IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 3050 Disciplinary Docket No. 3
Petitioner	:	No. 17 DB 2023
v.	:	Attorney Registration No. 63600
	:	(Philadelphia)
ROBERT SCOTT CLEWELL,	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 24th day of July, 2024, upon consideration of the Report and Recommendations of the Disciplinary Board, Robert Scott Clewell is suspended from the Bar of this Commonwealth for a period of two years. Respondent shall comply with the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. *See* Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 07/24/2024

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. 17 DB 2023
v.	:	Attorney Registration No. 63600
ROBERT SCOTT CLEWELL, Respondent	:	(Philadelphia)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on March 16, 2023, Petitioner, Office of Disciplinary Counsel, charged Respondent, Robert Scott Clewell, with violations of the Rules of Professional Conduct arising out of allegations of misconduct in three client matters. Respondent filed an Answer to Petition for Discipline on May 1, 2023.

A prehearing conference was held on August 2, 2023. On September 15, 2023, the parties filed Joint Stipulations of Fact and Law wherein Respondent stipulated to the factual allegations and rule violations in the Petition for Discipline. On September

19, 2023, a District I Hearing Committee ("Committee") held a disciplinary hearing. In its case-in-chief, Petitioner moved into evidence the Joint Stipulations and Exhibits ODC-1 through ODC-51. Petitioner moved into evidence Exhibits ODC-52 through ODC-59 during the dispositional phase of the hearing, and presented testimony from three witnesses, the complainants in this matter. Respondent declined to cross-examine the witnesses. Respondent appeared pro se and testified on his own behalf. Respondent presented no other witnesses and introduced no exhibits.

On November 6, 2023, Petitioner filed a post-hearing brief and requested that the Committee find that Respondent violated the rules charged in the Petition for Discipline and recommend to the Board that Respondent be suspended for at least two years. On December 18, 2023, Respondent filed a post-hearing brief and advocated for a suspension for no less than one year and one day. By Report filed on January 25, 2024, the Committee concluded that Respondent violated the Rules of Professional Conduct set forth in the Petition, but for Rule 3.3(a)(1), and recommended that he be suspended for a period of two years.

Respondent filed a Brief on Exceptions on February 14, 2024, contending that the Committee erred in not giving weight in mitigation to his testimony concerning his mental health issues. Petitioner filed a Brief Opposing Exceptions on February 23, 2024. The Board adjudicated this matter at the meeting on April 10, 2024.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, 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 an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent is Robert Scott Clewell, born in 1965 and admitted to practice law in Pennsylvania on December 6, 1991. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. (Joint Stip. ¶ 2; N.T. 92)

The TEC Electrical Matter

3. On September 8, 2015, TEC Electrical Contracting, Inc. ("TEC") filed a Mechanic's Lien Claim in the Court of Common Pleas of Montgomery County, PA, in a case captioned *TEC Electrical Contracting, Inc. v. 1133 Black Rock Road LLC et al.*, No. 2015-24536 ("CRD Case"). (Pet. ¶ 3)[1]

4. In the Mechanic's Lien Claim in the CRD Case, TEC asserted that the amount due and unpaid was $489,487.47. (Pet. ¶ 4)

5. By email dated October 26, 2016, Respondent:

   a. informed TEC that he had conducted a "cursory review" of "two pending mechanic's lien litigation cases" in which TEC was involved;

   b. set forth his proposed "strategy" for the cases; and

   c. provided TEC with a "Flat Fee Pricing Proposal," setting forth three possible options for representing TEC. (Pet. ¶ 5)

[1] The paragraphs of the Petition for Discipline cited in this section constitute stipulated facts.

6. In October 2016, Respondent did not have professional liability insurance. (Pet. ¶ 6)

7. Respondent did not acquire professional liability insurance until some point after June 2, 2019. (Pet. ¶ 7)

8. Respondent failed to inform TEC that he did not have professional liability insurance. (Pet. ¶ 8)

9. On or about November 1, 2016, TEC retained Respondent on a flat fee basis for representation in multiple matters. (Pet. ¶ 9)

10. Shortly after TEC retained Respondent, the terms of the agreement were expanded to include representation in the CRD Case. (Pet. ¶ 10)

11. On December 20, 2016:

a. Respondent entered his appearance as TEC's counsel in the CRD Case; and

b. TEC's prior counsel withdrew from the CRD Case. (Pet. ¶ 11)

12. On September 11, 2017, the defendants in the CRD Case filed a Motion of 1133 Black Road, LLC, C. Raymond Davis and Sons, and Liberty Mutual Insurance to Strike Mechanic's Lien and Release of Lien Discharge Bond ("First Motion to Strike Mechanic's Lien"). (Pet. ¶ 12)

13. On October 16, 2017, Respondent filed a response to the First Motion to Strike Mechanic's Lien in the CRD Case. (Pet. ¶ 13)

14. By Order dated January 26, 2018, and filed on January 29, 2018, the trial court in the CRD Case scheduled argument for February 5, 2018, with respect to the First Motion to Strike the Mechanic's Lien. (Pet. ¶ 14)

15. On February 5, 2018, the trial court held a hearing in the CRD Case with respect to the First Motion to Strike Mechanic's Lien. (Pet. ¶ 15)

16. On February 12, 2018, Respondent filed a Petition to Withdraw as Counsel for TEC Electrical Contracting, Inc. in the CRD Case, claiming, *inter alia*, that TEC had failed to make payments toward his fee and that he had a "strained relationship" with his client. (Pet. ¶ 16)

17. By Order dated March 5, 2018, and filed on March 8, 2018, the trial court denied the First Motion to Strike Mechanic's Lien in the CRD Case. (Pet. ¶ 17)

18. By Order dated March 20, 2018, and filed on March 22, 2018, the trial court struck Respondent's Petition to Withdraw as Counsel in the CRD Case, without prejudice, because the matter had appeared on the Rule Returnable List without a proper Certificate of Service having been entered. (Pet. ¶ 18)

19. Respondent did not file a new petition to withdraw as counsel in the CRD Case and remained as TEC's counsel. (Pet. ¶ 19)

20. In an email dated May 14, 2018, addressed to Brian Turner and Angie Turner of TEC, Respondent set forth the status of the cases in which he represented TEC, including, *inter alia*:

a. in the CRD Case, he was scheduled to take a deposition the next week;

b. in a matter involving Penn Asian Senior Services ("Passi Matter"), Respondent would draft and serve a new "Notice of Intent";

c. the Notice of Intent in the Passi Matter needed to be filed by June 30, 2018, and Respondent expected to have it "sent off by the end of th[e] week." (Pet. ¶ 20)

21. In Respondent's May 14, 2018 email, he also set forth the terms under which he would continue to represent TEC in the CRD Case and the Passi Matter, including:

a. he would agree to represent TEC "to the completion of [the] CRD matter for a flat-rate fee of $3,200," which would include "all representation up to this point, and all future representation through to either settlement or judgment";

b. the flat fee for the CRD Case would be "due now, but there [would] be no additional invoices or billings" and TEC would be "paid in full";

c. he would agree to represent TEC in the Passi Matter for a flat fee of $850.00, which would "include representation up to and including the filing [of] the actual Mechanic's Lien";

d. if he needed to file a complaint to foreclose on the lien in the Passi Matter, he would "need to provide a proposal on an additional flat fee"; and

e. if he were retained to provide representation in both cases, he would reduce the "full flat fee to a total of $3,750, which is due up front." (Pet. ¶ 21)

22. During an exchange of additional emails on May 15 and 16, 2018, Brian and Angie Turner of TEC raised concerns about the progress of the CRD Case, and Angie Turner told Respondent that TEC would make a payment on the morning of a scheduled deposition, so that TEC would "feel comfortable that this is moving forward." (Pet. ¶ 22)

23. In an email dated May 16, 2018, Respondent revised the terms for his continued representation of TEC to include:

a. TEC would pay Respondent $1,925.00, due the morning of a deposition scheduled for May 24, 2018;

b. TEC would make a second payment of $1,925.00, due upon receipt of an invoice to be sent on June 15, 2018; and

c. the "total flat-fee amount" would "cover the CRD case thru to its conclusion and anything involving the PASSI matter up to and including the filing of a ... mechanics lien claim." (Pet. ¶ 23)

24. TEC agreed to the terms Respondent set forth in his May 16, 2018 email. (Pet. ¶ 24)

25. No depositions were ever taken in the CRD Case, and TEC did not make the payments on the schedule provided. (Pet. ¶ 25)

26. As discussed below, TEC later paid Respondent his fee for representation in the CRD Case and the Passi Matter, and Respondent agreed to continue the representation. (Pet. ¶ 26)

27. On June 27, 2018, Brian Turner filed a Mechanic's Lien Claim on behalf of TEC against Penn Asian Senior Services; the case was captioned *TEC Electrical Contracting v. Penn Asian Senior*, No. 1806M0012. (Pet. ¶ 27)

28. The Mechanic's Lien Claim Mr. Turner filed in the Passi Case was deficient in that:

a. the caption incorrectly identified the record owner of the property as "Penn Senior Asian," when the actual owner was "Penn Asian Senior Services"; and

b. it did not state when TEC had provided formal written notice of its intention to file a claim to the owner of the property. (Pet. ¶ 28)

29. On July 20, 2018, the defendants in the CRD Case:

a. filed a Motion of 1133 Black Road, LLC, C. Raymond Davis and Sons, Inc. and Liberty Mutual Insurance to Strike Mechanics' Lien and Release Lien Discharge Bond ("Second Motion to Strike Mechanic's Lien"); and

b. served a copy of the Second Motion to Strike Mechanic's Lien on Respondent. (Pet. ¶ 29)

30. Respondent received the Second Motion to Strike on July 20, 2018. (Pet. ¶ 30)

31. By email dated July 31, 2018, Angie Turner, *inter alia*:

a. told Respondent that TEC would be paying $500 toward its balance by Friday, August 3, 2018; and

b. told Respondent that TEC would still owe $2,150 and would pay that shortly. (Pet. ¶ 31)

