

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2364 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 81 DB 2015
	:	
v.	:	Attorney Registration No. 86611
	:	
MARY ELLEN CHAJKOWSKI,	:	(Out of State)
	:	
Respondent	:	
	:	
	:	
	:	

ORDER

PER CURIAM

AND NOW, this 1st day of June, 2017, upon consideration of the Petition for Review and responses to a Report and Recommendations of the Disciplinary Board, Mary Ellen Chajkowski is suspended from the Bar of this Commonwealth for a period of one year and one day, and she shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 6/1/2017

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 81 DB 2015
Petitioner	:	
	:	
v.	:	Attorney Registration No. 86611
	:	
MARY ELLEN CHAJKOWSKI	:	
Respondent	:	(Out of State)

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 November 10, 2015, Office of Disciplinary Counsel charged Mary Ellen Chajkowski, Respondent, with violations of Rules of Professional Conduct (“RPC”) 1.16(a)(1), 3.1, 4.4(a), and 8.4(d). Because Respondent provided the Disciplinary Board with only a post office box number for her address, the Petition for Discipline was served by regular mail and was not returned to Petitioner as “undeliverable” or “refused.” Respondent was served with the Petition for Discipline and did not file an Answer to Petition.

A prehearing conference was held on March 24, 2016, at which Respondent was present and represented by counsel. A disciplinary hearing was held on April 29, 2016, before a District IV Hearing Committee comprised of Chair Craig L. Fishman, Esquire, and Members Betsy A. Zimmerman, Esquire and Jason A. Medure, Esquire. At the commencement of the disciplinary hearing, over Respondent's objection, the Hearing Committee granted Respondent's counsel's motion to withdraw. Respondent's motion for a continuance of the hearing to obtain new counsel was denied and the hearing was held. Petitioner offered one administrative exhibit and four additional exhibits relating to aggravating factors, three of which were admitted. Petitioner did not call any witnesses. Respondent testified on her own behalf, but called no other witnesses and presented no documentary evidence.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on August 25, 2016, concluding that Respondent violated the Rules of Professional Conduct and recommending that she be suspended from the practice of law for a period of one year and one day.

On September 16, 2016, Respondent filed a Brief on Exceptions to the Hearing Committee Report and requested oral argument before the Board.

Office of Disciplinary Counsel filed a Brief Opposing Exceptions on September 23, 2016.

A three-member panel of the Board held oral argument on January 5, 2017.

The Board adjudicated this matter at the meeting on January 12, 2017.

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 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E."), with the power and the 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 the aforesaid Rules.

2. Respondent is Mary Ellen Chajkowski. She was born in 1949 and was admitted to the practice of law in the Commonwealth in 2000. Her attorney registration mailing address is P.O. Box 57694, Jacksonville, FL 32241. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania. AE I, N.T. 69.

3. Respondent has a record of prior discipline consisting of an Informal Admonition administered on September 28, 2015, for violation of RPC 8.4(d), arising out of her failure to pay court-ordered sanctions on four occasions. PE 2, PE 3, PE 4.

4. On May 15, 1996, Steven Smith filed a workers' compensation claim petition for an alleged injury arising from his exposure to chemicals on February 28, 1996, while he was employed by Consolidated Freightways (Consolidated), which subsequently became known as Con-way. AE I.

5. On October 31, 1997, Mr. Smith filed a petition to recover payment for medical bills allegedly related to the same chemical exposure. AE I.

6. On October 15, 1997, and November 30, 1998, Workers' Compensation Judge ("WCJ") Kathleen Vallely denied the above-mentioned petitions. AE I.

7. On December 31, 1999, WCJ Vallely's decisions were affirmed on appeal by the Workers' Compensation Appeal Board ("WCAB"). AE I.

8. Mr. Smith filed no further appeals from the WCAB affirmances of WCJ Vallely's orders. AE I.

9. On September 24, 2001, Mr. Smith filed, *pro se*, three additional claim petitions for the same alleged injury, claiming misconduct by Consolidated in the earlier 1997-1998 proceedings, and asserting the existence of after-discovered evidence. AE I.

