

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 3001 Disciplinary Docket No. 3
	:	
	:	
Petitioner	:	No. 52 DB 2022
	:	
v.	:	
	:	Attorney Registration No. 65885
JAMES P. MILLER,	:	
	:	
Respondent	:	(Erie County)

ORDER

PER CURIAM

AND NOW, this 20th day of November, 2023, upon consideration of the Report and Recommendations of the Disciplinary Board, James P. Miller is suspended from the Bar of this Commonwealth for four years. Respondent shall comply with the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 11/20/2023

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 52 DB 2022
Petitioner	:	
	:	
v.	:	Attorney Registration No. 65885
	:	
JAMES P. MILLER,	:	
Respondent	:	(Erie 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

On April 20, 2022, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline against Respondent, James P. Miller, charging him with violations of the Pennsylvania Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement arising from allegations of serial neglect in numerous matters. Respondent was personally served and thereafter requested and received, a one-time extension of twenty days to file his Answer. Respondent failed to file an Answer.

A prehearing conference was held on August 25, 2022, at which Respondent discussed filing a pleading seeking leave to file his Answer to Petition for Discipline *nunc pro tunc*. Respondent was given ten days to file such a pleading, but failed to do so. On October 25, 2022, a District IV Hearing Committee (“Committee”) held a disciplinary hearing. As Respondent failed to file an Answer, all factual averments were deemed admitted under the provisions of Pa.R.D.E. 208(b)(3). Petitioner offered fifteen exhibits, which were admitted into evidence. Respondent appeared pro se, offered no exhibits, and was prohibited from calling fact witnesses. The Committee made a prima facie finding of at least one rule violation and directed that the matter proceed to the dispositional phase. In the dispositional phase, Petitioner called four witnesses. Respondent testified but did not call any character witnesses.

On February 8, 2023, Petitioner filed a post-hearing 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 brief. By Report filed on May 10, 2023, the Committee concluded that Respondent violated the rules as set forth 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 July 25, 2023.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Pa.R.D.E. 207, 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 in accordance with the various provisions of the aforesaid Rules.

2. Respondent, James P. Miller, was born in 1967 and was admitted to practice law in the Commonwealth of Pennsylvania on November 30, 1992. Respondent's attorney registration mailing address is PMB 189, 1985 Lincoln Way, Suite 23, White Oak, Allegheny County, PA 15131. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent was personally served with the Petition for Discipline in this matter on May 2, 2022, and failed to timely file an Answer to the Petition for Discipline; all factual allegations in the Petition for Discipline are deemed admitted under Pa.R.D.E. 208(b)(3). PE-1; PE-2.

4. In approximately late 2018 or early 2019, Erie County contracted with Respondent to act as an outside conflicts counsel for representation of indigent criminal defendants. During the middle of 2019, Erie County gave Respondent an additional contract after another contract attorney left employment. Erie County renewed Respondent's contract in 2020. N.T. 13, 14, 21, 85.

5. Beginning in approximately middle to late 2019 and much more frequently in 2020, the Erie County court system received letters from Respondent's clients complaining about his lack of attention to their matters. N.T. 15, 17,19-21, 85.

6. Many of the letters expressed frustration that there had not been any movement on their respective cases. PE-7; PE-8; PE-9; PE-10.

7. Erie County District Court Administrator Robert Catalde had his staff forward the letters to Respondent, and had his Deputy Court Administrator, Julia Bagnoni, communicate directly with Respondent. N.T. 19.

8. Mr. Catalde made Erie County Court of Common Pleas Judge John Mead, the administrative judge of the trial division, aware of growing concerns about Respondent's effectiveness in representing defendants. N.T. 24.

THE RUIZ MATTER

9. On September 20, 2019, Danny Ruiz was arrested, incarcerated and charged with robbery, simple assault, terroristic threats with intent to terrorize another person, possessing instruments of crime, and possession of a firearm by a minor in Erie County, Pennsylvania for an incident that occurred on August 28, 2019. (First Criminal Charges)

10. On September 20, 2019, Mr. Ruiz was arrested, incarcerated and charged with two counts of aggravated assault, possessing instruments of crime and recklessly endangering another person in Erie County, Pennsylvania for an incident that occurred on September 18, 2019. (Second Criminal Charges)

11. Mr. Ruiz was fifteen years old at the time the offenses were committed and at the time of his arrest.

12. Shortly thereafter, Respondent was appointed by Judge Mead to represent Mr. Ruiz regarding the criminal charges filed against him in the above matters.

13. On October 17, 2019, the first criminal charges were filed against Mr. Ruiz in the Court of Common Pleas of Erie County at docket number CP-25-CR-0002873-2019.

14. On December 18, 2019, the second criminal charges were filed against Mr. Ruiz in the Court of Common Pleas of Erie County at docket number CP-25-CR-0003525-2019.

15. On various occasions between October 2019 and November 2020, Mr. Ruiz, who remained incarcerated in the Erie County Prison, telephoned Respondent and left messages on his voicemail requesting that Respondent return Mr. Ruiz's call or come to the Erie County Prison and speak with him regarding the status of his criminal cases.

16. Respondent did not respond to Mr. Ruiz's inquiries nor did Respondent advise him as to the status of his criminal cases.

17. Specifically, although Respondent made some attempt to have Mr. Ruiz decertified from adult court, he did not communicate with Mr. Ruiz regarding his efforts.

18. By letter addressed to Respondent dated August 11, 2020 and sent to the Erie County Clerk of Courts, Mr. Ruiz stated that he had been in the Erie County Prison for approximately eleven months, and he needed to speak with Respondent about filing a "Rule 600" on his behalf.

19. Shortly thereafter, the Clerk of Courts forwarded to Respondent a copy of the August 11, 2020, letter from Mr. Ruiz.

20. Although the Clerk of Courts forwarded the letter to Respondent, Respondent failed to contact Mr. Ruiz, nor did he file a the requested "Rule 600" motion on behalf of Mr. Ruiz.

21. On December 4, 2020, Judge Mead held a status conference regarding Mr. Ruiz's criminal cases and in particular the issue of decertification.

22. By Order dated December 4, 2020, Judge Mead directed Respondent to file a motion on behalf of Mr. Ruiz requesting funding for experts within ten days of the date of his Order. Respondent failed to do so.

23. As a result of Respondent's non-compliance with the December 4, 2020 Order, Judge Mead, by Order filed January 26, 2021, memorialized the following actions that were taken to obtain Respondent's compliance with his December 4, 2020 Order:

- a. Respondent was ordered on December 4, 2020 to file a request for funding for experts on behalf of Mr. Ruiz within ten days of the December 4, 2020 Order;
- b. Respondent failed to file such a Motion;
- c. On January 12, 2021, Judge Mead's law clerk sent Respondent an email requesting that Respondent provide the Court with the status of the Motion Requesting Expert Funding; and,
- d. Respondent failed to reply and did not provide the Court with the status of the Motion.

24. As a result of Respondent's defiance of the December 4, 2020 Order, Judge Mead by Order entered on the docket on January 26, 2021, directed that a rule to show cause hearing would be held on Tuesday, February 2, 2021, to determine whether Respondent should be held in contempt of court for failing to comply with the December 4, 2020 Order.

25. On February 2, 2021, the rule to show cause hearing was held. Judge Mead did not hold Respondent in contempt but directed Respondent to file a request for funding for experts on behalf of Mr. Ruiz within fourteen days of the February 2, 2021, Order.

