IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2934 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 77 DB 2021
v.	:	
	:	Attorney Registration No. 66379
ALAN KANE,	:	
Respondent	:	(Bucks County)

ORDER

PER CURIAM

AND NOW, this 8th day of March, 2023, upon consideration of the Report and Recommendations of the Disciplinary Board and Respondent's Petition for Review, Alan Kane is suspended from the Bar of this Commonwealth for a period of one year and one day. 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).

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 77 DB 2021
v.	:	Attorney Registration No. 66379
ALAN KANE, Respondent	:	(Bucks County)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on July 20, 2021, Petitioner, Office of Disciplinary Counsel, charged Respondent, Alan Kane, with violating multiple disciplinary rules in the course of representing his client in a legal action against the client's former employer. On August 10, 2021, Respondent filed an Answer and denied all rule violations.

Following a prehearing conference on October 29, 2021, a District II Hearing Committee ("Committee") conducted a disciplinary hearing on December 9 and 10, 2021. In its case in chief, Petitioner presented the testimony of one witness, the

complainant in this matter. Petitioner also offered into evidence, without objection, Exhibits ODC-1 through ODC-16, R-26 and R-50. Respondent appeared pro se, testified on his own behalf, and offered into evidence Exhibits R-4, R-5, R-9, R-19, R-22, R-38, R-41, R-42 and R-44. The evidence was admitted, subject to Petitioner's objection to Exhibit R-19, based on relevance. Following the presentation of Petitioner's case and Respondent's case, the Committee determined that Petitioner established at least one *prima facie* violation of the Rules of Professional Conduct charged in the Petition for Discipline. Thereafter, Respondent presented a brief personal statement but no other evidence in mitigation.

On February 10, 2022, Petitioner submitted a post-hearing brief to the Committee and requested that the Committee recommend to the Board that Respondent be suspended for a period of one year and one day. On April 4, 2022, Respondent submitted his post-hearing brief to the Committee and requested that the Committee recommend to the Board that a private reprimand be imposed and that Respondent perform 100 hours of pro bono work for indigent clients and take an additional 40 hours of Continuing Legal Education credits in ethics.

By Report filed on June 2, 2022, the Committee concluded that Petitioner met its burden of proof to establish that Respondent violated Rules of Professional Conduct 1.16(d), 8.4(a) (through violation of 1.5(a)), and 8.4(c). The Committee concluded that Petitioner failed to establish its burden of proof as to RPC 1.2(a), 1.4(a)(2), 1.4(a)(3), 1.4(b), 1.6(a), 1.6(d), 1.6(e), 1.7(a)(2), 3.1, and 8.4(d). The Committee recommended that Respondent be suspended from the practice of law for a period of one year.

On June 10, 2022, Petitioner submitted a letter to the Committee advising that it was not taking exceptions to the Committee's Report. On June 22, 2022, Respondent filed a brief on exceptions to the Committee's Report and recommendation and requested oral argument before the Board. On July 11, 2022, Petitioner filed a brief opposing Respondent's exceptions.

A three-member panel of the Board held oral argument on July 18, 2022. The Board adjudicated this matter at the meeting on July 21, 2022.

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 Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any 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 Alan Kane, born in 1965 and admitted to practice law in the Commonwealth in 1992. Respondent is on active status and maintains his address of record at 600 Louis Dr., Suite 201, Warminster, PA 18974. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.
3. Respondent has no prior record of discipline.

4. In January 2017, Ms. Deborah Logoyda contacted Respondent pertaining to pursuit of legal claims against her former employer, Elwyn Pharmacy ("Elwyn"). N.T. 245.

5. Ms. Logoyda engaged Respondent to pursue legal claims against Elwyn, but the parties did not sign an engagement letter in January 2017 due to an oversight. N.T. 245.

6. On February 15, 2017, Respondent wrote to Elwyn regarding Ms. Logoyda's claims. ODC-4 #92-94; N.T. 245-46. Despite a telephonic follow-up, Elwyn's counsel, Mary Ellen Allen, Esquire did not substantively respond to Respondent's letter. N.T. 163.

7. On August 24, 2017, Respondent sent the engagement letter to Ms. Logoyda via email outlining the fee arrangement. R-4; N.T. 81, 165.

8. Respondent told Ms. Logoyda to contact him if she had any questions, but Ms. Logoyda did not reach out with any questions. R-4 ("If you have any questions, please contact me."); N.T. 81-83, 247.

9. On August 31, 2017, Ms. Logoyda signed the engagement letter that outlined the fee arrangement. R-4.

10. Respondent's fee agreement with Ms. Logoyda stated, in part, that:

> This firm will charge you for its professional services the greater of (1) three thousand dollars ($3,000.00); (2) thirty-three and one third percent (33 1/3%) of the gross amount recovery; (3) or the amount of attorney's fees awarded by the Court, recovered from your former employer or agreed upon by the parties. ODC-7.

11. The fee agreement further stated, in part, that:

> Attorney shall be entitled to withdraw from representing Client, if in the opinion of Attorney, the matter should be settled or Client is advised that in Attorney's opinion further litigation would be detrimental to Client's best interest, and Client elects to

disregard Attorney's opinion. Upon withdrawal, Client shall pay Attorney the greater of (1) three thousand dollars ($3,000.00); (2) thirty-three and one third percent (33 1/3%) of any settlement offer from by your employer; (3) or the amount of attorney's fees awarded by the Court regarding this firm's representation of you, recovered from your former employer, or agreed upon by all parties.
ODC-7.

12. The fee agreement acknowledged Ms. Logoyda provided Respondent a retainer in the amount of $3,000.00. ODC-7.

13. The fee agreement also provided that "[t]his agreement may not be modified or changed unless in writing signed by all parties." ODC-7.