10. On March 15, 2002, WCJ David Henry, who assumed the petitions were duplicate assignments by the bureau, rather than duplicate filings by Mr. Smith, consolidated the three claim petitions and convened a hearing. AE I.

11. Finding that none of Mr. Smith's allegations of wrongdoing by the employer or the alleged additional evidence warranted reopening the case, and that the claims were otherwise barred under the doctrine of *res judicata*, WCJ Henry dismissed the claim petitions. AE I.

12. On April 17, 2002, Mr. Smith's counsel, Charles A. Knoll, Jr., filed an appeal with the WCAB. AE I.

13. By Order dated July 29, 2003, the WCAB affirmed WCJ Henry's decision. AE I.

14. By Opinion and Order of the Commonwealth Court dated December 17, 2003, the Court affirmed the WCAB's decision. AE I.

15. In connection with her employment at the law firm of Vincler and Knoll, Respondent began representing Mr. Smith at or about the time of the proceedings before WCJ Henry and the related WCAB matter. AE I.

16. On March 19, 2004, on behalf of Mr. Smith, Respondent filed a Petition for Allowance of Appeal to the Supreme Court of Pennsylvania, which was thereafter denied on March 23, 2005. AE I.

17. On April 1, 2005, Respondent filed a Request for Reconsideration with the Supreme Court of Pennsylvania, which was thereafter denied on April 19, 2005. AE I.

18. On June 24, 2005, on behalf of Mr. Smith, Respondent filed a Petition for Writ of Certiorari with the United States Supreme Court, which was thereafter denied on November 14, 2005. AE I.

19. On September 23, 2004, during the pendency of the appeal to the Supreme Court of Pennsylvania, Mr. Smith submitted another claim petition which was assigned to WCJ Rosalia Parker and scheduled for hearing on December 16, 2004. AE I.

20. On December 16, 2004, WCJ Parker dismissed the claim petition for lack of jurisdiction because it was filed while the Petition for Allowance of Appeal was pending before the Supreme Court of Pennsylvania and the allegations in the claim petition arose from the same February 28, 1996, incident. AE I.

21. On December 27, 2004, Respondent filed an appeal of WCJ Parker's dismissal with the WCAB, which was thereafter affirmed by Order dated March 31, 2006. AE I.

22. Respondent filed an appeal of the WCAB decision with the Commonwealth Court. AE I.

23. The Commonwealth Court, by its Opinion and Order dated November 15, 2006, affirmed WCJ Parker's decision to dismiss, holding that the attempts to relitigate the case before WCJ Parker were barred by the doctrine of *res judicata*. AE I.

24. On October 20, 2005, on behalf of Mr. Smith, Respondent filed a penalty petition, which was assigned to WCJ Persifor Oliver, Jr. AE I.

25. On December 19, 2005, WCJ Oliver dismissed Mr. Smith's penalty petition as being barred by the doctrine of *res judicata* and/or the statute of limitations set forth in the Pennsylvania Workers' Compensation Act. AE I.

26. On January 9, 2006, Respondent filed an appeal of WCJ Oliver's dismissal with the WCAB, which was thereafter affirmed by Order dated December 11, 2006. AE I.

27. Thereafter, Respondent filed an appeal of the WCAB's decision affirming WCJ Oliver's denial of the penalty petition in the Commonwealth Court. AE I.

28. By Order dated May 17, 2007, the Commonwealth Court dismissed the appeal for Respondent's failure to comply with the court's order to file a brief that comported with the Rules of Appellate Procedure. AE I.

29. Respondent filed a Petition for Allowance of Appeal with the Supreme Court of Pennsylvania, which was thereafter denied by Order dated October 16, 2007. AE I.

30. Respondent filed an Application for Reconsideration, which was thereafter denied by Order dated December 18, 2007. AE I.

31. Subsequently, on behalf of Mr. Smith, Respondent endeavored to appeal WCJ Oliver's decision by seeking to invoke the Supreme Court of Pennsylvania's King's Bench powers in an Application for Extraordinary Relief, which was thereafter denied by Order of the Supreme Court dated June 25, 2008. AE I.

