IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 3015 Disciplinary Docket No. 3
Petitioner	:	No. 88 DB 2022
v.	:	
	:	Attorney Registration No. 82205
MICHAEL ERIC ADLER,	:	
Respondent	:	(Montgomery County)

ORDER

PER CURIAM

AND NOW, this 23rd day of January, 2024, upon consideration of the Report and Recommendations of the Disciplinary Board, Michael Eric Adler is suspended from the Bar of this Commonwealth for a period of one year and one day. Respondent shall comply with the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. *See* Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 01/23/2024

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. 88 DB 2022
v.	:	Attorney Registration No. 82205
MICHAEL ERIC ADLER, Respondent	:	(Montgomery 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 June 28, 2022, Petitioner, Office of Disciplinary Counsel, charged Respondent, Michael Eric Adler, with violation of the Rules of Professional Conduct based on his conduct in five disciplinary complaint matters. On July 20, 2022, Respondent filed an Answer to the Petition for Discipline and denied all rule violations.

Following a prehearing conference on October 12, 2022, a District II Hearing Committee ("Committee") conducted a disciplinary hearing on November 30,

2022 and December 1, 2022. Petitioner introduced ODC Exhibits ODC-1 through ODC-97, which the Committee accepted into evidence. Petitioner presented the testimony of six witnesses, complainants in the instant disciplinary matters. Respondent appeared pro se and introduced Exhibits R-1 through R-16, which the Committee accepted into evidence. Respondent testified on his own behalf, and presented the additional testimony of one witness, his client in the J.M. Smucker Company matter. The Committee determined that Petitioner established a *prima facie* violation of at least one of the disciplinary rules alleged to have been violated in the Petition for Discipline and proceeded to hear evidence on the quantum of discipline to be imposed. Petitioner introduced Exhibits ODC-98 through ODC-100, which the Committee accepted into evidence. Respondent introduced Exhibits R-17 through R-23, which were admitted into evidence.

On January 20, 2023, Petitioner filed a post-hearing brief and requested that the Committee recommend to the Board that Respondent be suspended for a period of no less than two years. Respondent filed a post-hearing brief on February 24, 2023, and requested that the Committee recommend either a private or public reprimand.

By Report filed on April 20, 2023, the Committee concluded that Respondent violated the rules charged in the Petition for Discipline and recommended a suspension for a term of two years. On May 10, 2023, Respondent filed exceptions to the Committee's Report and requested oral argument before the Board. On May 24, 2023, Petitioner filed a brief opposing exceptions.

A three-member panel of the Board held oral argument on July 20, 2023. The Board adjudicated this matter at the meeting on July 25, 2023.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Office of Chief Disciplinary Counsel, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 18106, 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 and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the Enforcement Rules.

2. Respondent is Michael Eric Adler, born in 1973 and admitted to the bar of the Commonwealth of Pennsylvania in 1998. Respondent's attorney registration address is 17 Windmill Drive, Holland PA 18966. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Following his graduation from law school and admission to the Pennsylvania bar, Respondent began his career working at two large law firms in Philadelphia. He then formed a partnership with several attorneys, working in a smaller firm, followed by employment at a mid-sized law firm for a few years. NT 12/1/22 81-86.

4. In 2013, Respondent began the solo practice of law. Respondent's legal office was located at his home, but he explained that he did not meet clients there. For a time period prior to Covid, Respondent maintained an office at several different community workspaces in Philadelphia, where he would meet his clients. Starting in March 2020, with the advent of Covid, Respondent worked solely out of his home office. NT 12/1/22 88-91.

Bruce Davis Complaint

5. Respondent represented Josh and Rachel Silverbauer with regard to the death of their cat Hook. It was alleged that Hook died after consuming cat food from a batch that had been voluntarily recalled by the manufacturer, Natural Balance, a company owned by the J.M. Smucker Company. At all relevant times, Bruce Davis, Esquire was in-house counsel for Smucker. In August 2020, Mr. Davis filed a complaint with Office of Disciplinary Counsel (ODC) against Respondent for conduct he deemed "ethical violations." NT 11/30/22 37.

6. In July 2020, Mr. Davis was assigned to handle the Hook matter, after Respondent sent a demand letter to Smucker dated July 8, 2020. NT 11/30/22 41-42 and ODC Exhibit 5. Mr. Davis testified that the demand letter linked to the FDA website and correctly quoted from the Food and Drug Administration (FDA) website regarding the reason for the voluntary cat food recall, which was potentially elevated levels of choline chloride. NT 11/30/22 43. Mr. Davis confirmed that "choline chloride is a nutritional supplement that appears in almost all cat food and almost all dog food.… it serves to provide nutrients that are important in cell membrane maintenance, so it supports the function of both the neurological system and the musculature of the animal." NT 11/30/22 47.

7. Mr. Davis explained that choline chloride does not have chlorine in it, and is referred to as a "salt," nor does the FDA recall announcement make any reference to chlorine. NT 11/30/22 48-49. Mr. Davis testified that he and Respondent discussed the difference between choline chloride and chlorine multiple times on the telephone and also in email correspondence. NT 11/30/22 49. Mr. Davis corrected Respondent multiple times about the fact that there was no chlorine in the recalled cat

food. NT 11/30/22 50. Mr. Davis stated, "I made it very clear to [Respondent] that chlorine had nothing whatsoever to do with the case he was handling on behalf of his client." *Id.*

8. After receipt of the demand letter, Mr. Davis contacted Respondent by telephone and email to introduce himself and provide him with information to participate in the recall process. *Id.* and *see* ODC Exhibit 7. Mr. Davis observed, "Mr. Adler consistently misrepresented things that had been said on the phone, and e-mails, and I consistently tried to correct the record of the things that were being misrepresented." NT 11/30/22 53. Respondent began copying Mr. Davis' general counsel on his email communications and made misrepresentations and allegations about Mr. Davis' conduct to the general counsel. NT 11/30/22 54.

9. On Sunday, August 16, 2020, *see* ODC's Exhibits 7 and 8, Respondent sent an email letter to members of Smucker's senior leadership and Board of Directors, without Mr. Davis' prior knowledge or permission. NT 11/30/22 55-57. The letter accused Smucker of a cover-up, even though there was a voluntary recall of the cat food. NT 11/30/22 58. Respondent already knew of the recall as he provided a link to the recall in his demand letter of July 8, 2020. *See* ODC Exhibit 5. Respondent alleged that Smucker lied to the FDA in the past, and accused the legal department, of which Mr. Davis was the only individual with whom Respondent had contact, of refusing to be honest and doing the right thing. *Id.*

10. Mr. Davis found this email offensive for many reasons, including: the misrepresentations made; the fact that the recipients of the email were not supposed to be "bothered with this sort of thing"; it called into question Mr. Davis' competency; and most significantly, that Respondent contacted represented parties. NT 11/30/22 58-61.

11. On the same date, Sunday, August 16, 2020, Mr. Davis responded to Respondent indicating that his correspondence had violated the Pennsylvania Rules of Professional Conduct. ODC Exhibit 9. Mr. Davis testified that Respondent's ethical violations, in his opinion, required him to report Respondent. NT 11/30/22 37.

