

IN THE SUPREME COURT OF PENNSYLVANIA

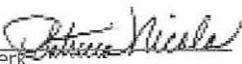
OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2280 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 65 DB 2015
	:	
v.	:	Attorney Registration No. 90763
	:	
MICHAEL ELIAS STOSIC,	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 14th day of September, 2016, upon consideration of the Report and Recommendations of the Disciplinary Board, the Petition for Review, and the Office of Disciplinary Counsel's answer, Michael Elias Stosic is suspended from the Bar of this Commonwealth for a period of one year and one day, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 9/14/2016

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 65 DB 2015
Petitioner	:	
	:	
v.	:	Attorney Registration No. 90763
	:	
MICHAEL ELIAS STOSIC	:	
Respondent	:	(Philadelphia)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on April 21, 2015, Office of Disciplinary Counsel charged Michael Elias Stosic with violations of the Rules of Professional Conduct and Rules of Disciplinary Enforcement. Respondent filed an Answer to Petition on June 2, 2015.

A disciplinary hearing was held on August 20, 2015, before a District I Hearing Committee comprised of Chair Timothy W. Callahan, II, Esquire and Members

Peter C. Buckley, Jr., Esquire and George Twardy, Jr., Esquire. Respondent appeared pro se. Petitioner introduced exhibits and presented the testimony of five witnesses. Respondent testified on his own behalf and introduced exhibits.

Following the submission of Briefs by the parties, the Hearing Committee filed a Report on February 22, 2016, concluding that Respondent violated Rules of Professional Conduct 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(c), 8.4(c), 8.4(d) and Rules of Disciplinary Enforcement 203(b)(1) and 203(b)(3). The Committee recommended that he be suspended from the practice of law for a period of one year and one day.

Petitioner filed a Brief on Exceptions on March 14, 2016.

Respondent filed a Brief on Exceptions and request for oral argument on March 14, 2016.

Petitioner filed a Brief Opposing Exceptions on March 24, 2016.

Oral argument was held on April 14, 2016, before a three-member Board panel.

This matter was adjudicated by the Disciplinary Board at the meeting on April 21, 2016.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, is invested, pursuant to Pa.R.D.E. 208, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice

law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent is Michael Elias Stosic. He was born in 1973 and was admitted to practice law in the Commonwealth of Pennsylvania in 2003. He maintains his office at 236 Market Street, Apt. 3, Philadelphia, PA 19106. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no record of prior discipline.

Rosa Matter

4. Respondent had represented Luis Rosa in three drug-related criminal matters between 2009 and 2010. ODC-1, ODC- 2, ODC-3.

5. In December 2010, Rosa was charged with murder in two separate cases. ODC-4, ODC-5, ODC-6, ODC-7, ODC-8, ODC-9.

6. On March 12, 2011, Respondent met with Rosa's sister and mother (Wamaid Torres Rosa and Rafaelina Rosa, respectively) to arrange for Respondent to represent Rosa in the two murder cases. ODC-13; N.T. 128.

7. At the March 12, 2011 meeting, Wamaid and Rafaelina paid Respondent \$2,400.00 pursuant to the written fee agreement provided by Respondent in case No. CP-51-CR-0014892-2010. This case involved a charge of third degree murder and related charges but no capital murder charges. ODC-13; N.T. 106, 107, 129, 132.

8. The fee agreement stated, *inter alia*, that the \$2,400.00 was nonrefundable unless the "attorney's fees are limited by any applicable law or a ruling of the court." ODC-13.

9. The case subject to the written fee agreement did not reflect at any time prior to the entrance of appearance of Respondent that the District Attorney considered it a capital murder matter with “Aggravating Circumstances.”

10. A “Notice of Aggravating Circumstances” was filed by the District Attorney in the other murder case against Rosa, at No. CP-51-CR-0016074-2010. ODC-5.

11. Respondent only became aware of the “Notice of Aggravating Circumstances” filed by the District Attorney on March 22, 2011. ODC-15; N.T. 134-136.