14. On or about September 7, 2017, Respondent filed a lawsuit in the Court of Common Pleas of Philadelphia County on behalf of Ms. Logoyda against Elwyn. ODC-1, 2 ¶8.

15. On November 27, 2017, Ms. Logoyda emailed Respondent an explanation of her expected bonus payment. ODC-6. Ms. Logoyda also stated "Let me know when you hear something. I'd like to wrap this up." *Id.*

16. Ms. Logoyda credibly testified that she wanted to settle "from day one," and testified that she maintained this position throughout the representation. N.T. 54.

17. Respondent spoke with Elwyn's counsel about potential settlement at the Case Management Conference on December 18, 2017, but Elwyn's counsel was not interested. N.T. 104.

18. Respondent advised Ms. Logoyda that Elwyn was not interested in settlement at the time. *Id.*

19. On October 23, 2018, Elwyn's counsel sent Respondent an email offering Ms. Logoyda $14,600 to settle the lawsuit. ODC-8.

20. Ms. Logoyda rejected the October 23, 2018 settlement offer. N.T. 31.

21. Ms. Logoyda credibly testified that she rejected this offer because it would not cover Respondent's legal fees, which Respondent informed Ms. Logoyda were approximately $29,000, and Respondent had implied to her that she would owe him the difference. N.T. 31.
22. In November 2018, Respondent sent a draft settlement demand to Ms. Logoyda that included a payment of $53,500. R-4.
23. Respondent and Ms. Logoyda discussed the offer and the response, including that if Elwyn accepted the $53,500 demand, Respondent's fee would be $17,600 pursuant to the fee arrangement. N.T. 175. Respondent also explained that he had expended approximately $13,000 to $14,000 in billable hours so far and offered to reduce his fee to $13,500 if it settled for $53,500. *Id.*
24. Ms. Logoyda instructed Respondent to increase the demanded payment to $63,500.00. N.T. 176.
25. On November 8, 2018, Respondent sent Elwyn's counsel the settlement demand of $63,500.00 per Ms. Logoyda's instructions. R-5.
26. On November 13, 2018, Elwyn's counsel emailed Respondent a counteroffer for $25,893.00 that was represented as "Elwyn's best and final offer." ODC-8 at 6.
27. Ms. Logoyda rejected the offer. N.T. 181. Ms. Logoyda believed that she could not accept this offer because there was not enough money to cover Respondent's attorney's fees. N.T. 34-35.
28. According to Ms. Logoyda, Respondent informed her of his estimated fees when every offer was conveyed. *Id.*

29. Respondent, however, testified that Ms. Logoyda rejected the offer because it did not include her claim for PTO (paid time off), 340B contract commissions and did not account for legal fees. N.T. 181.

30. On or about January 22, 2019, Respondent spoke to Ms. Logoyda by telephone and discussed a potential settlement demand to present at the upcoming settlement conference scheduled for January 29, 2019. ODC-1, 2¶28.

31. Ms. Logoyda and Respondent disagreed on the substance of the telephone call.

32. Ms. Logoyda credibly testified that Respondent stated that Elwyn's offer was insufficient because it did not cover his attorney's fees incurred to date (which Respondent estimated were $37,000), and recommended that she not accept an offer of less than $100,000. ODC-1. Ms. Logoyda testified that she reiterated to Respondent that she wanted to settle and all she wanted was her bonus. N.T. 38, 40, 97.

33. Ms. Logoyda credibly testified that Respondent led her to believe that either Elwyn had to pay Respondent's fees, or she would have to pay his fees, and she did not want to owe him anything. N.T. 41. Ms. Logoyda wanted her bonus, but believed she had to include Respondent's fees in her demand because, she believed, she was responsible for his fees. N.T. 40, 97.

34. On the other hand, Respondent stated that he provided Ms. Logoyda with an itemization of damages and that Ms. Logoyda wanted 100% of what she was owed including attorney's fees. ODC-2 ¶29. Respondent asserted that he told Ms. Logoyda that if "she did not want to compromise, then [Respondent] did not believe that the case would settle, and that the case would be scheduled for trial." *Id.*

35. The January 29, 2019 settlement conference was unsuccessful. ODC-1, 2¶30.

36. The trial was scheduled to commence in April 2019, but was continued based on Respondent's request, on behalf of Ms. Logoyda. ODC-1, 2¶¶31-32; N.T. 43.
37. After the trial was continued, on May 3, 2019, Elwyn's counsel offered $25,800 to settle. ODC-8.
38. Ms. Logoyda testified that Respondent did not advise her of the May 3, 2019 settlement offer, although Respondent stated that he left her a message. N.T. 44-45; ODC-2 ¶38.
39. Respondent did not respond to Elwyn's counsel's May 3, 2019 email and renewed settlement offer. ODC-1; 2¶35.
40. Elwyn's counsel followed up with Respondent on May 21, 2019, and Respondent did not respond. ODC-1, 2¶37; N.T. 265.
41. Respondent believed Ms. Logoyda would have rejected the settlement offer because she rejected the same amount previously. ODC-1, 2¶38; N.T. 263-64.
42. On or about July 10, 2019, Respondent attended a pretrial conference where he spoke with Elwyn's counsel about potential settlement. ODC-1; 2¶40.
43. Respondent indicated to Elwyn's counsel that the current estimate of the claim was between $120,000 and $130,000, but that his client had not given specific authority. *Id.*
44. Elwyn's counsel stated that Elwyn's settlement offer was still at $25,893. *Id.*
45. Respondent maintained that Ms. Logoyda also demanded emotional distress damages. *Id.*
46. The Elwyn case was called to begin trial in September 2019, with jury selection beginning on September 6, 2019. ODC-1, 2¶42.