12. The same weekend that Respondent sent the email to Smucker's senior management and Board, he also made several social media posts. Specifically, on LinkedIn, Respondent refers to the FDA recall as a cover-up, despite the fact that it was a voluntary recall, and states, "chlorine in cat food," despite the fact that chlorine had nothing to do with the recall. Respondent's post had the terms "J.M. Smucker's Company Natural Balance Pet Foods Inc." and "FDA" listed as hyperlinks, keywords searchable within the LinkedIn application. *See* ODC Exhibit 10 and NT 11/30/22 64-66.

13. Mr. Davis testified that the reason the LinkedIn post was:

> so concerning to me in a public post on a social media site that has been linked to our organization is that chlorine is generally viewed by the public as a toxic substance that's frequently associated with cleaning products like bleach that everyone knows to be harmful….This, to me, I viewed as a deliberate attempt to misrepresent the chemical at issue in this case and make it seem far more concerning or negligent or harmful than it really was. NT 11/30/22 67.

14. Mr. Davis testified that in the comments below the post, Respondent stated that he had been stonewalled by the lawyers at Smucker, but Mr. Davis pointed out that Respondent had only spoken with Mr. Davis, and was not stonewalled. *Id.* Respondent removed the post within a short period of time. NT 11/30/22 79.

15. Mr. Davis testified that in a Twitter post over the same weekend, *see* ODC Exhibit 11, Respondent made additional misrepresentations about the cat food recall, referring to it as a "major recall." However, Mr. Davis testified that the recall only involved one lot of cat food which is considered a "very, very small recall." NT 11/30/22

69. In the Twitter post, the word "chlorine" had a hashtag in front of it (#chlorine), making it searchable on Twitter, despite the fact that chlorine had nothing to do with the recall, which Mr. Davis categorized as misleading to the public. NT 11/30/22 70. The tweet also referenced stonewalling by lawyers at Smucker and stated, "profits come first at Smuckers." Mr. Davis characterized this as an inaccurate statement. NT 11/30/22 70-71. Mr. Davis testified, "I view this as a tactic that was specifically designed to shake my clients' trust in my competency and my behavior." NT 11/30/22 71.

16. During cross-examination of Mr. Davis, Respondent posed a question to him regarding Hook's veterinary reports indicating elevated "chloride" levels. Mr. Davis responded, "You know that that's neither choline or chlorine, correct?" Respondent responded, "now I do." NT 11/30/22 90. Respondent conceded that the word "chlorine" is not used in any of the veterinary reports. NT 12/1/22 250.

17. At the time that Respondent wrote the demand letter to Smucker, he had the FDA recall in his possession. NT 12/1/22 130-131. When asked if he misrepresented anything with regard to Hook's death, Respondent testified "did I misstate, I misstated something. I don't say I misrepresented. I don't want to quibble with you about the word. I may not understand exactly what you mean by misrepresented, but yes, I misstated something." NT 12/1/22 129. Respondent also testified:

> choline chloride was mentioned there [referring to ODC Exhibit 6 the FDA recall]. And all I'm admitting to you is I didn't know the difference between choline chloride and chlorine at that time. And in discussion with Bruce [Davis], I subsequently learned that.
> NT 12/1/22 128.

18. Respondent testified that to the best of his recollection, Mr. Davis explained the difference between choline chloride and chlorine to him on August 17, 2020. NT 12/1/22 129. However, by email letter dated August 15, 2020, Mr. Davis stated,

inter alia, "It seems from your email that you have grossly misstated our conversation and the facts of the case to your clients…. The fact that you keep referring to 'chlorine' … leads me to believe that you have a complete lack of understanding of the facts of this case." *See* ODC Exhibit 7 Bates 104, which email letter was sent to Respondent before Respondent's letter to the Board/senior management and before the LinkedIn and Twitter social media posts of August 17, 2020. *See* ODC Exhibits 10 and 11.

19. When asked to review ODC Exhibit 7 to refresh his recollection that Mr. Davis had spoken to him about the difference between chlorine and choline chloride before the August 17, 2020 social media posts, Respondent stated, "I'm not reading this sentence to say that he explained anything to me, right, and I am also not recalling that we ever had that conversation, to be honest, today." NT 12/1/22 137. Respondent further testified that he did not recall having that conversation with Mr. Davis before the social media posts. *Id.*

20. As to emailing the Smucker Board/senior management, who were represented by Mr. Davis, Respondent stated, "I apologized to Bruce. Spoke the next day, I retracted. Never did it again. It was a one time, you know, frustration. It was to make sure also that the board knew what was going on." NT 12/1/22 106-107. When asked if he thought he violated the rules by contacting the Smucker Board, Respondent testified, "the answer is, I think it was a violation. I immediately took corrective actions." NT 12/1/22 111.

21. As to the social media posts, Respondent testified, "I still stand by the facts in the LinkedIn post and the Twitter post." NT 12/1/22 107. Asked why he retracted the social media posts if he stood by the facts, Respondent stated:

I didn't think it was appropriate to litigate this in social media at the time.

> When Bruce and I spoke the day after and I apologized for the email to the board, I didn't retract it because I thought the statements were false, but because in good faith, I didn't want to make this a bigger issue.
> NT 12/1/22 108-109.

22. Despite Respondent's admission that the recalled cat food contained no chlorine, Respondent took the incomprehensible position at hearing that his social media posts, stating the FDA voluntary recall was due to chlorine, were factually correct.

23. When asked if he thought he violated the rules with regard to his LinkedIn and Twitter posts, Respondent testified that he did not think he violated the rules. NT 12/1/22 110.

24. Of significant note, Mr. Davis sent Respondent an email letter on August 6, 2020, well before the letter to the Smucker Board and the social media posts, which letter reads in pertinent part:

> While I appreciate your zealous advocacy for your client, your repeated mischaracterizations of Smucker's reaction… [and] the facts of this case are counterproductive…. While I would normally ignore the kinds of threats in your email, given your comments about recording our confidential [word/words redacted] I feel professionally obligated to encourage you to carefully review the Rules of Professional Conduct before you make any sort of disclosures.
> ODC Exhibit 7 Bates 112-113.

25. Mr. Davis testified credibly.

Testimony of Josh Silverbauer

26. Josh Silverbauer testified that he met Respondent through a non-profit organization called Tribe 12 and asked Respondent to be his startup digital agency's business lawyer and consultant. In April 2020, Mr. Silverbauer's cat Hook died and he asked Respondent to handle the representation, which involved a demand to Smucker

relating to Hook's death. Mr. Silverbauer testified that the matter settled in August 2020. NT 11/30/22 213-214.

Sharon Hunt Complaint

27. Sharon Hunt hired Respondent to prepare a mortgage and promissory note with regard to a home her daughter was purchasing, as well as amend Ms. Hunt's will and trust agreement. Ms. Hunt was extending a mortgage to her daughter to purchase the home and recognized that she would probably predecease the satisfaction of the mortgage. Accordingly, Ms. Hunt wanted to amend her testamentary documents so that the remaining mortgage balance would come out of her daughter's percentage of Ms. Hunt's estate, to be fair to Ms. Hunt's other children. NT 11/30/22 101-102.