12. At the March 22, 2011 hearing, three cases involving Rosa were listed on the docket presided over by Judge Benjamin Lerner. When Respondent attempted to proceed with representing Rosa with respect to the non-capital case, Judge Lerner ruled that he was disqualified from representing Rosa because Respondent was not “801 Certified” and that an 801 certification was needed since one of the three cases was determined to be a capital murder case. ODC-15; N.T. 139-140.

13. Respondent did not hesitate to inform Judge Lerner that he was not certified when asked whether he was allowed to handle capital murder cases. ODC-15.

14. After the March 22, 2011 hearing, Rosa’s family asked Respondent to perform research regarding decertifying the case as a capital murder case.

15. At some point following Judge Lerner’s order disqualifying Respondent as counsel, Rosa’s sister and mother made several requests for a refund of their money. N.T. 108.

16. Respondent’s first documented response to the demands of a refund by Rosa’s sister and mother was *via* correspondence dated June 30, 2011

directed to Rosa's sister, wherein Respondent refunded the requested monies and indicated the existence of an outstanding balance in the amount of \$1,425.00. ODC-20.

17. Respondent's June 30, 2011 correspondence to Rosa's sister provided an accounting of the allocation of the \$2,400.00 paid to Respondent evidencing a balance for previous drug cases handled by Respondent on behalf of Rosa and work performed on case No. CP-51-CR-0014892-2010, the case involving a charge of third degree murder *before* he was disqualified and some research after. ODC-20; N.T. 142, 143.

18. Respondent's June 30, 2011 accounting sent to Rosa's sister further provided an allocation of \$1,000.00 for hours spent in travel and time meeting with Rosa at Graterford Prison and research regarding the viability of filing a motion to decertify the classification of the capital murder case. ODC-20; N.T. 151, 152.

19. Records from the Pennsylvania Department of Corrections do not indicate that Respondent was ever a registered visitor of Rosa at Graterford Prison. ODC-18.

20. Rosa's sister made a claim against Respondent to the Pennsylvania Lawyers Fund for Client Security for the entire \$2,400.00 paid to Respondent for his representation of Rosa. ODC-22; N.T. 108, 109.

21. Rosa's sister was awarded \$2,400.00 by the Client Security Fund. ODC-21; N.T. 108, 109.

Monroe Matter

22. On November 17, 2008, Respondent entered into a written fee agreement to represent Exia Monroe in a civil matter against a construction contractor regarding a claim of faulty construction. ODC-27; N.T. 18, 19.

23. Pursuant to the fee agreement, Respondent's fee was based on an hourly rate of \$200.00 per hour for his work, with an initial deposit of \$300.00 and an additional \$400.00 to get started. Payments were to be made following the issuance of bills prepared by Respondent. Costs, as per the written fee agreement, could be paid in even monthly installments. ODC-27.

24. There is no evidence that Ms. Monroe made payments on a monthly basis. There is also no evidence that Respondent forwarded monthly bills or invoices for his legal representation of Ms. Monroe.

25. The written fee agreement required Ms. Monroe to pay the anticipated costs of a home inspection/construction expert to be procured by Respondent for trial, estimated to be "\$1,000 to \$2,000." ODC -27.

26. Ms. Monroe paid Respondent \$2,000 by a PNC cashier's check dated October 1, 2009. The check bore the note "for Inspection" written on it. ODC-32; N.T. 20, 23.

27. Respondent did not use the \$2,000.00 to procure a construction expert. ODC-34; N.T. 23, 24.

28. Respondent, after discussing litigation fees and costs with Ms. Monroe, used the \$2,000.00 to pay for the arbitration appeal and "other things" related to the litigation. N.T. 161, 163, 164.

29. Ms. Monroe hired a construction/inspection expert herself and paid for the expert with her own funds on February 4, 2011. ODC-33; N.T. 24, 25.

30. An arbitration hearing was scheduled for April 13, 2010. ODC-26.

31. Ms. Monroe did not attend the April 2010 arbitration hearing. N.T. 28, 31.

32. Ms. Monroe has serious kidney problems which she believes became problematic partly due to the stress from her case. Ms. Monroe, *via* correspondence as early as November 30, 2008 and on February 9, 2009 stated, “Because of this my blood pressure is up and I have been sick.” D-3; N.T. 25-28.