32. By email to Ms. Turner, dated July 31, 2018, Respondent, *inter alia*, offered to send an invoice for the $500 payment. (Pet. ¶ 32)

33. By email dated August 2, 2018, Ms. Turner:

a. sought information from Respondent regarding the status of the CRD Case, including, *inter alia*, whether there were new dates for a deposition; and

b. told Respondent that she would be making a payment that day, but "need[ed] to see things moving." (Pet. ¶ 33)

34. On August 9, 2018, Penn Asian Senior Services filed preliminary objections in the Passi Case. (Pet. ¶ 34)

35. Respondent has provided a copy of an email which, according to him, he sent to Brian and Angie Turner, on August 28, 2018. In the email, Respondent:

a. wrote that he was "terminating representation [of TEC] in all legal matters effective immediately";

b. recommended that TEC seek out advice of new counsel;

c. noted that TEC would "lose important legal rights" if it did not meet certain deadlines; and

d. suggested that the "most immediate concern [was] the Passi matter, in which TEC could lose important legal rights if it "d[id] not file an answer or get an extension by August 30th, 2018." (Pet. ¶ 35)

36. Despite allegedly having sent TEC the letter terminating his representation, Respondent did not withdraw as TEC's counsel in the CRD Case. (Pet. ¶ 36)

37. On August 29, 2018, a Rule to Show Cause was issued in the CRD Case directing TEC to "show cause why [the defendants were] not entitled to the relief requested [in the Second Motion to Strike Mechanic's Lien] by filing an answer in the form of a written response at the Office of the Prothonotary on or before the 1st day of October 2018." (Pet. ¶ 37)

38. On August 30, 2018, counsel for the defendants in the CRD Case served the Rule to Show Cause on Respondent. (Pet. ¶ 38)

39. Respondent received the Rule to Show Cause on August 30, 2018. (Pet. ¶ 39)

40. By email dated September 11, 2018, Angie Turner asked Respondent to provide "the remainder of our agreed upon bill to ... close out the CRD and Passi cases." (Pet. ¶ 40)

41. By emails dated September 11 and 12, 2018, Respondent told Ms. Turner, *inter alia*, that:

a. he "agree[d] to proceed with representation on both cases [the CRD Case and the Passi Case] as long as [the bill was] paid";

b. he would send her an invoice for the balance due; and

c. the balance due was $1,950.00. (Pet. ¶ 41)

42. By email dated September 18, 2018, Respondent requested information about the Passi Case from Ms. Turner, and told her that he "would like to get caught up this week and mov[e] forward with both Passi and CRD." (Pet. ¶ 42)

43. By a text message dated September 19, 2018, Brian Turner of TEC:

a. asked Respondent to send him the balance he owed, and said he would pay it that day; and

b. told Respondent that he needed to "close out the CRD case." (Pet. ¶ 43)

44. By a text message dated September 19, 2018, Respondent:

a. informed Mr. Turner that he would "move forward as aggressively as possible on CRD";

b. asked Mr. Turner to let him know the status of the Passi Case, so that he would "know what I need to do with that case"; and

c. told Mr. Turner that he would send him the invoice and would "follow up with [him] by end of th[e] week." (Pet. ¶ 44)

45. On September 19, 2018, TEC paid Respondent the additional $1,950.00 for his representation in the CRD Case and the Passi Case; this was the total amount outstanding toward his "flat fee" for the cases. (Pet. ¶ 45)

46. Despite having agreed to provide representation in the Passi Case, Respondent never reviewed the Mechanic's Lien Claim Brian Turner had filed or filed anything on TEC's behalf in the case. (Pet. ¶ 46)

47. Respondent failed to file an answer to the Second Motion to Strike Mechanic's Lien in the CRD Case by the October 1, 2018 due date or appear at a rule returnable hearing on that date. (Pet. ¶ 47)

48. By Order dated October 2, 2018, the trial court in the Passi Case sustained the defendant's Preliminary Objections, and struck TEC's mechanic's lien. (Pet. ¶ 48)

49. By Order dated October 3, 2018, and filed on October 10, 2018, the trial court in the CRD Case, having received no response to the Second Motion to Strike Mechanic's Lien:

a. struck TEC's Mechanic's Lien Claim;

b. released a Lien Discharge Bond; and

c. directed TEC to pay CRD attorney's fees in the amount of $1,000 incurred in presenting the motion. (Pet. ¶ 49)

50. On October 21, 2018, Respondent filed in the CRD Case a Motion of TEC Electrical Contracting, Inc., for Reconsideration and to Vacate and Open Judgment In Favor of 1133 Black Rock Road, LLC, C. Raymond Davis and Sons, Inc. and Liberty Mutual Insurance, Striking Mechanic's Lien and Release of Lien Discharge Bond ("Motion for Reconsideration"). (Pet. ¶ 50)

51. In the Motion for Reconsideration, Respondent:

a. acknowledged that he had not "appeared at the hearing or filed a written answer by the rule returnable date of October 1, 2018";

b. acknowledged that he had received a copy of the Second Motion to Strike Mechanic's Lien from defendants' counsel on July 20, 2018;

c. told the court that, on August 28, 2018, he had notified TEC by email that he was terminating representation of TEC, that TEC should obtain replacement counsel for all pending legal matters, and that TEC would lose important rights if deadlines were missed;

d. acknowledged that, on August 30, 2018, he had received the notice of a Rule Returnable requiring a response by October 1, 2018, and claimed that he had intended to file a Petition to Withdraw as Counsel;

e. stated that he had never entered the Rule Returnable date on his calendar;

f. claimed that a representative of TEC, Angie Turner, was "responsible for monitoring deadlines and tasks associated with th[e] lawsuit";

g. advised the court that, on September 18, 2018, Ms. Turner had notified him that "she no longer would have any responsibilities regarding TEC";

h. asserted that "[d]ue to the confusion," he had "missed the Rule Return date and did not file an answer or otherwise communicate with the Court or opposing Counsel";

i. suggested that having obtained a favorable ruling on the defendants' prior "identical [m]otion," TEC would have had an "excellent and

compelling argument on the merits in defending the [instant motion to strike the mechanic's lien]"; and

j. asked the court to reconsider its ruling, open the judgment, and "reinstate the Mechanic's Lien Complaint and Lien Bond." (Pet. ¶ 51)

52. On November 6, 2018, the defendants in the CRD Case filed a response in opposition to Respondent's Motion for Reconsideration. (Pet. ¶ 52)

53. By Order dated November 19, 2018, and filed on November 20, 2018, the trial court in the CRD Case denied Respondent's Motion for Reconsideration. (Pet. ¶ 53)

54. The trial court's November 19, 2018 Order effectively ended the CRD Case in that court. (Pet. ¶ 54)

55. Brian Turner reviewed the docket for the CRD Case and discovered on his own that the trial court had denied the motion for reconsideration. (Pet. ¶ 55)

56. By a text message dated November 20, 2018, Mr. Turner told Respondent that he had heard that the trial court in the CRD Case had denied the Motion for Reconsideration. (Pet. ¶ 56)

57. Respondent failed to:

a. respond to Mr. Turner's text message;

b. explain to TEC the significance of this ruling; or

c. discuss possible additional steps with his client regarding the CRD Case. (Pet. ¶ 57)

58. Between February 20, 2019 and April 22, 2019, Mr. Turner sent Respondent fourteen emails seeking information regarding the status of TEC's cases. (Pet. ¶ 58)

59. Respondent failed to reply to Mr. Turner's emails. (Pet. ¶ 59)

60. Respondent failed to communicate with TEC again until TEC reached out to him in or about March 2020, at which time Respondent informed TEC that the CRD Case was over. (Pet. ¶ 60)

61. On September 29, 2020, TEC commenced a civil action against Respondent in the Court of Common Pleas of Philadelphia by filing a Praecipe to Issue Writ of Summons; the case was captioned *TEC Electrical Contracting, Inc. v. Robert S. Clewell, Esquire, and Clewell Law Firm*, September Term 2020, No. 01785 ("Malpractice Case"). (Pet. ¶ 61)

62. On August 18, 2021, TEC filed a Complaint in Civil Action in the Malpractice Case, alleging that Respondent and Clewell Law Firm had committed legal malpractice in the CRD Case by:

a. failing to file a written response to the Second Motion to Strike Mechanic's Lien by the deadline of October 1, 2018; and

b. failing to appear at the Rule Returnable hearing on October 1, 2018. (Pet. ¶ 62)

63. On September 17, 2021, Respondent filed, through counsel, Defendants' Answer and New Matter to Plaintiff TEC Electrical Contracting, Inc.'s Complaint ("Malpractice Answer"). (Pet. ¶ 63)

64. Respondent signed a Verification, filed with the Malpractice Answer, in which he represented that he:

a. had "read the foregoing Answer and New Matter and the averments of fact made therein are true and correct based on knowledge, information, and/or belief"; and

b. understood that "false statements herein are made subject to penalty of 18 Pa.C.S. § 4904 relating to unsworn falsifications to authorities." (Pet. ¶ 64)

65. The Malpractice Answer asserted, *inter alia*, that:

a. "Defendants [Respondent and Clewell Law Firm] advised Plaintiff prior to the October 1, 2018 response and hearing date that they were terminating their representation of Plaintiff";

b. "Defendants also told Plaintiff that it should retain replacement counsel for all pending legal matters and if it did not, it could lose important rights if deadlines were missed"; and

c. as a result of the purported termination of Respondent's representation of TEC, "Defendants were under no duty to file a response or attend the scheduled hearing." (Pet. ¶ 65)

66. Respondent's assertion that he had advised TEC prior to October 1, 2018, that he and Clewell Law Firm were terminating representation was false or, at the least, materially misleading, because, as Respondent knew:

a. by September 19, 2018, TEC had paid Respondent in full for representation in the CRD Case; and

b. despite any earlier communications regarding the termination of Respondent's representation, he remained as TEC's counsel in the CRD Case as of October 1, 2018. (Pet. ¶ 66)