47. On September 6, 2019, Elwyn's counsel offered Ms. Logoyda $50,000 to settle. ODC-1, 2¶43.

48. Respondent and Ms. Logoyda disagreed over how this offer was presented to Ms. Logoyda.

49. According to Ms. Logoyda, Respondent failed to present the offer in terms that she could understand, mentioned the amount of attorney's fees, and implied that she would be responsible for the difference between the settlement and his fees. ODC-1, 2¶44-45.

50. According to Respondent, Respondent presented the offer to Ms. Logoyda and explained to her that legal fees would be paid out of the recovery, not out of her pocket. ODC-2¶44-45.

51. Respondent maintained that because Elwyn had not allocated "what was being offer[ed] as compensation earned due D.L. and the attorney's fee being offered, the Respondent and D.L. will need to allocate what is due D.L. and amount due for attorney's fees being recovered." ODC-2¶45.

52. Respondent's statement was an attempt to renegotiate the fee agreement.

53. Respondent contended that Ms. Logoyda maintained entitlement to damages for emotional distress and legal fees, and he was instructed to counteroffer with $115,000. ODC-2¶44.

54. By email dated September 8, 2019, on behalf of his client, Respondent presented the settlement demand of $115,000 to Elwyn's counsel. Respondent stated to Elwyn's counsel that "legal fees continue to accrue and it may be more difficult to get movement from my client as time passes." ODC-1, 2 ¶46; ODC-8, #14.

55. According to Respondent, while this settlement demand was pending, Ms. Logoyda rejected inquiries to reduce her demand to $75,000 and $90,000. *Id.*

56. On September 8, 2019, Respondent sent an email to Elwyn's counsel saying that his only authority was to demand payment of $115,000. ODC-8.

57. Respondent informed Ms. Logoyda that Elwyn's counsel rejected the offer. N.T. 55.

58. On September 8, 2019, Ms. Logoyda told Respondent that she did not want to proceed with the trial and did not want Respondent to represent her at trial. N.T. 212; ODC-2¶64.

59. Respondent contacted Ms. Logoyda on September 8, 2019, confirming a telephone conversation where they agreed to demand $75,000 from Elwyn, and that "we agreed legal fees will be $50,000.00 and you will receive the sum of $25,000.00." ODC-4 at ¶46.

60. Elwyn rejected the demand and offered to settle for $60,000. N.T. 214.

61. A series of contentious phone calls between Ms. Logoyda, her husband, and Respondent ensued pertaining to this offer, which ended with Ms. Logoyda agreeing to accept the $60,000 offer. N.T. 215-217.

62. Respondent indicated there was a need to allocate a portion of the $60,000 to attorney's fees. ODC-2¶51; N.T.60-61.

63. In frustration, Ms. Logoyda stated to Respondent, "Just take it all." N.T. 61. While Ms. Logoyda stated these words, this was not and never was her intent.

64. In an email on September 8, 2019, at 6:28 p.m., Respondent stated to Ms. Logoyda, "I want to confirm my understanding of our last telephone conversation that you want me to accept the $60,000.00 settlement offer. You also stated that

you want nothing out of the $60,000.00 and the $60,000.00 can be used to pay legal fees. Please confirm by return email." ODC-10.

65. Respondent claimed that he "was not demanding $60,000.00 in legal fees, but documenting D.L.'s bizarre comments." ODC-2¶51. Respondent's statement and similar testimony on this point is not credible.

66. Thereafter, Ms. Logoyda replied, "Dear Alan: Your understanding is not completely correct. Please settle at the $60,000 but I would like to discuss the distribution between the two of us tomorrow." ODC-10.

67. In another email to Respondent on September 8, 2019, Ms. Logoyda stated, "No. I do not agree." ODC-1, 2¶53.

68. On September 10, 2019, Respondent forwarded a draft settlement agreement to Ms. Logoyda that was received from Elwyn's counsel. ODC-2¶55; ODC-10.

69. Ms. Logoyda did not respond and testified that "I didn't want to sign the settlement agreement because it would put the money in [Respondent's] hands … and I didn't trust him to have the money." N.T. 62.

70. On September 13, 2019 at 8:27 a.m., Respondent sent a follow-up email to Ms. Logoyda pertaining to the status of the settlement agreement and requesting a response by noon. ODC-10 at 8.

71. Later on September 13, 2019 at 1:52 p.m., Respondent emailed Ms. Logoyda the following:

> I have attempted to reach out to you regarding the status of the Settlement Agreement but received no response. I anticipate that if you are not going to respond, Elwyn will [file] a Motion to enforce the settlement, and Elwyn may seek legal fees against you regarding said motion. I urge you to advise me of the status of the settlement agreement.
> *Id.*

72. On September 13, 2019 at 4:52 p.m., Ms. Logoyda responded that she had every intention to settle for $60,000 but was reviewing the settlement agreement. ODC-10 at 7-8. Further, Ms. Logoyda complained that Respondent's email "contained absolutely no information other than to sign and return it to you by regular mail." *Id.* Ms. Logoyda continued, "Since you did not mention any deadline by which the settlement agreement had to be executed and refused to speak to me or communicate to me with what occurred in court on Monday, I need time to review the document since the full terms of the settlement were never explained to me." *Id.*

73. On September 13, 2019 at 5:39 p.m., Respondent offered to answer any questions that Ms. Logoyda had and assured her that the terms were standard. ODC-10 at 7. Respondent added some clarity to what happened in court:

> Next, outside of the Courtroom on Monday, I had attempted to explain to you that the Court viewed the e-mails and found that a settlement had occurred. The Court further indicated that any fee dispute is a separate matter, and that the Court was not going [sic.] involved nor address any fee dispute. I left after you started to yell and shout. I had no intentions to engage in a yelling and shouting match outside of the Courtroom so to defuse the situation I left.
>
> *Id.*

74. In several back-and-forth emails on September 16 and 17, 2019, Respondent attempted to have Ms. Logoyda sign the settlement agreement while Ms. Logoyda expressed reluctance before knowing exactly how much Respondent would retain as his fee. ODC-10 at 10-12.