33. Respondent failed to obtain or file a request for a continuance setting forth the fact that Ms. Monroe was unable to attend the arbitration because of illness and/or a serious kidney problem in advance of the arbitration date. ODC-26.

34. As a result of Ms. Monroe’s failure to appear at the April 13, 2010 arbitration and Respondent’s failure to obtain a continuance, the court listed the matter for a Rule to Show Cause hearing to argue why the case should not be dismissed. ODC-26.

35. Ms. Monroe learned about the arbitrator’s award in favor of the defendants for her failure to appear when she received the Court’s notice informing her of the same. N.T. 28-32.

36. At the June 14, 2010 Rule to Show Cause hearing before Judge Sandra Mazur Moss, Respondent represented that his client suffered from a “serious kidney problem” which prevented her from attending the April 13, 2010 arbitration. ODC-26; ODC-29.

37. Ms. Monroe testified that Respondent told the Court that Ms. Monroe was not present at the hearing on June 14, 2010, which Respondent denies. Ms. Monroe’s testimony on this point was not credible. N.T. 26, 32, 59, 61.

38. On June 14, 2010, Judge Moss entered an Order remanding the case for an arbitration hearing, sanctioning Ms. Monroe \$225.00 for the cost of the initial

arbitration and \$225.00 for the time spent by defense counsel in attending the initial arbitration. ODC-29.

39. Ms. Monroe's arbitration hearing was re-listed and took place on October 12, 2010. The arbitrators found in favor of the defendant and against Monroe. D-4.

40. There is no evidence that Respondent utilized a construction/inspection expert witness or report in support of Ms. Monroe's property damage claim at the October 12, 2010 arbitration.

41. An appeal of the October 12, 2010 arbitration was filed timely on November 9, 2010. ODC-26.

42. There is no evidence that after the June 14, 2010 Rule to Show Cause hearing or after having lost at arbitration on October 12, 2010, Ms. Monroe ever complained about Respondent's allocation of the \$2,000.00 check noted "for inspection" or attempted to retain other counsel.

43. The November 17, 2008 written fee agreement between Respondent and Ms. Monroe for legal representation did not cover appeals. ODC-27; N.T. 18. 19.

44. On February 15, 2011, the defendant in the Monroe matter filed a Motion for Sanctions against Respondent and Ms. Monroe. ODC-26.

45. On March 3, 2011, the court entered an order on the Motion for Sanctions for failing to comply with Judge Moss's Order of June 14, 2010, and specifically directed Ms. Monroe to pay \$225.00 to defense counsel for time lost attending the first arbitration and further directed Ms. Monroe to pay counsel fees of \$500.00 for the preparation and filing of the Motion for Sanctions. ODC-26; ODC-31.

46. Prior to the July 29, 2011 bench trial, Ms. Monroe received a call from Respondent conveying an offer to settle her claim for \$25,000.00. Ms. Monroe turned down this offer and requested a trial. D- 6.

47. On July 29, 2011, a bench trial was commenced before the Honorable Eugene Maier. The court found in favor of the defendant and against the plaintiff. ODC-26.

48. On July 22, 2014, the Pennsylvania Lawyers Fund for Client Security awarded Ms. Monroe \$2,000.00 for Respondent's refusal to return the \$2,000.00 allegedly "earmarked" to obtain a construction expert for her case. ODC-34; N.T. 33- 35.

Price Matter

49. On November 2, 2009, Respondent entered into a written fee agreement with Albert Price, Jr. to represent him in a divorce matter with the requirement of an initial retainer of \$600.00. ODC-38; N.T. 92.

50. Respondent entered his appearance on behalf of Mr. Price on December 14, 2009. ODC-35.

51. Respondent attended multiple hearings, drafted interrogatories and requests for production of documents, sent out subpoenas, obtained pension and accident information and obtained income and expenses information for the certification before the Master. D- 9 through D-13.