26. Thereafter, Respondent again disobeyed the Court by failing to file a Motion requesting funding for experts within fourteen days of the February 2, 2021, Order.

27. By letter dated February 21, 2020 [sic], Mr. Ruiz informed the Clerk of Courts, among other things, that Respondent had continued his pattern of not communicating with Mr. Ruiz regarding his criminal cases.

28. On February 22, 2021, six days after the deadline set by the Court, Respondent filed a Motion for In Forma Pauperis Status for Funds for an Expert Witness on behalf of Mr. Ruiz.

29. By Order dated February 24, 2021, Judge Mead granted the Motion.

30. Thereafter, Respondent took no further action to consult with, or retain, an expert witness to advise or assist in Mr. Ruiz's attempt to decertify his criminal cases to juvenile court.

31. By letter dated April 16, 2021, Mr. Ruiz requested that the Clerk of Courts provide him with his discovery packet as he claimed Respondent had never provided it to him.

32. On July 16, 2021, after replacing Respondent as counsel for Mr. Ruiz, Judge Mead issued an Order denying the decertification Motion.

33. On July 22, 2021, after executing the appropriate Rule 119 waiver and acknowledging an understanding of his rights, Mr. Ruiz entered a counseled plea to guilty at both case docket numbers.

34. On July 22, 2021, Mr. Ruiz was sentenced on both criminal dockets to an aggregate period of incarceration of 11-22 months, followed by three specific terms of probation that were all ordered to run consecutive to each other and consecutive to the period of incarceration.

THE CHRISTOPHER D. HEARN MATTER

35. On or about October 24, 2019, Christopher D. Hearn was arrested and charged with simple assault, disorderly conduct, and harassment in Erie County, Pennsylvania.

36. On November 13, 2019, after being remanded to the Erie County Prison, a criminal information was filed against Mr. Hearn in the Court of Common Pleas of Erie County at docket number CP-25-CR-0003184-2019.

37. On January 13, 2020, Mr. Hearn filed an Application for a Public Defender.

38. Shortly thereafter, Judge John J. Mead appointed Respondent to represent Mr. Hearn.

39. On March 6, 2020, Respondent filed a Motion to Continue Mr. Hearn's case which was granted by Judge Mead on March 9, 2020.

40. On November September 16, 2020, Respondent filed another Motion to Continue Mr. Hearn's case which Judge Mead granted on that same date.

41. On February 12, 2021, during a scheduled review of bench warrants, Judge Mead released Mr. Hearn as the bench warrant against Mr. Hearn was lifted and his bond/bail was set at R.O.R.

42. During the entire period that Respondent was counsel for Mr. Hearn, Respondent failed to meet with or speak with Mr. Hearn regarding the criminal charges that had been filed against him.

43. On various occasions between February 2020 and February 2021, in an effort to communicate with the Respondent, Mr. Hearn sent correspondence addressed and directed to Respondent through the Clerk of Court Office.

44. Additionally, Mr. Hearn requested that third parties try, on his behalf, to telephone Respondent, and when possible, leave messages for Respondent on his voice mail requesting that Respondent come and meet with Mr. Hearn while he was being held in the Erie County Prison.

45. Respondent failed to respond to any of Mr. Hearn's inquiries or the various attempts by third parties to contact him on behalf of Mr. Hearn.

46. When Mr. Hearn was able to use the telephone in the Erie County Prison, he attempted to call Respondent about the status of his criminal matter, but frequently there

was no answer at Respondent's office or Respondent's voice mail message advised the caller that the voice mail box was full and would not accept any additional messages.

47. At no time did Respondent file for leave of court to withdraw from Mr. Hearn's case on the basis that he was not able to fulfill his obligation to represent Mr. Hearn.

48. On March 17, 2021, approximately fourteen months after he appointed Respondent to represent Mr. Hearn, Judge Mead *sua sponte* dismissed and removed Respondent as counsel for Mr. Hearn and appointed Attorney Michael Herman to represent Mr. Hearn in the pending criminal matter.

49. During that fourteen-month period of time in which he was counsel for Mr. Hearn, the court docket reflects no work of record was performed on behalf of Mr. Hearn except for various requests by Respondent to postpone Mr. Hearn's case.

50. On June 23, 2021, Mr. Hearn entered a counseled plea of guilty to one count of Disorderly Conduct, 18 Pa.C.S.A. §5503(a)(4) and was sentenced to one term of probation, ordered to pay fines and costs and attend anger management classes.

THE MASON GALBRAITH MATTER

51. On or about July 29, 2020, Mason Galbraith was charged with numerous criminal offenses including criminal attempt-criminal homicide and aggravated assault.

52. Mr. Galbraith was a juvenile aged approximately 17. N.T. 118.

53. A criminal information was filed against Mr. Galbraith in the Court of Common Pleas of Erie County at case docket CP-25-CR-0002132-2020.

54. On October 12, 2020, Mr. Galbraith filed an Application for a Public Defender.

55. Shortly thereafter, Respondent was appointed by the Court to represent Mr. Galbraith.

56. On March 3, 2021, Respondent filed a Motion to Continue Mr. Galbraith's case to the April Trial Term which was granted by Judge Mead on March 4, 2021.

57. By letter addressed, and sent to Respondent through the Clerk of Courts on March 4, 2021, Mr. Galbraith informed Respondent that:

- a. He was in the Erie County Prison and currently a client of the Respondent;
- b. He and his family had made numerous attempts to contact the Respondent to no avail;
- c. At this point, he was scheduled for the March criminal trial term and had not heard a word from the Respondent about his case;
- d. He was still waiting for Respondent to send him a copy of his discovery;
- e. He was in doubt if Respondent was still his counsel and if Respondent was not his counsel, asked where should direct his concerns; and,
- f. He was looking forward to hearing from Respondent, receiving his discovery, and finally knowing what was going on in his case.

58. On March 5, 2021, the Clerk of Courts Office forwarded Mr. Galbraith's letter to Respondent by first U.S. mail as noted on the case docket entries.

59. Shortly thereafter, Respondent met with Mr. Galbraith in the Erie County Prison.

60. By letter addressed and sent to Respondent through the Clerk of Courts on April 12, 2021, Mr. Galbraith wrote to Respondent that:

- a. It had been about a month and a half since he has spoken to Respondent;
- b. He still had not received his discovery packet or heard anything further about his case;
- c. He was anxious to know what was going on with his case;
- d. He had only met with Respondent once;

- e. He had been in the Erie County prison since August 29, 2020, and since his preliminary hearing on September 23, he had not received any legal mail except trial subpoenas;
- f. He had a pre-trial hearing that Respondent did not attend;
- g. He wondered if Respondent had put the motion in to have his case moved to juvenile court;
- h. He still had not received a copy or heard anything about that motion; and,
- i. He was hoping to hear back from Respondent and receive his discovery packet soon.

61. On April 13, 2021, the Clerk of Courts forwarded Mr. Galbraith's letter to Respondent by regular U.S. mail as noted on the case docket entries.

62. Respondent did not respond to Mr. Galbraith's letter.

63. By letter addressed and sent to Respondent on or about April 26, 2021, through the Clerk of Courts, Mr. Galbraith informed Respondent, among other things, that;

- a. About two weeks ago he had written to Respondent regarding his discovery packet and motions that were to be filed on his behalf;
- b. He was again asking that Respondent put in a Motion for Nominal Bail as he had been in the Erie County Prison for a period exceeding 180 days;
- c. There was still no progress in his case, nor had he heard anything from Respondent; and,
- d. He was looking forward to hearing from the Respondent.

