to depose them would not advance the preparation of the complaint. The court barred Respondent from conducting any pre-complaint discovery directed to or involving the persons named in the Order.

On March 16, 2011, Respondent filed a civil complaint with thirty named defendants, raising causes of action for defamation, trespass and conversion. The defendants filed preliminary objections and argued, among other things, that Respondent failed to state a cause of action for any of his claims. By Memorandum and Order dated July 8, 2011, the trial court granted the defendants' preliminary objections and dismissed Respondent's complaint. Respondent appealed to the Superior Court. On February 1, 2012, the Superior Court affirmed the trial court's grant of preliminary objections and dismissal of Respondent's March 16, 2011 complaint. The Superior Court held that Respondent's pleading of the torts of defamation, trespass and conversion was too imprecise because he failed to plead with sufficient particularity essential facts to address the elements of each tort that Respondent would have to prove in order to recover for any harm suffered. In addition, the Superior Court found that the trial court did not abuse its discretion by prohibiting Respondent from engaging in pre-complaint

and post-complaint discovery.

Subsequent to the Superior Court's affirmation of the dismissal of Respondent's First Action, Respondent nonetheless continued to pursue his case by initiating six additional actions. None of those additional actions cured the fatal defects cited by the Superior Court in affirming the dismissal of the First Action. Although Respondent was on notice of the deficiencies in his earlier petition for pre-complaint discovery and civil complaint, his subsequently filed matters contained little variation as to the allegations and the identity of the several defendants.

Our review of the extensive record leads the Board to conclude that Respondent's continued pursuit of his tort claims by initiating and maintaining six additional court actions violated RPC 3.1, RPC 4.4(a) and RPC 8.4(d). The record is replete with multiple instances to sustain each of the alleged violations.

RPC 3.1 states: "A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law." Respondent's initiation of the Second through Seventh Actions did not have a "basis in law...that is not frivolous," because these actions did not address the issues raised by the Superior Court in its February 1, 2012 opinion affirming dismissal of Respondent's First Action. The Superior Court explained that Respondent could not maintain an action for defamation because his complaint in the First Action failed to identify the substance of the defamatory statement and "failed to include specifically who made the statement and to whom the statement was made." PE 10 at 9. Similarly, regarding Respondent's trespass and conversion claims, the Superior Court explained that Respondent's complaint "does not indicate who allegedly trespassed onto

his property, who took the files and papers in question, or the specific date when the trespasses and conversions allegedly occurred." PE 10 at 12.

Thereafter, Respondent ignored the language of the Superior Court's February 1, 2012 opinion in that none of his subsequent actions addressed the reasons for the Superior Court's affirmance of the dismissal of Respondent's complaint in the First Action. In its December 19, 2012 opinion, the Superior Court compared the First Action with the Second and Fourth Actions and was not able to discern a significant difference. PE 28 at 16. Indeed, in the February 1, 2012 opinion, the Superior Court concluded that Respondent's later actions had not cured the defects identified. PE 28 at 13.

For example, in Respondent's defamation claim, his complaint in the Second Action did not address the Superior Court's finding that Respondent's complaint in the First Action "failed to include specifically who made the statement and to whom the statement was made." Respondent's complaint in the Second Action vaguely alleged that "[d]efendants did engage in a course of defamatory statements," and that "[t]hese defamatory statements were communicated orally to persons living and employed in the communities of southern, western and northern Allegheny County, and the City of Pittsburgh; northern, eastern, and central Washington County, including the City of Washington; and west-central and central Mercer County." PE 9 at ¶¶95-96. Each of Respondent's four subsequent complaints included identical allegations. PE 17 at ¶¶ 101-102; PE 19 at ¶¶102-103; PE 30 at ¶¶106-107; PE 37 at ¶¶120-121.

Respondent's complaints after the First Action added allegations of additional instances of trespass, including specific dates, but did not address the Superior Court's reasoning that his complaint in the First Action was defective because it

"does not indicate who allegedly trespassed onto his property" or "who took the files and papers in question." PE 10 at 12. Further, Respondent made vague allegations, such as "one or more of the defendants, or one or more agents of the defendants, entered the law office premises of the plaintiff McArdle, conducted a search of that law office, and seized McArdle's paper files on his investigation into defamation of his character and professional reputation." PE 9 at ¶58. Each of Respondent's four subsequent complaints included identical allegations. PE 17 at ¶64; PE 19 at ¶64; PE 30 at ¶PE 37 at ¶60.

RPC 4.4(a) states: "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." Initially, we address Respondent's claim that he could not have violated this rule because he represented himself with respect to the charged misconduct and was not "representing a client" pursuant to RPC 4.4(a). AE III at 44. This argument is meritless. A lawyer is not permitted to use legal proceedings in a manner that "has no substantial purpose other than to embarrass, delay or burden a third party" merely because a lawyer represents himself. *See* ***Office of Disciplinary Counsel v. Paul Anthony Kelly***, 35 DB 2009 (D.Bd. Rpt. 7/23/10) (S. Ct. Order 10/28/10) (finding that an attorney representing himself violated RPC 4.4(a) by filing multiple baseless lawsuits).

In pursuing his claims after the Superior Court's February 1, 2012 decision affirming the dismissal of his First Action, Respondent contends that his "objective was... to vindicate recognized rights and bring to a halt what was in fact criminal conduct." AE III at 4. The record indicates otherwise. After the Court of Common Pleas of Allegheny County denied Respondent's request for post-complaint discovery in the First Action because the taking of the defendants' depositions would "constitute unreasonable

annoyance, embarrassment, oppression, burden or expense" PE 6 at 7, the Superior Court affirmed the trial court's denial on February 1, 2012. The Superior Court in its December 19, 2012 opinion concluded that Respondent failed to show "that his actions are not unreasonably annoying, embarrassing, oppressive, burdensome and expensive to the Defendants." PE 28 at 23. Despite this, Respondent pressed on in repeated efforts to take discovery from the defendants. His conduct could have no other purpose than to "embarrass, delay or burden" the individual defendants targeted by Respondent.

