IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 3005 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 107 DB 2021
v.	:	
	:	Attorney Registration No. 313471
MARIANNE SAWICKI,	:	
Respondent	:	(Huntingdon County)

ORDER

PER CURIAM

AND NOW, this 22nd day of December, 2023, upon consideration of the Report and Recommendations of the Disciplinary Board, Respondent's Petition for Review, and the Office of Disciplinary Counsel's response, the Petition for Review is denied. Marianne Sawicki is suspended from the Bar of this Commonwealth for a period of one year and one day, and she shall comply with 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 Nicole Traini
As Of 12/22/2023

Attest: Nicole Traini
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 107 DB 2021
v.	:	Attorney Registration No. 313471
MARIANNE SAWICKI, Respondent	:	(Huntingdon 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 September 22, 2021, Petitioner, Office of Disciplinary Counsel, charged Respondent, Marianne Sawicki, with violations of the Rules of Professional Conduct arising out of her involvement in the criminal and civil matters of Barbara Kissinger. On November 8, 2021, Respondent filed an Answer to Petition for Discipline denying that she engaged in any misconduct.

Following a prehearing conference on January 11, 2022, a District III Hearing Committee (the "Committee") held disciplinary hearings on February 16, 2022, February 17, 2022, April 27, 2022, August 29, 2022, and August 30, 2022. Petitioner presented testimony from four witnesses, and offered various documents into evidence.[1] Thereafter, Respondent testified on her own behalf, presented three character witnesses, and also successfully offered into evidence numerous documents,[2] along with three tapes (marked as Exhibit R-62) into evidence.

On November 7, 2022, Petitioner filed a post-hearing brief and requested the Committee recommend to the Board that Respondent be suspended for a period of not less than one year and one day. In rejoinder, Respondent filed a post-hearing brief on January 3, 2023, contending Petitioner had failed to meet its burden of proof on any of the charged rule violations. By Report filed on February 27, 2023, the Committee concluded that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline and recommended a suspension for a period of not less than one year and one day.

On March 21, 2023, Respondent filed a Brief on Exceptions and requested oral argument before the Board. Petitioner filed a Brief Opposing Exceptions on April 6, 2023. A three-member panel of the Board held oral argument on April 10, 2023. The Board adjudicated this matter at the meeting on April 19, 2023.

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[1] Specifically, the following exhibits introduced by Petitioner were received into evidence: ODC-1 through ODC-13, ODC-15, ODC-17 through ODC-21, ODC-23 through ODC-27, ODC-30 through ODC-38, and ODC-40 through ODC-49 and Joint Exhibits R-8, R-23, R-48, R-50, R-54, and R-55 were admitted into evidence.

[2] Exhibits R-1, R-2, R-3, R-9 (Bates 1063 only), R-12, R-15, R-18, R-21, R-22, R-28, R-29, R-30, R-32, R-38, R-44, R-45, R-46, R-49, R-53, R-58, R-59, R-60, R-72, and R-81.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Respondent was born on January 21, 1950, and was admitted to practice law in the Commonwealth on October 24, 2012. Her registered mailing address is in Huntingdon County, Pennsylvania. Respondent elected retired license status on March 8, 2022.

2. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no prior record of discipline.

4. On September 3, 2019, a Borough of Huntingdon code enforcement officer served Barbara Jean Kissinger with a "Notice of Uninhabitable Property" relative to her property located at 1422 Oneida Street, Huntingdon, PA 16652 ("Oneida property"), as well as a notice prohibiting trespass or further occupancy thereof. (ODC-2)

5. The following day, Ms. Kissinger was served with a "Public Hearing Notice, informing her that a public hearing would be held on September 10, 2019 to determine the fate of the Oneida property. (ODC-2)

6. Ultimately, after the public hearing on September 10, 2019, the Oneida property was found to be a public hazard requiring demolition and on September 11, 2019, the Huntingdon Borough Chief of Police personally served Ms. Kissinger with an Adjudication and Order. (ODC-2)

7. Ms. Kissinger's home was subsequently demolished. (ODC-2)

8. In the meantime, on September 9, 2019, a criminal complaint was filed against Ms. Kissinger for 220 counts of Aggravated Cruelty to Animals - Torture,

Cruelty to Animals, and Neglect of Animals in the Magisterial District Judge Court of Huntingdon County, captioned *Commonwealth v. Barbara Jean Kissinger*, No. MJ-20302-CR-250-2019 (the "Kissinger Criminal Matter"). (ODC-1)

9. Christopher Wencker, Esquire, was appointed by the Court to represent Ms. Kissinger. (ODC-1; 2/16/22 N.T. 200-205)

10. Mr. Wencker did not represent Ms. Kissinger at the public hearing regarding the Oneida property. (ODC-2; 2/16/22 N.T. 208)

11. On September 25, 2019, a preliminary hearing was held in the Kissinger Criminal Matter, at which time Ms. Kissinger waived the hearing, (ODC-1; 2/16/22 N.T. 206), and the matter was transferred to the Court of Common Pleas of Huntingdon County, No. CP-31-CR-0000587-2019. (ODC-1; ODC-4; 2/16/22 N.T. 206)

12. Mr. Wencker appeared on behalf of Ms. Kissinger at the preliminary hearing. (ODC-1; 2/16/22 N.T. 206-207)

13. On September 25, 2019, the Honorable George Zanic issued a Scheduling Order in the Kissinger Criminal Matter, setting the formal arraignment and pretrial conference for November 7, 2019. ODC-4; ODC-5.

14. The Scheduling Order was duly entered on the docket in the Kissinger Criminal Matter and was accompanied by the annotation "Formal ARGN/PTC." ODC-4; ODC-5.

15. Mr. Wencker spoke to Ms. Kissinger at the preliminary hearing and, as relevant here, explained to her that, pursuant to the Scheduling Order, Ms. Kissinger was required to appear on November 7, 2019, for the formal arraignment and pretrial conference. (ODC 4; ODC-5; 2/16/22 N.T. 206-207).

16. On October 1, 2019, Richard Wilson, Esquire, filed a Municipal Claim and Lien in the Court of Common Pleas, case captioned *Huntingdon Borough v. Kissinger*, No. CP-31-CV-1519-2019 (the "Kissinger Civil Matter"), on behalf of Huntingdon Borough against Ms. Kissinger for an outstanding water bill in the amount of $839.89. (ODC-6)

17. The only parties to the Kissinger Civil Matter were the Borough of Huntingdon and Ms. Kissinger.

18. On October 8, 2019, a Criminal Information was filed against Ms. Kissinger in the criminal matter. ODC-4.

19. In late October 2019, Respondent was contacted by Beth McCreary, a friend of Ms. Kissinger's and a member of a Facebook group called "Barb's Besties."

20. Respondent met with Ms. McCreary on November 2, 2019.

21. Ms. McCreary sought assistance in locating Ms. Kissinger, whom she had not seen since July 2019.

22. The following morning, Respondent informed Ms. McCreary via email that she had examined the criminal docket for Ms. Kissinger's case and learned, among other things, that: (i) the arraignment was scheduled for November 7, 2019; and (ii) "[Ms. Kissinger]'s appointed lawyer is Chris Wencker." Shortly thereafter, Respondent emailed Mr. Wencker, relaying that he "might see [her] in the courtroom for the arraignment" because "friends of [Ms. Kissinger] asked [Respondent] to take a look."

23. On November 4, 2019, Respondent obtained certain documents from Huntingdon Borough associated with the condemnation and demolition of Ms. Kissinger's home and, from those records, learned that Ms. Kissinger's current address

was on Deforrest Street. Respondent then immediately informed Ms. McCreary of her discovery, and explained that "if [Ms. Kissinger] wanted [Respondent] to represent her in this [claim against the Borough for the demolition of Respondent's home]," Respondent could "do it on contingency (no cost to [Ms. Kissinger] unless [Respondent] g[o]t money for her)." But, Respondent continued, "Ethically, I cannot approach her on my own and 'volunteer' myself. She would need to say she wants to talk to me. Can you phone her?"

24. In response to Respondent's email, Ms. McCreary opined—without elaboration or any factual basis—that Ms. Kissinger was "brainwashed like a cult." (R-72, Bates 1994).

25. At no point in any of her correspondences with Respondent, does Ms. McCreary suggest that she believed Ms. Kissinger was being held against her will by "armed" individuals.

26. In fact, there was no mention of firearms in connection with Ms. Kissinger at any point between October 22, 2023 and November 5, 2023.