67. On November 15, 2021, Respondent's counsel filed a motion to withdraw their appearance, noting, *inter alia*, that:

a. Respondent's professional liability insurance carrier had determined that he was not covered by their insurance policy for the time period when TEC alleged that the legal malpractice had occurred; and

b. Respondent had not responded to counsel's attempts to discuss the issues of coverage and substitution of counsel. (Pet. ¶ 67)

68. On January 27, 2022, Respondent's counsel was granted leave to withdraw from the Malpractice Case. (Pet. ¶ 68)

69. On April 19, 2022, TEC's counsel filed a motion to withdraw from the Malpractice Case. (Pet. ¶ 69)

70. On February 8, 2023, TEC's counsel was granted leave to withdraw from the Malpractice Case. (Pet. ¶ 70)

71. Mr. Turner elected not to pursue the Malpractice Case further because "[w]hen it was determined that he didn't have malpractice insurance . . . the only other option for me to do at that point was to go after him personally. I didn't feel comfortable, despite the harm he did to me, going after him personally." (N.T. 32-33)

The Cifone Matter

72. On June 2, 2020, Michael Cifone spoke with Respondent regarding representation with respect to a dispute with a customer. Mr. Cifone alleged that the customer had failed to make a $4,500 payment for work Mr. Cifone had performed as a tile contractor. (Pet. ¶ 73)

73. In an email dated June 2, 2020, Respondent told Mr. Cifone that:

a. he believed Mr. Cifone had an "excellent case";

b. Mr. Cifone had "the option" of filing a case in the "local magistrate court," which would require a "small filing fee";

c. he would agree to represent Mr. Cifone for a "flat rate fee of $775"; and

d. the representation would include "drafting and filing the complaint and representing [Mr. Cifone] at the hearing." (Pet. ¶ 74)

74. By email dated June 2, 2020, Mr. Cifone agreed to the representation. (Pet. ¶ 75)

75. By email dated June 3, 2020, Respondent sent Mr. Cifone an invoice reiterating that:

a. he would charge a "flat fee" of $775.00, which was "Due upon Receipt";

b. the representation would be for a "Case Involving Daniel Phillips at District Court Proceeding"; and

c. the fee did not include an appeal. (Pet. ¶ 76)

76. On June 3, 2020, Mr. Cifone paid $775 to Respondent. (Pet. ¶ 77)

77. By email dated August 4, 2020, Respondent advised Mr. Cifone that he would:

a. file the case "shortly" in District Court in Chester County;

b. send Mr. Cifone an invoice for $196.50 to cover the filing fee and the cost of service by certified mail; and

c. "notify [Mr. Cifone] of the hearing date once it is set." (Pet. ¶ 78)

78. After sending Mr. Cifone the August 4, 2020 email, Respondent:

a. failed to file a complaint on Mr. Cifone's behalf; or

b. have any further communication with Mr. Cifone. (Pet. ¶ 79)

79. After August 4, 2020, Mr. Cifone repeatedly called Respondent and left messages seeking information about his case. (Pet. ¶ 80)

80. Respondent failed to return Mr. Cifone's calls. (Pet. ¶ 81)

81. On June 3, 2021, Petitioner served on Respondent a DB-7 Request for Statement of Respondent's Position ("Cifone DB-7 Letter") with respect to his representation of Mr. Cifone. (Pet. ¶ 82)

82. On August 4, 2021, Respondent filed a response to the Cifone DB-7 Letter. In the response, Respondent acknowledged that he had failed to "follow through on drafting and filing Mr. Cifone's matter" and stated that was "going to refund the entire fee of $775." (Pet. ¶ 83)

83. Respondent failed to refund Mr. Cifone's $775 fee. (Pet. ¶ 84)

84. On November 8, 2021, Mr. Cifone filed a Statement of Claim against Respondent with the Pennsylvania Lawyers Fund for Client Security (the "Fund"). (Pet. ¶ 85)

85. By letter dated November 9, 2021, the Fund:

a. provided Respondent with a copy of Mr. Cifone's Statement of Claim;

b. informed Respondent that he was entitled to respond to Mr. Cifone's claim and to request a hearing; and

c. informed Respondent that if the Fund did not hear from him within thirty days, the matter would "proceed accordingly." (Pet. ¶ 86)

86. Respondent did not file a response with the Fund. (Pet. ¶ 87)

87. By letter dated December 9, 2021, the Fund informed Respondent that if he intended to defend against Mr. Cifone's claims or request a hearing, he was required to do so "immediately." (Pet. ¶ 88)

88. Respondent did not file a response with the Fund. (Pet. ¶ 89)

89. By letter dated April 19, 2022, the Fund informed Respondent that Mr. Cifone's claim was scheduled to be reviewed by the Board of the Fund at its June 10, 2022 meeting, and that he should forward within fourteen days any additional information he would like the Fund's Board to consider. (Pet. ¶ 90)

90. Respondent did not provide the Fund with any additional information. (Pet. ¶ 91)

91. The Fund awarded Mr. Cifone $775.00. (Pet. ¶ 92)

The Kollhoff Matter

92. In 2019, Paul Kollhoff retained Respondent to review a contract regarding a company he was forming with Anthony Marano, called Elite Mechanical, LLC ("Elite"). (Pet. ¶ 94)

93. Respondent had not previously represented Mr. Kollhoff. (Pet. ¶ 95)

94. In or around February 2020, Mr. Kollhoff approached Respondent about further representation; specifically, Mr. Kollhoff wanted to withdraw as a member of Elite and divide up the assets of the business. (Pet. ¶ 96)

95. Respondent told Mr. Kollhoff that, for a fee of $575, he would send a letter to Mr. Marano regarding the matter and follow up with him. (Pet. ¶ 97)

96. Respondent did not communicate the basis or rate of his fee for this additional work to Mr. Kollhoff, in writing, before or within a reasonable time after commencing the additional representation. (Pet. ¶ 98)

97. On February 13, 2020, Respondent sent Mr. Marano an email informing him, *inter alia*, that:

a. he was representing Mr. Kollhoff in connection with the status of his membership interest in Elite, as well as his work status moving forward;

b. Mr. Kollhoff would no longer be reporting for work due to a personal matter;

c. Mr. Kollhoff needed to withdraw as a member of Elite;

d. Mr. Kollhoff hoped that the members of Elite would be able to reach an agreement regarding his withdrawal from Elite and the distribution of assets; and

e. all communications should be directed to Respondent's attention, rather than to Mr. Kollhoff. (Pet. ¶ 99)

98. By email dated February 13, 2020, Mr. Marano informed Respondent that he would be in touch the next week. (Pet. ¶ 100)

99. Respondent forwarded copies of his email and Mr. Marano's response to Mr. Kollhoff. (Pet. ¶ 101)

100. On February 19, 2020, Mr. Kollhoff paid Respondent $575.00 for his representation. (Pet. ¶ 102)

101. By letter dated February 27, 2020, Mr. Marano's attorney, Thomas A. Musi, Jr., Esquire:

a. informed Respondent that, effective February 14, 2020, Mr. Marano had agreed that Mr. Kollhoff was no longer a member of Elite;

b. criticized the quality of Mr. Kollhoff's work;

c. claimed that Mr. Marano had needed to replace work Mr. Kollhoff had done "at a great expense"; and

d. informed Respondent that Elite was "defunct" and that its operations had been shut down effective February 14, 2020. (Pet. ¶ 103)

102. Between March 23, 2020 and June 8, 2020, Mr. Kollhoff sent Respondent seven text messages seeking information about the case. (Pet. ¶ 104)

103. Respondent failed to respond to Mr. Kollhoff's text messages. (Pet. ¶ 105)

104. On June 24, 2020, Respondent sent Mr. Kollhoff a text message telling him that he would "call [him] back." (Pet. ¶ 106)

105. Respondent failed to call Mr. Kollhoff. (Pet. ¶ 107)

106. On July 9, 2020, Mr. Kollhoff sent Respondent text messages requesting that Respondent call him, and asserting that he would "be driving to your office pretty soon." (Pet. ¶ 108)

107. By a text message dated July 9, 2020, Respondent told Mr. Kollhoff that he:

a. had not been in his office "for a couple of weeks"; and

b. would call him the next week and "get caught up." (Pet. ¶ 109)

108. Respondent failed to call Mr. Kollhoff. (Pet. ¶ 110)

109. By an exchange of text messages on July 15 and 16, 2020, Respondent informed Mr. Kollhoff, *inter alia*, that:

a. Mr. Marano was "resistant to settlement";

b. Respondent would "follow up" with Mr. Marano and would "probably threaten a lawsuit to get him to be practical";

c. Mr. Marano "took a hard line initially" and his lawyer claimed that Mr. Kollhoff would actually owe him money;

d. Respondent would "reach out to give him [an] ultimatum on settlement and see if that works"; and

e. Respondent would "get back to [Mr. Kollhoff]." (Pet. ¶ 111)

110. Respondent did not:

a. "follow up" with Mr. Marano or his counsel;

b. "threaten a lawsuit"; or

c. "get back" to Mr. Kollhoff. (Pet. ¶ 112)

111. Between August 11, 2020 and October 26, 2020, Mr. Kollhoff sent Respondent five text messages seeking information about his case. (Pet. ¶ 113)

112. Respondent failed to respond to Mr. Kollhoff's text messages. (Pet. ¶ 114)

113. By a text message dated December 7, 2020, Mr. Kollhoff asked Respondent to "let [him] know what's up with [his] business" and threatened to "get another lawyer involved." (Pet. ¶ 115)