75. On September 16, 2019, Ms. Logoyda emailed Respondent, stating:

> I acknowledge your emails; however I will not be able to sign off on the settlement agreement until we have reached a separate agreement on your fee. Please advise what you believe your final fee will be for my consideration.
>
> ODC -1, 2 ¶58; ODC-10, #10.

76. In another email to Respondent on September 16, 2019, Ms. Logoyda stated:

> Before I execute the agreement I must know how much you are going to retain as your fee. I have now requested this multiple times, including my request for an itemized bill on Friday, September 6, 2019.
> ODC-1, 2¶60.

77. At no time did Respondent advise Ms. Logoyda that the fee arrangement controlled and there was no requirement for Respondent and Ms. Logoyda to enter into a separate agreement on the fee. Instead, Respondent permitted Ms. Logoyda to continue with the mistaken belief that a separate agreement was necessary.

78. Respondent's attempt to renegotiate the fee arrangement and Ms. Logoyda's mistaken belief as to attorney's fees led to a fee dispute.

79. This fee dispute escalated, including:

    a. on September 20, 2019, Respondent threatened to proceed with a collection enforcement action including "taking legal action, referring the matter to a collection agency, and/or asserting the appropriate lien" (ODC-1, 2¶61);

    b. on September 23, 2019, Respondent wrote to Elwyn's counsel and asserted an attorney charging lien on the settlement funds (ODC-1, 2¶65);

    c. on September 23, 2019, Ms. Logoyda engaged separate counsel (Kevin Lovitz, Esquire) to negotiate and resolve the fee dispute (ODC-1, 2¶66); and

    d. on November 22, 2019, Respondent filed a complaint against Ms. Logoyda in the Court of Common Pleas of Bucks County. ODC-12.

80. Despite all of this, Respondent never withdrew as counsel and Ms. Logoyda never discharged Respondent. ODC-5, 6¶7.

81. Among other things, Respondent's complaint sought damages under a quantum meruit theory in the amount of $76,301.90, which represented the amount of

attorney's fees billed minus the $3,000 retainer already paid by Ms. Logoyda. ODC-12.

82. Respondent filed the complaint under seal. ODC-2¶72.

83. In the fee litigation, Respondent disclosed information relating to his representation of Ms. Logoyda, which Ms. Logoyda did not authorize. ODC-1, 2 ¶72.

84. By way of example, at paragraphs 24 through 27, 37, 38 and 42 of Respondent's civil complaint, Respondent made allegations concerning Ms. Logoyda which were wholly unnecessary to his claim for relief. ODC-12 at ¶¶24-27, 37, 38 and 42.

85. Ms. Logoyda hired Cheryl Garber, Esquire as defense counsel in the Bucks County action, who sought Respondent's agreement to have Elwyn put the settlement payment in escrow. ODC-1, 2 ¶81.

86. In a series of emails beginning on March 28, 2020, Ms. Garber and Respondent negotiated over placing the funds in escrow, but did not reach an agreement, so the Elwyn settlement could not be finalized. ODC-14.

87. On April 27, 2020, Ms. Garber filed a petition for emergency hearing before the Court, requesting that the settlement funds be paid over to the Court. ODC-1, 2 ¶86.

88. The petition was granted, on a non-emergency basis, and the funds were paid into the court pending resolution of the parties' fee dispute. ODC-1, 2 ¶87.

89. Beginning on November 18, 2020, Ms. Garber asked Respondent to file a Praecipe to Settle, Discontinue, and End the Elwyn Litigation, as Respondent remained counsel of record. ODC-1, 2¶88.

90. On November 24, 2020, Respondent filed a Praecipe to Settle, Discontinue and End the Elwyn Litigation. ODC-1, 2¶99.

91. The parties were scheduled to participate in a settlement conference in the fee litigation on January 28, 2021. ODC-1, 2¶100.

92. On January 5, 2021, Ms. Logoyda emailed Respondent and requested the original or a complete copy of her file from the Elwyn litigation by January 8, 2021. ODC-15 at 1.

93. On January 8, 2021, Respondent emailed Ms. Garber and stated that it was inappropriate for him to have direct contact with a represented party so asked for all future communications to come through Ms. Garber. ODC-15 at 2.

94. Later that day, Ms. Garber responded by acknowledging that she did not represent Ms. Logoyda in the request for her file and asking that he turn the file over to Ms. Logoyda immediately. ODC-15 at 4.

95. On January 13, 2021, Ms. Garber emailed Respondent asking for the status of the delivery of the client file to Ms. Logoyda. ODC-15 at 6.

96. Respondent replied to Ms. Garber on January 14, 2021, denying her request until his fee was paid. ODC-15 at 8-10.

97. On January 19, 2021, Respondent mailed a letter to Ms. Garber and agreed to produce the file after permitting a reasonable time for copying and location of all electronic records. ODC-1, 2 ¶106.

98. On January 22, 2021, Ms. Garber again emailed Respondent about the status of copying and delivering the file by January 25, 2021. ODC-15 at 11. Having received no response, Ms. Garber followed up on January 25, 2021 at 11:03 a.m. *Id.*

99. On January 25, 2021 at 4:16 p.m., Respondent replied by claiming that the copier in his office broke down and that he should have the file copied by the next day. ODC-15 at 13.