64. On April 27, 2021, the Clerk of Courts forwarded Mr. Galbraith's letter to Respondent by regular U.S. mail as noted on the case docket entries.

65. Respondent did not respond to Mr. Galbraith's letter.

66. Pursuant to a May 6, 2021, Administrative Order, Mr. Galbraith's case was reassigned to Bruce Sandmeyer.

67. On August 18, 2021, Mr. Sandmeyer filed an Omnibus Pre-Trial Motion for Relief on behalf of Mr. Galbraith which appears to have included a request for decertification.

68. Mr. Sandmeyer also obtained a Court Order compelling the Erie County Juvenile Probation Office to furnish him with Mr. Galbraith's juvenile records.

69. On February 3, 2022, Mr. Galbraith entered a counseled plea of guilty.

70. On March 30, 2022, Mr. Galbraith was sentenced to a lengthy period of confinement in a State Correctional Facility.

THE MATTER OF ROBERT J. CATALDE, COURT ADMINISTRATOR FOR THE
COURT OF COMMON PLEAS OF ERIE COUNTY

ROGER WILLIAMSON

71. On January 23, 2019, Roger Williamson, who had been incarcerated on various criminal matters, and had been represented by other counsel in those matters including the filing of various appeals filed, pro se, appeals to the Superior Court of Pennsylvania regarding two criminal cases, CR-0002932 and CR-0000155-2016.

72. The Superior Court appeals were filed and docketed at 116 WDA 2019 and 118 WDA 2019.

73. By Order of Court dated October 3, 2019, Judge William R. Cunningham ordered, among other things, that due to the Superior Court Opinion dated September 30, 2019, William Hathaway, Esquire was removed as Mr. Williamson's appellate counsel and Respondent was appointed to represent Mr. Williamson and directed to comply with the briefing schedule set by the Superior Court.

74. On October 9, 2019, Respondent entered his appearance on behalf of Mr. Williamson regarding the two (2) Superior Court appeals at case docket numbers 116 WDA 2019 and 118 WDA 2019.

75. By letter sent to Respondent through the Erie County Clerk of Courts dated February 10, 2020, Mr. Williamson informed Respondent, among other things, that:

- a. Due to the Superior Court Opinion on September 30, 2019, Respondent had been appointed to his case; and,
- b. He would like Respondent to keep him up to date and send him copies of all motions Respondent filed on his behalf.

76. As listed on the Court of Common Pleas docket entries, the Clerk of Courts forwarded a copy of Mr. Williamson's letter to Respondent.

77. By Order of the Superior Court of Pennsylvania dated March 10, 2020, and docketed at both 116 WDA 2019 and 118 WDA 2019, the Court noted, among other things, that:

- a. The present appeal was from the PCRA Order entered by the Court of Common Pleas of Erie County criminal division at number CP-25-CR-0000155-2016 and also applicable to the case at number CP- 25-CR-0002932-2007:
- b. Based on counsel's assertion that meritorious issues existed, Mr. Williamson's application for reconsideration was granted; and,
- c. The Superior Court vacated the Order from the PCRA Court dismissing Mr. Williamson's petition and remanded the matter to the PCRA Court to permit counsel to file an amended PCRA petition.

78. Respondent was copied on the Superior Court's Remand Order dated March 10, 2020.

79. Shortly thereafter, Respondent was appointed by the trial court to represent Mr. Williamson on his PCRA consistent with the Order of Remand from the Superior Court.

80. By Order issued on March 18, 2020, Judge Daniel Brabender directed Respondent to file any amended PCRA petition within 30 days of the Order.

81. Respondent was copied on Judge Brabender's March 18, 2020, Order.

82. Thereafter, Respondent failed to file an amended PCRA petition on behalf of Mr. Williamson.

83. In a subsequent Order, dated September 17, 2020, Judge Brabender noted that:

- a. Upon receipt of the remanded Order from Superior Court, on March 18, 2020, an Order directed appointed PCRA counsel to file an amended PCRA petition per the Superior Court's *Per Curiam* Order of March 2020;
- b. The amended PCRA petition was to be filed within 30 days;
- c. Respondent failed to comply with the March 18, 2020 Order, and to date, no amended PCRA had been filed and served on the Court;
- d. Judge Brabender again ordered Respondent to file an amended PCRA within 30 days of receipt of this latest Order; and,
- e. The amended PCRA was to be filed of record and concurrently served upon Judge Brabender.

84. Respondent was copied on Judge Brabender's September 17, 2020 Order.

85. Thereafter, despite the Court having issued a second Order, Respondent failed to file an Amended PCRA Petition on behalf of Mr. Williamson.

86. By Memorandum and Order dated October 27, 2020, Judge Brabender ordered and directed that among other things, due to Respondent's abandonment of Mr. Williamson, and pursuant to the Superior Court Order at 116 WDA 2019 dated March 10, 2020, Michael Harmon, Esquire was appointed as new PCRA counsel to represent Mr. Williamson in the remanded PCRA proceedings.

87. Respondent was copied on Judge Brabender's October 27, 2020 Memorandum and Order.

88. On January 11, 2021, Mr. Harmon filed an amended PCRA on behalf of Mr. Williamson.

89. Following the Court's Notice of Intention to Dismiss the PCRA, the Court dismissed the amended PCRA on August 11, 2021.

90. Mr. Harmon filed a timely Notice of Appeal to the Superior Court and the matters are pending at case numbers 1011 WDA 2021 and 1012 WDA 2021.

KENDALL FOSTER

91. Kendall Foster was charged with criminal attempt-criminal homicide and related offenses docketed at CP-25-CR-0001224-013 in the Court of Common Pleas of Erie County.

92. On September 25, 2013, Mr. Foster was found guilty and was sentenced on November 26, 2013.

93. After the unsuccessful filing of various appeals and requests for post-conviction relief, both through prior counsel and pro se, Mr. Foster filed another pro se PCRA Petition on March 25, 2020.

94. By Opinion and Order of the trial court dated June 3, 2020, the Court among other things:

- a. Granted Mr. Foster's PCRA Petition to the extent that the right to file an appeal *nunc pro tunc* from the Order of December 10, 2019 (dismissing PCRA of April 22, 2019) was reinstated;
- b. Gave Mr. Foster thirty (30) days from the date of the Court's Order to perfect an appeal; and,
- c. Appointed Respondent as PCRA as counsel to represent Mr. Foster.

95. Respondent was provided with a copy of the June 3, 2020, Opinion and Order along with the exhibits and information from previous PCRA counsel.

96. Mr. Foster sent a letter dated June 14, 2020, directed to Respondent but mailed under cover of another letter to the Clerk of Courts who received the correspondence on June 17, 2020, and as is shown on the docket entries, was subsequently forwarded to Respondent.

97. By correspondence dated August 24, 2020, Mr. Foster sent a letter addressed to the Clerk of Courts and another letter addressed to Respondent which as shown on the docket entries, was forwarded to Respondent on or about August 31, 2020.

98. At the time of the August 24, 2020 letter from Mr. Foster, Respondent had not:

- a. Filed any pleading to perfect an appeal on behalf of Mr. Foster as he was directed to file within thirty (30) days from the date of Judge Brabender's June 3, 2020, Order;
- b. Responded to any of Mr. Foster's letters to him dated June 14, 2020, and August 24, 2020; nor,
- c. Communicated with Mr. Foster or advised him as to the status of the appeal he had been ordered to file on behalf of Mr. Foster after being appointed as his new PCRA counsel.