27. On November 5, 2019, in the Huntingdon County Courthouse, the following occurred:

a. after learning that Respondent wanted to see him, Mr. Wencker spoke with Respondent, at which time she expressed her concern about Ms. Kissinger's safety because the person Ms. Kissinger was staying with allegedly had guns and was known to take advantage of the elderly (2/16/22 N.T. 211-214);

b. Respondent told Mr. Wencker that she did not personally know Ms. Kissinger but that a group called "Barb's Besties" had

hired her to represent Ms. Kissinger in regard to the civil matter and potentially in the criminal matter (2/16/22 N.T. 212-217);

c. Mr. Wencker expressly told Respondent that she was not allowed to speak with Ms. Kissinger because he represented her and that he did not want Respondent to speak with her (2/16/22 N.T. 213-214);

d. Respondent told Mr. Wencker that she was going to file a proposed Order in an attempt to have the Sheriff's Office accompany her to see Ms. Kissinger and Mr. Wencker again told Respondent that she did not have his permission to speak with his client, Ms. Kissinger (2/16/22 N.T. 214);

e. Mr. Wencker told Respondent that he had no concern that Ms. Kissinger was being held against her will at gunpoint or by someone armed with a gun, and based on his interactions with Ms. Kissinger, he believed that she was happy where she was residing at the time, and that Ms. Kissinger never expressed fear or told Mr. Wencker that she was being held against her will (2/16/22 N.T. 214-218); and

f. Respondent assured Mr. Wencker that she was not going to discuss the criminal case with Ms. Kissinger and that Respondent was only interested in the civil case regarding Ms. Kissinger's property, cats, and the demolition of her house. (2/16/22 N.T. 215-216)

28. On November 5, 2019, at 10:00 a.m., Respondent provided to the Huntingdon County District Court Administrator, Angela J. Robinson, a typed proposed order, which requested that the Huntingdon County Sheriff's Office be ordered to

accompany Respondent to meet Ms. Kissinger at her residence, and orally requested that Ms. Robinson present it to Judge Zanic for his signature. (ODC-7, Bates 183; 2/16/22 N.T. 35)

29. At that time, Ms. Robinson told Respondent that:

a. her request was “out of the ordinary”;

b. attorneys usually did not show up with proposed orders; and

c. “it’s usually scheduled with the Court.”

(2/16/22 N.T.36)

30. Ms. Robinson presented the proposed order to Judge Zanic in his chambers as requested by Respondent. (2/16/22 N.T. 36)

31. Judge Zanic did not sign the proposed order. (2/16/22 N.T. 36)

32. Judge Zanic directed Ms. Robinson to inform Respondent that a petition or motion had to be filed with a proposed order, and that he did not sign random orders. (2/16/22 N.T. 36)

33. Ms. Robinson instructed Respondent to file a written petition. (2/16/22 N.T. 37)

a. Respondent was aware that Judge Zanic did not permit ex parte communications and that he would not schedule a hearing without a motion or petition being filed with the Court. (2/16/22 N.T. 69-72)

b. Judge Zanic has known Respondent from her work in the federal court system representing inmates in civil matters, and at least one family court matter. (2/16/22 N.T. 66-67)

c. Prior to Ms. Kissinger's matter, Respondent had not appeared before Judge Zanic in a criminal case. (2/16/22 N.T. 67-68)

34. After speaking with Ms. Robinson, on November 5, 2019, Respondent filed a petition (the "November 5 Petition"), requesting that the Court order the County Sheriff "to accompany her to a residence where the defendant is believed to be held against her will by an individual who is armed.**"** (ODC-7, Bates 182; 2/16/22 N.T. 37)

35. The November 5 Petition was filed under the Kissinger Civil Matter docket number. (ODC-7; 2/16/22 N.T. 107)

36. At the time that Respondent filed the November 5 Petition, she:

a. did not personally know Ms. Kissinger;

b. had neither met nor spoken with Ms. Kissinger prior to filing the petition;

c. had no first-hand knowledge about Ms. Kissinger's safety;

d. had not been retained by Ms. Kissinger to represent her in any matter; and

e. did not have Ms. Kissinger's permission to file anything on her behalf.

(2/16/22 N.T. 216-217; 4/27/22 N.T. 25)

37. At the disciplinary hearing, Respondent testified that she requested an escort from the Sheriff's Office because she was concerned for her own safety, not that of Ms. Kissinger. (4/27/22 N.T. 92)

38. Ms. Robinson became alarmed about Respondent's statement in the petition that Ms. Kissinger might be held against her will by an armed individual and believed that a serious crime was being committed. (2/16/22 N.T. 38)

39. Judge Zanic directed Ms. Robinson to notify the Pennsylvania State Police in Huntingdon of a potentially dangerous situation involving Ms. Kissinger and provide a copy of Respondent's petition to the State Police. Ms. Robinson immediately complied with Judge Zanic's directives. (2/16/22 N.T. 39-40, 75-77)

40. Later that day, the State Police communicated with Judge Zanic that Ms. Kissinger was safe and there was no harm. (2/16/22 N.T. 77)

41. On November 6, 2019, Mr. Wencker filed a Guilty Plea Colloquy ("Colloquy") on behalf of Ms. Kissinger, which she had executed that day. (ODC-9)

a. On November 6, 2019, Mr. Wencker represented Ms. Kissinger. (2/16/22 N.T. 226-227)

b. Mr. Wencker fully explained the Colloquy to Ms. Kissinger before she signed it. (2/16/22 N.T. 226)

c. The Colloquy that Mr. Wencker filed was Huntingdon County's standard Colloquy. (2/16/22 N.T. 83, 223-224)

d. The Colloquy does not effectuate an actual guilty plea, but instead is used to make certain that a defendant has made a knowing,

intelligent, and voluntary waiver of very specific constitutional rights. (2/16/22 N.T. 224)

e. A separate proceeding is held before a Judge at which the defendant is questioned by the Judge in regard to the Colloquy. (2/16/22 N.T. 224)

f. On November 6, 2019, Mr. Wencker had also negotiated a plea agreement with the District Attorney's Office on behalf of Ms. Kissinger. (2/16/22 N.T. 221-222)

g. The agreement worked out with the District Attorney included entering the plea the day before Ms. Kissinger's formal arraignment on November 7, 2019.

h. Judge Zanic did not accept the plea agreement on that day as he thought it was inappropriate. (2/16/22 N.T. 222)

42. On November 6, 2019, Mr. Wencker again informed Ms. Kissinger that she was required to appear in court on November 7, 2019. (2/16/22 N.T. 226-227)

43. At some point on November 6, 2019, Respondent and Ms. Kissinger communicated and after Ms. Kissinger informed Respondent of the plea agreement, Respondent visited her and had her sign a fee agreement to both the criminal and civil matters.

44. In addition, upon Respondent's instructions, Ms. Kissinger signed a waiver of appearance for the November 7, 2019 arraignment.

45. Respondent also informed Ms. Kissinger that she was not required to appear at the November 7, 2019 arraignment, despite the Scheduling Order's express directive to the contrary. (ODC-10; 4/27/22 N.T. 124-126, 133).

46. The fee agreement indicated that either party could terminate Respondent's representation, but that Respondent would be required to obtain permission from the court if Respondent wished to withdraw after she entered her appearance. (ODC- 10)

47. The fee agreement further provided that Respondent would represent Ms. Kissinger pro bono on both matters. (ODC-10)

48. On November 6, 2019, Respondent filed an entry of appearance and the waiver of arraignment with the court in the criminal matter. (4/27/22 N.T. 149; ODC-4)

49. On November 7, 2019, Ms. Kissinger did not initially appear for her arraignment. (2/16/22 N.T. 229-230)

50. On November 7, 2019, Mr. Wencker saw Respondent in the courtroom waiting room; however, she did not inform Mr. Wencker that Ms. Kissinger had signed a fee agreement with Respondent on the previous day. (2/16/22 N.T. 230-231)

51. Not seeing Ms. Kissinger in the courtroom waiting area, Mr. Wencker asked Lori Heaton, Services Director of the Area Agency on Aging ("AAA") to contact Ms. Kissinger and advise her to come to court and if she did not appear, a bench warrant could be issued for her arrest. (2/17/22, N.T. 229-230)

52. Thereafter, Ms. Heaton telephoned Ms. Kissinger and relayed Mr. Wencker's message to Ms. Kissinger. (2/17/22 N.T 229-230)

53. Ms. Heaton accompanied Ms. Kissinger to the courthouse and took her to a waiting room for Ms. Kissinger's case to be called for the arraignment/pretrial conference. (ODC-12; 4/27/22 N.T. 146-147)

54. Thereafter, Ms. Kissinger appeared before Judge Zanic for her arraignment/pretrial conference. (ODC-11)

a. Both Respondent and Mr. Wencker were present during the hearing. (ODC-11)

b. Judge Zanic thought it was odd that there were two attorneys and that Respondent was in the courtroom because at the time she did not practice criminal law and she had never appeared before him in a criminal matter. (2/16/22 N.T. 88, 192)

55. Judge Zanic called Ms. Heaton up to the bench and spoke with her privately, then questioned Ms. Kissinger regarding who she wanted to represent her in the criminal matter, and in response Ms. Kissinger stated, "I do not know what to do." (ODC-11; 2/16/22 N.T. 88-90, 232-233)

56. Judge Zanic then asked Ms. Kissinger if Respondent represented her, to which Ms. Kissinger stated "yeah." (ODC-11)

57. Judge Zanic ordered the criminal case stayed and directed the AAA to assess Ms. Kissinger to determine whether or not she could choose who her lawyer was. (2/16/22 N.T. 233-234)

58. After the arraignment, Respondent approached Ms. Kissinger and Ms. Heaton at which time Respondent told Ms. Kissinger that:

a. she was withdrawing from both of Ms. Kissinger's cases because Ms. Kissinger came to the courthouse against Respondent's advice; and

b. Ms. Kissinger would "never hear from [Respondent] again."

(ODC-12; ODC-26; R-48, Bates 1335-1336; R-50, Bates 1360)

59. By letter to Ms. Kissinger dated November 7, 2019, with a copy to Mr. Wencker and Ms. Heaton, Respondent, *inter alia*:

a. advised Ms. Kissinger that she was withdrawing the fee agreement in the civil case because Ms. Kissinger had acted against Respondent's advice and instructions;

b. told Ms. Kissinger that Respondent's name would remain on her criminal matter until she retained another attorney;

c. acknowledged that while in court, Ms. Kissinger told Judge Zanic that she did not know whether she wanted Respondent to be her attorney anymore, which was completely her right; and

d. wished her the best.