32. On September 19, 2008, Respondent filed a Petition for Writ of Certiorari to the United States Supreme Court on behalf of Mr. Smith, which was thereafter denied on December 1, 2008. AE I.

33. On July 19, 2006, Mr. Smith filed another claim petition, which was assigned to WCJ David Torrey. AE I.

34. On August 21, 2006, WCJ Torrey dismissed Mr. Smith's claim petition as being barred by the doctrine of *res judicata* and/or the statute of limitations set forth in the Pennsylvania Workers' Compensation Act. AE I.

35. On September 13, 2006, Respondent filed an appeal of WCJ Torrey's dismissal with the WCAB, which was thereafter affirmed by Order dated May 21, 2007. AE I.

36. Rather than file a petition for review of WCJ Torrey's decision with Commonwealth Court of Pennsylvania, Respondent filed an appeal directly to the Supreme Court of Pennsylvania on behalf of Mr. Smith, which filing was returned to Respondent as undocketed by letter dated June 12, 2007. AE I.

37. On November 20, 2006, Mr. Smith filed another claim petition. AE I.

38. On January 17, 2007, on behalf of Mr. Smith, Respondent filed a motion for judgment on the pleadings. AE I.

39. By order dated January 30, 2007, WCJ Oliver denied the motion for judgment on the pleadings and dismissed the claim petition as time-barred and barred by *res judicata*. AE I.

40. On or about February 12, 2007, Respondent filed an appeal of WCJ Oliver's dismissal with the WCAB, which was affirmed by Order dated September 18, 2007. AE I.

41. On December 15, 2008, May 4, 2009, June 1, 2009, June 17, 2009, July 27, 2009, and August 18, 2009, Mr. Smith filed medical review petitions *pro se*, all of

which were assigned to, and summarily dismissed by, WCJ Torrey on grounds of *res judicata* and the statute of limitations by orders dated January 7, 2009, May 22, 2009, June 8, 2009, June 29, 2009, August 4, 2009, and August 24, 2009. AE I.

42. On January 20, 2009, June 5, 2009, June 15, 2009, July 20, 2009, August 17, 2009, and September 14, 2009, Respondent filed appeals to the WCAB on Mr. Smith's behalf, all of which were the subject of a consolidated WCAB decision dated November 30, 2010, affirming WCJ Torrey's dismissals. AE I.

43. By Memorandum Opinion dated December 1, 2011, the Commonwealth Court affirmed the WCAB's decision. AE I.

44. The Commonwealth Court:

a. Referenced WCJ Vallely's and WCJ Henry's decisions that Respondent had appealed on behalf of Mr. Smith, without success, through to the United States Supreme Court;

b. Determined that "All litigation over this matter should have ended at that point";

c. Concluded:

[I]t is clear that [Smith] is, once again, seeking to re-litigate the same claim he has been trying to re-litigate for over a decade. However, there is no doubt that consideration of any issue related to the February 28, 1996, incident is barred by the doctrines of *res judicata* and collateral estoppel;

d. Addressed Respondent's conduct in the matter as follows:

We agree with Employer that the appeal is frivolous and that the conduct of both [Smith] and his counsel has been "obdurate and vexatious." [Smith] has, over a period of fifteen years, filed approximately fifteen petitions, all based on the same incident which, back in 1997, was determined by WCJ Valley not to have caused any injury or disability to [Smith]. At least five hearings have been held by four different WCJs. This is the fourth time that [Smith] has been before this Court. [Smith] has appealed unsuccessfully to the Pennsylvania Supreme Court four times and to the United States Supreme Court twice. Public funds have been extensively expended as [Smith] repeatedly attempts to re-litigate the case that was decided many years ago. Moreover, [Smith]'s actions are, at the very least, unfair and unduly burdensome to Employer, who has been forced to defend against each of these unreasonable petitions. AE I.