52. Mr. Price made numerous telephone calls to Respondent. Respondent did not promptly or regularly return these telephone calls or keep Mr. Price reasonably apprised of the status of his divorce case. ODC-42; N.T. 66, 92- 94, 97- 98, 98-102.

53. On September 2, 2010, the Philadelphia Court of Common Pleas ordered that \$500.00 of Mr. Price's Workers' Compensation Award be placed in escrow with Respondent solely for the purpose of equitable distribution. ODC-41; N.T. 184-185.

54. By correspondence dated May 17, 2011, Mr. Price instructed Respondent that he no longer wished Respondent to continue as his attorney. Mr. Price did not indicate at that time the name and address of a new attorney. ODC-42, ODC-43.

55. By correspondence dated January 30, 2012, addressed to 2207 Chestnut Street, Philadelphia, PA 19103, Mr. Price again informed Respondent that he was to cease further work on the divorce. Mr. Price also instructed Respondent to forward his file to the new attorney and provided the new attorney's address. ODC-45.

56. By correspondence dated March 1, 2012, addressed to Respondent at 2207 Chestnut Street, Philadelphia, PA 19103, Lauren H. Kane, Esquire, Mr. Price's new divorce attorney, advised Respondent that she now represented Mr. Price and asked Respondent to forward the file to her pursuant to her client's instructions. ODC-46.

57. Respondent did not initially forward the Price file upon request because he did not receive Ms. Kane's March 1, 2012 letter or Mr. Price's January 30, 2012 letter as Respondent's office was no longer located at the 2207 Chestnut Street address. ODC-37, N.T. 186.

58. Respondent acknowledged that Mr. Price's new counsel demanded the file as of March 1, 2012. D-14.

59. Respondent did not forward the Price file upon request because he believed that new counsel had to enter her appearance on behalf of Mr. Price on the Family Court docket before he was permitted to do so because of the confidential nature of Family Court files. Respondent later testified that he would have handed the file to Attorney Kane, Mr. Price or a courier if they appeared at his office to pick up the file. N.T. 190-191.

60. Respondent indicated that he was resentful that Mr. Price had paid Attorney Kane \$2,500.00 when Respondent had collected only \$600.00 from Mr. Price. N.T. 191.

61. Respondent forwarded a copy of Mr. Price's divorce file and withdrawal of appearance to Attorney Kane after contact with Disciplinary Counsel in late 2012. N.T. 187, 188, 189, 195.

62. Mr. Price requested Respondent to forward the \$500.00 held in escrow to his new counsel. N.T. 192-194.

63. Respondent believed that, pursuant to court order dated September 2, 2010, he was not permitted to transfer or give the money to anyone because said funds were to be used "solely for the purpose of filing for equitable distribution." Respondent followed the September 2, 2010 court order and kept the \$500.00 in escrow until such time as there was a filing for equitable distribution. N.T. 192, 193.

64. On September 24, 2014, the Pennsylvania Lawyers Fund for Client Security awarded Mr. Price \$500.00 on his claim against Respondent for Respondent's failure to refund or return the \$500.00. ODC-49.

65. Respondent filed a Motion to Transfer the \$500.00 he held in escrow as per court order to resolve the conflict with the Client Security Fund asking him to transfer the money to Attorney Kane. D-18.

66. Respondent transferred the \$500.00 when an order was entered on November 19, 2014, granting him permission to do so, three weeks after the Client Security award of \$500.00. N.T. 192-194.

Fields Matter

67. On September 9, 2012, Respondent entered into a written fee agreement with Calvin Fields to represent him in a divorce for a flat fee of \$420.00, if Mr. Fields' wife followed through on her agreement to sign a document consenting to the divorce and to jurisdiction in Cameron County. D- 20.

68. On or about September 24, 2012, a complaint in divorce was filed by Respondent in the Cameron County Court of Common Pleas on behalf of Mr. Fields. D- 21.

69. Respondent told Mr. Fields that he estimated that his divorce would be completed by the end of May, 2013 if not contested and if venued in Cameron County. ODC-50; N.T. 66, 72-75.