100. Ms. Logoyda volunteered to pick up the file at Respondent's office to avoid mailing. ODC-15 #13. On January 25, 2021 at 8:50 p.m., Ms. Garber asked Respondent what time the file would be ready for pick-up by Ms. Logoyda. *Id.* Ms. Garber followed up on several occasions on January 26, 2021, asking for a pick-up time. *Id.*

101. On January 26, 2021, two days before the settlement conference, Respondent emailed Ms. Garber that Ms. Logoyda did not need to come to the office as the file had been sent out for shipment. *Id.* Respondent sent the file by U.S. mail. ODC-15 at 26-27.

102. Ms. Logoyda spent over $40,000 in legal fees to defend the fee dispute litigation. N.T. 67.

103. Ms. Logoyda's testimony was credible.

104. Respondent's testimony lacked credibility on certain points.

105. Respondent acknowledged no wrongdoing and expressed no remorse or regret for his actions that caused harm to his client.

III. CONCLUSIONS OF LAW

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

1. RPC 1.2(a), which provides that a lawyer shall abide by a client's decisions concerning the objectives of the representation and, as required by RPC 1.4, shall consult with the client as to the means by which they are to be pursued.
2. RPC 1.4(b), which provides that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
3. RPC 1.6(a), which provides that a lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).
4. RPC 1.6(d), which provides that a lawyer shall make reasonable efforts to prevent the inadvertent or unauthorized disclosure of, or unauthorized access to, information relating to the representation of a client.
5. RPC 1.6(e), which provides that the duty not to reveal information relating to representation of a client continues after the client-lawyer relationship has terminated.
6. RPC 1.7(a)(2), which provides that except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if

there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

7. RPC 1.16(d), which provides that 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.
8. RPC 3.1, which provides that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.
9. RPC 8.4(a), which provides that it is professional misconduct for a lawyer to attempt to violate the Rules of Professional Conduct, via RPC 1.5(a), which states that a lawyer shall not enter into an agreement for, charge or collect an illegal or clearly excessive fee.
10. RPC 8.4(c), which provides that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

IV. DISCUSSION

In this matter, the Board considers the Committee's recommendation to suspend Respondent for a period of one year to address his misconduct related to his representation of Ms. Logoyda. Respondent takes exception to the Committee's conclusions that he violated RPC 1.16(d), 8.4(a) (via RPC 1.5(a)), and 8.4(c), and contends the Committee erred in recommending that he be suspended. Respondent advocates for a private reprimand, 100 hours of pro bono work for indigent clients and an additional 40 hours of ethics education. Petitioner opposes Respondent's exceptions and contends that the Committee's recommended one year suspension is within the range of appropriate discipline to address Respondent's professional misconduct.

Petitioner bears the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. *Office of Disciplinary Counsel v. John T. Grigsby, III*, 425 A.2d 730, 732 (Pa. 1981). After considering the evidence, the Committee concluded that Petitioner failed to meet its burden as to 10 of the 14 charged violations of the rules. The primary evidence relied upon by Petitioner and Respondent is testimony by Ms. Logoyda and Respondent. The Committee found that each witness had a different version of the events, characterized by the Committee as a "classic he said, she said dispute." (HC Report at p. 17). The Committee found that some facts of each witness's version were substantiated by the documentary evidence and some were not. The Committee's findings are guidelines for judging the credibility of witnesses and we give them substantial deference. *Office of Disciplinary Counsel v. Lawrence J. DiAngelus*, 907 A.2d 452, 456 (Pa. 2006). However, the Board is not bound by the Committee's conclusions and recommendation. *See*, Pa.R.D.E. 208(d)(2). From

the evidence adduced at the hearing, sufficient factual support exists to establish by clear and satisfactory evidence that Respondent violated Pennsylvania Rules of Professional Conduct 1.2(a), 1.4(b), 1.6(a), (d) and (e), 1.7(a)(2), 1.16(d), 3.1, 8.4(a) via RPC 1.5(a), and 8.4(c). Upon this record and for the following reasons, we recommend that Respondent be suspended for a period of one year and one day.

The circumstances at issue in this matter began in January 2017, when Ms. Logoyda contacted Respondent seeking advice with regard to the pursuit of legal claims against her former employer, Elwyn Pharmacy, regarding unpaid compensation. Ms. Logoyda signed an engagement letter in August 2017. The evidence of record demonstrates that during the course of the representation, the attorney-client relationship disintegrated, principally due to Respondent's ambiguous fee arrangement and the breakdown of communications between Respondent and Ms. Logoyda, the ultimate result of which was a lawsuit filed by Respondent against Ms. Logoyda. Throughout these proceedings, Respondent has portrayed Ms. Logoyda as a difficult client, in an attempt to negate his responsibility for the breakdown of the attorney-client relationship. However, in our view, Respondent's unprofessional conduct contributed to Ms. Logoyda's responses to situations and escalated the fractious relationship between the two.

The record demonstrates that Respondent's actions in the course of representing Ms. Logoyda were motivated by his own self-interest in maximizing his attorney's fee, rather than on achieving the best result for his client. The record contains numerous examples of Respondent's actions in this regard. As an initial matter, as evidenced by the hopelessly confusing engagement letter presented to Ms. Logoyda, from the outset of the representation, Respondent failed to communicate effectively with

his client in terms she could understand, and failed to provide his client with an objective view of her case to assist her in evaluating fair settlement offers and making informed decisions. Respondent's actions on the eve of Ms. Logoyda's trial exemplify the extent to which his self-interest controlled his representation of his client, as he pressed Ms. Logoyda to renegotiate their fee arrangement. Respondent failed to advise Ms. Logoyda that she was under no legal obligation to renegotiate. Respondent never reminded his client that the fee agreement controlled the amount of fees he was entitled to, and even though he knew that his client was confused about what she would owe in attorney's fees, he never took the time to explain his fee agreement to her.[1] At one point when Respondent and his client discussed a counterdemand of $75,000, Respondent pressed his client to quantify what amount would be paid to him, suggesting that he take $50,000 and she take $25,000. After Elwyn rejected the $75,000 counterdemand and offered $60,000, Respondent again pushed Ms. Logoyda to commit to a dollar amount for his attorney's fees. In response to this pressure, Ms. Logoyda in frustration stated to Respondent that he should "Just take it all." N.T. 61. Respondent immediately attempted to confirm that his client wanted him to take the entire settlement as his attorney's fee.