28. On September 11, 2020, Ms. Hunt had a conference call with Respondent in which she, her daughter, and Respondent participated. The call was followed by Respondent's letter of representation, *see* ODC Exhibit 15. Ms. Hunt testified that Respondent knew that she lived in the State of Delaware and that her estate documents were prepared under Delaware law. NT 11/30/22 102. A retainer payment of $1750 was paid to be charged against Respondent's hourly rate of $350. NT 11/30/22 103.

29. Respondent prepared the mortgage and promissory note in a timely manner. NT 11/30/22 104. However, Ms. Hunt testified that after several weeks went by following her daughter's house closing, and she had not received the revised will and trust documents, she emailed Respondent about the status of the remaining tasks. *Id.*

30. Respondent agreed that on or about November 2, 2020, he told Ms. Hunt that he would complete the will and trust revisions, but he testified that he did not understand the urgency of completing the task at that time and did not tell Ms. Hunt that he would do it right away. NT 12/1/22 199-202.

31. Despite Ms. Hunt's multiple communications to Respondent that followed, she never heard back from Respondent after November 2, 2020. *See* ODC Exhibit 17 and NT 11/30/22 104-105. Respondent never contacted Ms. Hunt to advise that he could not do the legal work for her. NT 11/30/22 119.

32. On December 16, 2020, Ms. Hunt sent Respondent an email letter saying that she needed the will and trust documents completed within a week. Respondent conceded that the request to complete the documents within one week came one and one-half months after he told Ms. Hunt he would complete these tasks. NT 12/1/22 202-203.

33. Ms. Hunt continued to send letters through January 2021, including a certified letter dated January 12, 2021, which Respondent received, requesting the refund of a portion of her retainer payment, as Respondent had not completed the will or trust document work. *See* ODC Exhibit 18 and NT 11/30/22 106-107.

34. On January 25, 2021, Ms. Hunt sent Respondent a registered letter, which he signed for. NT 11/30/22 108.

35. Ms. Hunt asked Respondent for a detailed invoice reflecting Respondent's hourly billing. NT 11/30/22 108. Ms. Hunt never received an itemized bill from Respondent, nor did she receive a partial refund from him. NT 11/30/22 109. Respondent agreed that he never sent Ms. Hunt any invoices during the course of his representation of her, nor any refund of the retainer she paid him. NT 12/1/22 207-

208. Respondent further conceded that Ms. Hunt's fee agreement provided that he would send her periodic statements, but that he did not send her any. NT 12/1/22 210.

36. Ms. Hunt submitted a complaint to ODC, as well as to the Pennsylvania Lawyers Fund for Client Security (the "Fund"). NT 11/30/22 109-110. The Fund reimbursed Ms. Hunt, not Respondent. NT 11/30/22 110. Ms. Hunt testified that she was aware that Respondent later reimbursed the Fund in August 2022, over two years after she requested that Respondent send her a partial return of her retainer payment. NT 11/30/22 119.

37. When Respondent posed the question to Ms. Hunt of whether she was aware that he was staying in a hotel room in November 2020, due to damage to his home, Ms. Hunt replied, "The first I heard about the hotel is in this room. If the hotel didn't have a phone system, that would be about the only reason you couldn't at least call me." NT 11/30/22 116.

38. Respondent testified, "With regards to Ms. Hunt, factually, I agree with everything that Ms. Hunt came to court to say." NT 12/1/22 197, see also NT 12/1/22 191.

39. Respondent testified that he knew that Ms. Hunt lived in the State of Delaware, that he had problems with the complexity of the will and trust, and admitted that he never advised Ms. Hunt of his "ability or inability to complete the rest of the assignment, which was review and advice related to the will and trust. And to this day that never happened…. The work didn't get done, so I failed that one client." NT 12/1/22 199, 201-202.

40. As to his representation of Ms. Hunt, Respondent testified, "Again, this is not how I practice law. I apologized to her. That is below my normal conduct, and

she deserves the restitution that she got [referring to Ms. Hunt's recovery from the Fund]." NT 12/1/22 207.

41. Ms. Hunt testified credibly.

Mark and Laura Pirolli Complaint

42. Mark and Laura Pirolli (incorrectly identified in the notes of testimony as Linda Pirolli) operate Pirolli Printing Company, a family-owned print business. NT 12/1/22 7. In January 2021, the Pirollis, along with Mark's brother Matt, had an initial video meeting with Respondent, and were later provided with a written fee agreement. NT 12/1/22 8. The fee agreement set forth Respondent's hourly rate of $325 per hour and required a $1500 retainer, ODC Exhibit 23, which the Pirollis paid. NT 12/1/22 10. The fee agreement also provided that Respondent send periodic invoices to the Pirollis. ODC Exhibit 23. The Pirollis hired Respondent after the death of their long-time business attorney. NT 12/1/22 41.

43. The Pirollis had another meeting with Respondent on April 23, 2021, to discuss future matters they would eventually want Respondent to work on. Laura Pirolli testified, but "the main thing we needed him to do now was the corporate minutes. We got a notice from the state saying that the corporate minutes had to be filed by June 5 or June 6, or they would put us out of business, because our lawyer died, and it wasn't done in 2019, 2020, and 2021." NT 12/1/22 12-13. "They needed it done by June 5, 2021." NT 12/1/22 13. Mark Pirolli testified consistent with Laura Pirolli. NT 12/1/22 47-48.

44. One of the tasks Respondent was retained to perform had to do with a loan from the Small Business Administration (SBA). Laura Pirolli received an email letter from the SBA with a form to be filled in, see ODC Exhibit 24, which she sent to

Respondent, because she did not understand it. NT 12/1/22 13-14. Respondent completed this assignment.

45. However, Respondent never filed the corporate minutes by the deadline, NT 12/1/22 15, despite email reminders from Laura Pirolli on May 14, 2021, May 18, 2021, and May 26, 2021. See ODC Exhibits 26-28. Laura Pirolli testified, "we never heard from him" after she sent the emails to Respondent. NT 12/1/22 17. On June 2, 2021, Mark Pirolli also sent Respondent an email about timely submission of the corporate minutes, with no response. NT 12/1/22 55

46. Laura and Mark Pirolli both tried, unsuccessfully, to contact Respondent after the April 23, 2021 meeting by email, telephone and text message. See ODC Exhibits 29-30 and 32 and NT 12/1/22 18-21, 55-56. Three days before the corporate minutes were due, Mark Pirolli called and left Respondent a telephone message:

> I remember saying something to the effect of, Mike - - at this point I'm thinking that he must be in the hospital on life-support or something, because I didn't understand why you were not getting back to us. I am sure you took care of this task, but we have to know for a fact that you took care of it, because our business is depending on it, and, you know, get a hold of us some way. Send us an email or call us, just let us know that you took care of it.
> NT 12/1/22 56.

47. There was no response to that message. *Id.*

48. Mark Pirolli testified that he asked his wife to call the State of New Jersey to find out how to file the corporate minutes, "we didn't want to risk screwing something up, because it was the state, so we always depended on the lawyer to do it." NT 12/1/22 57.

49. On June 3, 2021, after Laura Pirolli tried unsuccessfully to contact Respondent, she called the State of New Jersey and received directions on how to handle the corporate minutes. Ms. Pirolli filed them herself. NT 12/1/22 21-22.