70. Mr. Fields's wife never signed the divorce papers consenting to the divorce or jurisdiction in Cameron County, which prompted the contingency within the written fee agreement to pay an additional \$600.00 to pursue Mr. Fields's divorce in Philadelphia County. D- 20; N.T. 202, 203.

71. On March 17, 2013, Mr. Fields made the second and last payment toward the \$1,020.00 fee he agreed to pay Respondent for his uncontested divorce to be filed in Philadelphia County. ODC-50; N.T. 64, 65, 71.

72. Between March 17, 2013 and October 2013, Mr. Fields made repeated unsuccessful telephone calls to Respondent. N.T. 66, 75.

73. When Mr. Fields finally communicated with Respondent on September 24, 2013, Respondent told Mr. Fields to meet him at his office the next day. N.T. 66, 67.

74. Mr. Fields appeared at Respondent's office and waited several hours for Respondent to arrive. Respondent never appeared as he was under the impression that he told Mr. Fields to meet him at 236 Market Street, a bar that Respondent had recently purchased. N.T. 66- 67.

75. Respondent in and around this time period was overwhelmed by the demands of opening the bar. N.T. 218-219, 314-315.

76. Mr. Fields filed a complaint with Office of Disciplinary Counsel on September 25, 2013. ODC-50.

77. Respondent filed the complaint in divorce in Philadelphia County on behalf of Mr. Fields on October 13, 2013, nearly seven months after Mr. Fields made the final payment on the Philadelphia divorce action and requested that Respondent proceed. ODC-51; N.T. 73-75.

Contempt Hearing Before Judge Dumas-Brooks

78. On June 21, 2013, Respondent was found in contempt of court by the Honorable Lori Dumas-Brooks of the Court of Common Pleas of Philadelphia County. He was ordered to pay a fine in the amount of \$1,000.00. ODC-52; ODC-53; ODC-54.

79. Respondent had failed to appear on three prior listings on behalf of a juvenile client in custody. ODC-52.

80. Respondent stated to the Court that he had no real excuse for not appearing. ODC-52.

81. Respondent told the Court that he had just opened a bar in Old City and taken on more cases than he could manage. ODC-52.

82. Respondent explained to the Hearing Committee that there was no harm in his delay because the court on its own delayed the sentencing, and as his juvenile client was going to be adjudicated and placed in a facility, Respondent's delay didn't really matter. N.T. 318–321.

January 13, 2012 Contempt Hearing Before Judge Wogan

83. On January 13, 2012, Respondent was found in contempt of court by the Honorable Chris Wogan of the Court of Common Pleas of Philadelphia County in *Com v. Khalil Dickens*. ODC-58, ODC-59.

84. Respondent was held in contempt by Judge Wogan because of his tardiness in appearing in Judge Wogan's courtroom on January 13, 2012. ODC-58.

85. Respondent was late in arriving in Judge Wogan's courtroom because he was appearing before Judge Byrd in another courtroom. ODC-58.

86. Judge Wogan questioned Respondent's candor in his explanation regarding his appearance before Judge Byrd. ODC-58.

May 9, 2012 Contempt Hearing before Judge Wogan

87. On May 9, 2012, Respondent was held in contempt of court by Judge Wogan for a second time. ODC-61.

88. Respondent was held in contempt for failing to appear at trial in *Com. v. Khalil Dickens* without requesting a continuance or notifying the court of his unavailability. ODC-61.

89. The prosecutor had subpoenaed witnesses to appear at the hearing at which Respondent failed to appear. Respondent was in Mexico at the time of the hearing. ODC-61.

90. Respondent did not produce or introduce into evidence in the instant disciplinary proceeding or before Judge Wogan during the May 9, 2012 contempt proceeding a copy of the letter he purportedly sent to Judge Wogan and copied the District Attorney requesting an advanced continuance.

91. Respondent accepted a \$500.00 fee from the family of Khalil Dickens, regarding a separate privately retained juvenile matter, while simultaneously acting as court-appointed counsel in the matter before Judge Wogan. ODC-61; ODC-64.