114. By a text message dated December 7, 2020, Respondent told Mr. Kollhoff that:

a. his situation had "taken on a different dynamic" due to the effect of Covid on businesses;

b. "as [Respondent] explained to [Mr. Kollhoff's] dad some time ago, [Respondent] received a response from [his] former partner's lawyer basically denying that there was any money left to buy [him] out" and saying "that they had to spend the money finishing the job";

c. the only option was to sue Mr. Marano; and

d. filing a lawsuit would cost money and involve risk, but that Mr. Kollhoff should let Respondent know if he was interested in discussing it. (Pet. ¶ 116)

115. By a text message dated December 7, 2020, Mr. Kollhoff replied, noting, *inter alia*, that:

a. Respondent had spoken to his father in March 2020;

b. when they last spoke, Respondent had indicated that he was sending Mr. Marano a letter threatening to "take him to court"; and

c. Mr. Kollhoff had been trying to talk to Respondent for almost a year about his matter. (Pet. ¶ 117)

116. By a text message dated December 7, 2020, Respondent told Mr. Kollhoff, *inter alia*, that:

a. he had sent Mr. Marano a letter, but "very little if anything ha[d] happened in the courts since [February]" and that "[n]othing could have progressed in terms of filing suit during that time";

b. Mr. Marano "is the type of guy that you have to sue"; and

c. Respondent was concerned about spending additional money on the case. (Pet. ¶ 118)

117. By a text message dated December 7, 2020, Mr. Kollhoff told Respondent that:

a. he understood that nothing had been happening in the court system, but that "a little communication would be great"; and

b. he wanted to sue Mr. Marano. (Pet. ¶ 119)

118. By a text message dated December 7, 2020, Respondent:

a. apologized to Mr. Kollhoff for the lack of communication;

b. told Mr. Kollhoff that if he wanted to pursue the matter, "we can file a writ of summons to institute the lawsuit";

c. told Mr. Kollhoff that he would "look at the letter from his lawyer" and advise Mr. Kollhoff further; and

d. told Mr. Kollhoff that he did "flat fees for these types of cases" and would "certainly be reasonable." (Pet. ¶ 120)

119. Following additional communications, Mr. Kollhoff agreed to retain Respondent to sue Mr. Marano. (Pet. ¶ 121)

120. By a "Clewell Law Firm Legal Services Agreement – Flat Fee" ("Fee Agreement"), which Respondent signed on February 24, 2021, Mr. Kollhoff retained Respondent's firm, Clewell Law Firm, to represent him in a matter involving the "Anthony Murano [sic]/Elite Mechanical LLC Case." (Pet. ¶ 122)

121. According to the Fee Agreement:

a. the representation would be for the "entire case from initiation of lawsuit until final disposition via trial, arbitration, or dismissal," but would not include any appeals; and

b. Respondent would receive a "flat fee" of $4,250.00, which was non-refundable and earned upon receipt. (Pet. ¶ 123)

122. On March 1, 2021:

a. Mr. Kollhoff paid Respondent the full $4,250.00;

b. Mr. Kollhoff sent Respondent a text message asking whether he needed to return the Fee Agreement before "we get started"; and

c. Respondent sent Mr. Kollhoff a text message telling him that he should send the signed Fee Agreement as soon as he could, but that Respondent would "start the process." (Pet. ¶ 124)

123. After Mr. Kollhoff paid Respondent the $4,250.00, Respondent:

a. failed to initiate a lawsuit on Mr. Kollhoff's behalf;

b. failed to respond to multiple requests for information; and

c. made knowingly false assertions regarding the status of the case, falsely telling Mr. Kollhoff that he had filed a Writ of Summons, had served the Writ of Summons on Mr. Marano's counsel, and was in the process of scheduling a deposition of Mr. Marano. (Pet. ¶ 125)

124. By a text message dated March 24, 2021, Mr. Kollhoff asked if Respondent had sent "that initial letter to Tony's office starting our case?" (Pet. ¶ 126)

125. Respondent failed to reply to Mr. Kollhoff's text message. (Pet. ¶ 127)

126. By text messages dated March 29, 2021, March 30, 2021, and March 31, 2021, Mr. Kollhoff sought information about his case. (Pet. ¶ 128)

127. In an exchange of text messages dated March 31, 2021, Respondent, *inter alia*:

a. told Mr. Kollhoff that he had been "out sick for a few days" following a "covid shot";

b. told Mr. Kollhoff that the "Writ of [S]ummons" was "ready to go";

c. agreed to split the filing fee with Mr. Kollhoff; and

d. agreed to Mr. Kollhoff's request that he copy him on all letters sent to Mr. Marano, "especially that initial one [starting] our lawsuit." (Pet. ¶ 129)

128. By a text message dated April 14, 2021, Mr. Kollhoff informed Respondent that he had returned the signed Fee Agreement to Respondent's office, and asked that Respondent "[c]opy [him] on what [he] sent to [Mr. Marano.]" (Pet. ¶ 130)

129. Respondent failed to respond to Mr. Kollhoff's April 14, 2021 text message. (Pet. ¶ 131)

130. By a text message to Respondent dated April 19, 2021, Mr. Kollhoff sought information about his case, writing, "???" (Pet. ¶ 132)

131. By a text message dated April 20, 2021, Respondent told Mr. Kollhoff that he would "get in touch before the end of the week." (Pet. ¶ 133)

132. Respondent failed to "get in touch" with Mr. Kollhoff by the end of the week. (Pet. ¶ 134)

133. By a text message dated April 28, 2021, Mr. Kollhoff asked Respondent to call him. (Pet. ¶ 135)

134. Respondent failed to call Mr. Kollhoff or reply to his text message. (Pet. ¶ 136)

135. By a text message dated May 3, 2021, Mr. Kollhoff asked Respondent to send him the "[e]mail u sent [to Mr. Marano]." (Pet. ¶ 137)

136. By a text message dated May 4, 2021, Respondent told Mr. Kollhoff, *inter alia*, that Respondent:

a. "ha[d] the Writ of Summons ready to go";

b. was "having [his] staff file it"; and

c. would send Mr. Kollhoff a copy once Respondent received a stamped copy. (Pet. ¶ 138)

137. By a text message dated May 4, 2021, Mr. Kollhoff:

a. told Respondent that he "would love a little communication throughout the process"; and

b. asked Respondent why he had not sent Mr. Marano the Writ of Summons yet. (Pet. ¶ 139)

138. Respondent failed to respond to Mr. Kollhoff's text message. (Pet. ¶ 140)

139. Respondent failed to file a Praecipe for a Writ of Summons on Mr. Kollhoff's behalf. (Pet. ¶ 141)

140. By a text message dated May 26, 2021, Mr. Kollhoff asked Respondent, "When are [w]e getting the stamped copy back????" (Pet. ¶ 142)

141. Respondent failed to respond to Mr. Kollhoff's text message. (Pet. ¶ 143)

142. In an exchange of text messages dated June 7, 2021:

a. Mr. Kollhoff asked whether Respondent "treat[ed] all [of his] clients like this ... ?";

b. Respondent told Mr. Kollhoff that he had been out of the office for a week or so "tending to some family issues";

c. Respondent told Mr. Kollhoff he would be back in the office on Wednesday (June 9, 2021), would "check on everything," and would "get back to [him]"; and

d. Mr. Kollhoff told Respondent to call him that week or he would "tak[e] other action." (Pet. ¶ 144)

143. By a text message dated June 10, 2021, Respondent told Mr. Kollhoff, *inter alia*, that:

a. he "ha[d] the writ" and it was "going to be served [the] next week";

b. Mr. Marano would then "know he is getting sued";

c. he wanted to take Mr. Marano's deposition "in the next few weeks or so to get info we can include in the complaint"; and

d. he would "be in touch early [the] next week with more details." (Pet. ¶ 145)

144. Respondent again failed to file a Praecipe for a Writ of Summons on Mr. Kollhoff's behalf. (Pet. ¶ 146)

145. By a text message dated June 16, 2021, Mr. Kollhoff asked Respondent, "When is he getting served this week?" (Pet. ¶ 147)

146. By a text message dated June 16, 2021, Respondent told Mr. Kollhoff that he was out of the office, but that upon his return he would "check to see if we received an affidavit of service from [the] process server." (Pet. ¶ 148)

147. Respondent's June 16, 2021 text was knowingly false, as he had not filed a Praecipe for a Writ of Summons, and there was nothing for him to serve on Mr. Marano or his counsel. (Pet. ¶ 149)

148. By a text message dated June 22, 2021, Respondent told Mr. Kollhoff that there was "[s]till no proof of service returned" and that he was "going to resubmit it and get an answer for [him] ASAP." (Pet. ¶ 150)

149. Respondent's June 22, 2021 text message was knowingly false, as he had not filed a Praecipe for a Writ of Summons and there was nothing for him to "resubmit." (Pet. ¶ 151)

150. By a text message dated June 22, 2021, Mr. Kollhoff asked Respondent "why was the proof of service returned?" (Pet. ¶ 152)

151. Respondent failed to reply to Mr. Kollhoff's question. (Pet. ¶ 153)

152. By text message to Respondent dated June 24, 2021, Mr. Kollhoff sought a response to his question, writing "??" (Pet. ¶ 154)

153. Respondent failed to reply to Mr. Kollhoff's text. (Pet. ¶ 155)

154. By a text message to Respondent dated July 1, 2021, Mr. Kollhoff again sought a response, writing, "???" (Pet. ¶ 156)

155. Respondent failed to reply to Mr. Kollhoff's text message. (Pet. ¶ 157)

156. By a text message dated July 6, 2021, Mr. Kollhoff asked Respondent to "Answer me please." (Pet. ¶ 158)

157. By a text message dated July 6, 2021, Respondent told Mr. Kollhoff, *inter alia*, that:

a. he had been "having trouble" receiving text messages;

b. he had "had the writ reinstated and [would] re-serve";

c. if his efforts to serve the Writ of Summons did not work this time, "there is a procedural rule that allows for alternate service"; and

d. he would "keep [him] posted." (Pet. ¶ 159)

158. By a text message dated July 6, 2021, Mr. Kollhoff asked Respondent why the Writ of Summons kept "coming back." (Pet. ¶ 160)