Concerned that Respondent would take the entire settlement proceeds if the funds were paid over to him, Ms. Logoyda refused to sign the settlement documents, although she did not discharge Respondent and he never withdrew from the case. Respondent later filed a frivolous civil complaint against his client, seeking declaratory judgment and recovery in quantum meruit, claiming Ms. Logoyda was unlawfully

[1] Based on this record, Respondent would not have been able to explain his fee agreement even had his client asked him to do so. At the oral argument before the Board panel on July 18, 2022, the chair asked Respondent to explain his fee agreement as if explaining it to a client. Respondent's response was rambling and confusing and raised more questions than it answered. Oral Arg. Transcript at 14 - 16.

interfering with his right to attorney's fees, which he valued at $76,301.91. Respondent breached his client's confidentiality without her consent by making irrelevant allegations about her in his complaint.

Ms. Logoyda retained counsel to defend her in the civil action, and in the course of litigation, the parties were scheduled to participate in a settlement conference on January 28, 2021. Some three weeks prior to the scheduled conference, Ms. Logoyda requested her file pertaining to the Elwyn litigation from Respondent. At the time of Ms. Logoyda's request, Respondent was aware of the upcoming conference yet purposefully delayed returning the file to Ms. Logoyda, despite her numerous requests and willingness to retrieve the file from Respondent's office. Respondent waited until two days prior to the conference before placing the file in the U.S. mail.

We examine Respondent's conduct of record in the context of the rules charged in the Petition for Discipline. Respondent's conduct violated RPC 1.2(a), which governs the scope of representation and allocation of authority between client and lawyer. Specifically, a lawyer must abide by a client's decisions concerning the objectives of representation, as well as the client's decision to settle a matter. Here, a clause in the engagement letter permitted Respondent to withdraw from representation "if in the opinion of Attorney, the matter should be settled," and purported to grant Respondent the right to recover certain sums. This agreement had the potential to restrict Ms. Logoyda's exclusive right to accept or reject a settlement offer, as it exerted economic pressure on her. While Pennsylvania disciplinary cases have not addressed this issue, courts in other jurisdictions have almost universally held that such agreements violate RPC 1.2(a). *See, e.g., Compton v. Kittleson*, 171 P. 3d 172, 176-78 (Alaska 2007) (holding fee agreement guaranteeing lawyer greater of $175 per hour or one-third of recovery violated RPC 1.2

"because of its potential to restrict a client's exclusive right to accept or reject an offer of judgment"); *In re Lansky*, 678 N.E. 2d 1114, 1116 (Ind. 1997) (provision in fee agreement by which client gave up right to determine whether to accept settlement offer violates Rule 1.2(a)); *May v. Seibert*, 264 S.E. 2d 643 (W. Va. 1980) (acceptance of settlement terms solely within client's province, and refusal is not adequate grounds for lawyer's withdrawal). Ethics opinions from other jurisdictions examining RPC 1.2(a) have reached a similar conclusion. *See*, *e.g.*, Conn. Informal Ethics Op. 99-18 (1999) (contingent fee agreement may not include clause requiring client to pay lawyer at hourly rate if client rejects settlement offer recommended by lawyer and defendant prevails; client has right to decide whether to accept settlement and economic pressure limiting that right violates Rule 1.2); Wash. Ethics Op. 191 (1994) (fee agreement providing if client rejects settlement offer lawyer believes is reasonable, fee will be based upon larger of offer or amount recovered at trial is improper).[2]

Moreover, our Supreme Court has held such agreements in disfavor, albeit not in the context of an attorney disciplinary matter. *See, e.g.*, *Wahl v. Strous*, 25 A.2d 820, 822 (Pa. 1942) ("Indeed it is almost universally held that even if a power of attorney provides in express terms that the client is not to have the right himself to compromise or settle his claim, such a provision is void as against public policy. Settlements are favored by the law, which, therefore, frowns upon arrangements whereby a client would need his attorney's permission to settle a suit, and it is immaterial that the attorney may

[2] *See also* N.Y. Cnty. Ethics Op. 736 (2006) (contingent-fee agreement may not give lawyer authority to convert to hourly fee if client refuses "reasonable" settlement offer); Neb. Ethics Op. 95-1 (1995) (may not include provision in contingent-fee agreement preventing client from settling case without lawyer's approval; may not include provision giving lawyer either percentage fee or customary hourly fee, whichever greater, if client settles without lawyer's approval).

be interested in the sense of his compensation being contingent upon the result of the litigation or settlement.").

Respondent's conduct violated RPC 1.4(b), which governs communications and directs that a lawyer must explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. Here, Respondent failed to properly communicate with his client to present settlement options to her in terms she could understand; he also failed to stay mindful of Ms. Logoyda's stated objective to settle her claim against Elwyn. Respondent's communications with his client, suffused with repeated references to the amount of attorney's fees that would have to be "allocated" to him, his failure to inform Ms. Logoyda that the engagement letter already provided for the amount of fees, and the utterly confusing nature of his communications lead to the conclusion that Respondent failed to comply with his obligations under this rule. The record demonstrates that Ms. Logoyda was confused about how much Respondent would receive as attorney's fees and further demonstrates that Respondent did absolutely nothing to dispel the confusion. Instead, Respondent deceitfully took advantage of Ms. Logoyda's confusion and agitation to press for higher settlement amounts, allowing her to labor under the belief that she owed him ever increasing amounts for attorney's fees that might have to be paid out of her pocket.