ANTHONY SHIELDS

99. On or about April 22, 2015, Anthony Shields was arrested and charged with various drug-related offenses in Erie County, Pennsylvania which were docketed at CP-25-CR-0002210-2015.

100. On March 13, 2016, Mr. Shields was convicted and on May 13, 2016 he was sentenced to a period of incarceration.

101. Thereafter, a direct appeal and PCRA Petitions were filed on behalf of Mr. Shields both by prior appointed counsel and pro se.

102. By Order dated February 14, 2020, Judge Brabender directed that pursuant to the Superior Court's November 14, 2019 decision at 143 WDA 2019 and the Per Curiam Order of February 11, 2020, it was ordered that:

a. Respondent was appointed as the new PCRA counsel to represent Mr. Shields in the pro se PCRA Mr. Shields had filed on or about November 8, 2017;

b. Respondent was directed to follow the directives from the Superior Court in its decision filed on November 14, 2019, including instructions on page 10; and,

c. Due to the complex history of this matter, Respondent was afforded up to 45 days to either file the amended PCRA Petition or an adequate no-merit letter as directed by the Superior Court.

103. Thereafter, despite Judge Brabender's Order, Respondent failed to file either an amended PCRA Petition or a no-merit letter in Mr. Shields' criminal case.

104. On August 7, 2020, Respondent filed a Motion for Extension of Time *Nunc Pro Tunc* on behalf of Mr. Shields.

105. By Order dated August 10, 2020, Judge Brabender granted the Motion for Extension of Time Nunc Pro Tunc and directed that Respondent file either an Amended PCRA or an adequate no-merit letter by October 5, 2020.

106. Thereafter, Respondent again failed to file either an amended PCRA or an adequate no-merit letter regarding Mr. Shields' criminal case.

107. By letter to Judge John J. Trucilla, dated September 28, 2020, Mr. Shields stated, among other things, that he was writing to Judge Trucilla because he was concerned about his legal situation, specifically:

a. On February 14, [sic, 2020] Respondent was appointed as his new PCRA counsel;

b. Respondent was given 45 days to file an amended PCRA that would have been due on March 28, 2020;

c. Nothing had been filed;

d. He had written Respondent letters and called his office;

e. Respondent's answering machine indicated that due to the pandemic the courts were closed and so was Respondent's office;

f. Mr. Shields did not know where he stood because the courts had reopened and he felt that he had been forgotten about again; and,

g. Asked if someone could write to him and let him know something.

108. In response to the September 28, 2020 letter to Judge Trucilla, Judge Brabender, by Memorandum and Order dated October 20, 2020, directed, among other things, that:

a. Due to Respondent's abandonment of Mr. Shields, and pursuant to the Superior Court Decision at 143 WDA 2019 dated November 14, 2019, and.

Superior Court's Per Curiam Order of February 11, 2020, at the same docket number, it was Ordered, Adjudged and Decreed that Respondent was removed as counsel, and Michael Harmon, Esquire was appointed as new PCRA counsel to represent Mr. Shields in the pro se PCRA filed November 8, 2017.

109. Respondent was copied on Judge Brabender's October 20, 2020 Memorandum and Order.

AKEEM BOLDEN

110. On June 30, 2019, Akeem Bolden was charged with various criminal offenses in Erie County, Pennsylvania.

111. On July 12, 2019, a criminal information was filed against Mr. Bolden in the Court of Common Pleas of Erie County at docket number CP-25-CR-0001920-2019.

112. On November 4, 2019, Mr. Bolden filed an Application for a Public Defender.

113. Shortly thereafter, Respondent was appointed by the Court to represent Mr. Bolden.

114. By letter dated January 10, 2020, Kenneth Gamble, from the Erie County Clerk of Courts Office, forwarded to Respondent a letter dated January 8, 2020, from Mr. Bolden along with a copy of Mr. Bolden's pro se Petition for Writ of Habeas Corpus and Motion to Dismiss Prosecution.

115. In his letter, Mr. Gamble requested that Respondent notify the Clerk of Courts Office if he no longer represented Mr. Bolden.

116. By letter dated January 19, 2020, Mr. Bolden corresponded with Judge Brabender regarding his case and stated, among other things, that he had issues with Respondent representing him.

117. The Clerk of Courts forwarded copies of Mr. Bolden's letters to Respondent.

118. By correspondence, dated March 17, 2020, and sent to the Clerk of Courts, Mr. Bolden enclosed three letters directed as follows:

- a. To Julia Bagnoni (Deputy Court Administrator) informing her that he had not heard from Respondent since he was appointed to represent Mr. Bolden, that Respondent did not reply to Mr. Bolden's attempts to contact him, nor had Respondent entered his appearance on Mr. Bolden's behalf;
- b. To Respondent informing him of his concern that Respondent had not communicated with him, also expressing his frustration that he had not had the opportunity to discuss strategy in his case with Respondent and that he would like to receive his transcripts and discovery and have an opportunity to meet with Respondent; and,
- c. To the Clerk of Courts requesting copies of any motions or statements filed in his case.

119. The Clerk of Courts sent copies of those letters to Respondent.

120. By separate letters dated June 4, 2020, Mr. Gamble forwarded to Respondent a copy of Mr. Bolden's pro se Motion for Rule 600 to dismiss all charges and a copy of Mr. Bolden's pro se Motion for Rule 600 (nominal bail).

121. In both forwarding letters, Mr. Gamble again requested that Respondent notify the Clerk of Courts Office if he no longer represented Mr. Bolden.

122. By letter dated June 9, 2020, sent to the Clerk of Courts and to Patricia Kennedy (then Chief Erie County Public Defender), Mr. Bolden informed her of various issues that he had with Respondent's representation.

123. Thereafter, the Clerk of Courts sent Respondent a copy of the June 9, 2020, letter from Mr. Bolden to Ms. Kennedy.

124. By letter dated June 30, 2020, Jennifer Prichard, Administrative Assistant to Robert J. Catalde, Esquire, District Court Administrator, informed Respondent that she was enclosing a letter that the Court Administrator's Office had received from Mr. Bolden indicating that he had written to Respondent on numerous occasions regarding his case and in turn had not received any response from Respondent.

125. By letter dated July 15, 2020, Mr. Bolden sent another letter to the Court Administrator's Office regarding his concern with Respondent's representation.

126. A copy of the July 15, 2020, letter was forwarded to Respondent by the Clerk of Courts Office.

127. On September 16, 2020, Respondent filed a Motion to Continue Mr. Bolden's case to the October 2020 trial term, which Judge Brabender granted on September 17, 2020.

128. Prior to the filing of the Motion to Continue, Respondent had taken no action on behalf of Mr. Bolden since his appointment approximately ten months earlier.

129. Shortly thereafter, Respondent was removed as counsel from Mr. Bolden's criminal case, and Attorney Charles Sunwabe was appointed by the Court to represent Mr. Bolden.

CORDELL MILES

130. On September 18, 2018, a Criminal Information was filed against Cordell Miles in the Court of Common Pleas of Erie County at case docket CP-25-CR-0002151-2018.

131. Mr. Miles was appointed counsel; however, original appointed counsel was granted leave to withdraw by an Order entered by Judge Mead dated May 15, 2019.