45. On March 27, 2012, Respondent filed an untimely Petition for Allowance of Appeal to the Supreme Court of Pennsylvania from the decision of the Commonwealth Court. AE I.

46. Thereafter, Respondent filed a Petition for Leave to File Nunc Pro Tunc, which was denied by Order of the Supreme Court dated July 5, 2012. AE I.

47. On December 9, 2012, Mr. Smith filed additional medical review and penalty petitions pertaining to the same February 28, 1996, chemical exposure claim, which were assigned to WCJ Cheryl Ignasiak and which were summarily dismissed by Opinion and Order dated April 22, 2013. AE I.

48. On May 13, 2013, on behalf of Mr. Smith, Respondent filed an appeal of WCJ Ignasiak's dismissal to the WCAB, which dismissal was affirmed by Opinion and Order of the WCAB dated March 14, 2014. AE I.

49. On March 26, 2014, on behalf of Mr. Smith, Respondent filed a claim petition, which was assigned to WCJ Henry and which was dismissed by Order dated April 22, 2014. AE I.

50. On April 11, 2014, on behalf of Mr. Smith, Respondent filed a Petition for Review of the WCAB Opinion denying the December 9, 2010 Petition to Review Medical Treatment with the Commonwealth Court. AE I.

51. On May 5, 2014, Respondent filed an appeal from the findings of fact and conclusions of law of WCJ Henry. AE I.

52. On July 24, 2014, on behalf of Mr. Smith, Respondent filed an Application for Relief from the WCAB order dated March 14, 2014, for En Banc Review in the Commonwealth Court of Pennsylvania. AE I.

53. By Opinion and Order filed March 9, 2015, the Commonwealth Court affirmed the decision of WCJ Ignasiak denying Mr. Smith's December 9, 2012 petition to review medical treatment and his penalty petition. AE I.

54. Commonwealth Court awarded the employer costs and counsel fees incurred to defend the appeal. AE I.

55. The award was made jointly and severally against Mr. Smith and Respondent "for obdurate and vexatious prosecution of a frivolous appeal." AE I.

56. Commonwealth Court noted that:

[Smith] has now been before this Court five times involving the same claim.

In December 2012, [Smith] added two more petitions to his litigation tally, bringing the number of petitions based on the same incident to approximately seventeen.

We believe . . . that our Supreme Court left open the ability of the appellate courts to impose sanctions under Pa.R.A.P. 2744 in cases such as the one at bar. Otherwise, there is no way for our courts to curb the sort of flagrant abuse of the system engaged in here. [] We further award costs and counsel fees incurred by [Con-way] . . . , jointly and severally, against Smith and his appellate counsel for obdurate and vexatious prosecution of a frivolous appeal.[]AE I.

57. On July 25, 2015, Mr. Smith filed a medical review petition, which was assigned to WCJ Ignasiak and thereafter denied and dismissed by Order dated September 1, 2015. AE I.

58. On September 1, 2006, Con-way filed a Dragonetti action in the Allegheny County Court of Common Pleas, docketed at GD-06-020709, alleging abuse of process pursuant to 42 Pa.C.S.A. §8351, against both Respondent and Mr. Smith. AE I.

59. At a pretrial conference in the Dragonetti action, the employer informed the presiding judge that it would forego any monetary damages in lieu of an enforceable promise by Respondent and Mr. Smith that both would stop filing baseless workers' compensation litigation regarding Mr. Smith's 1996 claim. AE I.

60. Respondent and Mr. Smith defended against the Dragonetti action, which resulted in a jury verdict against them. AE I.

61. Because of filings Respondent made in the Dragonetti action, the Honorable Judith L.A. Friedman, Judge of the Court of Common Pleas of Allegheny County, entered an Order of Court dated January 29, 2009, as follows:

Mary Ellen Chajkowski, Esquire, is hereby directed not to file anything in the captioned matter that is not in compliance with the Rules of Court and the Allegheny County Local Rules. Failure to heed this Order shall result in the imposition of sanctions or disciplinary measures. AE I.