159. By a text message dated July 6, 2021, Respondent told Mr. Kollhoff that:

a. the Writ of Summons "just came back once" and that happened because "[n]obody was there";

b. Respondent would "give this top priority and petition to do it via email";

c. Respondent had "to make one more attempt"; and

d. Respondent would "keep [Mr. Kollhoff] in the loop on this and be on top of it." (Pet. ¶ 161)

160. Respondent's July 6, 2021 text messages were knowingly false, as he had not filed a Praecipe for a Writ of Summons, had not obtained a Writ of Summons, and had not had any Writ of Summons "reinstated." (Pet. ¶ 162)

161. By a text message dated July 23, 2021, Mr. Kollhoff asked Respondent, "What's up with the letter[?]" (Pet. ¶ 163)

162. By a text message dated July 26, 2021, Respondent told Mr. Kollhoff that he had been out of the office and would "check and let [him] know." (Pet. ¶ 164)

163. By a text message dated August 2, 2021, Respondent told Mr. Kollhoff that:

a. "[t]he Writ was sent to [the] process server" and Respondent was "waiting for [the] affidavit of service to be returned"; and

b. if the writ was not served by the next week, Respondent was "going to request that [Mr. Marano's] lawyer accept service on his behalf." (Pet. ¶ 165)

164. Respondent's August 2, 2021 text message was knowingly false, as he had not filed a Praecipe for a Writ of Summons and no "Writ was sent to [a] process server." (Pet. ¶ 166)

165. On August 16 and 17, 2021, Mr. Kollhoff sent Respondent additional text messages seeking information about the status of the case. (Pet. ¶ 167)

166. By a text message dated August 18, 2021, Respondent told Mr. Kollhoff that he had "served [Mr. Marano's] lawyer" and would be taking Mr. Marano's deposition "at some point over the next 4 to 6 weeks." (Pet. ¶ 168)

167. Respondent's August 18, 2021 text message was knowingly false, as he had not served anything on Mr. Marano's lawyer, and had no ability to take Mr. Marano's deposition over the next four to six weeks. (Pet. ¶ 169)

168. By a text message dated August 19, 2021, Mr. Kollhoff asked if Mr. Marano could "offer to just settle before that[?]" (Pet. ¶ 170)

169. Respondent did not respond to Mr. Kollhoff's August 19, 2021 text message. (Pet. ¶ 171)

170. By a text message dated September 15, 2021, Mr. Kollhoff asked if Respondent could call him and provide him with an update. (Pet. ¶ 172)

171. By a text message dated September 17, 2021, Respondent told Mr. Kollhoff that he was "[s]till working on getting a date for [Mr. Marano's] deposition," and would "let [Mr. Kollhoff] know as soon as [Respondent knew]." (Pet. ¶173)

172. Respondent's September 17, 2021 text message was knowingly false, as he had not initiated a case on Mr. Kollhoff's behalf and was not "working on getting a date for a deposition." (Pet. ¶ 174)

173. By a text message dated September 17, 2021, Mr. Kollhoff asked, "What do u mean date for deposition?" (Pet. ¶ 175)

174. Respondent did not respond to Mr. Kollhoff's text message. (Pet. ¶ 176)

175. By a text message dated October 7, 2021, Mr. Kollhoff sought information about his case, writing, "Yooo bob???" (Pet. ¶ 177)

176. Respondent did not respond to Mr. Kollhoff's text message. (Pet. ¶ 178)

177. By a text message dated October 11, 2021, Mr. Kollhoff again sought information about his case, writing, "?????" (Pet. ¶ 179)

178. By a text message dated October 11, 2021, Respondent told Mr. Kollhoff that he was in a deposition, had been out of town with a relative who was terminally ill, and would "check on everything and get back to [Mr. Kollhoff] [that] week." (Pet. ¶ 180)

179. By text messages dated October 15, 2021, October 18, 2021, and October 25, 2021, Mr. Kollhoff requested that Respondent call him. (Pet. ¶ 181)

180. By a text message dated October 25, 2021, Respondent:

a. told Mr. Kollhoff that he was dealing with "serious family issues" involving a cousin who was in the hospital;

b. apologized for "this delay";

c. acknowledged that Mr. Kollhoff "deserve[d] better service"; and

d. told Mr. Kollhoff that he would "make up for this somehow." (Pet. ¶ 182)

181. By a text message dated October 29, 2021, Respondent told Mr. Kollhoff that he "believe[d] [Mr. Marano] ha[d] been served" and that "the next step is scheduling a deposition in the next month or so." (Pet. ¶ 183)

182. Respondent's October 29, 2021 text message was knowingly false, as he had not filed a Praecipe for a Writ of Summons or attempted to serve anything on Mr. Marano or his counsel. (Pet. ¶ 184)

183. By a text message dated October 29, 2021, Mr. Kollhoff told Respondent that he was "trying to be sympathetic" to Respondent's personal issues and knew "this whole process takes time," but wanted some "communication and to know where we stand with it." (Pet. ¶ 185)

184. Respondent failed to respond to Mr. Kollhoff's October 29, 2021 text message. (Pet. ¶ 186)

185. By a text message dated November 29, 2021, Mr. Kollhoff asked that Respondent call him. (Pet. ¶ 187)

186. By a text message dated December 1, 2021, Respondent told Mr. Kollhoff that he would call him later that day. (Pet. ¶ 188)

187. Respondent failed to call Mr. Kollhoff. (Pet. ¶ 189)

188. By a text message dated December 2, 2021, Mr. Kollhoff told Respondent that he was "[s]till waiting for that call." (Pet. ¶ 190)

189. Respondent failed to respond to Mr. Kollhoff's text message or call him. (Pet. ¶ 191)

190. By a text message dated December 4, 2021, Mr. Kollhoff informed Respondent that he was "[s]till waiting for that infamous phone call." (Pet. ¶ 192)

191. Respondent failed to respond to Mr. Kollhoff's text message or call him. (Pet. ¶ 193)

192. By text message dated December 9, 2021, Mr. Kollhoff:

a. requested a refund of the money he had paid to Respondent; and

b. noted that he had received only one telephone call from Respondent in the past two years. (Pet. ¶ 194)

193. Respondent failed to respond to Mr. Kollhoff's text message. (Pet. ¶ 195)

194. By text message dated December 29, 2021, Mr. Kollhoff asked Respondent, "How do you do this to one individual[?]," and noted that he had "trusted [Respondent]." (Pet. ¶ 196)

195. Respondent failed to respond to Mr. Kollhoff's text message. (Pet. ¶ 197)

196. By a text message dated January 5, 2022, Mr. Kollhoff told Respondent that unless Respondent returned the money he had paid he would report Respondent to "the bar association." (Pet. ¶ 198)

197. Respondent failed to respond to Mr. Kollhoff's text message. (Pet. ¶ 199)

198. By text message dated January 10, 2022, Mr. Kollhoff told Respondent that he was reporting him to "the bar association." (Pet. ¶ 200)

199. On or about January 13, 2022, Respondent called Mr. Kollhoff and left him a voicemail informing him that he was having personal problems that were affecting his ability to work on his case. (Pet. ¶ 201)

200. By a text message on January 13, 2022, Mr. Kollhoff told Respondent that he "ha[d] till tomorrow." (Pet. ¶ 202)

201. Respondent failed to respond to Mr. Kollhoff's message. (Pet. ¶ 203)

202. By a text message on January 14, 2022, Mr. Kollhoff asked if he would be hearing from Respondent that day. (Pet. ¶ 204)

203. By a text message on January 14, 2022, Respondent told Mr. Kollhoff, *inter alia*, that:

a. he had "things with [himself] and [his] family," that these things had "caused some issues," and that he was "trying to address" the issues;

b. he had done "some work" on Mr. Kollhoff's case, but agreed that Mr. Kollhoff was "owed money back";

c. he had had "some very significant financial strain in [his] practice" and did not have the money to give Mr. Kollhoff at that point;

d. he was willing to send Mr. Kollhoff "refund payments" if he was willing to give Respondent more time "to make good on it"; and

e. Respondent "suppose[d]" Mr. Kollhoff could file a report against him, but that "if [his] license [was] put in jeopardy," he would "have a very difficult time earning money to reimburse [Mr. Kollhoff]." (Pet. ¶ 206)

204. By a text message dated January 14, 2022, Mr. Kollhoff told Respondent that:

a. he had been "working with [Respondent] for a whole year" and had not received "one phone call";

b. he had "wasted a whole year of not going after [his] money" from Mr. Marano;

c. the money he had given to Respondent "was all [he] had to go after him";

d. he needed the money to pay a new lawyer;

e. in two years, all Respondent had done was "send [Mr. Marano] one notice"; and

f. he wanted Respondent to "[g]et the money," or he would "go to the bar." (Pet. ¶ 206)

205. Respondent failed to respond to Mr. Kollhoff's text message. (Pet. ¶ 207)

206. By a text message dated January 18, 2022, Mr. Kollhoff told Respondent that he was giving him a "final last chance" before he filed his complaint. (Pet. ¶ 208)

207. Respondent failed to respond to Mr. Kollhoff's text message. (Pet. ¶ 209)

208. Respondent failed to refund any portion of the fee Mr. Kollhoff had paid him. (Pet. ¶ 210)

209. Respondent's fee of $4,250.00 was an excessive fee, where he failed to even initiate the lawsuit he had contracted to litigate on Mr. Kollhoff's behalf. (Pet. ¶ 211)

210. Mr. Kollhoff filed a claim with the Fund. (N.T. 51)

Respondent's Record of Discipline

211. On September 27, 2019, Respondent received an informal admonition for violating Rules of Professional Conduct 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), and 1.15(b). (ODC-54, p. 593; N.T. 93-94) The conduct leading to that discipline included a lack of competent representation, a lack of diligence, a failure to respond to a client's emails and telephone messages, and a failure to promptly refund an unearned fee. (ODC-54, pp. 594-95; N.T. 95-99)