92. Judge Wogan imposed a \$300.00 fine and charged Respondent \$2,314.94 in costs for the overtime expended by the Commonwealth in subpoenaing the witnesses to the hearing Respondent failed to attend or give notice of his business elsewhere. ODC-61.

93. Respondent believes that there would be a thousand or more contempts filed every day in Philadelphia if contempts were issued for every attorney who wasn't there when the judge called his list. N.T. 325. He believes showing up late is somewhat routine. N.T. 325.

94. Respondent claims that out of 4,000 court appearances he has had less than five contempts. Respondent's Proposed Findings of Fact ¶ 113.

Arroyo Matter

95. In January 2010, Lydia Arroyo retained Respondent to prosecute her claim for injuries sustained as a result of a slip-and-fall accident against Beneficial Bank. N.T. 77.

96. Respondent did not carry malpractice insurance at the time he agreed to represent Ms. Arroyo. ODC-72; N.T. 247.

97. Respondent did not discuss his lack of malpractice insurance with Ms. Arroyo, nor did he provide her with a written fee agreement in which he specifically stated his lack of malpractice insurance. N.T. 77- 78, 247-248.

98. On January 25, 2011, defendant filed a Motion to Compel Ms. Arroyo to provide discovery responses. ODC-75.

99. On February 23, 2011, defense counsel filed another Motion to Compel against Ms. Arroyo for failure to provide answers to interrogatories. ODC-66, ODC-77.

100. On March 22, 2011, defense counsel filed a Motion for Sanctions for Ms. Arroyo's repeated failure to respond to the discovery requests as ordered previously by the court. ODC-66; ODC-78.

101. In an April 5, 2011 Order, Judge Tereshko granted the defendant's Motion for Sanctions, required Ms. Arroyo to pay \$300.00 to defense counsel for the preparation and filing of the Motion, and further required Ms. Arroyo to answer all discovery. ODC-66.

102. Respondent claimed he tried to comply with the discovery deadlines but Ms. Arroyo was not responsive and was hard to reach. N.T. 250, 257, 258, 259.

103. On May 11, 2011, defense counsel filed a Motion to Compel to require the deposition of Ms. Arroyo. ODC-66; ODC-80.

104. By Order dated May 11, 2011, Ms. Arroyo was required to appear for her deposition within ten days or face sanctions. ODC-66; ODC-80.

105. On July 27, 2011, defense counsel filed a Motion to Compel seeking an independent medical exam ("IME") of Ms. Arroyo. ODC-66; ODC-87.

106. On August 23, 2011, an Order was entered compelling Ms. Arroyo to appear at an IME on August 25, 2011, and to pay cancellation fees of \$975.00 or risk further sanctions. ODC-66; ODC-88.

107. Ms. Arroyo did not appear at the IME. N.T. 250-251.

108. Ms. Arroyo testified that she was never informed by Respondent of the IME appointment or the need to appear at the examination. This testimony is not credible. N.T. 80, 82.

109. On September 6, 2011, an order was entered granting sanctions against Ms. Arroyo and dismissing the defendant Beneficial Bank from the lawsuit. The order also imposed cancellation fees of \$975.00 against Ms. Arroyo. ODC-66; ODC-67.

110. Respondent was unable to inform Ms. Arroyo that her case had been dismissed by the court. N.T. 82.

111. On October 25, 2011, Respondent filed an untimely Notice of Appeal to the Superior Court regarding the September 6, 2011 discovery order dismissing Ms. Arroyo's case. ODC-66; ODC-68.

112. Ms. Arroyo's appeal to the Superior Court was quashed for failing to file the Notice of Appeal within the required 30 days after entry of the judgment against her. ODC-68; ODC-69.

113. Ms. Arroyo filed a malpractice action against Respondent for his handling of her personal injury case. ODC-70.

114. Ms. Arroyo won a judgment against Respondent for malpractice. ODC-70.

115. Ms. Arroyo has not collected the judgment against Respondent and has no ability to seek payment of same from an insurance policy because Respondent failed to carry malpractice insurance. ODC-72.