50. By email letter dated June 3, 2021, the Pirollis advised Respondent that they prepared and filed the corporate minutes themselves and he should not do any work with regard to the corporate minutes. *See* ODC Exhibit 33.

51. On June 9, 2021, Mark Pirolli sent Respondent a letter by mail, as well as by email, terminating Respondent's services. *See* ODC Exhibits 34-35.

52. The Pirollis requested a refund of their retainer from Respondent, but he did not respond. They filed a complaint with ODC and the Fund. NT 12/1/22 22, 61-62, 71-72.

53. As of the date of the disciplinary hearing, the Pirollis had not received any money from the Fund. NT 12/1/22 72.

54. Respondent cross-examined Linda Pirolli regarding tasks he performed or was requested to perform, but did not refute that the task of preparing the corporate minutes had been assigned to him, the deadline by which to complete them, or that he never completed them. NT 12/1/22 23-36. Both Laura and Mark Pirolli testified that the only tasks assigned to Respondent were preparation of the SBA loan form and the corporate minutes. NT 12/1/22 37, 52.

55. Respondent admitted that he missed the deadline to file the corporate minutes, NT 12/1/22 222, 225. However, he stated:

> I also knew that if anybody missed the deadline, we could open it anyway. Revocation of a business license is not a death penalty for a company. There is a procedure. That is not an excuse. I'm not looking for an excuse. They thought it was a death penalty. I think I explained it to them. I had every intention of meeting that deadline.

> I intended to meet that deadline. I didn't respond to them. I'm wrong for not responding to them.
> NT 12/1/22 225, *see* also *Id.* at 191.

56. According to Respondent, he was aware somewhere around April 23, 2021, that the corporate minutes had to be filed by June 5, 2021, that his personal problems began mid-May, but conceded that between April 23 to mid-May he did not complete the task. Respondent testified "it was on my to do list, which is electronic, and I have my own way of managing my workflow." NT 12/1/22 230-231. Respondent then testified in a contradictory fashion indicating that on April 23, 2021, he did not know that the corporate minutes were due by June 5th. NT 12/1/22 234.

57. Respondent offered a statement to Mark Pirolli at the end of Mr. Pirolli's testimony, "I have no further questions. And again, just as I said to Laura, Mr. Pirolli, I apologize to you for what happened in June 2021. This is not who I am." NT 12/1/22 72.

58. Mark Pirolli and Laura Pirolli testified credibly.

<u>Scott Siegelman Complaint</u>

59. Scott Siegelman, Esquire testified that he is an attorney licensed to practice law in the State of Georgia, working in real estate. NT 11/30/22 173. Respondent represented Mr. Siegelman's company ELARSA Property, with regard to a matter before the Philadelphia Water Revenue Bureau. Respondent was engaged by letter of representation dated June 9, 2020, and was paid a $1500 retainer. NT 11/30/22 175. Respondent successfully represented ELARSA with regard to the appeal against the Water Bureau. The Water Bureau advised they were going to appeal the decision, so the parties entered into a settlement agreement for a sum certain to be paid

to ELARSA within 90 days. *See* ODC Exhibit 43 settlement agreement and NT 11/30/22 178-180.

60. When the Water Bureau failed to pay, Mr. Siegelman instructed Respondent to file a motion to enforce the settlement. *See* ODC Exhibit 283 and NT 11/30/2 181. Respondent failed to respond and failed to draft a motion for Siegelman's review. NT 11/30/22 182. Respondent testified that he was trying to work out the water appeal payment with opposing counsel but that, "Scott [Siegelman] just wanted to file the motion to enforce settlement. I told him I have to give it a chance to work it out with counsel. Just give me a little more time." NT 12/1/22 162.

61. On October 21, 2021, Mr. Siegelman emailed Respondent advising him that since Respondent had not responded to him, he wanted Respondent to immediately withdraw from the case because he would need to hire another attorney to move forward. *See* ODC Exhibit 56 and NT 11/30/22 195. Respondent failed to timely withdraw his appearance with regard to the appeal. *Id.* When Respondent failed to respond, Mr. Siegelman hired another attorney to represent his company with regard to the appeal. NT 11/30/22 183. Mr. Siegelman then filed a complaint with ODC. NT 11/30/22 193-195.

62. Mr. Siegelman also testified about another matter involving Respondent, wherein Mr. Siegelman paid $300,000 to an individual by the last name of Butto, and Butto in turn was to lend Mr. Siegelman $2 million over a five-year period. Although Mr. Siegelman paid Butto, he was never lent any money. NT 11/30/22 184.

63. Mr. Siegelman begin discussing the Butto matter with Respondent in January 2021 through a series of emails. *See* ODC Exhibit 46 and NT 11/30/22 185. On February 11, 2021, Mr. Siegelman paid Respondent a $2000 retainer with regard to the

Butto matter. NT 11/30/22 186. Respondent acknowledged by email that he represented Mr. Siegelman in this matter. *See* ODC Exhibit 47 and NT 11/30/22 187.

64. Mr. Siegelman testified that Respondent "scared" Butto into agreeing to place a mortgage on Butto's house as security, but Butto never placed the mortgage. NT 11/30/22 188-189. Mr. Siegelman reached out to Respondent on many occasions, by email and telephone, to go after Butto. Mr. Siegelman was concerned that Butto would file for bankruptcy, as Butto had done before in an unrelated matter, in order to defeat Mr. Siegelman's claim. *See* ODC Exhibits 48-55 and NT 11/30/22 189. Respondent did not respond to any of the emails or call Mr. Siegelman back. NT 11/30/22 191. Mr. Siegelman testified that the email letters were not opened by Respondent. NT 11/30/22 193.

65. Respondent conceded that there was a period of time, for several weeks, that he did not respond to Mr. Siegelman. NT 12/1/22 187, 190. Respondent testified: "I never ghosted[1] a client before these particular two or three incidents." NT 12/1/22 189.

66. On October 5, 2021, Mr. Siegelman sent another email letter to Respondent, this time inquiring if Respondent was okay, and advising that he needed to move forward with his cases. See ODC Exhibit 55 and *Id.*

67. On the evening of October 5, 2021, Mr. Siegelman went to Respondent's house in an attempt to have contact with him. Initially, Respondent was not home, but pulled into his driveway while Mr. Siegelman was there. NT 11/30/22 192. During that conversation, Respondent demanded an additional $7000 or $7500

[1] "Ghosted" is a relatively new colloquial term that refers to abruptly cutting off contact with someone without giving that person any explanation for doing so. *See*, What Is Ghosting? - Dictionary.com.

retainer to represent Mr. Siegelman in the Butto matter. Mr. Siegelman agreed to pay the additional retainer, but told Respondent he needed to do something now. NT 11/30/22 193.

68. Mr. Siegelman testified that he never paid Respondent the additional retainer because Mr. Siegelman tried to contact Respondent the next day by email, but Respondent never responded. See ODC Exhibit 54 NT 11/30/22 193-195.

69. Respondent gave conflicting testimony regarding the Butto matter, in one instance saying he was not competent to handle multi-jurisdictional federal court litigation "against scammers," NT 12/1/22 184, but later testifying that he stopped representing Siegelman because they did not agree on the additional money to be paid to Respondent. NT 12/1/22 189.