62. In a subsequent opinion dated July 29, 2009, entered by Judge Friedman in the same Dragonetti litigation, she found that:

The latest appeal by Defendant Smith, who still is represented by his co-Defendant and attorney, Mary Ellen Chajkowski, Esquire, is interlocutory and should be quashed.

We denied Smith's Motion for Judgment on the Pleadings as there are facts in dispute. Neither Defendant nor his attorney seem to understand this basic principle. Sanctions may be appropriate against Ms. Chajkowski. AE I.

63. A jury verdict was entered in the Dragonetti action, dated March 13, 2012, in favor of Con-Way and against both Respondent and Mr. Smith in the amount of \$45,358.24. AE I.

64. Respondent and Mr. Smith filed post-trial motions. AE I.

65. By Memorandum Order of Court dated June 18, 2012, the Honorable Timothy Patrick O'Reilly, Judge of the Court of Common Pleas of Allegheny County, stated in pertinent part:

The trial of [the Dragonetti action] consumed 2 days. At the outset and even before the trial started I advised the defendants that I would not permit a re-trial of the workers compensation claim. Nevertheless, that is what they attempted to do.

Needless to say, I had to make many rulings barring that effort and deeming irrelevant the great bulk of the testimony they wanted to offer. Further, defendant Chajkowski, even though a lawyer, continued to refuse to abide by my rulings and frequently engaged in an irrelevant diatribe against [the employer]. At one point Smith, himself, attempted to participate from counsel table with shouted objections and allegations against [the employer]. I had to assert my utmost authority to keep the trial from becoming a circus. AE I.

66. Thereafter, Respondent and Mr. Smith filed a motion for post-trial relief which was denied by Judge O'Reilly, who affirmed the jury verdict on June 29, 2012. AE I.

67. Following Judge O'Reilly's determination, on behalf of Mr. Smith, Respondent filed an appeal of the denial of Mr. Smith's workers' compensation claims to the Supreme Court of Pennsylvania, which at the time of the hearing on the Petition for Discipline was pending at 2303 C.D. 2015. N.T. 26-29, 63-64, 72-74.

68. At the disciplinary hearing on April 29, 2016, Respondent attempted to relitigate Mr. Smith's claims before the Hearing Committee, despite instruction from the panel at the commencement of the hearing that Respondent was not permitted to do so, as the Committee deemed all of the allegations in the Petition for Discipline admitted because of Respondent's failure to file a response to Petition. N.T. 9, 16-18, 19, 21, 35.

69. At the disciplinary hearing, Respondent did not admit or acknowledge the charges of misconduct and showed no recognition that her past and ongoing actions related to Mr. Smith's workers' compensation claim violate the Pennsylvania Rules of Professional Conduct. N.T. 16-30, 34-36, 63-64, 72-74.

70. At the disciplinary hearing, Respondent showed no remorse for her past and ongoing conduct related to Mr. Smith's workers' compensation claim. N.T. 16-30, 34-36, 72-74.

71. At the disciplinary hearing, Respondent presented mitigating evidence that she served on a number of boards over the years in an unpaid position, including: Oakland Catholic High School, Fox Chapel Area School District, Harmarville Rehabilitation Center, USA Dance, Pittsburgh Ceilidh, the Hibernians Irish heritage group, and Shadyside Academy. N.T. 45-49.

72. At oral argument before the three-member panel of the Disciplinary Board on January 5, 2017, Respondent attempted to relitigate Mr. Smith's claims, despite instruction from the panel that she was not permitted to do so.

III. CONCLUSIONS OF LAW

Respondent failed to file an Answer to Petition for Discipline; therefore, the facts alleged in the Petition for Discipline are deemed admitted. Pa.R.D.E. 208(b)(3).

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

1. RPC 1.16(a)(1) – A lawyer shall not represent a client or, where representation has commenced, shall withdraw from the representation of a client if the representation will result in violation of the Rules of Professional Conduct or other law.

2. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is

not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.

3. RPC 4.4(a) – In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay, or burden a third person, or use methods of obtaining evidence that violate the legal rights of such a person.

4. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

IV. DISCUSSION

Disciplinary proceedings against Respondent were instituted by Office of Disciplinary Counsel by way of a Petition for Discipline filed on November 10, 2015. Pennsylvania disciplinary law has established that “evidence is sufficient to prove unprofessional conduct if a preponderance of the evidence establishes the conduct and the proof of such conduct is clear and satisfactory.” *Office of Disciplinary Counsel v. Lawrence J. DiAngelus*, 907 A.2d 452, 456 (Pa. 2006). The facts of this matter are not in dispute, as Respondent failed to respond to the Petition for Discipline. Pa.R.D.E. 208(b)(3).

In 2005, after exhausting all appellate remedies in Mr. Smith’s workers’ compensation case, Respondent had a responsibility to advise her client that his case had reached its conclusion. Indeed, even though the results obtained may not have been desirable to Mr. Smith, he was entitled to straightforward information as to the status of his matter. Instead, Respondent has spent the past eleven years litigating the same

issues through Pennsylvania's Bureau of Workers' Compensation and appellate courts, despite numerous rulings against her client and against her individually. Nevertheless, Respondent continues to engage in the improper use of legal process, despite having been informed by the tribunals before which she practiced law that each of her client's successive claims were barred by the doctrine of *res judicata* and expiration of the applicable statute of limitations set forth in the Pennsylvania Workers' Compensation Act. Respondent's relitigation of matters which she has already lost on multiple occasions indicates a profound lack of understanding of her responsibilities to her client and a serious lack of respect for the judicial system.

Respondent's conduct ran afoul of numerous Rules of Professional Conduct. After resolution of the first claim petition by denial of the Petition for Allowance of Appeal by the Supreme Court of Pennsylvania and denial of the Petition for Certiorari, both in 2005, in every subsequent filing Respondent made on behalf of Mr. Smith, she initiated a proceeding, or asserted an issue therein, without a basis in law and fact for doing so that was not frivolous, contrary to RPC 3.1. Her continued representation of Mr. Smith constituted a failure to withdraw from the attorney-client relationship if the representation would result in the violation of other rules of professional conduct, in violation of RPC 1.16(a)(1). Respondent's refusal to abide by the decisions of the Workers' Compensation Judges, the WCAB, the Commonwealth Court, the Supreme Court of Pennsylvania and the United States Supreme Court is a violation of RPC 4.4(a), which prohibits a lawyer from using means that have no substantial purpose other than to embarrass, delay or burden a third person. Mr. Smith's employer was undoubtedly burdened as it was forced to repeatedly defend itself for over a decade in a matter that

reached finality in 2005. Respondent failed to recognize that her conduct warranted the unnecessary expenditure of judicial resources and was prejudicial to the administration of justice, in violation of RPC 8.4(d).

Having concluded that Respondent committed professional misconduct, this matter is ripe for the determination of discipline. The Hearing Committee recommended suspension for a period of one year and one day. Petitioner requests that the Board adopt the Hearing Committee's recommendation. Respondent takes exception to the Hearing Committee's recommendation and argues that the charges against her should be dismissed.

After reviewing the Hearing Committee's Report and recommendation and the recommendations of the parties set forth in briefs and at oral argument, and after considering the nature and gravity of the misconduct and the presence of aggravating or mitigating factors, *Office of Disciplinary Counsel v. Gwendolyn Harmon*, 72 Pa. D. & C. 4th 115 (2004), we recommend that Respondent be suspended from the practice of law for a period of one year and one day.

Respondent engaged in serious misconduct, which was aggravated by her failure to acknowledge that her actions violated the Rules of Professional Conduct, her lack of remorse, and her prior discipline for disregarding several orders of the Allegheny County Court of Common Pleas, conduct which further evidences her disdain for the authority of the courts before which she appears. At the disciplinary hearing, Respondent provided mitigating factors related to her voluntary participation on the boards of school systems and community groups, but was more concerned with the merits of Mr. Smith's case than offering evidence in her defense. The Board notes as particularly aggravating

Respondent's repeated attempts to relitigate the facts of her client's case before not only the Hearing Committee, but the three-member panel of the Disciplinary Board at oral argument. Respondent's ongoing refusal to acknowledge that Mr. Smith's case is final demonstrates that she fails to recognize she has engaged in misconduct. This display of willful ignorance renders Respondent unfit to practice law and warrants significant discipline.