132. Respondent entered his appearance as successor court appointed counsel for Mr. Miles on June 7, 2019, by filing a Motion to Postpone the trial until the August term.

133. Following postponement, Mr. Miles proceeded to trial and on August 19, 2019, was found guilty by an Erie County jury.

134. After post-verdict motions were filed and considered by the Court, a new trial was ordered.

135. Mr. Miles was retried and on August 21, 2020, he was again found guilty by an Erie County jury.

136. Mr. Miles was sentenced to a period of incarceration in a State Correctional Institution.

137. On December 4, 2020, Respondent filed a timely Notice of Appeal to the Superior Court of Pennsylvania on behalf of Mr. Miles, which was assigned case docket number 1315 WDA 2020.

138. On December 10, 2020, a docketing statement was generated by the Superior Court Prothonotary and sent to Respondent.

139. After receiving the trial court record on February 26, 2021, the Superior Court Prothonotary notified Respondent that the appellate brief for Mr. Miles was due on or before April 7, 2021.

140. On April 7, 2021, Respondent filed an Application for Extension of Time to file the brief on behalf of Mr. Miles.

141. On April 8, 2021, the Superior Court granted Respondent's Application for Extension of Time to file the brief and reproduced record on behalf of Mr. Miles directing that the appellate brief be filed on or before May 10, 2021.

142. Thereafter, Respondent failed to file the brief on behalf of Mr. Miles.

143. By Order dated June 15, 2021, the Superior Court *sua sponte* issued an Order indicating that as Respondent had not filed a brief on behalf of Mr. Miles his appeal had been dismissed. The Court also directed that Respondent file with the Court, within ten days of the date of that Order, a certification that Mr. Miles had been notified of that dismissal.

144. Based on the Superior Court docket entries, Respondent failed to file a certification with the Court that Mr. Miles had been notified of the dismissal.

TIMOTHY DOERFER

145. On June 10, 2019, a Criminal Information was filed in the Court of Common Pleas of Warren County at CP-62-CR-0000195-2019 against Timothy Doerfer.

146. On June 1, 2020, while represented by other counsel, Mr. Doerfer entered a plea of Nolo Contendere to an Amended Criminal Information charging him with Involuntary Manslaughter, 18 Pa.C.S.A §2504(a).

147. On August 10, 2020, after Mr. Doerfer had been sentenced and remanded to the custody of the State Department of Corrections to begin serving his sentence of 30 to 60 months Respondent entered his appearance as counsel for Mr. Doerfer and filed a post-sentence motion on behalf of Mr. Doerfer.

148. On September 4, 2020, the Court denied the post-sentence motions.

149. On October 5, 2020, Respondent filed a Notice of Appeal on behalf of Mr. Doerfer.

150. On October 8, 2020, the appeal was docketed in the Superior Court of Pennsylvania at case number 1051 WDA 2020.

151. The briefing schedule issued by the Superior Court reflected that Mr. Doerfer's appellate brief was due on December 30, 2020.

152. On December 1, 2020, the Superior Court sua sponte, issued an Order and Rule to Show Cause alleging that Respondent filed the Notice of Appeal in excess of the 30-day time limit, thus the appeal by Mr. Doerfer was untimely.

153. On December 12, 2020, Respondent filed a Response to the Rule and on December 15, 2020, the Superior Court entered an Order discharging the Rule to Show Cause and permitting the appeal to proceed.

154. On December 30, 2020, Respondent filed an Application for Extension of Time to file the brief on behalf of Mr. Doerfer.

155. On December 31, 2020, the Court granted the Application for Extension of Time to file a brief and reproduced record directing that the brief and reproduced record were due on or before March 1, 2021.

156. On March 2, 2021, Respondent filed another Application for Extension of Time to file the brief on behalf of Mr. Doerfer.

157. On March 4, 2021, the Court granted the second Application for Extension of Time to file Mr. Doerfer's brief with the new due date of April 5, 2021.

158. On April 5, 2021, Respondent filed yet another Application for Extension of Time to file a brief and reproduced record on behalf of Mr. Doerfer.

159. On April 8, 2021, the Court granted the third Application for Extension of Time to file brief and reproduced record on behalf of Mr. Doerfer and specifically indicated that:

- a. Mr. Doerfer's brief was due on or before April 12, 2021; and,
- b. No further extensions of time to file appellant's brief would be granted and the appeal would be subject to immediate dismissal by the Court, without further notice to the parties, if Mr. Doerfer's brief was not filed by the newly established due date.

160. On April 12, 2021, Respondent filed a fourth Application for Extension of Time to file a brief on behalf of Mr. Doerfer.

161. By Order dated April 21, 2021, the Superior Court granted the Application for Extension of Time to file a brief and reproduced record on behalf of Mr. Doerfer and noted, among other things, that:

- a. Mr. Doerfer's brief was due on or before April 26, 2021; and,
- b. Absolutely no further extensions of time to file Mr. Doerfer's brief would be granted, and the appeal would be subject to immediate dismissal by the Court, without further notice to the parties, if Mr. Doerfer's brief was not filed by the newly established date.

162. Respondent failed to file Mr. Doerfer's brief with the Superior Court by the April 26, 2021, due date.

163. On May 7, 2021, Respondent filed a *Nunc Pro Tunc* Application for Extension of Time to file a brief on behalf of Mr. Doerfer.

164. By per curiam Order dated May 11, 2021, the Court denied the *Nunc Pro Tunc* application and dismissed Mr. Doerfer's appeal for failure to file a brief to the Court.

165. Thereafter, Mr. Doerfer filed a PCRA Petition and was appointed new counsel. The trial court granted the PCRA Petition on October 8, 2021 and the matter is now pending before the Superior Court at case 1336 WDA 2021.

THE MAY 6, 2021 ADMINISTRATIVE ORDER OF COURT WITH RESPECT TO RUIZ, FOSTER AND GALBRAITH AS WELL AS RESPONDENT'S OTHER OUTSIDE CRIMINAL CLIENTS PURSUANT TO HIS CONTRACT WITH ERIE COUNTY

166. By Administrative Order dated May 6, 2021, Judge Mead ordered that:

- a. The criminal matters to which Respondent was assigned, including the cases of Mr. Ruiz, Mr. Foster, and Mr. Galbraith, as well as other criminal contract cases to which Respondent was assigned and were currently pending in Court of Common Pleas of Erie County were to be immediately reassigned;
- b. Respondent was ordered to assist new counsel during the reassignment process without delay, not to exceed twenty (20) days; and,
- c. Respondent was to provide each newly assigned counsel with his complete current case files regarding those now former clients.

167. Pursuant to the Order:

- a. Mr. Ruiz's case was reassigned to new counsel, Justin Panighetti, Esquire;
- b. Mr. Foster's case was to be reassigned as per the Court Administrator; and,
- c. Mr. Galbraith's case was reassigned to new counsel, Bruce Sandmeyer, Esquire.

168. Respondent failed to comply with Judge Mead's May 6, 2021 Order to turn over the case files to newly assigned counsel.

169. Respondent's non-compliance with Judge Mead's reassignment Order prompted the Deputy Court Administrator Julia Bagnoni to send a letter dated June 7, 2021, to Respondent in which she:

- a. Informed Respondent that he had not complied with Judge Mead's May 6, 2021, Administrative Order;

- b. Notified Respondent that he had until Friday June 11, 2021, to comply with the Court's Order;
- c. Provided Respondent with another copy of the May 6, 2021 Order, the same one that she mailed to his Erie County office address on May 6, 2021, and subsequently emailed to him on May 17, 2021; and,
- d. Gave Respondent Notice that if he failed to comply with the enclosed Administrative Order by June 11, 2021, Respondent would be subject to a contempt hearing before Judge Mead.

