

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL | : | No. 980, Disciplinary Docket No. 3 |
| Petitioner | : | |
| V. | : | No. 150 DB 2004 |
| KENTON R. O'NEIL | : | Attorney Registration No. 66285 |
| Respondent | : | (Venango 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**

On October 13, 2004, Office of Disciplinary Counsel filed a Petition for Discipline against Kenton R. O'Neil, Respondent. The Petition charged Respondent with misconduct in six separate client matters. Respondent did not file an Answer to Petition.

A disciplinary hearing was held on January 28, 2005, before a District IV Hearing Committee comprised of Chair David Ridge, Esquire, and Members James G. Gordon, Esquire, and Gene R. Peck, Esquire. Respondent failed to appear.

The Hearing Committee filed a Report on March 17, 2005, finding that Respondent violated the Rules of Professional Conduct as charged in the Petition for Discipline, and recommending that Respondent be suspended for five years, to run consecutively to a suspension previously imposed in a separate disciplinary matter.

This matter was adjudicated by the Disciplinary Board at the meeting of May 18, 2005.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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, Kenton R. O'Neil, was born in 1967 and was admitted to the practice of law in Pennsylvania in 1992. His attorney registration mailing address is

P.O. Box 538, Seneca PA 16346. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. By Order of the Supreme Court of Pennsylvania dated December 11, 2003, Respondent was transferred to inactive status for failing to pay his annual registration fee.

4. As of this date, Respondent is still on inactive status.

5. By Order of the Supreme Court of Pennsylvania dated December 22, 2004, Respondent was suspended from the practice of law for one year and one day.

Charge I – Ruda Matter

6. On October 8, 2001, Nancy and Dennis Ruda met with Respondent about preparing a Living Trust and Wills. At that time:

a) The Rudas provided Respondent with information to assist in preparing the documents;

b) The Rudas paid Respondent \$2,030, the full amount of his fee;

c) The Rudas signed all forms Respondent requested.

7. On October 11, 2001, Respondent negotiated the check for \$2,030.

8. On November 12, 2001, the Rudas again met with Respondent and signed forms for the Trust and Wills, which Respondent had drafted for them. The Rudas also signed forms to have their assets transferred to the Living Trust.

9. The Rudas made some corrections to the documents and Respondent told them he would make these corrections and contact them.

10. Respondent did not thereafter contact the Rudas.

11. The Rudas used some of the executed forms to transfer their assets to the Living Trust.

12. On May 15, 2002, Respondent filed on behalf of the Rudas a deed transferring title to their real estate from them to the Rudas as trustees under their Living Trust.

13. However, Respondent did not complete the final Living Trust or Wills.

14. The Rudas, consequently, did not have a valid executed Living Trust and valid executed Wills.

15. By a letter dated August 1, 2002, Respondent informed the Rudas, in part, that:

- a) He was closing his law office due to financial reasons;
- b) They could contact him at the same phone number and mailing address;
- c) He had been in contact with other attorneys who could possibly take over their files;

d) He would notify them so they could choose whether to allow their file to go to another law firm or pick up their file and hire another attorney on their own;

e) He would notify them soon regarding arrangements for the file;

f) All documents were given to them at the time they signed their estate planning documents.

16. As of August 1, 2002, Respondent had not concluded his legal services for the Rudas, in that they had not received from him their completed Living Trust and Wills.

17. Respondent did not refund to them the unearned portion of the fee they had paid him.

18. After receiving the letter from Respondent, Mr. Ruda called Respondent on numerous occasions, but was unable to speak with Respondent and left a message for Respondent to return his call.

19. Respondent did not return any calls or otherwise communicate with the Rudas.

20. Disciplinary Counsel contacted Respondent in November 2003 regarding the Rudas' complaint.

21. Respondent told Disciplinary Counsel that he would check for the Rudas' file, or words to that effect, but he never communicated with the Rudas nor did he complete the legal services for them or refund any unearned portion of their fee.

Charge II – Toy Matter

22. On January 17, 2002, Robert Toy retained Respondent to prepare numerous estate planning documents, including a Living Trust, Wills and powers of attorney for him and his wife.

23. The Toys paid Respondent \$900 as his retainer.

24. On January 22, 2002, Respondent negotiated Mr. Toy's check.

25. By a March 21, 2002 letter to the Toys, Respondent stated, in part, that he needed the Toys to complete a Client Asset Information worksheet so he could complete their estate plan.