Office of Disciplinary Counsel Matter

116. Respondent falsely represented on his PA Attorney's Annual Fee Form for the fiscal years 2010-2011, 2011-2012, 2012-2013, and 2013-2014 that he carried malpractice insurance. ODC-71; N.T. 263.

117. Between 2010 and 2014, Respondent did not carry any malpractice insurance. ODC-72; N.T. 264-265.

118. Respondent stated to the Hearing Committee that "I don't know what I was thinking." N.T. 267.

119. Respondent had someone else in his office pay the fee for him. N.T. 334.

Miscellaneous Findings

120. Respondent displayed no remorse for his misconduct and blamed his clients for the problems that brought him into the disciplinary system. N.T. 129-132, 139-152, 228-230, 231-238, 246-247.

121. Respondent offered no mitigation evidence or witnesses.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 – A lawyer shall provide competent representation to a client.
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
3. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.
4. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.
5. RPC 1.4(c) – A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosure for six years after the termination of the representation of a client.
6. RPC 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
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)(1) – Conviction of a crime shall be grounds for discipline.

9. Pa.R.D.E. 203(b)(3) via former Pa.R.D.E. 219(d)(1)(vi) (Effective 7/01/2010) – Falsely certifying on five annual fee forms that Respondent was covered by professional liability insurance.¹

IV. DISCUSSION

Disciplinary proceedings against Respondent were instituted by Office of Disciplinary Counsel by way of a Petition for Discipline filed on April 21, 2015. The Petition charged Respondent with violating multiple Rules of Professional Conduct and Rules of Disciplinary Enforcement arising from his handling of five client matters, contempt citations, and his failure to supply true and correct information in his attorney registration form. Respondent filed an Answer on June 2, 2015, in which he essentially denied all of the allegations contained in the Petition for Discipline. Petitioner must establish by a preponderance of clear and satisfactory evidence, that Resident's actions constitute professional misconduct. *Office of Disciplinary Counsel v. Surrick*, 749 A.2d 441, 444 (Pa. 2000).

Following review of the extensive testimony and documentary evidence, the Board concludes that Petitioner met its burden of proof that Respondent violated Rules of Professional Conduct 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(c), 8.4(c) and 8.4(d) and Rules of Disciplinary Enforcement 203(b)(1) and 203(b)(3).

¹ Current Pa.R.D.E. 219(d)(1)(viii) (effective May 12, 2016) requires an attorney to set forth whether the attorney is covered by professional liability insurance on the date of registration in the minimum amount required by Rule of Professional Conduct 1.4(c).

There is more than sufficient evidence to find that Respondent failed to communicate adequately with clients, failed to provide his clients with reasonably competent and diligent representation, engaged in conduct prejudicial to the administration of justice and provided false and misleading information in his annual attorney fee forms.

Respondent violated RPC 1.1 by his incompetence in failing to file the appropriate arbitration appeal in the Arroyo matter, resulting in the dismissal of his client's claim. His failure to act with reasonable diligence and promptness in representing his client in the Fields matter, as well as his routine failure to appear or appear late to criminal hearings, violated RPC 1.3.

Respondent regularly failed to communicate with his clients or respond to their reasonable requests for status updates on their cases. The complainants in the Monroe, Fields and Price matters all testified credibly that they had difficulties obtaining information from Respondent. While Respondent attempted to refute this testimony, in fact he offered no phone records, file notes, letters or emails to substantiate his claims that he routinely communicated with these clients.

In connection with his representation in the Arroyo matter, Respondent violated RPC 1.4(c) by failing to inform his client in writing that he did not have professional liability insurance. In addition to this violation, Respondent falsely certified on his annual attorney registration forms for five years starting in 2010 that in fact he was covered by professional liability insurance, in violation of RPC 8.4(c) and Pa.R.D.E. 203(b)(3).