Finally, we analyze Respondent's actions in the context of RPC 8.4(d). Pursuant to this Rule, a respondent commits professional misconduct if he engages in conduct that is prejudicial to the administration of justice. Respondent's initiation and maintenance of six separate court actions after the Superior Court's February 1, 2012 opinion affirming dismissal of the First Action needlessly burdened the Court of Common Pleas, the Superior Court, the Supreme Court, the United States District Court and the United States Court of Appeals with previously resolved matters.

Respondent acted in direct contravention of explicit court orders on at least two occasions. The July 25, 2012 order of the Allegheny Court of Common Pleas provided that "plaintiff, unless represented by counsel, is barred from pursuing additional litigation against the same or related defendants as those in the present proceeding if such litigation raises the same or relate claims." PE 22. In spite of this order, Respondent initiated the Fifth Action and the Seventh Action, even though he was directed not to do so. Similarly, the Court of Common Pleas issued an order on January 29, 2015, in connection with the Seventh Action, which prohibited Respondent from attempting to enter default judgment against the defendants. PE 36; PE 40. Yet, once again, in spite of this order, on February 6, 2015, Respondent filed a Praecipe for Judgment seeking

default judgment against Mr. and Mrs. Morgan, in direct contravention of the court's January 29, 2015 order. PE 42. Respondent's continued pursuit of his claims subsequent to the Superior Court's February 1, 2012 opinion, particularly Respondent's flagrant violation of two court orders, violated RPC 8.4(d).

Having concluded that Respondent committed professional misconduct, this matter is ripe for the determination of discipline. Petitioner seeks a suspension for no less than one year and one day. Respondent argues the charges should be dismissed, asserting that Petitioner did not meet its burden of proof. The Hearing Committee recommended suspension for a period of one year and one day.

After reviewing the parties' recommendations as well as the Committee's well-reasoned Report and recommendation, 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. 4th 115 (2004), we recommend that Respondent be suspended from the practice of law for a period of one year and one day.

Respondent's conduct in the underlying litigation, which began in 2010 and continued throughout the disciplinary hearing, in defiance of several court orders, has been dangerous and detrimental to the public and has negatively affected the reputation of the legal profession. Respondent refused to cease and desist from forcing thirty or more defendants to defend against his frivolous actions. These multiple, frivolous actions, based upon the same lawsuit, demonstrated Respondent's contempt for the authority of the courts.

It is Respondent's disdain for the judicial system that is so troubling in this matter, particularly in light of his unblemished prior record of discipline. Respondent's

conduct indicates that his persistent refusal to accept adverse court rulings stems from this disdain, and not from a good faith interpretation of the court decisions. To date, Respondent fails to recognize that his behavior as set forth in the record is improper. Respondent's unrepentant attitude renders him unfit to continue as a licensed member of the Pennsylvania bar.

While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and are suggestive of a suspension when, as here, an attorney who files frivolous lawsuits and fails to follow court orders would likely pose a danger to the public if he continues to practice law. ***Office of Disciplinary Counsel v. Robert S. Lucarini***, 472 A.2d 186, 189-191 (Pa.1983).

Suspension for one year and one day is consistent with prior cases. A lesser discipline is unlikely to deter Respondent from continuing to disregard court decisions. In ***Office of Disciplinary Counsel v. Paul Anthony Kelly***, 35 DB 2009 (D.Bd. Rpt. 7/23/10) (S. Ct. Order 10/28/10), Kelly filed two civil complaints in an effort to regain quarry rights. Both were dismissed, and Kelly lost on appeal. Kelly then filed several frivolous actions which hindered the use of the quarry. The Board determined that Kelly violated RPC 3.1, RPC 4.4(a) and RPC 8.4(d), among other rules and recommended a suspension of three years, and the Supreme Court suspended Kelly for a period of eighteen months. In ***Office of Disciplinary Counsel v. Allen L. Feingold***, 93 DB 2003 (D. Bd. Rpt. 11/18/05) (S. Ct. Order 3/3/06), Feingold was suspended for three years for assisting clients in fraudulent conduct and filing frivolous lawsuits in violation of RPC 3.1, RPC 8.4(c) and RPC 8.4(d), among others. The Board supported its recommendation noting that Feingold showed no remorse and demonstrated contempt for the disciplinary process.

The respondent-attorneys in the ***Kelly*** and ***Feingold*** matters received lengthier suspensions than that which the Board is recommending herein. We note that Respondent has no prior record of discipline in a career spanning more than thirty years and no clients were harmed by his conduct. These factors support our conclusion that a suspension for less than that imposed in the above-cited cases is warranted.

The primary purpose of the disciplinary system in Pennsylvania is to protect the public from unfit attorneys and to preserve public confidence in the legal system. ***Office of Disciplinary Counsel v. Suber W. Lewis***, 426 A.2d 1138, 1142 (Pa. 1981). Petitioner's evidence clearly and satisfactorily proved that Respondent is unfit to practice law and is a danger to the public and the profession itself. A suspension of one year and one day is warranted to comply with guiding decisions reviewed above, and to call attention to Respondent's misconduct.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Paul J. McArdle, be Suspended from the practice of law for a period of one year and one day.

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: _____
Lawrence M. Kelly, Board Member

Date: 9-21-16

Board Members Schwager, Porges, Cali and Goodrich recused.

Board Member Cordisco did not participate.