212. The informal admonition did not deter Respondent from committing additional misconduct, as reflected in the following:

a. Respondent was retained by Mr. Cifone on June 2, 2020—just nine months after he had received private discipline—and he committed similar misconduct (Petition, ¶¶73-81, 84; N.T. 100-103);

b. Mr. Kollhoff retained Respondent to represent him in dissolving his company in or around February 2020, paid him to file a lawsuit in February 2021, and Respondent committed similar misconduct (Petition, ¶¶96-211; N.T. 104-5); and

c. On September 17, 2021, Respondent made misrepresentations to the trial court in responding to TEC's lawsuit. (Petition, ¶¶63-66)

213. On June 3, 2021, Petitioner served Respondent with a DB-7 Request for Statement of Respondent's Position related to his representation of Mr. Cifone, but Respondent continued to neglect Mr. Kollhoff's case—which was ongoing—and make false claims about his supposed progress. (ODC-37; N.T. 106-8)

The James Floor Covering, Inc. Lawsuit

214. On March 7, 2022, another former client filed a Complaint against Respondent in the Court of Common Pleas of Bucks County. *See, James Floor Covering, Inc. v. Robert Clewell et al.*, No. 2022-01073. (ODC-59, pp. 639-86)

215. The Complaint alleged, *inter alia*, that:

a. between December 2020 and October 2021, Respondent neglected obligations to complete legal work in multiple matters for which the former client had retained him;[2]

b. Respondent failed to communicate with his client; and

c. Respondent failed to return his unearned legal fees. (Id.; N.T. 108-115)

216. On February 27, 2023, James Floor Covering, Inc., filed a Motion for Summary Judgment asserting, among other things, that Respondent had failed to respond to two sets of Requests for Admissions. (ODC-59, pp. 696-744)

217. By Order dated May 25, 2023, the trial court granted the Motion for Summary Judgment. (ODC-59, p. 745; N.T. 110, 116)

Respondent's Lack of Competence In Handling His Own Professional Matters.

218. As noted above, on November 8, 2021, Mr. Cifone filed a claim with the Fund against Respondent. (Pet. ¶ 85)

[2] Regarding one of these matters, Respondent testified: "I filed the mechanics' lien – actually I did it like a pro se type – I didn't do it, I'm not licensed in New York, but I filed it in New York and I sent it and it was incorrect." (N.T. 109)

219. The Fund sent notices to Respondent on November 9, 2021, December 9, 2021, and April 19, 2022, seeking his position on Mr. Cifone's claim, but Respondent provided no response. (Pet. ¶¶ 86-91)

220. In his Answer to the Petition, Respondent explained his failure to respond to the Fund by asserting that he did not open mail related to the matter and that even as of the date of his answer (May 1, 2023), much of his mail "remain[ed] unopened":

> I was allowing mail to pile up and was neglecting to even open up mail during this time-period. Much of the mail, including the mail from the Fund, remains unopened even as of this date as it has been neglected for such a long period that I assume deadlines have passed and there is very little I can do to cure any problems. This is particularly the case with any mail that appeared from the envelope to be related to a problem or issue that I was avoiding.

(ODC-51, pp. 579; N.T. 119-21)

221. In the action TEC filed against Respondent, Respondent's insurance carrier determined that he had not been covered at the time of the alleged malpractice; his counsel filed a motion to withdraw, informing the trial court that Respondent had not responded to their attempts to address the issue with him. (Pet. ¶ 67; ODC-30).

222. Respondent similarly testified that in the James Floor Covering, Inc., lawsuit he "avoided looking at" the complaint (although he, in fact, answered it), and that he still had mail he had not opened related to the case. (N.T. 110-111, 113-118)

Respondent's Lack of Financial Responsibility

223. On December 20, 2012, Respondent and his wife filed a petition for bankruptcy under Chapter 13 of the Bankruptcy Code. (ODC-50, p. 599)

224. By Order dated February 21, 2014, the bankruptcy court confirmed their plan. (ODC-50, pp. 601, 607-09)

225. By Order dated November 21, 2016, the bankruptcy court dismissed the petition due to a failure to make the required payments. (ODc-50, pp. 618-621)

226. Respondent has open judgments in the following matters arising in New Jersey:

a. a default judgment entered on June 4, 2014, in *Stonegate Community v. Robert Clewell*, No. BUR DC-001904-14, in which the amount demanded was $1,903 (ODC-56);

b. a judgment of $2,378.11, entered on January 21, 2021, in *Division of Taxation v. Robert S. Clewell*, No. DJ-007331-21 (ODC-57); and

c. a judgment of $1,093.40, entered on August 10, 2021, in *LVNV Funding LLC v. Robert Clewell*, No. BUR DC-006671-20 (ODC-58).

Testimony of Complainants Brian Turner, Paul Kollhoff, and Michael Cifone

227. Brian Turner credibly testified that:

a. he is the owner and President of TEC (N.T. 25);

b. when he retained Mr. Clewell, TEC had around 23 employees, but "it dwindled down to zero" during the course of the representation (N.T. 25-26);

c. the money at issue in the CRD Case was an "extremely large amount" for him (N.T. 27);

d. the money at issue in the Passi Case was also a significant amount for him (N.T. 28-29);

e. Respondent not only neglected Mr. Turner during the representation, but treated him "almost like ... a nuisance" (N.T. 29-30);[3]

f. when TEC sued Respondent because of his neglect of the CRD Case, Mr. Turner "assumed that [Respondent] had malpractice insurance" (N.T. 32);

g. after learning that Respondent did not have insurance applicable to the case, Mr. Turner discontinued TEC's lawsuit because he did not want to "go after [Respondent] personally" and risk harming Respondent's family (N.T. 32-33); and

h. Respondent never apologized to Mr. Turner (N.T. 33-34).

228. Mr. Turner provided credible testimony regarding the impact Respondent's conduct had on him, including:

a. that he was harmed financially due not only to the loss of the liens securing his interests, but also because he was continually paying Respondent for work that "was never getting done" (N.T. 34-35);

b. during the time Respondent was representing TEC, he needed to lay off "every single one of [TEC's] employees" and lost his house (N.T. 35-36);

c. while Mr. Turner has since rebuilt his company, he will "never be the same" and is still "constantly scared that something is going to happen" to him (N.T. 36-37);

[3] At the disciplinary hearing and in his brief, Respondent insisted that he spoke at length with Mr. Turner and his wife. (Resp. Br. 3) But Respondent elected not to cross-examine Mr. Turner, and Respondent's own testimony was at odds with the facts to which he stipulated.

d. he no longer has trust in lawyers or the legal system (N.T. 37-42); and

e. he believes lawyers are only concerned with "understanding how much money they can get out of you ... rather than actually resolving or caring about a case that's actually being heard and doing what's best for the customer or the client." (N.T. 39-40)

229. Paul Kollhoff credibly testified that:

a. he does "commercial HVAC" work (N.T. 43);

b. working with Respondent was his first experience with a lawyer (N.T. 43);

c. at the time he retained Respondent to represent him in dissolving Elite Mechanical LLC, Respondent was aware that Mr. Kollhoff was attempting to deal with issues related to his sobriety (N.T. 44-46);

d. the matter he entrusted to Respondent was "[o]ne of the most important in [his] life" (N.T. 46);

e. he was "dead broke" at the time he retained Respondent to sue his former partner and needed to borrow the money he paid from his parents (N.T. 47-48);

f. Respondent never returned the fee he had paid (N.T. 51);

g. he has a claim pending with the Fund related to Respondent's actions (N.T. 51); and

h. he needed to pay another attorney $2,500 to take on the representation for which he had previously paid Respondent. (N.T. 50-51).[4]

230. Michael Cifone credibly testified that:

a. he is an installer of ceramic tile who retained Respondent to sue a former customer who owed him $4,500 (N.T. 54-56);

b. when he hired Respondent, it was the only time he had ever retained an attorney (N.T. 54-55);

c. the $4,500 involved was a "lot of money" for him (N.T. 56);

d. after Respondent stopped answering his calls, Mr. Cifone gave up on pursuing his case because he believed the time to file had passed (N.T. 56-58);

e. his experience with Respondent adversely affected his view of the legal profession (N.T. 58);

f. Respondent never apologized for his conduct or expressed any remorse (N.T. 59-60);

g. Respondent never returned the fee he had paid (N.T. 59); and

h. the Fund paid him the $775 fee he paid to Respondent, but he has received no compensation for the $4,500 claim he retained Respondent to pursue (N.T. 59).

[4] After retaining new counsel, Mr. Kollhoff eventually declined to pursue the lawsuit against his former partner. (N.T. 52)

Respondent's Testimony

231. At the hearing, Respondent expressed remorse, testifying that he was "incredibly embarrassed" and "ashamed" about his actions, which he described as "despicable," and that he was sorry for the "shame" he had brought on the legal profession. (N.T. 77-78)

232. Respondent offered a sincere apology to Mr. Kollhoff for "betray[ing] [his] trust" (N.T. 53), but offered no apologies to Mr. Turner or to Mr. Cifone.

233. Respondent credibly testified about his mental and physical health, asserting that:

a. "for the better part of 10 to 15 years" he has been having issues with his mental health (N.T. 83, 129);

b. the issues involve "feeling depression and anxiety" (N.T. 84-85);

c. in November 2019, he had a heart attack and he has diabetes (N.T. 84);

d. over the "last four to five years," he has felt "sadness [and] despair" on most days (N.T. 85-86); and

e. he is subject to "[p]rocrastination beyond belief," has "piles of mail that are still not opened [because he does not] want to deal with it," and "avoid[s] approaching these situations" (N.T. 88).