Respondent's violation of RPC 8.4(d) is substantiated by his display of contempt toward the court. Respondent repeatedly failed to appear for scheduled hearings without properly notifying the court, thereby inconveniencing the court, his clients, opposing counsel and witnesses. Respondent was held in criminal contempt on two occasions by Judge Wogan and contempt on one occasion by Judge Dumas-Brooks. His criminal contempt is a violation of Pa.R.D.E. 203(b)(1).

Having concluded that Respondent violated the Rules, this matter is ripe for the determination of discipline. Petitioner seeks a suspension of one year and one day. Respondent argues that a lesser suspension is appropriate. The Hearing Committee recommended a suspension for one year and one day.²

A prevailing theme in the client matters and in Respondent's contempt of court is his disorganized approach to the practice of law. Respondent acknowledged this problem and referenced other events in his personal life, such as the opening of a bar, which he apparently prioritized above his clients' matters. Respondent produced no evidence to suggest that he has put in place any method to safeguard against similar conduct in the future in order to keep clients or the court adequately informed and to attend to and meet critical deadlines, discovery, hearings, motions and trials.

Importantly, Respondent has not acknowledged or recognized the impact of his actions on his clients or the court system. He displayed a sometime cynical and/or cavalier attitude toward his ethical duties. In the Price matter, he seemed to be more upset over the fact that the successor counsel was paid more money than Respondent

² The Hearing Committee made two additional recommendations in conjunction with the one year and one day suspension: that should Respondent be reinstated, he be assigned a practice monitor for a period of time not less than six months; and, that the expenses incurred be split evenly between Petitioner and Respondent. There is no authority in the Rules for these recommendations.

had been paid, rather than showing concern for his failure to communicate with his client or timely surrender the client's file. In the Dumas-Brooks contempt matter where Respondent failed to appear or respond to the court, he stated that there was no harm because the court itself delayed sentencing and therefore his delay was not significant. He minimized his criminal contempt convictions, indicating that showing up late to court is routine for lawyers and that out of 4,000 court appearances he has had less than five contempts. He appears to believe that being held in contempt of court is acceptable and simply the cost of conducting business.

His lack of remorse is troubling, as it indicates a failure to take full and genuine responsibility for his actions. In this same vein, Respondent attempted to slough off his dishonesty on his annual fee form as simply a product of neglect as he claimed the forms were prepared by others in his office. This is an unacceptable explanation. On five separate occasions, Respondent failed to verify and correct information on his fee form, an integral and necessary document for renewing his attorney license and maintaining his privilege to practice law. The obligation to provide true and correct information was solely Respondent's, not that of office staff.

After reviewing the parties' recommendations as contained in the briefs, the Committee's Report and recommendation, and the oral argument before this Board, 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.

While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and are suggestive of a one year and one day suspension when, as here, an

attorney's neglect and failure to meet his professional obligations places members of the public at risk of substandard representation. *Office of Disciplinary Counsel v. Lucarini*, 472 A.2d 186, 189-91 (Pa. 1983). The attorneys in the following cases received suspensions of one year and one day: *Office of Disciplinary Counsel v. Richard Patrick Reynolds*, 1895 D.D. No. 3 (Pa. 2014) (neglect of client's appeal, failure to communicate and abandonment of client after accepting representation, aggravating factors included two prior Informal Admonitions for similar misconduct); *Office of Disciplinary Counsel v. Ann-Marie McDonald Pahides*, 1546 D.D. No. 3 (Pa. 2010) (misconduct included lack of competence, neglect, lack of communication and failure to refund unearned fees and documents in five client matters, aggravating factor was a prior Informal Admonition); *Office of Disciplinary Counsel v. Marc D. Collazzo*, 1675 D.D. 3 (Pa. 2010) (lack of competence in failing to file a timely complaint, failure to communicate, misrepresentations, aggravating factors).

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. The evidence produced by Petitioner convincingly proved that Respondent cannot be allowed to remain in practice until he can demonstrate by clear and convincing evidence that he understands the impact of his misconduct and has taken appropriate steps to change his behavior.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Michael Elias Stosic, 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: 
Andrew J. Trevelise, Board Member

Date: June 23, 2016

Board Member Cordisco did not participate in the adjudication.