(R-48, Bates 1336-1337)

60. Thereafter, Respondent failed to file a motion to withdraw in Ms. Kissinger's criminal matter. (ODC-4)

61. As of November 7, 2019, Respondent had not entered her appearance on behalf of Ms. Kissinger in her civil matter. (ODC-6)

62. On November 12, 2019, Respondent filed an entry of appearance on behalf of Ms. Kissinger in the civil case. (ODC-6)

63. Respondent failed to obtain Ms. Kissinger's permission to enter her appearance on Ms. Kissinger's behalf or perform any services on Ms. Kissinger's behalf in the civil matter. (R-50, Bates 1360)

64. On November 12, 2019, a hearing was held in the civil matter based on Respondent's November 5, 2019, petition. (R-23; 2/16/22 N.T. 104-105)

65. Although it had been determined by the State Police that there was no hostage situation regarding Ms. Kissinger, Judge Zanic scheduled the hearing because:

a. it was Respondent who had filed the petition;

b. he believed that Respondent would have filed a complaint if he had not done so;

c. every time he entered a ruling against her, Respondent took offense to it, "like she took it personally"; and

d. he thought that it was important for Respondent to "have her say – or to have her client have her say."

(2/16/22 N.T. 81-84)

66. At the conclusion of the hearing, Judge Zanic:

a. stated that Respondent's witnesses did not come close to satisfying the requirements that Respondent needed; and

b. dismissed and denied Respondent's petition.

(R-23; 2/16/22 N.T. 112-113)

67. On December 6, 2019, Mr. Wilson filed a motion for a general continuance and a stay of all matters in the civil matter. (ODC-6; R-50)

a. Attached to the motion was Ms. Kissinger's December 5, 2019 letter, wherein she stated that by letter dated November 7, 2019, Respondent had "withdrawn from the Agreement for Legal Representation" for her, and that she had yet to retain counsel. (R-50, Bates 1360)

68. On December 6, 2019, Respondent filed a brief in opposition to the continuance and stay of all matters. (ODC-6)

69. Respondent failed to obtain Ms. Kissinger's permission to file a brief on her behalf. (R-50, Bates 1360)

70. By letter to Mr. Wencker dated December 7, 2019, Respondent, *inter alia*:

a. claimed to Mr. Wencker that Respondent represented Ms. Kissinger in both the civil and criminal matters;

b. stated that her representation was governed by RPC 1.14 in regard to a client with diminished capacity;

c. stated that Mr. Wilson improperly contacted Ms. Kissinger;

d. stated that with Mr. Wilson's petition for continuance and stay, he attached a December 5, 2019 letter that was purportedly from Ms. Kissinger, which stated that Respondent no longer represented her and that she had yet to retain another counsel;

e. stated that the typeface in Ms. Kissinger's purported letter was identical to the documents prepared by Mr. Wilson;

f. stated that "[i]n her mental illness, Ms. Kissinger feels enormous guilt" and that she is vulnerable to suggestions, and she craves approval; and

g. stated that Mr. Wencker should not communicate with Ms. Kissinger about either of her cases in Respondent's absence.

(ODC-25)

71. By letter dated December 9, 2019, Mr. Wencker:

a. stated that the purpose of his letter was to confirm, as Respondent had stated verbally on November 7, 2019, and in writing on "November 17 [*sic*], 2019," that Respondent did not represent Ms. Kissinger on any matter; and

b. informed Respondent that he had instructed Ms. Kissinger to advise Respondent that Respondent was not to contact her or communicate with her by any means or for any reason.

(ODC-26)

72. By letter to Michael Kipphan, Esquire, counsel for the AAA, dated December 9, 2019, Respondent, *inter alia*, stated that:

a. she represented Ms. Kissinger in both her civil and criminal matters;

b. Ms. Heaton again interfered with Respondent's representation of Ms. Kissinger; and

c. it was her understanding that Mr. Kipphan would provide her with a copy of any assessment that AAA prepared immediately upon its submission to the Court.

(ODC-27)

73. On December 10, 2019, Respondent and Mr. Wencker sent several emails to each other regarding Respondent's "representation" of Ms. Kissinger. (R-54)

a. Mr. Wencker advised Respondent that Respondent was not ethically obligated to continue to represent Ms. Kissinger. (Bates 1396)

b. Mr. Wencker advised Respondent that as she should know, Respondent was prohibited from representing Ms. Kissinger and should file a notice of withdrawal of Respondent's appearance per Rule 1.16(a)(3). (Bates 1396)

c. Mr. Wencker stated that Ms. Kissinger made it clear to Respondent on December 6, 2019, that she did not wish for Respondent to represent her in either matter. (Bates 1388)

d. Mr. Wencker stated that Respondent had been discharged, in part because Respondent quit. (Bates 1396)

e. Finally, Mr. Wencker informed Respondent that he represented Ms. Kissinger and that Respondent should cease all communications with her. (Bates 1396)

f. Respondent told Mr. Wencker that she had telephoned the bar association ethics hotline and they confirmed that Respondent represented Ms. Kissinger as long as Respondent remained attorney of record and that Respondent had not filed a withdrawal of appearance. (Bates 1400)

g. Respondent told Mr. Wencker that he was "confusing contract with representation," that Respondent's "current contract is verbal," and witnessed by another individual, and Ms. Kissinger had not instructed Respondent to withdraw from either case. (Bates 1406)

74. By email on December 10, 2019, to Mr. Wilson, with a copy to Mr. Wencker, Respondent told Mr. Wilson that Respondent represented Ms. Kissinger as her attorney of record in both the civil and criminal matters and that no other attorneys may discuss the civil and criminal matters with Ms. Kissinger without her consent. (R-54, Bates 1408)

75. By Order dated December 10, 2019, Judge Zanic appointed William Tressler, Esquire, an out-of-county attorney, to represent Ms. Kissinger in her criminal case. (ODC-4; 2/16/22 N.T. 114)

a. Judge Zanic became aware that Ms. Kissinger had applied for a public defender; therefore, he appointed Mr. Tressler.

b. The procedure for requesting a public defender is to apply to the Public Defenders' Office, which in turn notifies Judge Zanic to appoint either the Public Defenders' Office or other counsel.

c. When he appointed Mr. Tressler, it was not Judge Zanic's intention for Mr. Tressler to serve as co-counsel with Respondent in representing Ms. Kissinger.

(2/16/22 N.T. 114-120)

76. Judge Zanic testified that he appointed Mr. Tressler because the matter was "a mess" and he attributed that to Respondent, who, based on Judge Zanic's assessment of the history of the matter, was making the criminal matter about herself, rather than Ms. Kissinger, who was the defendant. 2/16/22 N.T. 117-119.

77. On December 10, 2019, Mr. Wencker filed a Praecipe for Substitution of Counsel Without Leave of Court in the civil matter substituting himself as counsel for Ms. Kissinger. (R-55)

a. Ms. Kissinger confirmed her consent to substitute Mr. Wencker as counsel in the matter and to replace Respondent on the Praecipe. (Bates 1415)

78. By letter to Respondent dated December 11, 2019, Mr. Kipphan, *inter alia*:

a. acknowledged his December 10, 2019, telephone call with Respondent;

b. stated that he had been advised that Respondent had notified his staff that she was not taking possession of the cognitive assessment of Ms. Kissinger because she had been replaced in both the criminal and civil matters;

c. informed Respondent that Ms. Kissinger "is a competent individual";

d. requested that Respondent desist from referring to Ms. Kissinger as a "person of diminished capacity";

e. stated that "as we can now agree that Ms. Kissinger is a competent individual," Ms. Kissinger can freely accept or reject the assistance of the AAA and Ms. Heaton; and

f. stated as to Respondent's apparent personal vendetta against Ms. Heaton, perhaps Respondent should reconsider her position regarding Ms. Heaton.

(ODC-30)

79. By letter to Mr. Kipphan dated December 16, 2019, Respondent, *inter alia*:

a. enclosed a copy of an email that she had sent to Mr. Kipphan on December 11, 2019, wherein she stated that she had just learned that her name had "vanished" from the online criminal docket in Ms. Kissinger's matter;

b. stated that she sought to inform him of the "anomaly" immediately because she did not want either of them to improperly convey confidential information contained in the assessment;

c. stated that she was glad to hear that Ms. Kissinger was "feeling better now" according to Mr. Kipphan's reading of the "cognitive assessment";

d. assured Mr. Kipphan, based on his request that she refrain from referring to Ms. Kissinger as a person of diminished capacity, that she had no need or inclination to mention Ms. Kissinger at all, in the "present tense" except as necessary in judicial proceedings; and

e. stated that however, in the "past tense," she would continue to describe Ms. Kissinger's "behavior in the context of events since September 2019 [*sic*]."

(ODC-31)

80. On December 16, 2019, Respondent filed a praecipe for appearance in Ms. Kissinger's criminal matter in which Respondent stated that:

a. she had not withdrawn or been granted leave to withdraw from the matter;

b. she received Judge Zanic's Order, which appointed Mr. Tressler, but that the Order did not comply with Pa.R.Crim.P. §122(B)(1); and

c. it was Respondent's understanding that her appearance had not been struck from the case "but that Mr. Tressler may be co-counsel."