234. Respondent credibly testified about steps he has taken to address his mental health issues:

a. in the past his primary care providers had prescribed medications for him, but "[f]or many different reasons, multiple side effects and just

the way [he] felt on them, none of them have worked" and he "went off them essentially in short order" (N.T. 83-84);

b. "[o]ver the last year or so ... [he] ha[s] begun to seek out professional help" including an evaluation with Lawyers Concerned for Lawyers (N.T. 79, 84);

c. he has "been seeing a counselor on an as-needed basis" (N.T. 87);

d. he has had "a few sessions" with the counselor, but does not have "regular weekly appointments" and instead makes an appointment when he feels the need to do so (N.T. 127-29);

e. he is able to "spill [his] guts" to the counselor, but she does not provide "much assistance in terms of how to cope with this or a strategy of what to do" (N.T. 87, 126-27);

f. he is "trying some white, some soft light therapy" (N.T. 90); and

g. he is taking vitamins and attempting to improve his diet. (N.T. 91)

235. Respondent offered no expert witnesses or treatment records regarding his mental health.

236. During cross-examination, Respondent acknowledged that:

a. he has problems with "procrastination," "not getting things done," "avoiding difficult situations," "extreme mental and physical fatigue," "severe approach avoidance of anything confrontational," a "lack of mental focus and sharpness," and "mental paralysis" (N.T. 124-25);

b. these problems are "not good characteristics of a good attorney (N.T. 125); and

c. he is "not fit" as an attorney (N.T. 114)

237. Respondent testified that he has taken a position working "behind the scenes" at a law firm but acknowledged that he is still representing "a few" of his own clients. (N.T. 121-22)

238. Respondent acknowledged that he "completely understands" that he "deserves a suspension." (N.T. 155)

III. CONCLUSIONS OF LAW

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

   a. RPC 1.1 (TEC, Cifone, Kollhoff), 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;

   b. RPC 1.3 (TEC, Cifone, Kollhoff), which states that a lawyer shall act with reasonable diligence and promptness in representing a client;

   c. RPC 1.4(a)(2) (Cifone, Kollhoff), which states that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;

   d. RPC 1.4(a)(3) (TEC, Cifone, Kollhoff), which states that a lawyer shall keep the client reasonably informed about the status of the matter;

   e. RPC 1.4(a)(4) (TEC, Cifone, Kollhoff), which states that a lawyer shall promptly comply with reasonable requests for information;

f. RPC 1.4(c) (TEC), which states that a lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least $100,000 per occurrence and $300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated;

g. RPC 1.5(a) (Cifone, Kollhoff), which states that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee;

h. RPC 1.5(b) (Kollhoff), which states that when the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation;

i. RPC 1.15(e) (Cifone, Kollhoff), which states that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property;

j. RPC 1.16(d) (TEC, Cifone, Kollhoff), which states 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;

k. RPC 8.4(c) (TEC, Kollhoff), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

l. RPC 8.4(d) (TEC), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.[5]

2. Respondent failed to satisfy his burden to prove that he suffered from a psychiatric disorder that was a causal factor in his misconduct, and therefore is not entitled to mitigation. *Office of Disciplinary Counsel v. Seymour Braun*, 553 A.2d 894 (Pa. 1989).

IV. DISCUSSION

In this disciplinary matter, the Board considers Respondent's exceptions to the Committee's Report and unanimous recommendation to suspend him for a period of two years for his ethical violations in three separate client matters. Respondent contends

[5] In addition, Respondent stipulated that he violated 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. (Joint Stipulations ¶ 4) The alleged rule violation to which Respondent stipulated apparently relates to certain statements in the Answer that Respondent filed, through counsel, in a malpractice case brought against Respondent by TEC. (Pet. ¶¶ 64-66; Pet. Br. 2, 36 n.8) Although the statements at issue were made by Respondent's counsel, Respondent signed a Verification representing that he had "read the foregoing Answer and New Matter and the averments of fact made therein are true and correct based on knowledge, information, and/or belief." (Pet. ¶ 64(a)) While this may implicate penalties under 18 Pa. C.S. § 4904 (Pet. ¶ 64(b)), the Committee found that the statements made by Respondent in his capacity as a client of another lawyer, even if false, do not constitute a violation of Rule 3.3(a). *See* Rule 3.3, Comment [1] ("This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal."). And as stipulated by Respondent, the same admittedly false statements—while they do not violate Rule 3.3—nevertheless give rise to violations of Rule 8.4. (Joint Stipulations ¶ 4)

that the Committee erred in not weighing his testimony on mental health issues in mitigation of discipline. Respondent did not set forth an alternative disciplinary sanction in his exceptions, but requested a suspension for not less than one year and one day in his post-hearing brief to the Committee. Petitioner advocates for a suspension of not less than two years.

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). In the instant matter, Respondent stipulated to the factual allegations and rule violations in the Petition for Discipline. Given these stipulations, the Board concludes that Petitioner satisfied its burden of proof, and the only issue to be decided in this matter is the extent of discipline for Respondent's admitted rule violations. For the following reasons, the Board recommends that Respondent be suspended for a period of two years.

The record established that in November 2016, TEC retained Respondent for representation in multiple matters, which included two mechanic's liens. Respondent failed to inform TEC that he lacked professional liability insurance. He then failed to file a brief in opposition to a dispositive motion in the CRD case, and failed to appear before the trial court on that motion. As a result, the court struck TEC's mechanic's lien for $489,487.47, without any opposition. Respondent further failed to provide work on the Passi case, which resulted in a court striking another mechanic's lien without opposition, this time in the amount of $77,308.52. After incompetently representing TEC in these matters, Respondent abandoned his client entirely, failing to respond to repeated requests for information. TEC later sued Respondent and his law firm for his neglect in the CRD case. Respondent's answer to TEC's complaint included a false or materially

misleading assertion regarding termination of his representation of TEC. TEC declined to pursue the malpractice case after learning that Respondent was not covered by professional liability insurance for the time period when TEC alleged the legal malpractice had occurred.

On June 2, 2020, Michael Cifone paid Respondent a flat fee of $775 to file a lawsuit against a former customer and to represent him in that case. Following one additional communication from Respondent to Mr. Cifone promising to file the case in a prompt manner, Respondent abandoned Mr. Cifone, failed to file the case, and ignored his client's requests for information. Respondent nonetheless kept his unearned fee Mr. Cifone had paid him, forcing Mr. Cifone to seek reimbursement from the Pennsylvania Lawyers Fund for Client Security. The Fund awarded Mr. Cifone $775.

In or around February 2020, Paul Kollhoff retained Respondent to assist him in dissolving a business he had formed with a partner and dividing up its assets. Respondent orally agreed to send a letter to Mr. Kollhoff's partner and follow up with him in exchange for a $575 fee. Respondent failed to communicate the basis or rate of the fee in writing. Respondent sent an email to Mr. Kollhoff's partner, but took no further action.

In February 2021, pursuant to a fee agreement, Mr. Kollhoff paid Respondent an additional $4,250 to file a lawsuit against his former partner. Respondent failed to initiate the lawsuit and repeatedly ignored his client's multiple requests for information. On the occasions when Respondent did reply, he attempted to conceal his neglect by falsely claiming to have obtained a Writ of Summons, to have served opposing counsel, and to have been in the process of scheduling depositions. Respondent retained

the entire fee he was paid, forcing Mr. Kollhoff, like Mr. Cifone, to file a complaint with the Fund. Mr. Kollhoff's claim was pending at the time of the disciplinary hearing.

Having determined that Respondent committed serious ethical misconduct, this matter is ripe for the determination of discipline. Disciplinary sanctions serve the dual role of protecting the interests of the public while maintaining the integrity of the bar. *Office of Disciplinary Counsel v. John J. Keller*, 506 A.2d 872, 875 (Pa. 1986). 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 S. 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). Nonetheless, in order to "strive for consistency so that similar misconduct is not punished in radically different ways," *Office of Disciplinary Counsel v. Anthony C. Cappuccio*, 48 A.3d 1231, 1238 (Pa. 2012) (quoting *Lucarini*, 472 A.2d at 190), the Board is guided by precedent for the purpose of measuring "the respondent's conduct against other similar transgressions." *In re Anonymous (Linda Gertrude Roback)*, 28 Pa. D. & C. 4th 398, 406 (1995).

Respondent's misconduct occurring between 2016 and 2022 and consisting of serial neglect and dishonest behavior, coupled with aggravating factors, warrants a suspension of two years. Upon review of the record, we ascribe weight to Respondent's record of discipline as an aggravating factor that must be considered when assessing the appropriate disciplinary sanction. Respondent's prior record of misconduct is relevant here and calls into question his fitness to practice law and the need to protect the public. On September 27, 2019, Respondent received an informal admonition for conduct that

included lack of competent representation, lack of diligence, failure to respond to a client's emails and telephone messages, and failure to promptly refund an unearned fee. The prior misconduct is the type at the heart of the instant matter, leading to the conclusion that Respondent's 2019 admonition failed to impress upon him the need to conduct himself in accordance with the ethical rules. Quite the opposite occurred, as approximately nine months after he received the private discipline, Respondent was retained by Mr. Cifone for representation and committed misconduct similar to that which resulted in his 2019 admonition, and which continued during his representation in the Kollhoff matter. We also note that Respondent's receipt of Petitioner's DB-7 letter on June 3, 2021 related to Mr. Cifone's matter did not affect his behavior, as he continued to neglect Mr. Kollhoff's matter during that time frame. Precedent establishes that a prior record of discipline is an aggravating factor, and recidivist offenders receive more severe disciplinary sanctions. *See, Office of Disciplinary Counsel v. Joshua M. Briskin*, No. 72 DB 2021 (D. Bd. Rpt. 6/13/2023) (S. Ct. Order 8/4/2023).