70. Respondent never gave Mr. Siegelman any invoices during the time that he represented him, despite his fee agreement indicating that periodic statements would be sent. NT 11/30/22 209, NT 12/1/22 164 and ODC Exhibit 36. Respondent stated that Mr. Siegelman understood that despite the language of his fee agreement, Respondent was working on a "value billing" system. NT 12/1/22 164-165.

71. Respondent testified, "so I work with my clients on value billing… rather than itemized billing, despite what it says in my retainer letter, and I don't think Scott would ever dispute that is what we talked about." NT 12/1/22 166.

72. Respondent agreed that the concept of value billing was not covered in his fee agreement and that it "usually works against me." NT 12/1/22 166. He stated, "I wanted to try to build a law firm to build relationships with clients that was not necessarily tethered to the billable hour. Oh, my God, that is a pipe dream. It didn't work with most clients, to be honest. Most clients couldn't comprehend that." NT 12/1/22 87.

73. Respondent then testified that he did not include the concept of value billing in his retainer letter "because I reserve the right to bill monthly. I reserve the right to send an itemized invoice." NT 12/1/22 166-167.

74. Mr. Siegelman testified credibly.

Daniel Anna Complaint

75. Daniel Anna, Esquire is a Pennsylvania attorney who was involved in a real estate transaction with Respondent in the Fall of 2020. The property in question was owned by the Roostertail Farm Trust. An agreement of sale for the sale of the property was signed on October 20, 2020. Buyer was represented by real estate agent Ronald Starr. NT 11/30/22 123. The agreement provided for the payment of two deposits each of $25,000, the first due October 27, 2020, and the second on November 6, 2020. NT 11/30/22 124-125. The agreement provided that all dates and times identified in the agreement were of the essence and binding. NT 11/30/22 124.

76. Property inspections were set for October 24, 2020, to be in compliance with a four-page document from the Pennsylvania Association of Realtors pertaining to COVID-19 procedures. NT 11/30/22 126. That document included such verbiage as limiting the number of inspectors to two inspectors in the home at one time. Mr. Anna testified that it was important to Seller to limit the number of persons in the home because the occupant, Mr. Anna's mother-in-law, had just lost her mother to Covid and nobody was vaccinated at that time. NT 11/30/22 127. Notwithstanding the COVID protocols, Mr. Anna testified that Buyer arrived with thirteen people on the day of inspection, but Seller worked with them and they were able to conduct the inspections. *Id.*

77. Following the inspections, Seller fired their realtor[2], employed by REMAX, and Mr. Anna stepped in to represent Seller with regard to the sale. NT 11/30/22 129. REMAX remained the escrow agent, but did not notify Seller of receipt of Buyer's deposit payments. Seller did not become aware of the payment of the deposits until Respondent forwarded an escrow agreement to Mr. Anna on November 16, 2020, which included copies of the two deposit checks. NT 11/30/22 129. See ODC Exhibit 62.

78. On November 12, 2020, Seller sent Buyer a notice of termination for failure to make deposit payments according to the agreement. *See* NT 11/30/22 133-134 and ODC Exhibit 60. Mr. Anna testified that Seller no longer wanted to sell the property to Buyer due to Starr's actions during inspections, which Mr. Anna characterized as being unreasonable. NT 11/30/22 133.

79. A second termination notice was sent on November 19, 2020, due to Buyer failing to provide confirmation of their mortgage commitment pursuant to the terms of the agreement of sale. NT 11/30/22 134 and ODC Exhibit 63.

80. On November 16, 2020, after receipt of Respondent's escrow letter, Mr. Anna emailed Respondent confirming that Buyer's first deposit payment was at least one day late and that therefore, the termination letter of November 12, 2020 was still valid. *See* NT 11/30/22 136 and ODC Exhibit 62. In response, Mr. Anna testified that Respondent threatened to report him to disciplinary counsel and that Respondent filed a writ of summons and lis pendens with regard to the property. NT 11/30/22 137. As far as Mr. Anna knows, Respondent never reported him to the Disciplinary Board. *Id.*

[2] Seller was displeased with his realtor's response when contacted by Seller about the number of people Buyer brought onto the property during inspections, despite the COVID protocols being in place.

81. Mr. Anna testified as to the defects in the lis pendens filed by Respondent, which was ultimately stricken by the Court. NT 11/30/22 140-142.

82. Mr. Anna further testified that Respondent personally signed the Verifications attached to the various court pleadings and never substituted the Verifications of his client, Buyer. NT 11/30/22 146. Mr. Anna testified that all of the statements contained within the pleadings were not accurate. NT 11/30/22 147. Of specific contention was the fact that Respondent misstated throughout the litigation the amount of the deposits Buyer paid to be a total of $100,000, instead of the $50,000 actually paid. NT 11/30/22 149.

83. Respondent was on notice of the need to correct the deposit amount because Mr. Anna raised it in court filings and Respondent was put on notice of the allegations in the February 22, 2022 DB-7 Letter. NT 11/30/22 146, 152; ODC-21.

84. Respondent did not correct the deposit amount inaccuracy in the litigation pleadings until the parties had a video conference with the assigned judge on April 27, 2022. NT 11/30/22 155-156.

85. The real estate litigation ultimately settled. NT 11/30/22 157.

86. Mr. Anna testified that he reported Respondent to ODC because Respondent threatened to report Mr. Anna and because, in his opinion, “it’s such a violation of the whole process of the pleadings and the process we were going through that I just finally couldn’t stand it anymore.” NT 11/30/22 155.

87. When asked about repeatedly misstating the total amount of the deposits paid, Respondent testified:

> There is not a single misrepresent - - there is a misstatement of fact in that document. At the time I misunderstood the facts. I thought it was 100,000. In my mind, I thought it was 50 and 50 for the first two deposits. In fact, a

> million-dollar deal, it is usually 50/50 and something like that, 10 percent down. Later, after re-reviewing the documents, I saw it was 25 and 25. Not a material misstatement of fact in any way. Did not mislead the judge. Didn't mislead any party. Everybody knew it was fifty. The problem I had was in doing all these motions, and four rounds of motions and trying to keep my clients' costs down, I just cut and pasted from the complaint and statement of fact, and so when I filed my first response to the preliminary objections, same sentence from the complaint in my statement of facts, so it was a misstatement of $100,000. It should have been 50. I corrected that, as you saw, with the judge on the first time we spoke to the judge, and every pleading thereafter, the motions for summary judgments, everything else in the case referenced 50, not 100. I clarified it. It didn't hurt anybody. It was not intentional, simply a misstatement.
> NT 12/1/22 148-149.

88. Mr. Anna testified credibly.

Testimony of Respondent

89. Respondent's stated justification for his actions or inactions in the complaint matters was, "Three times during the last three years I have been seriously ill with COVID. February 2020 I had that flu that nobody knew what it was. I was knocked out for at least 7 to 10 days, just in a fog.… I got COVID again in December 2020, which lasted until January 2021, and then in or around the mid-2021 to June 2021, that was the worst. I don't know if that was the Omicron one. I was out. I look back on those days, I responded to some emails, but I don't remember responding to them. I tried to maintain my life, my law office." NT 12/1/22 93-94. Respondent admitted that he provided no expert reports or medical records to corroborate his alleged medical condition. NT 12/1/22 247-248.