(ODC-32)

81. On December 16, 2019, Respondent also filed a praecipe for appearance in Ms. Kissinger's civil matter wherein she stated that:

a. she had not withdrawn her appearance and Ms. Kissinger had not discharged her or asked her to withdraw and that she did not plan to withdraw unless the Court so ordered her to withdraw;

b. she received service of Mr. Wencker's "irregular praecipe" wherein he indicated that he had entered his appearance; and

c. she understands that Mr. Wencker may be co-counsel in the matter.

(ODC-33)

82. By letter dated December 16, 2019, Respondent requested that the court reporter preserve evidence relative to Ms. Kissinger's criminal case.

a. Respondent indicated that since the November 12, 2019, transcript contained errors the record needed to be preserved. (ODC-34)

b. Judge Zanic testified that it has been his experience that Respondent is the only attorney to question transcripts and allege that transcripts are wrong. (2/16/22 N.T. 126)

c. Judge Zanic took Respondent's allegations regarding the transcript with a "grain of salt" and testified that a mistake in the transcript was "highly unlikely." (2/16/22 N.T. 126-127)

83. Thereafter, Respondent continued to file pleadings in Ms. Kissinger's civil matter. (ODC-6)

84. By Order dated December 18, 2019, Judge Zanic set aside and vacated Respondent's appearance and removed Respondent from the docket as counsel of record for Ms. Kissinger's criminal matter. (ODC-35).

85. Judge Zanic testified that:

a. he was compelled to enter his December 18, 2019, Order because he felt it was important to obtain experienced counsel for Ms. Kissinger;

b. it was important to appoint Mr. Tressler because he was an out-of-town attorney and Judge Zanic did not want him to have to deal with Respondent;

c. the situation with Respondent was getting out of hand and that Respondent's actions in Ms. Kissinger's criminal matter were "bizarre";

d. Ms. Kissinger's matter was becoming all about Respondent rather than Ms. Kissinger, especially considering Respondent's letters to Ms. Heaton, the AAA and others, as well as Respondent's entry of appearance;

e. Ms. Kissinger's matter was a "mess," and it was because of the actions of one person, and that was Respondent; and

f. He was concerned that Ms. Kissinger, an elderly woman facing multiple felony counts, receive representation from an experienced criminal attorney.

(2/16/22 N.T. 115-119; 165, 170-173)

86. By letter to Ms. Kissinger dated January 7, 2020, Respondent:

a. wished her a Happy New Year; and

b. reminded her of the deadlines for any legal action she may have wanted to take in her matters.

(ODC-36)

87. By letter to Ms. Kissinger dated June 27, 2020, Respondent stated, *inter alia*, that:

a. she still represented Ms. Kissinger in the civil matter;

b. Ms. Kissinger never told Respondent to stop representing her in the civil matter;

c. Ms. Kissinger was perfectly free to terminate representation and that they could "settle accounts for work done since termination of our *pro bono* contract"; and

d. provided a status update and legal advice.

(ODC-37; 5/10/22 N.T. 74-79)

88. By letter to Mr. Tressler dated June 27, 2020, Respondent stated, *inter alia*, that:

a. she still represented Ms. Kissinger in the civil matter; and

b. provided a status update.

(ODC-38)

89. Despite Respondent's testimony that she represented Ms. Kissinger "continuously" in 2020 and 2021 in the civil lien case (5/10/22 N.T. 79), Mr. Wencker represented Ms. Kissinger in her civil matter in 2020 and 2021, and as of the date of the February 2022 disciplinary hearing continued to represent Ms. Kissinger. (2/17/22 N.T. 63-65)

a. In August 2021, Respondent again contacted Ms. Kissinger in regard to her criminal and civil matters. (2/17/22 N.T. 65; 5/10/22 N.T. 80-86, 89-91)

90. In November 2019, Judge Zanic contacted then-Chief Disciplinary Counsel Paul J. Killion regarding Respondent's November 5, 2019 petition and her subsequent actions in Ms. Kissinger's criminal matter.

a. In his legal career spanning 29 years, Judge Zanic had not previously contacted the Office of Disciplinary Counsel regarding any attorney's actions. (2/16/22 N.T. 129, 192)

b. Judge Zanic believed that Respondent's actions regarding the November 5, 2019, petition and Ms. Kissinger's criminal matter were inappropriate, that the "chaos" that occurred on November 7, 2019 was created by Respondent, and that Respondent should not have been representing criminal defendants. (2/16/22 N.T. 129-133; 194)

c. Judge Zanic opined that Respondent's written work was usually good but that in his experience with Respondent, she struggled and "competency questions" were raised when she appeared before him in court. (2/16/22 N.T. 192)

d. When Respondent appeared before Judge Zanic in any matter, which was rare, she often created confusion, she believed that everyone was out to get her and her clients, she made every case about her and not her client, and she took rulings made by the Court personally. (2/16/22 N.T. 140, 172-175)

e. Although Judge Zanic had never previously removed Respondent from a case or contacted the Disciplinary Board, he did so in the Kissinger matter because there was a "huge difference between the right to counsel in a criminal case and a civil case." (2/16/22 N.T. 173-174)

f. Judge Zanic could not understand any attorney telling a defendant in a criminal case not to show up to court because the attorney believed that a rule was "wrong," especially when the client is at risk. (2/16/22 N.T. 176-177)

91. Mr. Wencker did not believe that Respondent was competent to represent Ms. Kissinger in her criminal case. (2/16/22 N.T. 234-240)

92. Respondent offered the testimony of three character witnesses.

93. Jennifer Tobin, Esquire was admitted to practice in the Commonwealth in 2006 and met Respondent in 2010 when her office hired Respondent as a summer intern. Ms. Tobin worked with Petitioner for approximately two or two and a half months and found her to be a "great" intern. (8/30/22, N.T. 57-58) Ms. Tobin has remained in contact with Respondent since 2014, approximately five or six times per year on legal issues. (8/30/22 N.T. 58)

94. Ms. Tobin testified that Respondent is an excellent attorney who pays very close attention to detail and cares deeply about her clients and their well-being. (8/30/22 N.T. 59)

95. Ms. Tobin testified that she had not read the Petition for Discipline in the instant matter and was not aware of the charges against Respondent. (8/30/22 N.T. 62)

96. Ms. Tobin practices primarily in federal court and has not spoken to any attorney from Huntingdon County who practices on the state level as to Respondent's reputation. (8/30/22 N.T. 62, 63, 64)

97. Stephen McConnell, Esquire was admitted to practice law in the Commonwealth in 1997 and is employed at Reed Smith in Philadelphia. He met Respondent when they worked on three prisoner civil rights matters involving the same client over the course of five or six years. Although he could not remember exact dates, he testified that the case ended two or three years ago. Mr. McConnell has not spoken to Respondent since that time. (8/30/22 N.T. 66-68, 77)

98. Mr. McConnell testified that Respondent's interaction with the client was excellent and she was very good at dealing with the client, as he was difficult. He further testified that her interactions with opposing counsel were very professional. (8/30/22 N.T. 69, 70, 71)

99. Mr. McConnell testified that Respondent was capable and competent in the cases they worked on together. (8/30/22 N.T. 73-74)

100. Mr. McConnell did not remember if he had ever read the Petition for Discipline in the instant matter and when asked if he had any idea why Respondent was before the disciplinary system, he testified that it was possible that "somewhere along the

way vaguely that – one of the attorneys may have told me that there was a case obviously where there was – I think I heard generally that a Judge made reference to the disciplinary committee because of another case…I think that's about all I heard." Mr. McConnell has never spoken directly to Respondent about the instant matter. (8/30/22 N.T. 75-76)

101. Mr. McConnell has never practiced in Huntingdon County and does not know Respondent's reputation in the legal community or in the community in general. (8/30/22 N.T. 76)

102. Dennis Plane is a professor of politics at Juniata College in Huntingdon and has a Ph.D. from the University of Texas. Mr. Plane met Respondent through the Democratic Party in Huntingdon. Mr. Plane described a situation involving a controversy with a political sign in his yard, which he discussed with Respondent. (8/30/22 N.T. 80, 81)

103. Mr. Plane testified that he is aware of Respondent's reputation in the community as a "fierce defender of citizen's rights and especially for the rights of people who maybe are often overlooked … or whose rights are more likely to be violated." (8/30/22 N.T. 84, 88)

104. Mr. Plane testified that he knew very little of the details of Respondent's disciplinary proceeding, and that Respondent herself never told Mr. Plane the details of the matter. He testified "I look forward to hearing those reasons one day, but I didn't want to hear anything beforehand." (8/30/22, N.T. 85-86)

105. The Honorable George Zanic testified credibly.

106. Mr. Wencker testified credibly.

107. Ms. Robinson testified credibly.

108. Respondent's character witnesses testified credibly.

109. Respondent failed to accept any responsibility for her misconduct.

110. Respondent failed to express remorse.

111. Respondent's testimony was not credible.

112. In December 2021, Respondent filed a civil action in the United States District Court for the Middle District of Pennsylvania claiming that her civil rights under the First and Fourteenth Amendments were violated by municipal actors, case captioned *Marianne Sawicki v. Michael M. Kipphan, et al.*, No. 1:21-cv-02031-JPW. In February 2022, Respondent filed an Amended Complaint.[3] (ODC-42; ODC-44; ODC-47)

III. CONCLUSIONS OF LAW

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

1. RPC 1.1, which states that "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, which states that "a lawyer shall act with reasonable diligence and promptness in representing a client."