Respondent's conduct violated RPC 1.5(a), which states that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. Respondent's ambiguous fee agreement, which he inexplicably claimed gave him the option to renegotiate with his client for increased fees at any time, his later "agreement" with his client contrary to the written fee agreement that a $75,000 demand to Elwyn would be allocated $50,000 to Respondent and $25,000 to Ms. Logoyda, and his demand

first for the entire settlement amount of $60,000.00 and later for $76,301.94 under an unjust enrichment theory, violated this rule, as did his discussions with his client on the eve of trial attempting to renegotiate a fee increase.[3] Although Respondent was ultimately unsuccessful in obtaining the excessive fee he desired, Respondent's actions violated RPC 8.4(a)'s prohibition against attempting to violate the Rules of Professional Conduct, as Respondent repeatedly attempted to violate RPC 1.5(a)'s proscription against charging or collecting clearly excessive fees.

The record demonstrates that Respondent's conduct violated RPC 1.6(a), 1.6(d),and 1.6(e), which impart a duty not to reveal confidential client communications. In his civil complaint, Respondent gratuitously and unnecessarily revealed confidential, personal information concerning his client, which Ms. Logoyda did not authorize. This confidential, personal information had no relevance to Respondent's lawsuit against his client for his fees.

Respondent's conduct both during the employment litigation, and after, violated RPC 1.7(a)(2), which prohibits a lawyer from representing a client where there is a risk that the representation will be materially limited by a personal interest of the lawyer. "Whenever a lawyer negotiates attorney's fees as part of a settlement there is a potential conflict of interest. A plaintiff's lawyer has an interest in securing the best possible fee award, but is duty-bound to negotiate the best possible settlement for the client." Annotated Model Rules of Professional Conduct, Rule 1.5 annotations, at 134

[3] While modification of a fee agreement is not per se prohibited, "[e]xcept . . . for periodic rate increases, and absent an unanticipated change in circumstances, attempts by a lawyer to change a fee arrangement to increase the lawyer's compensation are likely to be found unreasonable and unenforceable." ABA Formal Ethics Op. 11-458 (2011); *In re Thayer*, 745 N.E.2d 207, 212 (Ind. 2001) (finding a violation of Rule 1.5(a) where a lawyer attempted to renegotiate a contingency fee); *In re Disciplinary Proceeding Against Marshall*, 217 P.3d 291, 310 (Wash. 2009) (finding a lawyer violated Rule 1.5(a) when he "attempted to squeeze his clients for additional fees despite the flat fee agreement").

(ABA 9th Ed.). The overwhelming evidence of record shows that this potential conflict became an actual one, as Respondent's singular focus and primary motivation became his fee, and his negotiation of the settlement was plainly affected by his desire to maximize that fee.

After his client settled her case, but before the funds had been paid in settlement, Respondent's actions were again motivated by his own personal interest in securing his fee. At the time he filed the fee dispute litigation lawsuit against Ms. Logoyda, Respondent remained counsel of record in the Elwyn litigation and settlement could not be paid over to another party without his cooperation. Respondent's lawsuit against his client, at a time she was still a current client, constituted an impermissible conflict of interest, in violation of RPC 1.7(a)(2).

Respondent failed to abide by his duty under RPC 1.16(d), which required that he ensure Ms. Logoyda's interests were protected and she suffered no prejudice after he ultimately terminated the representation. Ms. Logoyda first requested a copy of her file in the Elwyn litigation more than three weeks before the scheduled settlement conference in the fee dispute with Respondent. Respondent failed to promptly comply with Ms. Logoyda's requests, belatedly placing the file in the U.S. mail two days prior to the settlement conference, thus ensuring that the likelihood the file would arrive on time was slim to none. Respondent offered no credible explanation for his unprofessional conduct.

Respondent's frivolous civil action against his client for attorney's fees violated RPC 3.1. There is no evidence of record that Ms. Logoyda terminated Respondent's representation prior to his achieving the $60,000.00 settlement on her behalf, yet he claims this event permitted him to disregard the written fee agreement and

pursue his frivolous claim for unjust enrichment—claiming hourly fees totaling $76,301.94—which well exceeded 100% of the settlement. The arrangement between Respondent and his client was governed by a contract; his civil complaint was completely frivolous.

Respondent's conduct violated RPC 8.4(c), which states that "it is professional misdoubt for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation." Respondent's attempts to renegotiate the fee agreement with Ms. Logoyda despite having an enforceable fee agreement in place was dishonest and deceitful. After Elwyn offered $50,000 to settle, Respondent maintained that because Elwyn had not allocated "what was being offer[ed] as compensation earned due D.L. and the attorney's fee being offered [Respondent] and D.L. will **need** to allocate what is due D.L. and amount due of attorney fees being recovered." ODC-2 ¶45 (emphasis added). In fact, there was no need to make an allocation, as the fee agreement governed and provided that Respondent would charge one-third of the gross recovery. Despite Ms. Logoyda's obvious confusion, Respondent concealed this fact in an attempt to renegotiate the fee agreement for an amount greater than one-third.