170. As of June 11, 2021, Respondent had not forwarded the various case files to the newly assigned counsel nor to the Court Administrator.

171. As a result of Respondent's continued non-compliance, Judge Mead entered an Order scheduling a Rule to Show Cause Hearing for June 23, 2021, over which he would preside to determine whether Respondent should be found in contempt for not complying with his Order.

172. At the Hearing on June 23, 2021, Judge Mead held Respondent in indirect civil contempt of court for his non-compliance. Respondent was directed to provide the case files by July 2, 2021, as set forth in the May 6, 2021 Order and failure to do so would result in the issuance of a bench warrant for Respondent's arrest and incarceration for fifteen (15) days.

173. After being threatened with incarceration, Respondent complied and provided the case files as directed.

FAILURE TO RESPOND TO DB-7 REQUESTS

174. On August 24, 2021, a DB-7 Request for Statement of Respondent's Position letter was sent to Respondent in the Ruiz, Hearn, and Galbraith matters and the

matters concerning the complaint filed by the Court Administrator for Erie County. PE-7; PE-8; PE- 9; PE-10.

175. Despite extensions of time being granted both to Respondent's former counsel and to Respondent himself, no Statement of Position was submitted in response to any of the DB-7 Requests for Statement of Respondent's Position.

ADDITIONAL FINDINGS

176. Robert Catalde offered credible testimony at the disciplinary hearing. Mr. Catalde has been the District Court Administrator for Erie County for the past five years (as of the date of the disciplinary hearing) and was the Clerk of Courts in Erie County for approximately twenty-two years prior to his current position. Mr. Catalde testified at the disciplinary hearing that as to the Ruiz matter, Mr. Ruiz's mother contacted prison staff concerning the status of her teenage son and the lack of communication with his appointed counsel, which prompted a prison counselor to contact Mr. Catalde. Mr. Catalde described this contact from the prison as "unprecedented," as he never had a prison counselor reach out with respect to an attorney's lack of attention to an incarcerated defendant, but because the individual was a juvenile and because there was no communication, the prison felt it was appropriate to contact Mr. Catalde. N.T. 12-13, 32-33.

177. Mr. Catalde testified that in his experience as District Court Administrator, it was an "unprecedented" situation to have to remove outside conflicts counsel and seek other counsel. N.T. 31.

178. Mr. Catalde testified that prior to Respondent's removal from the matter, he had many concerning conversations with administrative judges, the president judge and court administration staff about the effective administration of justice and whether or not

the court system was able to provide appropriate representation to Respondent's clients as defendants in the system. N.T. 31.

179. Judge John Mead offered credible testimony at the disciplinary hearing. Judge Mead is a judge on the Court of Common Pleas of Erie County and is the administrative judge of the trial division. Judge Mead testified at the disciplinary hearing that his May 6, 2021 Administrative Order was prompted by the fact that the Erie County court system was receiving a lot of complaints from criminal defendants represented by Respondent, and the Judge was concerned that these defendants were not receiving the representation that they needed from Respondent. N.T. 93, 95.

180. Judge Mead testified that the court system had tried to work with Respondent, but it was not working out, and he decided they had to do "something fairly drastic" because "people needed representation and they needed it quickly," so the best strategy was to hire new attorneys and reassign Respondent's cases. N.T. 95, 97.

181. Judge Mead did not anticipate there would be problems transferring the files, and was surprised and upset when he was informed that the none of the transfers had taken place in accordance with the Administrative Order, and that a rule to show cause hearing would be necessary. N.T. 96, 97.

182. Although the May 6, 2021 Administrative Order removed Respondent from 50 criminal files, Judge Mead allowed Respondent to keep the matter of Marquice Evans after Respondent requested to keep it. N.T. 99.

183. Respondent thereafter failed to file a brief in Mr. Evans's PCRA appeal after being ordered to do so on four occasions. PE-15.

184. Judge Mead was concerned the Evans matter was similar to the situation that had occurred earlier requiring Respondent's removal from cases, because Mr. Evans

“had been waiting for a while” and “we wanted to make sure that his rights were – were not violated.” N.T. 102.

185. Judge Mead held a contempt hearing on June 6, 2022, and removed Respondent from the Evans case by Order dated June 8, 2022. The Order directed that Respondent would be responsible for paying the costs associated with hiring new counsel, and that Respondent provide new counsel with all documents associated with the matter. PE-15.

186. In the June 8, 2022 Order, the Court stated that it did not find Respondent’s health and personal issues credible as a basis for why Respondent failed to complete his obligations. PE-15.

187. Respondent testified that he was diagnosed with cancer in the latter part of 2019 and received treatment in early 2020. N.T. 151-153. He further testified that in late December 2020 through early 2021, he suffered from some complications of treatment, and was also hospitalized in late January 2021. N.T. 155-156.

188. Although Respondent testified that he emailed the Erie County Deputy Court Administrator on January 27, 2021 as to his medical conditions (N.T. 51), he did not provide the email at the hearing.

189. When questioned by the Committee Chair as to why he did not provide the email to Petitioner earlier in the proceedings against him or at the hearing, Respondent stated, “I really can’t answer that.” N.T. 185.

190. Respondent testified that he contracted COVID in early April 2021 and was not released from quarantine until late April 2021, and suffered post-COVID health issues after that time. N.T. 157-158, 163.

191. Respondent did not provide evidence at the disciplinary hearing that as a result of any of these claimed health issues, he filed a request to reduce his caseload or withdraw from cases. N.T. 86-87; PE - 14, p. 16.

192. Judge Mead testified that he did not recall any type of written pleadings attaching any medical issues. N.T. 103.

193. Mr. Catalde testified that Respondent never provided to him any type of medical records regarding COVID or any other health issue. N.T. 86.

194. Respondent did not provide any evidence at the disciplinary hearing regarding his claimed health issues.

195. Respondent accepted responsibility for his misconduct. N.T. 189.

196. Respondent has no prior record of discipline.

197. In a separate disciplinary matter at No. 62 DB 2023, by Order dated June 14, 2023, the Supreme Court of Pennsylvania placed Respondent on temporary suspension pursuant to Pa.R.D.E. 208(f)(5).

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."):

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. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client’s objectives are to be accomplished.

4. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

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

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

8. Pa.R.D.E. 203(b)(7) – The following shall also be grounds for discipline: Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel’s request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney’s position.

IV. DISCUSSION

This matter comes to the Board following the Committee’s conclusion that Respondent violated the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement charged in the Petition for Discipline and its recommendation that Respondent be suspended for a period of two years. Petitioner bears the burden of

proving ethical misconduct by a preponderance of clear and satisfactory evidence. *Office of Disciplinary Counsel v. Lawrence J. DiAngelus*, 907 A.2d 452, 456 (Pa. 2006). As stated above, Respondent failed to answer the charges against him and all factual allegations in the Petition are deemed admitted.