3. RPC 1.4(b), which states that "a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation."

4. RPC 1.16(a)(3), which states that "except as stated in paragraph (c), a lawyer shall not represent a client or, where representation has

[3] The Board takes judicial notice that by Order dated April 24, 2023, the District Court dismissed the amended complaint without prejudice.

commenced, shall withdraw from the representation of a client if the lawyer is discharged."

5. RPC 1.16(d), which states, in pertinent part, that "upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests …."

6. RPC 3.1, which states, in pertinent part, 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 …."

7. RPC 3.3(a)(1), which states that "a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer."

8. RPC 4.2, which states that "in representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order."

9. RPC 8.4(c), which states that "it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation."

10. RPC 8.4(d), which states that "it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice."

Petitioner failed to meet its burden to prove that Respondent violated RPC 4.1(a), which states that "in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person."

Petitioner failed to meet its burden to prove that Respondent violated RPC 8.2(a), which states that "a lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office."

IV. DISCUSSION

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). For the reasons set forth below, although we conclude that Petitioner failed to carry its burden relative to the alleged violation of Rules 4.1(a) and 8.2(a), we find that the evidence overwhelmingly supports the conclusion that Respondent violated Rules of Professional Conduct 1.1, 1.3, 1.4(b), 1.16(a)(3), 1.16(d), 3.1, 3.3(a)(1), 4.2, 8.4(c), and 8.4(d). Furthermore, in light of the serious nature of the violations discussed in this Report, coupled with Respondent's continued insistence that she acted in full accord with her ethical obligations and her everchanging narrative, we recommend that a suspension from the practice of law for a period of one year and one day be imposed.

A. Violations resulting from Respondent's November 5, 2019 Petition.

As noted above, it is undisputed that on the morning of November 5, 2019, Respondent executed and filed a petition in the civil matter against Ms. Kissinger, requesting that the County Sheriff accompany Respondent to a residence on Deforrest Street, where, according to that filing, Ms. Kissinger was "believed to be held against her will by an individual who is armed." It is also undisputed that, at the time Respondent filed the November 5 Petition, she did not represent Ms. Kissinger, had no first-hand knowledge of Ms. Kissinger's situation and, in fact, had never met or spoken with her. Indeed, Mr. Wencker, who (unlike Respondent) represented Ms. Kissinger and had spoken with her, attempted to disabuse Respondent of the notion that Ms. Kissinger was in danger. Yet, despite having no factual basis for making such a serious allegation—and ignoring the assurance of an officer of the Court with a fiduciary duty to protect Ms. Kissinger's interests—Respondent submitted a written document to the Court, claiming that Ms. Kissinger was believed to be in grave danger.

In her exceptions, Respondent does not genuinely maintain that ***she*** had a reasonable basis for believing that Ms. Kissinger was in danger or being held against her will at gunpoint. Rather, highlighting the fact that the November 5 Petition is phrased in the passive voice, she maintains that to meet its burden of establishing a violation of Rules 3.1 and 3.3(a)(1), Petitioner was required to "prove either that no one believed [Ms.] Kissinger was held involuntarily, or that no one believed that the house where [Ms.] Kissinger was staying was [*sic*] the house of an individual with weapons—and that Respondent was aware of at least one of those facts." Resp't's Br. at 7. This is so, according to Respondent, because the November 5 Petition merely relays facts that ***someone*** believed to be true.

Respondent's warped perception of her ethical obligations does not withstand scrutiny and should not be countenanced by the Court. As an initial matter, even if Respondent's formulation of Rules 3.1 and 3.3 were to be accepted, her conduct plainly violated Rule 8.4(c)—a provision that is cited, but not meaningfully developed in Respondent's brief on exceptions. In this regard, the Court has explained that "[w]hen the alleged misconduct is misrepresentation in violation of Rule 8.4(c), a prima facie case is made where the record establishes that the misrepresentation was knowingly made, or made with reckless ignorance of the truth or falsity of the representation." *Office of Disciplinary Counsel v. Neil Werner Price*, 732 A.2d 599 (Pa. 1999). Recklessness, in turn, "may be described as the deliberate closing of one's eyes to facts that one had a duty to see or stating as fact, things of which one was ignorant." *Id*. (internal quotation marks and citations omitted).

Pursuant to *Price*'s framework, we are satisfied that Petitioner has met its burden of demonstrating that Respondent violated Rule 8.4(c). Specifically, Respondent acted "with reckless ignorance for the truth or falsity of her allegation" that Ms. Kissinger was being held against her will by an armed individual and, in doing so, "stat[ed] as fact, things of which one was ignorant." *Id.* To the contrary, Mr. Wencker, who (unlike Respondent) had recently spoken with Ms. Kissinger, assured Respondent that there was no danger to Ms. Kissinger. Given that Mr. Wencker represented Ms. Kissinger—and, thus, had a fiduciary obligation to protect her—Respondent "deliberate[ly] close[ed] [her] eyes to facts that [she] had a duty to see" when she decided to forge ahead without conducting any further investigation. *Id.*

In any event, however, we also disagree with Respondent's formulation of

Rules 3.1 and 3.3, as the construct she proposes ignores Rule of Civil Procedure 1023.1(c), which provides that "[b]y signing, filing, submitting, or later advocating" for a document submitted in court, the attorney, among other things, "certifies that, to the best of that person's knowledge, information and belief, formed after an inquiry reasonable under the circumstances, . . . the factual allegations have evidentiary support or, if specifically so identified, are likely to have evidentiary support after a reasonable opportunity for further investigation or discovery[.]" Pa.R.Civ.P. 1023.1. Thus, in submitting the November 5 Petition, Respondent was not merely representing to the Court what is "believed" to be true in the abstract, but was also certifying that she had conducted a reasonable investigation into the veracity of those allegations that were material to the relief she was seeking and believed them to be based in fact, or likely to be supported by evidence.

Furthermore, while Respondent attempts to parse the language of the November 5 Petition, its reference to "an individual who is armed" in the November 5 Petition, read in context, was plainly meant to suggest that firearms were somehow involved in keeping Ms. Kissinger captive. In rejoinder, Respondent offers an ever-shifting narrative that is not credible. Specifically, Respondent initially suggested that Ms. McCreary informed her about "guns." But as evidenced by Respondent's own evidence, Ms. McCreary did not know where Ms. Kissinger was staying until Respondent told her. When confronted with this information, Respondent changed her story and testified that Ms. McCreary had known that Ms. Kissinger was staying with "Denny" and the reason why Ms. McCreary thought that "Denny" had guns was because Deforrest Street was near "the State hunting." (4/27/22 N.T. 54-56)

Respondent's story on this point further evolved during the disciplinary hearing, when she claimed that she filed the petition to have the Sheriff accompany her to the Deforrest Street address, not out of concern for Ms. Kissinger, but instead for her own safety. (4/27/22 N.T. 91-92) Respondent testified that she wanted to have a police car sitting by the Deforrest Street house so when she walked to the door and knocked, she would not be shot. Id. In another email to Ms. McCreary on November 8, 2019, Respondent told her that she "just" used the civil lien case docket number because she wanted to have the Sheriff's Office go with her the first time when she visited Ms. Kissinger. (R-72, Bates 2137).[4]

We also find that the conduct described above violated Rule 3.3(a)(1). In this respect, even if Respondent did not "knowingly . . . make a false statement of material fact or law" when she initially filed the November 5 Petition, once she learned beyond any shadow of a doubt that Ms. Kissinger was, in fact, safe, she had a duty to immediately correct the allegations originally made. *See* RPC 3.3(a)(1) ("A lawyer shall not knowingly . . . make a false statement of material fact or law to a tribunal ***or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer***[.]" (emphasis added)). But after learning Ms. Kissinger was not in danger, Respondent failed to withdraw her petition and it is apparent to us that Respondent had no intention of presenting any evidence to support her allegations at the November 12, 2019 hearing. In fact, by email to Ms. McCreary dated November 8, 2019, Respondent, in regard to the

[4]Furthermore, Respondent's general course of conduct as discussed here—and, in particular, her actions on November 5—were plainly prejudicial to the administration of justice in violation of Rule 8.4(d). Specifically, Respondent directly caused substantial delays in both the civil and criminal proceedings against Ms. Kissinger, wasted valuable police resources, and injected an overarching sense of chaos and confusion into the affairs of Ms. Kissinger.

November 12, 2019 hearing, stated that "he cannot make me tell which client it was who mentioned possible guns in the house, because that is privileged information." (R-72, Bates 2137)[5]

Furthermore, because the November 5 Petition also lacked legal merit, we further find that Respondent violated Rule 3.1. Specifically, according to Respondent, she asked to be accompanied by sheriffs not because she believed Ms. Kissinger to be in imminent danger, but because the likelihood that firearms would be present at the Deforrest Street address made Respondent fear for her own safety. But even if this concern was genuine and justified, Respondent had no legal right to request an armed escort to visit the home of a person who was not a client. The relief Respondent sought could not be supported by any existing legal principle, or a good-faith extension thereof and, thus, was frivolous. *Accord Price*, 732 A.2d at 606.