90. Respondent also testified that his mother was ill with Parkinson's disease and had her second worse period in October 2021. NT 12/1/22 94.

91. Respondent testified that on June 3, 2020, during a storm, "my deck blew off, my roof, and a flood started to come in my house, filling the basement.… And

then Lower Merion got hit with a second major storm two days later…. And ultimately, it took a year, my house was repaired." NT 12/1/22 95. Respondent testified that he lived in a hotel from November 9 to 19, 2020. He did bring his computer to the hotel but he described the Internet connection as going in and out. NT 12/1/22 239-240. Respondent added that he was "living in my house from June to November in a construction zone until the following June or August 2021." NT 12/1/22 96.

92. As to the receipt of mail, Respondent testified, "I don't always see my mail. Mail piles up. I was out for 10 days. That's my fault. That is horrible. I'm responsible for my mail." NT 12/1/22 96-97. As to his telephone, Respondent testified, "I'm addicted to my device…. I'm always attached to my electronic devices. And the only time in the last 25 years that I have not been able to respond to clients was because of these issues that I raised today, my mother being sick and the house trauma." NT 12/1/22 100.

93. Respondent testified that he reimbursed the Fund for the award paid to Ms. Hunt. NT 12/1/22 206-207. He further testified that although the Fund had not yet made an award on behalf of the Pirollis, he was willing to reimburse the Fund whatever amount was determined appropriate. NT 12/1/22 222-223, 224.

94. Respondent testified as to his extensive involvement in community activities, including with his law school and undergraduate institutions, the Philadelphia Bar Association, Temple Inn of Court, the Association of Corporate Counsel, local school board and cyber charter school activities, the Penn Wynne Civic Association, the Leukemia and Lymphoma Society, the Mural Arts Advisory Board, the Jewish Federation of Greater Philadelphia, and service to his synagogue. NT 12/1/22 299-316.

95. Respondent has a prior record of discipline. On July 14, 2020, the Board imposed a private reprimand for Respondent's misconduct related to four client complaints for violations of RPC 1.1 RPC 1.3, RPC 1.4(a)(2), RPC 1.4(a)(3), RPC 1.4(a)(4), RPC 1.4(c), RPC 3.2, RPC 3,3(a)(1), and RPC 8.4(c). ODC-98. Therein, Respondent neglected and failed to communicate with clients. Respondent's general pattern was to engage with clients until he had their "earned-upon-receipt retainers," cease communications with the clients, then occasionally promise legal work that he never provided.

96. Since the imposition of his private reprimand in July 2020 and through the time of the disciplinary hearing in 2022, Respondent has made no changes to his law office procedures, including billing and calendaring systems, and has not acquired support staff. Respondent uses co-counsel and of-counsel on matters where needed. NT 12/1/22 323-324. Respondent does not carry professional liability insurance. NT 12/1/22 288.

97. When pressed by the Committee as to any changes he has made to avoid future ethical issues, Respondent testified, "So the answer to your question, I'm not sure what I technically changed other than I am more mindful of my clients' perceptions when a hiring a lawyer." NT 12/1/22 319-320. Further, "The answer is I have tried to become better." NT 12/1/22 324.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation. (Pirolli)

2. RPC 1.2(a) – A lawyer shall abide by a client's decisions concerning the objectives of representation and as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued. (Pirolli, Siegelman)

3. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client. (Hunt, Pirolli, Siegelman)

4. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished. (Hunt, Pirolli, Siegelman)

5. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter. (Hunt, Pirolli, Siegelman)

6. RPC 1.4(a)(4) - A lawyer shall promptly comply with reasonable requests for information. (Hunt, Pirolli, Siegelman)

7. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation. (Hunt, Pirolli, Siegelman)

8. RPC 1.16(a)(3) – A lawyer shall not represent a client or, where the representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged. (Siegelman)

9. RPC 1.16(d) – Upon termination of the 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. (Hunt, Pirolli)

10. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client. (Siegelman)

11. RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to the tribunal or fail to correct a false statement of a material fact or law previously made to the tribunal by the lawyer. (Anna)

12. RPC 4.1(a) – 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. (Davis)

13. RPC 4.2 – 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 court order.

14. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation. (Davis, Anna)

IV. DISCUSSION

This matter comes to the Board upon the Committee's conclusion that Respondent violated the Rules of Professional Conduct charged in the Petition for Discipline and its recommendation that Respondent be suspended for a period of two years, and Respondent's exceptions in favor of lesser discipline. In disciplinary matters, 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, we conclude that the record before us amply demonstrates Respondent's violation of the charged rules in five separate complaint matters.

As to the Davis complaint involving the J.M. Smucker Company matter, Respondent violated RPC 4.1(a) and RPC 8.4(c) in that he knowingly made a false statement of material fact or law to a third person, and engaged in misrepresentation. Respondent failed to educate himself as to the nature of the chemical compound choline chloride prior to making any claim about the cause of his clients' cat's death, and before he made false allegations about the cause of the cat's death, both to the manufacturer and on social media. Respondent's action in making certain key words searchable in the social media applications makes his conduct even more serious because of the harm he was causing to Smucker. Attorney Davis testified credibly as to the circumstances of the matter, while Respondent's testimony that he did not know the difference between choline chloride and chlorine before he sent the letter to Smucker's Board and before his social media posting, is not credible.

Respondent violated RPC 4.2, which prohibits a lawyer from communicating 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 court order. Here, Respondent had no such consent from Attorney Davis nor a court order which permitted him to send his letter to the Smucker Board. Respondent claimed that his action was a "one-time thing" done out of frustration.

Respondent's misconduct in the Hunt, Pirolli, and Siegelman matters was similar in that he engaged in a general pattern of accepting monies from his clients, failing

to communicate with them, and failing to produce the legal services they paid for. In the Hunt matter, Respondent admitted that he failed to make revisions to Ms. Hunt's will and trust document, that he stopped communicating with her altogether, and never informed Ms. Hunt that he was unwilling or unable to perform the services. Ms. Hunt sought reimbursement of her monies from the Fund, which approved her claim and made an award. Respondent subsequently repaid the Fund. In his representation of the Pirollis, Respondent failed to file Pirolli Printing's corporate minutes with the State of New Jersey by the directed deadline, risking the potential for Pirolli Printing to be shut down. As Mark and Laura Pirollli each testified, filing the corporate minutes was the key task for which they hired Respondent, and Ms. Pirolli scrambled at the last minute to learn how to file them herself when she and her husband realized Respondent was never going to respond to their many attempts to speak with him and was never going to file the minutes. Respondent took a cavalier attitude about the omission, dismissing the Pirollis' concern that they would be put out of business and testifying that "revocation of a business license is not a death penalty." NT 12/1/22 225. As Ms. Hunt did, the Pirollis also filed a claim with the Fund, which was not finalized as of the date of the disciplinary hearing. Respondent testified he intends to reimburse any award the Fund approves. The Siegelman matter involved Respondent's representation of his client in the ELARSA water appeal and the Butto fraud matter. With regard to ELARSA, Respondent failed to follow his client's request to file a motion to compel the parties' settlement and substituted his own judgment for that of his client, and also failed to withdraw from the matter when directed to do so by Mr. Siegelman. As to the Butto matter, Respondent never notified Mr. Siegelman that he was not able to handle the matter. Instead, Respondent simply

stopped communicating with Mr. Siegelman, as he had done with Ms. Hunt and the Pirollis.