For the reasons set forth below, we conclude that the record before us amply demonstrates Respondent's violations of the charged rules by his repeated failure to properly serve his clients, in particular through his complete abdication of the duty to communicate with clients, failure to act with diligence and promptness to move matters to their conclusion, failure to adhere to deadlines, and failure to follow court orders in his role as outside conflicts counsel for Erie County. In addition, the factual allegations in the Petition for Discipline establish Respondent's failure to respond to Petitioner's request for his statement of position in four separate DB-7s. Given the very serious nature of the violations discussed in this Report, we recommend a suspension from the practice of law for a period of four years.

A. Violations resulting from Respondent's lack of competence, diligence and communication

In the latter part of 2019, less than one year after Respondent contracted with Erie County to perform legal work as outside conflicts counsel, Court Administrator Robert Catalde and other personnel in the court system started receiving letters from criminal defendants complaining about Respondent's representation as their appointed counsel. The letters increased in volume and frequency until the end of calendar year 2020. Many of the letters expressed frustration at the lack of communication from Respondent and lack of movement on their cases. Mr. Catalde had his staff forward letters to Respondent and had staff communicate directly with Respondent about the

contents of the letters and the necessity to move cases along.

As set forth in the Petition for Discipline, Respondent's conduct in the Ruiz, Hearn, Galbraith, Williamson, Foster, Shields, and Bolden matters hewed to a general pattern: he was appointed to represent his clients, failed to meet with or speak with the clients as to the criminal charges filed against them, failed to respond to the clients' inquiries or various attempts by third parties to contact him on behalf of the clients, and failed to take action on the matters. This pattern of conduct violated RPC 1.1, as Respondent failed to provide competent representation to his clients; RPC 1.3, as he failed to act with reasonable diligence and promptness in representing clients; RPC 1.4(a)(2), as he failed to consult with clients about the means by which the clients' objectives were to be accomplished; RPC 1.4(a)(3), as he failed to keep clients informed about the status of their matters; and RPC 1.4(a)(4), as he failed to promptly comply with reasonable requests for information.

While each of the above client matters is troubling, especially disturbing is Respondent's mishandling of two matters that involved juvenile defendants. A particularly egregious example of Respondent's neglect can be found in the Ruiz matter. Therein, Danny Ruiz, who was incarcerated in adult prison since his arrest at age 15 and awaiting trial as an adult, began sending letters to court system staff seeking assistance because Respondent, his court-appointed counsel, had not communicated with him in any manner, even though Mr. Ruiz had telephoned and left messages for Respondent. Mr. Ruiz had no information as to the status of his case, and was not aware that anyone was advocating for him. The record established that Respondent had been Mr. Ruiz's appointed counsel for at least 13 months and Respondent had never communicated with him during that time. Mr. Catalde credibly testified that in an unusual turn of events, a prison counselor

contacted him regarding Mr. Ruiz, out of concern for the lack of attention from his appointed counsel. Mr. Ruiz's mother later contacted Mr. Catalde, as well, due to her concern over Respondent's appointment to her son's case. While Respondent eventually made some attempt to have Mr. Ruiz decertified from adult court, he failed to obtain an expert witness as required in decertification matters. The court directed Respondent to file a motion for funding the appointment of an expert, but Respondent failed to do so, prompting the court to schedule a rule to show cause hearing as to why Respondent should not be held in contempt for failing to comply with the court's order. After the hearing, the court granted Respondent additional time to file a motion, but Respondent did not file the motion until after the extension had passed, all the while delaying Mr. Ruiz's case.

Similarly, Mason Galbraith was a 17 year old charged as an adult and incarcerated in an adult prison. Mr. Galbraith and his family made numerous attempts to contact Respondent for information on his case after Respondent was appointed to represent him in October 2020, and sent letters to Respondent through the court system. After one such letter in March 2021, Respondent met with Mr. Galbraith once in March 2021. After that meeting, Mr. Galbraith again sent letters through the Clerk of Courts because he had not received discovery and was anxious to know the status of his matter, as Respondent was nonresponsive.

As well as engaging in the severe communication deficiencies and delays outlined above, Respondent acted incompetently in violation of RPC 1.1 and failed to act with diligence and promptness in violation of RPC 1.3 by habitually failing to comply with court orders and deadlines in the Ruiz, Williamson, Shields, Foster, Miles and Doerfer cases. The facts of the Ruiz matter set forth above demonstrate Respondent's

noncompliance with the court's orders to timely file motions in that matter. In the Williamson matter, Respondent was appointed to represent Mr. Williamson in Superior Court on his appeal of the lower court's denial of his PCRA claims. The Superior Court vacated the lower court's dismissal and remanded the case. The lower court twice ordered Respondent to file an amended PCRA within 30 days, but he failed to do so. When Respondent failed to comply with the court's order a second time, he was removed from the case. Respondent's conduct in the Shields case mirrored that in the Williamson matter, as he twice ignored orders by the court to file an amended PCRA or no merit letter, and when Respondent failed to comply, the court removed him. In the Foster matter, Respondent was given 30 days to perfect an appeal, but took no action and was eventually removed by the court. The Miles case involved Respondent's failure to file a brief on behalf of his client, resulting in the Superior Court dismissing Mr. Miles' appeal and directing that Respondent file with the court a certification that Respondent notified Mr. Miles of the dismissal, yet based on Superior Court docket entries, Respondent failed to file the required certification that his client had been notified. The Doerfer matter is likewise serious, as the Superior Court granted Respondent four extensions to file an appellate brief, and clearly informed him that failure to file the brief timely would subject the appeal to immediate dismissal, yet Respondent after receiving the multiple asked-for extensions, still failed to file the brief by the due date. Although Respondent attempted to revive the matter by filing a *Nunc Pro Tunc* application, the Court denied the application and dismissed the appeal for failure to file the brief.

B. Violations resulting from Respondent's failure to comply with the May 6, 2021 Administrative Order and failure to respond to Office of Disciplinary Counsel communications

As detailed in the factual findings, Respondent's on-going pattern during

2019 through the end of 2020 of failing to communicate, failing to act with competence and diligence, and blatant defiance of court orders and deadlines to file briefs and move cases, culminated in his removal from cases for which he was appointed as outside conflicts counsel. As Judge Mead testified, “something fairly drastic” needed to happen because the court was concerned that Respondent’s representation, or lack thereof, was endangering his clients’ rights. By an “unprecedented” Administrative Order dated May 6, 2021, the court removed Respondent from 50 cases and required him to facilitate the transfer of the case files to three newly appointed counsel within 20 days of the order and assist the counsel in the transition.

While Judge Mead had expected that the Administrative Order would resolve the problems occasioned by Respondent’s dilatory behavior and allow successor counsel to begin moving the cases, this did not happen, as Respondent severely procrastinated in transferring the files to the appointed counsel. Respondent’s failure to comply in an expeditious fashion with the May 6, 2021 Order prompted court personnel to send a letter on June 7, 2021, a month later, informing Respondent that he had until June 11, 2021 to comply with the order. When Respondent yet again failed to comply by June 11, 2021, Judge Mead scheduled a rule to show cause hearing to determine whether Respondent should be held in contempt. Only after Respondent was threatened with incarceration at the June 23, 2021 show cause hearing did he finally transfer the case files to successor counsel.

Respondent’s actions are a clear violation of RPC 1.16, which required him to take reasonable steps to surrender papers and property to which his clients were entitled, and which he wholly failed to do until forced by the court. As well, Respondent’s proclivity for ignoring court orders, in particular the May 6, 2021 Administrative Order,

prejudiced the administration of justice in violation of RPC 8.4(d), as his recalcitrant actions created additional work for the Erie County court system, forcing the court to schedule multiple hearings to address Respondent's contemptuous behavior.