Respondent's handling of the November 5 Petition and her subsequent arguments in connection therewith also lay bare her lack of competence. For instance, as Respondent has repeatedly acknowledged, her only "client" at that time was Ms. McCreary and the Barb's Besties Facebook Group—neither of whom were parties to the civil action. Thus, before seeking substantive relief in the Kissinger Civil Action, Respondent was required to seek intervention on behalf of her clients, or at a minimum, should have filed her Petition to Intervene simultaneously. Yet, the November 5 Petition

[5] It also bears noting that, although it was ultimately considered in an adversarial setting, the November 5 Petition sought *ex parte* relief. Respondent, therefore, had a heightened obligation "to make disclosures of material facts known to the lawyer and that the lawyer reasonably believes are necessary to an informed decision." RPC 3.3, cmt. 14. Under the circumstances, such a disclosure would include, at a minimum, information regarding the source and reliability of the allegations undergirding the November 5 Petition and Mr. Wencker's countervailing assurances regarding the safety of Ms. Kissinger.

makes no mention of the fact that Respondent represented non-parties and was seeking relief on their behalf. Given the rudimentary nature of this legal principle, we find Respondent's filing demonstrates a lack of basic competence. *See generally, e.g.*, *Silver Spring Twp. v. Pennsy Supply, Inc*., 613 A.2d 108, 111 (Pa. Cmwlth. 1992) ("It is crystal clear from the foregoing cases, treatises cited therein, the rules of civil procedure, and the absence of case law, that one, who is not a named party to an action, be it an individual action or a class action prior to its certification, cannot become a party to an action by the simple expedience of walking into the office of the prothonotary and filing his appearance in any one or more of the multitude of open actions on file.").

In fact, far from alleviating concerns about Respondent's competence, her arguments in the disciplinary proceedings raise significant doubts about her grasp of the basic rules of procedure. For instance, Respondent continues to suggest that, under the Local Rules 208.3(A), Judge Zanic was required to "speak" with her based merely on the submission of the "stand-alone" proposed order and that his refusal to grant her an audience without a written submission was improper. Yet, nothing in the Local Rules suggests that an emergency motion may be presented orally by anyone—let alone *ex parte* by counsel purporting to represent a nonparty. Rather, Local Rule 208.3(A) provides that unlike other motions, which are "filed with the Prothonotary along with a praecipe to place the motion on the current argument list[,]" LR 208.3(A)(3), emergency motions "may be presented directly to the President Judge on any day the court is in session." LR 208.3(A)(6). Moreover, even where the motion seeks emergency relief, notice must be "given in advance to opposing counsel or any unrepresented party of the date and time of presentation of any motion for emergency relief[.]" 208.3(A)(6). Thus, it

is Respondent—and not Judge Zanic—who exhibited a lack of familiarity with the procedural rules.

B. Violations resulting from Respondent's advice in the Kissinger Criminal Matter.

Respondent also maintains that she: (i) did not violate her duty to provide competent representation in her handling of the Kissinger Criminal Matter, *see* RPC 1.1 (duty of competence); (ii) "act[ed] with reasonable diligence and promptness in representing [Ms. Kissinger;]" *see* RPC 1.3; and (iii) explained the matter in sufficient detail to allow Ms. Kissinger to make an informed decision. *See* RPC 1.4. Again, however, we find Respondent's arguments unpersuasive.

As noted above, on November 6, 2019, Respondent—who did not practice criminal law in Huntingdon County, (4/27/22 N.T. 63-64,137-139), and whose experience in the field was virtually nonexistent—filed a waiver of arraignment on behalf of Ms. Kissinger and advised her that she did not have to appear on November 7, 2019.[6] (4/27/22 N.T. 129-132).

The Scheduling Order, however had set the arraignment and pre-trial conference for November 7, 2019 and expressly directed ***both*** Ms. Kissinger and her counsel to appear at the appointed time. That Scheduling Order was in keeping with Judge Zanic's general policy of scheduling the formal arraignment and pre-trial conference on the same day—a practice with which Mr. Wencker and the defense bar in Huntingdon County was familiar. (PFOF 11; 2/16/22 N.T. 61-62, 206-207).

During cross-examination, Respondent acknowledged that she rendered

[6] Notably, Respondent conducted research of the Philadelphia County local rules for waivers and printed out the Philadelphia County waiver of arraignment form. (4/27/22 N.T. 129-132)

her advice to Ms. Kissinger without first having obtained a copy of the Scheduling Order in the Kissinger Criminal Matter. Pressed further, on this point, Respondent explained she "d[id]n't have to" review the Scheduling Order as "criminal procedure goes in lockstep, and the agreement was going to come, and we knew what that was going to be. I knew what was going to be, so I was prepared for that. If I had known…" (4/27/22 N.T. 137). As for the fact that the docket entry was accompanied by the annotation "Formal ARGN/PTC," Respondent conceded that she did not know what "PTC" meant, but did not "think anything of it[,]" believing it to be a code that indicated a time change. *Id*. When questioned about whether it would have been prudent for her to investigate to determine what "PTC" meant, Respondent answered "no." (4/27/22 N.T 134-135).

Before the Board on exceptions, Respondent renews her argument that a pretrial conference is discretionary and, thus, under Rule of Criminal Procedure 570, Ms. Kissinger could not be required to attend. However, while Respondent may be correct that "no authority ***requires*** . . . mandatory attendance by a counseled defendant[,]" Resp't's Br. at 14 n.22 (emphasis added), it does not follow that Rule 570 ***prohibits*** a judge in this Commonwealth from including such a requirement in a scheduling order. Indeed, given that "a pre-trial conference is a critical stage of the proceedings in which potential substantial prejudice to defendant's rights inheres," *Commonwealth v. Tarver*, 384 A.2d 1292, 1298 (Pa. Super. 1978), Judge Zanic's decision to mandate a defendant's presence appears eminently reasonable.

Respondent also argues that, in advising Ms. Kissinger that she did not have to appear on November 7, 2019, Respondent was relying on Pennsylvania Rules of Criminal Procedure and because Judge Zanic's standard scheduling order had not been

published and adopted as a local rule, she should not be disciplined for failing to abide by it. (8/29/22 N.T. 82-84). But the Scheduling Order here—despite having become "standard" in Huntingdon County—was entered on the docket in Ms. Kissinger's case just as every other order setting a timetable for a case would. Accordingly, publication was unnecessary. In short, nothing in the Rules of Criminal Procedure supports Respondent's assumption regarding Ms. Kissinger's need to be present.

Under the circumstances, a reasonably prudent and competent attorney would have obtained the September 25, 2019 Scheduling Order, or—at a minimum—conducted the necessary research and investigation to ascertain the meaning of the notation by, for example, asking other defense counsel or the court administrator about its meaning.[7] Yet, confident in her (mis)interpretation of the rules, Respondent failed to take the necessary measures to ensure that she furnished competent representation to Ms. Kissinger and explained the matter adequately to allow Ms. Kissinger to make an informed decision. And as a result of Respondent's faulty advice, Ms. Kissinger was at risk of a bench warrant being issued for her arrest.

Respondent also maintains that, because Mr. Wencker "had failed to enter his appearance," she was required to act with speed to ensure that Ms. Kissinger was represented by counsel. Once again, Respondent's argument demonstrates that she lacks an understanding of the Rules of Criminal Procedure, which provide that, when

[7] In this connection, although not decided in the context of disciplinary proceedings, we find resonance in the Commonwealth Court's admonition that "[c]ounsel who choose to practice law in a particular county are obliged to follow the rules and procedures of that county" and "[i]t is the duty of the parties to ascertain the schedule of the court." *Masthope Rapids Prop. Owners Council v. Ury*, 687 A.2d 70, 72 (Pa. Cmwlth. 1996); *see also Toczylowski v. Gen. Bindery Co*., 519 A.2d 500, 504 (Pa. Super. 1986) (noting that "a diligent practitioner," has a duty "to monitor the master major jury list and the individual judge calendars").

counsel is appointed by the Court, a separate entry of appearance is unnecessary. *See* Pa.R.Crim.P. 120(A)(2). As Mr. Wencker explained, he had been appointed to represent Ms. Kissinger and "an attorney is not to enter an appearance or is not required to enter an appearance when they've been appointed by the Court." (4/16/22 N.T. 11:10-13).

In concluding that Respondent violated her duties of competence and diligence, we also find it significant that both Judge Zanic and Mr. Wencker raised questions about Respondent's competency in her representation of Ms. Kissinger. (4/16/22 N.T. 129-133, 173-177, 94, 234-240). In fact, Judge Zanic was so concerned about Respondent's lack of competence and the confusion she caused with Ms. Kissinger's case that he subsequently appointed Mr. Tressler, an out-of-county, experienced criminal attorney, to represent Ms. Kissinger in her criminal matter. We are satisfied that Respondent's actions regarding the November 5, 2019 petition coupled with the chaos that she created in Ms. Kissinger's criminal matter, demonstrated that Respondent was not competent to represent Ms. Kissinger or, for that matter, any criminal defendant.