Respondent's combined actions in the Hunt, Pirolli and Siegelman matters violated multiple ethical rules: RPC 1.1, in that he failed to act with competence; RPC 1.2(a), in that he failed to abide by his client's decisions concerning the objectives of representation; RPC 1.3, by failing to act with reasonable diligence and promptness; RPC 1.4(a)(2), by failing to reasonably consult his clients about the means of achieving objectives; RPC 1.4(a)(3), by failing to keep his clients reasonably informed about the status of the matter; RPC 1.4(a)(4), by failing to promptly comply with reasonable requests for information; RPC 1.4(b), by failing to explain a matter to the extent reasonably necessary to permit his clients to make informed decisions; RPC 1.16(a)(3), by failing to withdraw after being discharged; RPC 1.16(d), by failing to refund advance payments of fee; and RPC 3.2, by failing to make reasonable efforts to expedite litigation consistent with the interests of his client.

Finally, in the Anna matter, Respondent personally verified pleadings filed with the court that misrepresented Buyer's total deposit monies as $100,000, instead of the correct figure of $50,000. Respondent received Petitioner's February 22, 2022 letter that addressed Mr. Anna's complaint, and even after Respondent was put on notice of the allegation relating to the misrepresentation in the court filing, he did not correct the deposit "misstatements" in the pleading until a court hearing on April 27, 2022. Respondent's actions violated RPC 3.3(a)(1), where he failed to correct a false statement of material fact previously made to a tribunal, and RPC 8.4(c), prohibiting misrepresentation.

Having concluded that Respondent violated the ethical rules charged in the Petition for Discipline, we turn to the appropriate sanction to address his serious misconduct. In looking at the general considerations governing the imposition of final discipline, it is well-established that disciplinary sanctions serve the dual role of protecting the public from unfit attorneys and maintaining the integrity of the legal system. *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986). Another compelling goal of the disciplinary system is deterrence. *In re Dennis Iulo*, 766 A.2d 335, 338, 339 (Pa. 2001). The 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).

Before the Board is the Committee's recommendation for a two year period of suspension. We have carefully evaluated the Committee's recommendation and concur with the thrust of the Committee's thoughtful analysis: namely, that a suspension requiring Respondent to undergo a reinstatement proceeding before resuming practice is warranted on the facts and circumstances of this matter. However, upon the Board's independent review of this record, and after reviewing the decisional law, weighing the aggravating and mitigating factors, and recognizing that there is a range of sanctions for misconduct, we conclude that a one year and one day suspension is commensurate with the totality of the facts and circumstances in this matter and is consistent with sanctions imposed under similar circumstances.

We first examine the aggravating and mitigating factors present in this matter. The record before us reveals Respondent's prior record of discipline, consisting of a private reprimand imposed on July 14, 2020, for his misconduct in four separate client matters based on complaints filed in 2018 and 2019, wherein Respondent engaged with clients until he had their "earned-upon-receipt" retainers, ceased communication with the clients, then occasionally communicated to promise legal work that he subsequently never provided. Examination of this previous misconduct belies Respondent's claims in the instant matter that he "never ghosted a client before these particular two or three instances," and that the "only time in the last 25 years that I have not been able to respond to clients was because of these issues that I raised today, my mother being sick and the house trauma." 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. Frank C. Arcuri*, No. 147 DB 2019 (D. Bd. Rpt. 8/20/2020) (S. Ct. Order 10/6/2020); *Office of Disciplinary Counsel v. Peter Jude Caroff*, No. 42 DB 2019 (D. Bd. Rpt. 2/25/2020) (S. Ct. Order 6/5/2020).

Petitioner presented evidence in support of aggravation relating to two malpractice actions against Respondent, one initiated in 2016 and the other in 2021. ODC Exhibits 99 and 100; NT 12/1/22 262-263. Respondent testified that the 2016 action was settled in his favor and was resolved with the dismissal of all claims asserted by Respondent and his former client against one another. Exhibit R-23; NT 12/1/22 280-281. As to the 2021 malpractice action, Respondent testified that such action has not yet had a case management conference. NT 12/1/22 285. On this evidence, we find that the malpractice actions do not serve to aggravate discipline in this matter.

We turn next to Respondent's claims of mitigation. Two of Respondent's mitigation claims we dismiss out of hand. Respondent would like the Board to consider his timely filing of an Answer to the Petition for Discipline as evidence of mitigation. This is not mitigation; it merely indicates that Respondent followed the Board's procedural rules. Respondent also posits that he should be accorded mitigation for cooperation with Petitioner; however, we find nothing in the record that evidences any notable cooperation with disciplinary authorities worthy of mitigation.

Respondent contends that he has shown acceptance of responsibility and remorse for his actions, and we find that to a certain degree he has done that relative to Ms. Hunt and the Pirollis, when he apologized to them at the disciplinary hearing. However, this limited acknowledgement of his professional missteps and the effect they had on two of his clients falls short of a wholesale understanding of the scope of his misconduct and a candid expression of genuine remorse. As an expression of his acceptance of responsibility, Respondent seeks mitigation based on his restitution of unearned fees, yet the record demonstrates that Respondent did not voluntarily reimburse any funds—Ms. Hunt and the Pirollis turned to the Fund in order to be made whole. Respondent reimbursed the Fund for the amount paid to Ms. Hunt and intends to reimburse the Fund for any award paid on behalf of the Pirollis. While in Respondent's mind, he has reimbursed his clients, we conclude there is a difference between voluntarily refunding the unearned fees and waiting until clients endure the process of making a claim with the Fund and obtaining an award. This difference reduces the weight of the reimbursement to the Fund as a mitigating factor. *See*, *Office of Disciplinary Counsel v. David Charles Agresti*, No. 68 DB 2020 (D. Bd. Rpt. 5/21/2021, p. 24) (S. Ct. Order 7/21/2021) (The Board found that Agresti's failure to make restitution until after the Fund

paid a claim to his former client weighed against Agresti's claim that he accepted responsibility and demonstrated remorse).

Respondent testified to extensive community and civic activities, which weigh favorably in mitigation. These activities include involvement as an alumnus with his undergraduate and law school institutions, the Philadelphia Bar Association, Temple Inn of Court, local school board and cyber charter school activities, the Leukemia and Lymphoma Foundation, and other worthy causes.

To justify his actions in the five complaint matters, Respondent testified to a confluence of circumstances occurring in his personal life. Respondent explained that he had Covid in February 2020, December 2020 through January 2021, and around June 2021, which he explained was his worst bout with the virus. Respondent testified that during those times, he responded to some emails and tried to maintain his life and law office. Respondent admitted that he had no medical reports to corroborate his medical condition. Respondent testified that in June 2020, a severe storm caused significant damage to his home and it took a year for his house to be repaired, during which time he spent approximately 10 days in a hotel, from November 9 to November 19, 2020. At that time, Respondent did not have a separate office for the practice of law and was practicing out of his home. Respondent testified that he brought his computer to the hotel, but the internet connection was poor. Lastly, Respondent testified that his mother was deteriorating with Parkinson's disease and went through a bad period in October 2021.