Respondent's incompetent handling of his own personal affairs is another aggravating factor. Respondent failed to respond to three inquiries from the Fund related to a complaint filed by Mr. Cifone. Respondent attributed his nonresponsive behavior to procrastination in opening his "piles" of mail and general avoidance of confrontational situations. N.T. 88, 124-125. Respondent also acknowledged that he did not open mail in the James Floor Covering lawsuit brought against him by a former client. Relatedly, we note Respondent's history of fiscal irresponsibility, including a bankruptcy petition which was dismissed because he failed to make required payments, and three open judgments. *See, Office of Disciplinary Counsel v. Joseph Q. Mirarchi*, No. 56 DB 2016 (D. Bd. Rpt. 5/21/2018 at 68) (S. Ct. Order 3/18/2019) (aggravating circumstances included Mirarchi's

"history of irresponsibility" as demonstrated by, among other things, civil cases seeking payment of debts and unsatisfied tax liens).

A final aggravating factor, and one of significance to the Board's review and analysis of appropriate discipline, is the credible testimony of Mr. Turner and Mr. Cifone that Respondent's treatment of them as clients adversely affected their perceptions of the legal profession. In particular, Mr. Turner shared that after his experience with Respondent, he no longer has trust in lawyers or the legal system, and believes lawyers are only concerned with "understanding how much money they can get out of you...rather than actually resolving or caring about a case that's actually being heard and doing what's best for the customer or client." N.T. 39-40. Respondent did not assuage Mr. Turner's and Mr. Cifone's negative feelings, as he offered no apology to them for his admitted misconduct. Additionally, Mr. Turner, Mr. Cifone, and Mr. Kollhoff each credibly testified to the adverse financial consequences they experienced due to Respondent's misconduct. *See, Office of Disciplinary Counsel v. Matthew Gerald Porsch*, No. 248 DB 2018 (D. Bd. Rpt. 2/20/2020) (S. Ct. Order 5/29/2020) (Board accorded weight to the testimony of Porsch's three clients who credibly described the negative impact of Respondent's misconduct on them).

In mitigation, we consider that prior to the disciplinary hearing, Respondent stipulated to the factual allegations and rule violations in the Petition for Discipline, which demonstrates both accountability for his unethical actions and cooperation with Petitioner. *See, Office of Disciplinary Counsel v. Michael Eric Greenberg*, No. 101 DB 2020 (D. Bd. Rpt. 9/8/2021) (S. Ct. Order 11/23/2021) (By stipulating to the facts of the misconduct, Greenberg demonstrated cooperation with Office of Disciplinary Counsel and acceptance of responsibility, which weighed in favor of mitigation). Respondent expressed remorse,

embarrassment, and shame for his misconduct, which he described as "despicable." As well, we assign some mitigation to Respondent's sincere apology to Mr. Kollhoff at the disciplinary hearing as demonstrative of his remorse, tempered by our recognition that he did not apologize to his other clients. *See, Office of Disciplinary Counsel v. Frank C. Arcuri*, No. 147 DB 2019 (D. Bd. Rpt. 8/20/2020) (S. Ct. Order 10/6/2020) (Arcuri's genuine expression of remorse was a mitigating factor).

Respondent offered testimony concerning his mental health. Respondent candidly testified that "for the better part of 10 or 15 years" he has been troubled with feelings of depression and anxiety, and over the "last four or five years" he has felt "sadness and despair" on most days, and feels a "lack of mental focus and sharpness." N.T. 83, 85-86, 125, 129. Respondent further acknowledged problems with procrastination and avoidance of difficult situations, as exemplified by his inability to open mail. Respondent testified to numerous steps he has taken to address his mental health issues over the years, including prescription medication, seeking help from mental health professionals, counseling, light therapy, and vitamins. The Committee addressed this testimony and concluded that it did not serve as a mitigating factor, as the testimony, in and of itself, does not meet the mitigation standard set forth in *Office of Disciplinary Counsel v. Seymour Braun*, 553 A.2d 894 (Pa. 1989). In order for mitigation to apply, *Braun* requires a respondent to prove by clear and convincing evidence that a psychiatric disorder caused the misconduct. In meeting this stringent burden, expert testimony has been deemed "critical":

> Our Court has never held that lay opinions alone, are sufficient to establish that an addiction or mental illness was the cause of an attorney's misconduct. Indeed, recent decisions of our Court have emphasized the critical role of expert testimony in establishing such a causal link.

Office of Disciplinary Counsel v. Paul Pozonsky, 177 A.3d 830, 845 (Pa. 2018) (finding insufficient the testimony from lay witnesses who were "manifestly unqualified to render ... a professional opinion" that addiction caused the misconduct).

Here, Respondent did not proffer any other witness, expert or lay, as to a diagnosis of a psychiatric disorder and its causal effect on Respondent's misconduct. In his exceptions, Respondent acknowledges *Braun* and related cases as controlling, but nevertheless contends that the Committee should not have relied exclusively on *Braun* to reject his testimony, and asks the Board to allow his "factual first-party testimony" and employ a commonsense approach in assessing the appropriateness of a mitigated suspension. Upon review of this issue, while we recognize that Respondent's testimony is fairly intended to contextualize the underlying misconduct, we agree with the Committee's conclusion that the *Braun* standard does not apply, as *Braun* requires more than a respondent's own unsubstantiated testimony and a commonsense approach. Under similar circumstances, the Board has disallowed *Braun* mitigation. *See*, *Office of Disciplinary Counsel v. Danial Dixon*, No. 174 DB 2020 (D. Bd. Rpt. 12/8/2021, p. 37) (S. Ct. Order 3/4/2022) (Dixon failed to satisfy *Braun* where he "did not put forth the expert testimony necessary to th[e] determination" that a psychiatric disorder had caused his misconduct).

Respondent did not proffer the type of evidence required to receive mitigation; however, we find his testimony credible that he has suffered from mental health difficulties through the years. We also find credible his descriptions of procrastination and avoidance of difficult situations, as well as his frank assessment that he is not fit as an attorney. On these points we have concerns due to Respondent's

further testimony that although he has limited his practice to work for a law firm "behind the scenes," where he does not meet the firm's clients, he continues to represent a small number of his own clients independent of the law firm. The cumulative nature of these facts portends a danger to Respondent's current clients and the public that cannot be ignored. Respondent himself recognized this danger when he acknowledged on the record that he "completely understands" that he deserves a suspension.

Case precedent establishes that a minimum one year and one day suspension is appropriate for attorneys who engage in multiple, repeated instances of client neglect, misrepresentation, and failure to refund unearned fees. *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) (Hibbert engaged in a pattern of deficient representation in three client matters, including lack of competence, lack of diligence, and lack of communication, as well as additional misconduct pertaining to fiduciary recordkeeping; mitigation included refunding unearned fees after Office of Disciplinary Counsel began its investigation, no record of prior discipline, and acknowledgment of misconduct); *Office of Disciplinary Counsel v. Tangie Marie Boston*, No. 99 DB 2018 (D. Bd. Rpt. 12/10/2019) (S. Ct. Order 2/12/2020) (Boston committed misconduct in four matters comprising incompetence, neglect, lack of communication, failure to refund unearned fees, and conduct prejudicial to the administration of justice; Boston answered the charges against her, stipulated to many of the facts and rule violations, subsequently admitted her derelictions, and accepted responsibility for her misconduct; Boston had no prior discipline); *Office of Disciplinary Counsel v. Howard Goldman*, No. 157 DB 2003 (D. Bd. Rpt. 5/20/2005) (S. Ct. Order 8/3/2005) (Goldman committed misconduct in four client matters, including neglect, lack of communication, failure to disclose rate or basis of fee in writing to a client,

and misrepresentation to two clients; aggravation included multiple lawsuits and open judgments; mitigation included no prior record, character witnesses, cooperation with Office of Disciplinary Counsel, and remorse).

The cited matters concern respondents who engaged in a pattern of misconduct, as did Respondent. But unlike the attorneys in *Hibbert*, *Boston*, and *Goldman*, Respondent has the additional weighty aggravating factor of prior discipline for similar misconduct that was close in time to the instant misconduct. As well, the aggravating factors of incompetence in handling personal matters, fiscal irresponsibility, failure to express remorse by not apologizing to two of his clients, and, not least, the negative effect of his conduct on his clients' view of the legal profession, support the imposition of a suspension greater than one year and one day.

The Board's recommendation for a two year period of suspension has support in the case precedent. In matters that resulted in suspension for two years, either the scope and nature of the misconduct was more serious than those matters where a one year and one day suspension was imposed, or the balance of aggravating and mitigating factors required a more severe sanction. *See*, *Office of Disciplinary Counsel v. Clarence E. Allen*, No. 190 DB 2020 (D. Bd. Rpt. 1/31/2022) (S. Ct. Order 4/14/2020) (serial neglect of five client matters, misrepresentation, and other misconduct; aggravation included Allen's prior informal admonition, lack of remorse, and failure to accept responsibility); *Office of Disciplinary Counsel v. Matthew Gerald Porsch*, No. 248 DB 2018 (D. Bd. Rpt. 2/20/2020) (S. Ct. Order 5/29/2020) (repeated acts of misconduct in three separate matters consisting of neglect, misrepresentation, and failure to refund unearned fees and return documents; failed to respond to disciplinary authorities; prior discipline consisting of a public reprimand; failure to apologize to clients); *Office of*

Disciplinary Counsel v. Michael Mayro, No. 144 DB 2001 (D. Bd. Rpt. 10/27/2003) (S. Ct. Order 2/3/2004) (neglect of four client matters, failure to communicate, failure to expedite litigation, failure to respond to motions, misrepresentations to clients; history of prior private discipline for similar misconduct in aggravation; no mitigating factors).

Our analysis of the decisional law leads us to conclude that a two year suspension is commensurate with the totality of facts and circumstances in this matter and consistent with sanctions imposed for similar misconduct. A two year suspension is warranted to protect the public and maintain the integrity of the profession, as Respondent will be required to undergo a rigorous reinstatement proceeding and prove his fitness to practice before he is permitted to represent clients in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Robert Scott Clewell, be Suspended for two years from the practice of law in this Commonwealth.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: David S. Senoff
David S. Senoff, Member

Date: 5/21/2024

Chair Rafferty and Members Ellsworth and Repard recused.