Respondent's failure to meet his duties extended to his interaction with the Office of Disciplinary Counsel, when Respondent failed without explanation to respond to four DB-7 inquiries regarding the complaints filed against him, in violation of Pa.R.D.E. 207(b)(3).

C. Appropriate measure of discipline

Having concluded that Respondent committed multiple violations of the ethical rules that govern the profession, we turn next to the appropriate measure of discipline to be imposed. In reviewing the general considerations governing the imposition of final discipline, it is well-established that disciplinary sanctions serve the dual purpose of protecting the public from unfit attorneys and maintaining the integrity of the legal system. *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986). Another compelling goal of the disciplinary system is deterrence. *In re Dennis Iulo*, 766 A.2d 335, 338, 339 (Pa. 2001). The recommended discipline must reflect the facts and circumstances unique to the case, including circumstances that aggravate or mitigate the discipline. *Office of Disciplinary Counsel v. Anthony C. Cappuccio*, 48 A.3d 1231, 1238 (Pa. 2012). And importantly, while there is no per se discipline in Pennsylvania, the Board is mindful of precedent and the need for consistency in the imposition of discipline. *Office of Disciplinary Counsel v. Robert Lucarini*, 472 A.2d 186, 189-191 (Pa, 1983).

Respondent testified at length as to personal and health issues he claims are partially to blame for his serious professional derelictions. Respondent did not

produce any medical records or reports from healthcare providers to support his claims that his health interfered with his ability to represent clients over the time period in question. We further observe that the record is devoid of evidence that any motions were filed by Respondent to withdraw from cases due to health problems. While Respondent testified that he emailed the Deputy Court Administrator regarding his health, he failed to produce the email at the disciplinary hearing. The testimony of Judge Mead and Mr. Catalde confirms that Respondent did not attempt to withdraw from matters based on the state of his health. We recognize that Respondent's testimony is fairly intended to explain and contextualize the underlying misconduct; however, his unsubstantiated health problems do not warrant mitigation of discipline.

In mitigation, Respondent has no record of discipline since his admission to the Pennsylvania bar in 1992. Further, the record reflects that he accepted responsibility for his misconduct, although we find nothing in the record to demonstrate Respondent's appreciation of or remorse for what his clients endured due to his failure to meet his professional obligations.

We recognize two factors that serve to aggravate the discipline imposed in this matter. First, we find Respondent's grievous neglect of the two juvenile defendants a particularly appalling example of his professional derelictions. Mr. Ruiz and Mr. Galbraith were each charged as adults and incarcerated in an adult prison, yet were minors of 15 and 17, respectively. As juveniles, they were part of a more vulnerable segment of the population and deserved far better representation than what they received from Respondent. Mr. Ruiz was incarcerated for 13 months without any contact with his lawyer, a situation Respondent wrongfully allowed to occur and for which there is simply no justification.

Next, we find that Respondent's handling of the Marquice Evans matter serves to aggravate the discipline in the instant case. Despite the serious consequences of ignoring the May 6, 2021 Administrative Order and being exposed to a contempt hearing for his noncompliance, the record established that Respondent did not learn from his experience. Respondent's subsequent conduct in the Evans matter repeated his longstanding pattern of delay, and involved his failure to timely file a brief in a PCRA matter on four occasions. Respondent's continued procrastination demonstrated that he did not reflect on his conduct that caused his removal from 50 other cases and take steps to remedy the underlying issues. Indeed, Judge Mead found Respondent proffered the same unacceptable excuses for his delays and held him in contempt.

The Committee has recommended a two year period of suspension to address Respondent's misconduct. We concur with the Committee that Respondent's actions warrant suspension for a period of time that requires him to petition for reinstatement and prove his fitness before resuming legal practice. However, the breadth of Respondent's serial neglect, contemptuous response to court orders, and unending delays warrants more severe discipline than a two year suspension. A survey of prior matters suggests that serial neglect of client matters starts with a one year and one day suspension and increases based on the facts and circumstances of each case. In the matter of *Office of Disciplinary Counsel v. Tangie Marie Boston*, No. 99 DB 2018 (D. Bd. Rpt. 12/10/2019) (S. Ct. Order 2/12/2020), Boston, who had no history of prior discipline, was suspended for a period of one year and one day for her pattern of neglect, failure to communicate and failure to refund unearned fees in four client matters. Another matter that resulted in a suspension for one year and one day is *Office of Disciplinary Counsel v. Douglas Andrew Grannan*, No. 197 DB 2016 (D. Bd. Rpt. 4/3/2019) (S. Ct. Order

7/9/2019). In that matter, Grannan, who had no history of attorney discipline, neglected seven client matters over two and one-half years. In *Office of Disciplinary Counsel v. Thomas William Smith*, No. 21 DB 2000 (D. Bd. Rpt. 9/8/2003) (S. Ct. Order 12/9/2003), Smith engaged in neglect of 11 client matters over a period of three years and made misrepresentations as to the status of the matters. In aggravation, Smith had a record of prior discipline consisting of a public censure, but successfully demonstrated in mitigation that he suffered from a psychiatric disorder that caused his misconduct. While the Board recommended a four year period of suspension, the Court suspended Smith for a period of one year and one day.

More severe discipline was imposed in the case of *Office of Disciplinary Counsel v. Donna Marie Albright-Smith*, No. 225 DB 2010 (D. Bd. Rpt. 12/20/2011) (S. Ct. Order 5/30/2012). Therein, Albright-Smith engaged in misconduct in eight client matters over a four year period, whereby she agreed to represent the clients, accepted retainer fees, which often were not deposited into a trust account, failed to pursue the matters, made misrepresentations in three of the matters to either the court or clients, failed to notify clients of an office move to a different county, and failed to promptly refund unearned fees but later made reimbursement in all but one case after involvement by the Office of Disciplinary Counsel. Albright-Smith had no prior history of discipline but was suspended for two years due to the severity of her professional lapses.

In our view, Respondent's misconduct is more serious than that of the attorneys in the above-cited matters, and warrants more severe discipline. Respondent not only neglected multiple matters over a period of approximately two years, which egregiously included two cases where juvenile defendants were housed in adult prison without contact from their court-appointed attorney for months, he shirked his

responsibility to comply with court orders of the lower court and the Superior Court. This included the Administrative Order that directed him to turn over 50 files to successor counsel appointed to stanch the flow of complaints from defendants arising from Respondent's incompetence, lack of communication, and lack of diligence. Respondent's refusal to comply with the Administrative Order and other orders forced the court at various times to issue rules to show cause and schedule contempt hearings. Even when Respondent was given an opportunity after his removal from the 50 other matters to represent Mr. Evans, he again failed to meet deadlines and fulfill his professional responsibilities, resulting in a finding of contempt. Respondent offered no credible evidence to explain his persistent failure to meet his ethical duties to his clients and to the courts.

Upon this record, we conclude that Respondent is not fit to practice law. The serious and troubling misconduct established in this record compels a lengthy suspension in order to protect the public, preserve the integrity of the profession and the courts, and deter other practitioners from engaging in similar misconduct. We recommend that Respondent be suspended for a period of four years.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, James P. Miller, be Suspended for four 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: */s/ John C. Rafferty, Jr.*
John C. Rafferty, Jr., Vice-Chair

Date: September 7, 2023