C. Respondent's continued representation of Ms. Kissinger in violation of Rule of Professional Conduct 1.16.

As detailed above, during the November 7, 2019 hearing, Ms. Kissinger expressly stated that she did not wish to be represented by Respondent in her criminal matter and, immediately after the proceeding concluded, Respondent informed Ms. Kissinger—both in writing (R-8) and orally—that the attorney-client relationship was terminated relative to the civil and criminal matters. Yet, as demonstrated by Petitioner's evidence, Respondent continued to contact Ms. Kissinger (ODC-21, ODC-23, ODC-24,

ODC-25, ODC-26, ODC-28, ODC-36, ODC-37, R-49), Mr. Wencker (ODC-18, 2/17/22 N,T. 21-24), and third parties and opposing counsel (ODC-12, ODC-15, ODC-17, ODC-19, ODC-20, ODC-22, ODC-28, ODC-30, ODC-31, ODC-31, ODC-38). In fact, in November 2019, Respondent entered her appearance on behalf of Ms. Kissinger in the civil lien matter and filed pleadings on Ms. Kissinger's behalf, even though the attorney-client relationship had been terminated. (ODC-6, ODC-32, ODC-33)

After Respondent terminated her representation, Mr. Wencker, who had become Ms. Kissinger's only attorney in the criminal matter, testified that he did not give Respondent permission to contact Ms. Kissinger or third parties on her behalf, or file anything on Ms. Kissinger's behalf. (2/17/22 N.T. 7-10) Mr. Wencker credibly testified that, based on his interactions with Ms. Kissinger, she (a) understood that Respondent was no longer her attorney; (b) was confused about why Respondent continued to send her letters (2/17/22 N.T. 36); and (c) neither gave Respondent permission to act on her behalf, nor wanted her to do so (2/17/22 N.T. 7-8, 16, 36). When Respondent's continued interjection did not cease, on December 9, 2019, Mr. Wencker transmitted a letter to Respondent on Ms. Kissinger's behalf, requesting that Respondent refrain from any further contact with Ms. Kissinger. (ODC-26; 2/17/22 N.T. 32). Despite Mr. Wencker's request and Ms. Kissinger's explicit instructions, Respondent continued to contact Ms. Kissinger and third parties, and file documents on Ms. Kissinger's behalf. (2/27/22 N.T. 32-33) After Mr. Wencker—with the consent of Ms. Kissinger—filed a Praecipe for Substitution of Counsel in the civil matter substituting himself as counsel for Ms. Kissinger, Respondent filed her own praecipe for appearance and stated that she considered herself co-counsel for Ms. Kissinger. (ODC-29, ODC-33) Respondent's

refusal to stop interfering in Ms. Kissinger's criminal case compelled Judge Zanic to take the extraordinary step of entering an order (ODC-36) explicitly removing Respondent's name from the docket in Ms. Kissinger's matter, after Respondent filed a praecipe of appearance in which she stated that she considered herself co-counsel with Mr. Tressler.

In rejoinder, Respondent maintains that her actions were proper because, after she terminated her contract with Ms. Kissinger, she entered into a verbal agreement with Ms. Kissinger, that Ms. Kissinger wished for Respondent to continue to represent her in both the criminal and civil matters, and that Ms. Kissinger never terminated her representation. (4/27/22 N.T. 204). But aside from her self-serving testimony, Respondent did not present any evidence to support her position. Moreover, Respondent's rendition of events was contradicted by the credible testimony of Mr. Wencker and Ms. Kissinger's December 5, 2019 letter to Mr. Wilson, stating that she had yet to retain counsel in the civil lien case. (R-49).

Furthermore, Respondent also argues that she did not violate her ethical obligations relative to termination of the attorney-client relationship because, under the pertinent rules of procedure, she could only withdraw after substitute counsel had entered their appearance. Once more, Respondent misconstrues her professional duties. Under Rule 1.16(a)(3), a lawyer who has been discharged is required to "withdraw from representation," subject to the requirements of Rule 1.16(c), which provides, in relevant part, that a "[a] lawyer must comply with applicable law requiring notice to or permission of a tribunal when terminating a representation." RPC 1.16(c). Turning to the "applicable law," *id.*, Rule of Civil Procedure 1012, as well as Rule of Criminal Procedure 120, set forth the mechanism for obtaining the requisite permission to terminate representation.

See Pa.R.Civ.P. 1012(c) (providing that leave must be sought by motion or petition); Pa.R.Civ.P. 1012(d) (detailing the process for obtaining leave when the whereabouts of the client are known); Pa.R.Crim.P. 120(B)(2) (setting forth the requirements of a motion for leave to withdraw). Having failed to avail herself of the relatively simple mechanisms available for extricating herself from Ms. Kissinger's affairs, Respondent cannot now argue that she was somehow compelled to continue representing her.

Further considering this record, we conclude that Petitioner failed to prove that Respondent violated RPC 8.2(a) and RPC 4.1(a). The facts alleged by Petitioner to support these violations are Respondent's statement in her November 8, 2019 letter to Connie Brode at the AAA that Judge Zanic "overreacted" when he sent the police to Ms. Kissinger's current residence, and Respondent's request during the November 12, 2019 hearing that Judge Zanic recuse himself from Ms. Kissinger's case due to a conflict of interest because fifteen years prior he worked for a law firm that had represented Respondent. (ODC-13; R-23) These facts do not rise to the level of a violation of RPC 8.2(a), which prohibits Respondent from making a statement that she knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of Judge Zanic, or RPC 4.1(a), which prohibits Respondent from knowingly making a false statement of material fact or law to a third person. While Respondent's use of the word "overreacted" in her letter to a third person to describe Judge Zanic's response to her petition was injudicious and a poor choice of language, we find that the statement does not denigrate Judge Zanic's qualifications or integrity. In previous matters, lawyers who violated RPC 8.2(a) made serious accusations against judges that went to the heart of the judge's integrity. *See*, *Office of Disciplinary Counsel v. William Vinsko*, 186 DB 2018

(D. Bd. Order 10/22/2018) (Vinsko made statements in a brief filed with the court that cast aspersions on the court's analytical ability; the brief contained 13 instances where Vinsko commented on the integrity and qualifications of the judge); *Office of Disciplinary Counsel v. David Foster Gould, III*, No. 160 DB 2016 (D. Bd. Order 6/26/2018) (Gould made allegations against a trial judge in a federal lawsuit, and in five instances claimed that the judge was biased and predisposed to rule against him). As to Respondent's request that Judge Zanic recuse himself due to a conflict of interest, after review of the November 12, 2019 hearing transcript, we find insufficient evidence to support Respondent's violation of the rules. Specifically, although Respondent's allegation that Judge Zanic had represented a municipality in a similar condemnation proceeding approximately fifteen years ago seems to lend no support to her argument for recusal, it did not impugn Judge Zanic's integrity or qualifications.

D. Appropriate Discipline

Having concluded that Respondent committed multiple ethical violations, we turn next to the appropriate quantum of discipline to be imposed. In looking at 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). In this regard, the Board also recognizes that the recommended discipline must reflect facts and circumstances unique to the case, including circumstances that are aggravating or

mitigating. *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 discipline. *Office of Disciplinary Counsel v. Robert Lucarini*, 472 A.2d 186, 189-91 (Pa. 1983).

Significant Aggravating Factors

The record before us reveals numerous aggravating factors, which weigh in favor of a one year and one day suspension.

(i) Failure to accept responsibility and appreciate the impact of her actions

Respondent's failure to acknowledge her wrongdoing and take responsibility for her actions, under the present circumstances, is a significant factor that compels more serious discipline. *See*, *Office of Disciplinary Counsel v. Alan Kane*, No. 77 DB 2021 (D. Bd. Rpt. 12/13/2022) (S. Ct. Order 3/8/2023). While presenting a defense is not, in of itself, an aggravating factor, where, as here, the vast majority of the relevant facts are not in dispute, and the petition for discipline does not present a novel legal issue, a lawyer's obstinacy in refusing to recognize any wrongdoing is disconcerting and raises serious doubts about her fitness to practice law.

Here, Respondent's position throughout the course of the disciplinary proceedings has been that her conduct was in full accord with her ethical obligations and not a single violation of the rules has occurred.[8] Based on the record, reasonable minds may differ about the extent of Respondent's violations and the appropriate discipline. But,

[8] *See, e.g.*, Resp't's Br. at 4 ("Respondent's conduct proven at the hearings is entirely compliant with the rules of court[.]"); *id.* ("Respondent represented Kissinger in both of those matters for about six weeks, in compliance with all applicable rules of court[.]"); *id.* at 13 ("Documentary evidence, however, shows that Respondent engaged in rule compliant advocacy."); *id.* at 34 ("Respondent accepts responsibility for her conduct, which was competent, diligent, and rule-compliant.");

in our view, no reasonable practitioner, upon reflection, could conclude that the conduct involved in this matter was beyond reproach. Yet, that is precisely what Respondent has maintained.

Time and again, Respondent left no doubt that, in her view, she was the most intelligent and competent person in the room and every person involved in the Kissinger matters (except for her) made mistakes and failed to follow the rules. (8/30/22 N.T. 53-54). As the record demonstrated, despite not being experienced in criminal law and not appearing before Judge Zanic in civil cases on a frequent basis (2/16/22 N.T. 58), Respondent questioned the decisions and actions made by Judge Zanic, Mr. Wencker, Ms. Heaton, Mr. Wilson and others. For example, Respondent testified that Judge Zanic and Mr. Wencker did not comply with the Rules of Criminal Procedure,[9] that Judge Zanic's December 16, 2019 Order did not comply with the Rules, that Judge Zanic's instructions to her to file a petition with her proposed Order was irregular, Mr. Wencker's praecipe to substitute counsel was irregular, and the November 12, 2019, transcript contained errors. (ODC-32, ODC-33, ODC-34; 4/27/22 N.T. 88, 94, 139, 174, 176; 5/10/22 N.T. 23-25, 30-40, 33, 52, 55, 58, 105, 189, 190; 8/29/22 N.T. 51, 127).[10] But as noted above, on many (if not all) of these points, it is Respondent that misunderstood the rules. At oral argument before the Board, Respondent continued to advocate her position that the evidentiary record contained nothing to indicate that her conduct was other than rule compliant and there was no identifiable misconduct.