During this time, Respondent continued operating as a sole practitioner, with no staffing assistance. He admitted that he allowed mail to pile up, which he further acknowledged was his fault, was "horrible," NT 12/1/22 96, and he was responsible for his mail. Respondent also testified that he is "addicted" to his electronic devices, NT

12/1/22 100, yet his clients futilely attempted to communicate with him, to the point that one client thought Respondent "must be in the hospital on life support." NT 12/1/22 56. Despite these numerous personal dilemmas, there is no evidence to suggest that Respondent contacted his clients to advise them of his difficulties or the need to withdraw from the representation. Instead, and inexplicably, Respondent chose to cease communicating with his clients, leaving them frustrated and bewildered.

When queried by the Committee as to the concrete changes he has made in his law practice to avoid ethical pitfalls, Respondent did not offer any remedies, such as a calendar system, change to billing, acquiring support staff, or improving the way he communicates to prevent future harm to clients. Respondent continues to work out of his home, has no identifiable case management system in place, and does not carry professional liability insurance. Respondent testified, "So the answer to your question, I'm not sure what I technically changed other than I am more mindful of my clients' perceptions when hiring a lawyer." NT 12/1/22 319-320. He also offered, "The answer is I have tried to become better." NT 12/1/22 324. These answers underscore that Respondent has not absorbed the real significance of his unethical actions, both current and prior, and the effect such misconduct has had on his clients, and he remains poised to negatively impact his clients if allowed to continue practicing law.

We next consider the relevant case law. Our review of prior matters shows that the Court frequently imposes a minimum suspension of one year and one day on attorneys who engage in multiple, repeated instances of client neglect and related misconduct. *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) (multiple acts of neglect in three client matters consisting of incompetence, lack of diligence, lack of communication, as

well as separate acts of financial recordkeeping violations and failure to respond to disciplinary authorities; no prior discipline); *Office of Disciplinary Counsel v. Robert G. Young*, No. 115 DB 2019 (D. Bd. Rpt. 11/20/2020) (S. Ct. Order 3/16/2021) (suspension of one year and one day for neglect in three client matters consisting of lack of diligence, failure to communicate, failure to have a written fee agreement, and conduct prejudicial to the administration of justice; one matter involved a situation where the court held Young in contempt for his failure to complete an estate; prior public censure an aggravating factor; Young accepted responsibility for his misconduct and demonstrated remorse); *Office of Disciplinary Counsel v. Douglas Andrew Grannan*, No. 197 DB 2016 (D. Bd. Rpt. 4/3/2019) (S. Ct. Order 7/9/2019) (misconduct in seven client matters consisting of incompetence, lack of diligence, failure to communicate, failure to return client files, conduct prejudicial to the administration of justice; some clients' rights were jeopardized or lost due to Grannan's failure to present evidence or pursue arguments; no acceptance of responsibility and no efforts to remediate the underlying practice management problems; no prior discipline); *Office of Disciplinary Counsel v. Ephraim Tahir R. Mella*, No. 96 DB 2019 (D. Bd. Rpt. 10/7/2020) (S. Ct. Order 2/12/2021) (multiple acts of misconduct in six client matters consisting of incompetence, communication deficiencies, false statements in documents, charging excessive fees, frivolous filings, and conduct prejudicial to the administration of justice; no remorse or acceptance of responsibility; no prior discipline).

In contrast to the numerous cases imposing a one year and one day suspension, we find relatively few matters of repetitive neglect where the Court deemed appropriate a two year period of suspension. Reviewing these matters, we find the facts and circumstances are more egregious and thus distinguishable from the case at bar. In

the recent matter of *Office of Disciplinary Counsel v. Clarence E. Allen*, No. 190 DB 2020 (D. Bd. Rpt. 1/31/2022) (S. Ct. Order 4/14/2022), a two year suspension was imposed for Allen's misconduct in five separate matters. The misconduct involved incompetence, delay, failure to appear at a pre-trial conference and a hearing and related false and misleading statements to the court about the reason for the nonappearance, false and misleading statements to clients about the status of matters, failure to communicate with clients, failure to deposit and maintain prepaid fees in an IOLTA, and failure to cooperate and respond to subpoenas from Office of Disciplinary Counsel. As an aggravating factor, Allen had a prior record of discipline consisting of an informal admonition for acts of neglect in two client matters, which admonition had been imposed only a couple of years prior to his later acts of misconduct. The nature of Allen's serious misconduct, in particular his contemptuous behavior to the court by his nonappearance and his contemptuous behavior to disciplinary authorities by failing to cooperate and respond, sets his case apart from the facts of Respondent's matter. Here, Respondent has not engaged in such disrespectful behavior, and additionally has provided some mitigation. In the matter of *Office of Disciplinary Counsel v. Joseph John Ashton, III*, No. 67 DB 2019 (D. Bd. Rpt. 5/20/2020) (S. Ct. Order 7/27/2020), the Court imposed a two year period of suspension to address Ashton's client neglect and abandonment in three matters and his complete failure to participate in the disciplinary process, which included failure to file a response to the Petition for Discipline and failure to appear at the disciplinary hearing. Here, Respondent has fully participated in the process and presented some mitigation, which differentiates his matter from *Ashton* and warrants lesser discipline. In *Office of Disciplinary Counsel v. Matthew Gerald Porsch*, No. 248 DB 2018 (D. Bd. Rpt. 2/20/2020) (S. Ct. Order 5/29/2020), the Court imposed a suspension for two years for Porsch's

repeated acts of misconduct in three separate client matters consisting of neglect, misrepresentation, and failure to refund unearned fees and return documents, and failure to respond to disciplinary authorities. In aggravation, the Board considered Porsch's prior public reprimand and his failure to apologize and lack of sympathy for clients. We find the facts of *Porsch* to be more serious than in the instant matter, as Porsch failed to respond to Office of Disciplinary Counsel's requests for a statement of position in all three client matters, a fact that is not present here, and Porsch had a history of public discipline, rather than the private discipline of record in the instant matter. None of the above-cited matters that warranted a two year period of suspension had a mitigating circumstance of extensive community service, as we find in Respondent's matter.

Based upon the applicable precedent and giving due consideration to the aggravating and mitigating circumstances, the Board concludes that a one year and one day suspension is a sufficient quantum of discipline and within the range of appropriate sanctions to address Respondent's misconduct. In our view, a suspension of more than one year and one day is not warranted, as the matters where the Court imposed more than a one year and one day suspension may be distinguished by more egregious misconduct and weightier aggravating factors than in the present matter. Respondent's serious misconduct requires his removal from the practice of law and a reinstatement process to determine his fitness to resume practice at a future date. Imposition of this discipline will ensure that the integrity of the courts is preserved while protecting the public and deterring future misconduct of a similar nature.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Michael Eric Adler, 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 are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: _____
Christopher M. Miller, Member

Date: 11/6/23