There is no *per se* discipline in Pennsylvania; however, prior similar cases are instructive and are suggestive of a suspension when, as here, an attorney who files multiple frivolous appeals and abuses the judicial system would likely pose a danger to the public if she continues to practice law. ***Office of Disciplinary Counsel v. Robert S. Lucarini***, 472 A.2d 186, 189-91 (Pa. 1983).

Suspension for one year and one day is consistent with prior cases. In the recent case of ***Office of Disciplinary Counsel v. Paul J. McArdle***, 39 DB 2015 (D. Bd. Rpt. 9/21/16) (S. Ct. Order 11/22/16), the Board dealt with misconduct of a similar nature to that of Respondent in the instant matter. The Board found that McArdle's continued pursuit of his *pro se* claims for relief was "dangerous and detrimental to the public and has negatively affected the reputation of the legal profession." Rpt. p. 26. The Board held that "[McArdle's] conduct indicates that his persistent refusal to accept adverse court rulings stems from [his] disdain [for the judicial system], and not from a good faith interpretation of the [adverse] court decisions." Rpt. pp. 26-27. Despite the fact that McArdle had practiced law in the Commonwealth for more than thirty years without incident, the Board recommended to the Supreme Court of Pennsylvania that, because

he was unfit to practice law, a one year and one day period of suspension was appropriate. The Court imposed a one year and one day suspension.

Another similar case, *Office of Disciplinary Counsel v. Allen L. Feingold*, 93 DB 2003 (D. Bd. Rpt. 11/18/05) (S. Ct. Order 3/3/06), involved a respondent-attorney who was suspended for three years by the Supreme Court of Pennsylvania for assisting clients in fraudulent conduct and filing frivolous lawsuits. The Board recommended a multi-year suspension after it concluded that Feingold showed no remorse and demonstrated contempt for the disciplinary process.

In yet another similar matter, an attorney was disbarred after he engaged in a course of conduct designed to obstruct the judicial process by instigating baseless filings. In *Office of Disciplinary Counsel v. John J. Koresko, V.*, 119 DB 2013 (D. Bd. Rpt. 6/1/15) (S. Ct. Order 9/4/15), the disciplinary case against Koresko arose from numerous false and baseless claims that he filed against parties, their attorneys individually and their respective law firms. Koresko also filed numerous pleadings, motions and interlocutory appeals based on improper and meritless grounds, and he interfered with opposing counsel's lawful efforts to conduct discovery depositions and delayed the case for one year. Further, Koresko exhibited a demonstrable lack of remorse. The Board recommended a suspension of five years to the Supreme Court of Pennsylvania; the Court imposed disbarment when Koresko did not respond to a Rule to Show Cause. Contrary to respondents Feingold and Koresko, the instant Respondent has not engaged in dishonest and deceitful practices, although, akin to those respondents, the instant Respondent has not accepted responsibility for her actions.

The primary function of the disciplinary system in Pennsylvania is to determine the fitness of the lawyer to continue in that capacity, while protecting the courts and the public from persons unfit to practice law. *Office of Disciplinary Counsel v. Brian J. Preski*, 134 A.2d 1027, 1031 (Pa. 2016). Respondent's contempt for judicial authority is evident from her conduct on behalf of her client over a span of more than ten years and her comments on record during the disciplinary hearing. Petitioner demonstrated that Respondent poses a danger to the public and the profession and must be removed from the practice of law for a period of time that requires her to petition for reinstatement and prove her fitness. A lesser discipline is unlikely to deter Respondent from her misconduct.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Mary Ellen Chajkowski, be Suspended from the practice of law for one year and one day.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 

John P. Goodrich, Board Member

Date: 03/02/2017

Board Members Kelly, Haggerty and Hart recused.