[9] *See, e.g.*, Resp't's Br. at 9 n.8 ("Judge Zanic did not comply with this local rule at all[.]").
[10] Resp't's Br. at 30 ("ODC's other witnesses exhibited their failure to understand and comply with the applicable rules of court."); *id.* at 30 n.69 ("Judge Zanic did not know that LR 208.3(A) provides for hearing *ex parte* and without any written filing.")

In short, Respondent was eager to question and criticize the actions of others but never reflected on her own actions in the Kissinger matters. This, in our view, is a significant aggravating factor under the circumstances. *See Office of Disciplinary Counsel v. Cynthia Baldwin*, 225 A.3d 817, 858 (Pa. 2020) (finding aggregation because respondent-lawyer "ha[d] seen fit to cast blame for her problems on everyone involved . . . including the Disciplinary Board, the ODC, the Superior Court, and the Individual Clients").

Relatedly, Respondent's failure to consider the impact of her conduct on Ms. Kissinger is a substantial aggravating factor. *See*, *Office of Disciplinary Counsel v. Christopher John Basner*, No. 80 DB 2014 (D. Bd. Rpt. 10/16/2015) (S. Ct. Order 12/17/2015). Respondent's unwavering stance that others interacting with Ms. Kissinger, including the court, Mr. Wencker and the AAA, were behaving improperly and she was the only individual capable of representing Ms. Kissinger in accordance with the rules rendered her unable to recognize that her own actions exacerbated Ms. Kissinger's legal situation and, in fact, threatened to derail her criminal matter entirely. Respondent described Ms. Kissinger as "fragile," "emotional," and having "diminished capacity" (4/27/22 N.T. 193), and as "mentally ill" and "suicidal" (4/27/22 N.T. 116), yet despite these beliefs that Ms. Kissinger was unstable, Respondent continued to badger Ms. Kissinger and meddle in her matters long after Respondent stated she was withdrawing, and when Ms. Kissinger had made clear she did not want Respondent representing her.

(ii) Lack of remorse

Respondent's lack of genuine remorse also compels a heavier disciplinary sanction. While remorse can be considered as a mitigating factor, *Office of Disciplinary*

Counsel v. John Rodes Christie, 639 A.2d 782, 784 (Pa. 1994), the absence of remorse is an aggravating factor. *See*, *Baldwin*, 225 A.3d at 858-59. During this disciplinary proceeding, Respondent did not express any remorse for her misconduct, which correlates with her inability to accept that she committed wrongdoing. Instead, Respondent focused on the effect of the disciplinary proceedings on her, and testified that her cognitive health has declined because of the stress of the present disciplinary action. (8/30/22 N.T. 52) Respondent also testified that she would look at her options of practicing law again after the Disciplinary Board "clears me of what you think I've done." *Id*.

(iii) Lack of credibility and lack of candor

Respondent's lack of credibility serves as an aggravating factor. *See*, *Office of Disciplinary Counsel v Hercules Pappas*, No. 190 DB 2018 (D. Bd. Rpt. 11/12/2019) (S. Ct. Order 1/23/2020). Although various aspects of Respondent's factual account strain credulity, as detailed above, her testimony with respect to the November 5 Petition was particularly incredible. Relatedly, in further aggravation, we consider Respondent's lack of candor. *See*, *Office of Disciplinary Counsel v. John Andrew Klamo*, No. 90 DB 2015 (D. Bd. Rpt. 12/23/2016) (S. Ct. Order 3/13/2017) We find that Respondent exhibited a propensity to mischaracterize the facts throughout this proceeding in order to suit her narrative and to shift rationales for her conduct, which actions reflect negatively on her honesty, judgment, and ability to practice law.

Mitigating Factors

Respondent's evidence in mitigation does not provide a basis on which to decrease the recommended disciplinary sanction, particularly when viewed in the context

of the weighty aggravating factors.

(i) No prior record of discipline

In mitigation, we consider that Respondent has no prior record of discipline. However, we do not find this factor compelling and accord it little weight, as Respondent was admitted in 2012 and the misconduct in the instant matter began in 2019, a mere seven years later. *See*, *Office of Disciplinary Counsel v. Caleb Clinton Bissett*, No. 78 DB 2016 (D. Bd. Rpt. 7/21/2017) (S. Ct. Order 9/22/2017).

(ii) Character testimony

We also consider Respondent's character evidence as offered by three witnesses, one of whom supervised Respondent when she worked as a summer intern, one of whom worked with Respondent on prisoner civil rights matters, and one of whom is a member of Respondent's Huntingdon community. We find that the character evidence is not entitled to appreciable weight in mitigation. The witnesses, while credible, had little or no knowledge of the reasons for Respondent's disciplinary proceedings nor, apparently, did Respondent make any effort to advise them of such. For example, when questioned on cross-examination about his knowledge of Respondent's misconduct, Mr. Plane testified that he was not aware of the basis for the disciplinary action, nor did Respondent tell him the reason why she was before the Disciplinary Board. Ms. Tobin and Mr. McConnell testified similarly. While Mr. Plane was aware of Respondent's reputation in the community as a defender of civil rights, Ms. Tobin and Mr. McConnell could offer no testimony on Respondent's reputation in the legal community or the community in general, as neither witness practiced nor lived in Huntingdon. The overall weight and significance of character evidence is undermined where a character witness

has little knowledge of the underlying disciplinary charges or no knowledge of a respondent's reputation in the community. *See, Office of Disciplinary Counsel v. Valerie Andrine Hibbert*, No. 215 DB 2019 (D. Bd. Rpt. 2/17/2021) (S. Ct. Order 4/27/2021).

Case Law Supporting Suspension for One Year and One Day

"As is often the case with attorney disciplinary matters, there is no case precedent that is precisely on all fours…" *Cappuccio*, 48 A.3d at 1240. While our survey of prior matters did not reveal a case that squares with the instant matter, in reviewing the decisional law, we find cases that provide a benchmark to determine the severity of discipline, which discipline must be tailored to Respondent's weighty aggravating factors and minimal mitigation.

In *Office of Disciplinary Counsel v. Paul J. McArdle*, 39 DB 2015 (D. Bd. Rpt. 9/26/2016) (S. Ct. Order 11/22/2016), McArdle filed multiple frivolous actions based on the same lawsuit in defiance of several court orders, showed contempt for the authority of the courts, and failed to recognize his misconduct. The Board found that McArdle's condescension for the judicial system was troubling, and his conduct indicated that his persistent refusal to accept adverse court rulings stemmed from his disdain, and not from a good faith interpretation of the court decisions. The Board found that McArdle's unrepentant attitude rendered him unfit to continue practicing law. The Board recommended and the Court imposed a suspension of one year and one day, which required McArdle to petition for reinstatement and prove his fitness before resuming practice.

In the matter of *Office of Disciplinary Counsel v. Mary Ellen Chajkowski*, No. 81 DB 2015 (D. Bd. Rpt. 3/2/2017) (S. Ct. Order 6/1/2017), after exhausting all appellate

remedies in her client's worker's compensation matter, Chajkowski continued filing frivolous petitions for many years and failed to advise her client that his case had reached its conclusion. The Board found that Chajkowski's continued representation constituted a failure to withdraw pursuant to the rules, and her misconduct prejudiced the administration of justice. In aggravation, Chajkowski failed to accept responsibility for her misconduct and attempted to relitigate her client's matter at the disciplinary hearing and before the Board at oral argument. Chajkowski's prior record of discipline consisting of an informal admonition was another aggravating factor. Upon the Board's recommendation, the Court imposed a one year and one day suspension.

In another matter, *Office of Disciplinary Counsel v. Thomas Peter Gannon*, 123 DB 2017 (D. Bd Rpt. 9/21/2018) (S. Ct. Order 12/21/2018), Gannon filed multiple baseless and frivolous filings despite numerous warnings from judges. After being disqualified as his client's attorney, Gannon continued to hold himself out as being the client's attorney in many pleadings and motions filed in state court. The Board found that Gannon abused his client's trust by counseling his client to pursue a non-existent claim for years. Gannon had no history of discipline and had practiced law for decades. While the Board recommended a five year suspension, the Court handed down a lesser suspension of two years.

Similar to the respondents in the above-cited matters, Respondent filed a frivolous petition containing a false averment, failed to withdraw from Ms. Kissinger's matters, persisted in filing pleadings to the extent that the court ordered her removed from the matters, and exhibited a lack of understanding of her responsibilities. Respondent made Ms. Kissinger's matters about herself and failed to grasp that her own actions

created chaos and confusion for her client and the court system.

Upon this record, after considering the nature and gravity of Respondent's misconduct, weighing the significant aggravating factors and the less compelling mitigation, and analyzing the decisional law, we recommend that Respondent be suspended for one year and one day. This suspension is within the range of discipline meted out in similar matters and will protect the public, in keeping with the goals of the disciplinary system, by requiring Respondent to prove her fitness prior to resuming the practice of law.

V. RECOMMENDATION

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

It is further recommended that the expenses incurred in the investigation and prosecution of this matter be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: *S/Shohin H. Vance*
Shohin H. Vance, Member

Date: September 15, 2023

Members Miller, Mongeluzzi, and Senoff recused.