Respondent continuously tried to renegotiate the fee arrangement. Due to Ms. Logoyda's mistaken understanding that an agreement as to allocation of attorney's fees had to be made, Respondent and his client "agreed" that the $75,000 demand would be allocated $50,000 to Respondent and $25,000 to Ms. Logoyda. Next, when the case settled in principle for $60,000, Respondent again falsely told his client that the parties needed to allocate an amount for attorney's fees. When Ms. Logoyda, speaking from frustration, stated that Respondent could keep the entire $60,000.00, Respondent attempted to confirm that statement in writing in a dishonest attempt to collect an

excessive fee. While Respondent later claimed that he was not really demanding $60,000 in fees but merely documenting Ms. Logoyda's "bizarre" comments, his testimony is not credible.

Respondent's actions demonstrate a deceitful and dishonest pattern of attempting to obtain a higher fee than what was set forth in the fee agreement. While Respondent stresses that Ms. Logoyda never asked questions when initially entering into the fee arrangement, the record is clear he took advantage of that fact. By their various conversations and emails throughout the representation, Respondent was well aware that Ms. Logoyda did not understand the terms of the fee agreement, because if she had understood, she would not have continued to ask what his fee would be; she would have known that the fee agreement controlled. Respondent stayed silent and never advised his client that the fee agreement controlled. In our view, he manipulated his client in order to gain financially from her continued confusion and frustration. This serious misconduct demonstrates Respondent's unfitness to practice law.

Having concluded that Respondent engaged in professional misconduct, this matter is ripe for the determination of discipline. In reviewing the general considerations governing the imposition of final discipline, it is well-established that disciplinary sanctions serve the role of protecting the interests of the public while maintaining the integrity of the bar. *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986). Disciplinary sanctions also serve to deter unethical conduct. *In the Matter of Dennis J. Iulo*, 766 A.2d 335, 338-339 (Pa. 2001). There is no per se discipline for attorney misconduct in the Commonwealth of Pennsylvania; each disciplinary matter is considered on its own unique facts and circumstances. *Office of Disciplinary Counsel*

v. Robert Lucarini, 472 A.2d 186, 190 (Pa. 1983). In assessing appropriate discipline, the Board must weigh any aggravating and mitigating circumstances. *Office of Disciplinary Counsel v. Brian J. Preski*, 134 A.3d 1027, 1031 (Pa. 2016).

"As is often the case with attorney disciplinary matters, there is no case precedent that is precisely on all fours…" *Office of Disciplinary Counsel v. Anthony Cappuccio*, 48 A.3d 1231, 1240 (Pa. 2012). While our review of prior matters did not reveal a case on all fours with the instant matter, prior matters establish that the Court has suspended attorneys who abandon professional responsibilities, charge or attempt to collect clearly excessive fees, engage in a conflict of interest motivated by personal finances, or conduct themselves in a deceitful and dishonest manner. These matters provide guidance as to the appropriate quantum of discipline in the instant matter. *See*, *Office of Disciplinary Counsel v. Richard S. Ross*, No. 189 DB 2020 (D. Bd. Rpt. 1/11/2022) (S. Ct. Order 3/18/2022) (two year suspension based on Ross's misconduct in engaging in a financial transaction with a current client and failing to safeguard the client's interests, thereby taking advantage of that client; prior history of discipline and no remorse served as aggravating factors); *Office of Disciplinary Counsel v. Albert M. Sardella*, No. 132 DB 2019 (D. Bd. Rpt. 9/2/2020) (S. Ct. Order 12/1/2020) (two year suspension based on Sardella's misconduct as executor of an estate, where he charged and collected an excessive fee and engaged in an impermissible conflict of interest in furtherance of his personal interests, and mishandled his IOLTA for an extended period of time; failed to show remorse; no prior discipline); *Office of Disciplinary Counsel v. Peter Jude Caroff*, No. 42 DB 2019 (D. Bd. Rpt. 2/25/2020) (S. Ct. Order 6/5/2020) (a combination of Caroff's neglect, communications failures, trust fund failures, and misrepresentation in one client matter resulted in a one year and one day suspension;

prior discipline was an aggravating factor; Caroff admitted his wrongdoing but failed to apologize for how he treated his client); *Office of Disciplinary Counsel v. Bret Keisling*, 65 DB 2017 (D. Bd. Rpt. 6/19/2018) (S. Ct. Order 8/30/2018) (one year and one day suspension based on Keisling's neglect and dishonesty in one client matter; no prior discipline; expressed remorse). The disposition of each of these cases depended on the nature and gravity of the misconduct and the assessment of aggravating and mitigating factors unique to each matter.

Here, Respondent has practiced law for a lengthy time, approximately 28 years, without any discipline of record. It is well-established that lack of prior discipline is properly considered in mitigation. *Office of Disciplinary Counsel v. Philip A. Valentino*, 730 A.2d 479, 483 (Pa. 1999). Respondent presented no other mitigating factors. We balance this mitigation with Respondent's deflection of responsibility for his serious misconduct and failure to show any remorse, which constitute significant aggravating factors. *Office of Disciplinary Counsel v. Joseph Q. Mirarchi*, No. 56 DB 2016 (D. Bd. Rpt. 5/21/2018 at p. 67) (S. Ct. Order 3/18/2019). Respondent did not apologize for his actions nor did he recognize his wrongdoing, raising doubts as to his fitness to practice law.

Examining the record before us, after considering the nature and gravity of Respondent's misconduct involving one client matter, and after weighing the mitigating and aggravating factors, we recommend that Respondent be suspended for one year and one day. This suspension is within the range of discipline imposed in matters bearing similarities to the instant matter, and will protect the public, in keeping with the goals of the disciplinary system, by requiring Respondent to prove his fitness prior to resuming the practice of law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Alan Kane, be Suspended for one year and one day from the practice of law in this Commonwealth.

It is further recommended that all of 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:_____
Shohin H. Vance, Member

Date: 12/13/2022

Members Dee, Miller and Mongeluzzi recused.