26. In June 2002, Mr. Toy called Respondent's office and informed Respondent's secretary that he and his wife decided not to proceed with the estate planning and required a refund of the \$900.

27. Respondent did not provide the Toys with a refund.

28. By letter dated January 30, 2003, sent to Respondent by certified mail, Mr. Toy terminated Respondent's services and requested a refund of the \$900 retainer.

29. Respondent did not communicate with the Toys or send them a refund.

30. Mr. Toy called Respondent in February, March and April of 2003. On each of three occasions he left a message for Respondent to return his call.

31. Respondent did not return any of the calls.

32. On May 2, 2003, Mr. Toy telephoned Respondent. At that time, Respondent told Mr. Toy that he thought he had sent a refund check to the Toys and that he would follow-up on their request.

33. Respondent failed to refund the retainer fee or otherwise communicate with the Toys.

34. Mr. Toy continued to call Respondent on various occasions with no success.

35. By letter dated November 13, 2003 sent to Respondent by certified mail, Mr. Toy:

- a) listed his attempts to contact Respondent;
- b) recounted Respondent's promise to take care of the matter;
- c) offered to pay a minimum fee for the one-time meeting if appropriate;
- d) asked Respondent to contact him.

36. Respondent did not contact the Toys nor did he refund the unearned portion of the \$900 fee.

Charge III – White Matter

37. On April 30, 2002, H. Richard and Joanne White retained Respondent to prepare a Living Trust, Wills and other estate planning documents for them.

38. The Whites paid a \$900 retainer fee to Respondent.

39. Respondent negotiated the check for \$900.

40. Respondent prepared the estate documents for the Whites and met with them in May or June 2002 to review the documents.

41. On January 6, 2003, Respondent met with the Whites at his law office, at which time the Whites signed the Living Trust and other documents and took possession of the documents. The Whites signed deeds to transfer title to their real estate to the Living Trust.

42. About two days later, the Whites sent Respondent a check for \$1,205, representing the balance of Respondent's legal fee and \$125 for the cost of transferring title to their two properties to the Living Trust.

43. Respondent negotiated the check for \$1,205.

44. In April 2003, Mr. White telephoned Respondent and asked whether the title transfers to the Living Trust were completed and Respondent told him that he thought they were.

45. Shortly thereafter, Mr. White checked with the Clarion County Recorder of Deeds Office and was told that title to the property had not been transferred to the Living Trust.

46. In May 2003, Mr. White called Respondent, who told him that title to their property had not been transferred and Respondent said he would file the deeds to transfer title to the Living Trust.

47. In July 2003, Mr. White telephoned Respondent and spoke to his wife, who told Mr. White that Respondent had a family crisis and would be unavailable for several weeks, but she would check on the status of the case.

48. About a week later, Respondent's wife called Mr. White and said she could find no further information about the deeds.

49. Thereafter Mr. White continued to call Respondent but was unable to speak to him and left messages.

50. Respondent did not return Mr. White's calls.

51. In or about September or October 2003, Respondent closed his law office and stopped practicing law.

52. Respondent did not notify the Whites that he stopped practicing law.

53. Respondent did not take action to transfer title to the Whites' property to the Living Trust.

54. Respondent did not refund to the Whites the unearned portion of the fee they paid to him.

Charge IV – Cloak Matter

55. On May 30, 2002, Jean Cloak retained Respondent to prepare a Living Trust, Will and deeds for her.

56. Ms. Cloak paid Respondent \$700 toward his fee and costs. Respondent did not communicate to Ms. Cloak in writing the basis or rate of his fee.

57. On June 24, 2002, Ms. Cloak went to Respondent's office with her daughter, Linda Smith. Although Ms. Cloak was not able to meet with Respondent, she signed the Living Trust, Will and deeds that Respondent prepared for her and signed other documents so that her assets could be transferred to the Living Trust.

58. Ms. Cloak gave to Respondent's secretary a check for \$740, the balance of Respondent's legal fee, and a check for \$100 for the real estate title transfers.

59. Respondent did not take action to record the deeds to transfer title to the two properties to the Living Trust.

60. In July 2002, Linda Smith, on behalf of Ms. Cloak, went to Respondent's office but was unable to meet with Respondent.

61. Thereafter, Ms. Smith called Respondent about every two weeks on behalf of Ms. Cloak about Ms. Cloak's legal matter until about February 2003.

62. On each occasion, Ms. Smith was unable to speak with Respondent and left a message.

63. Respondent did not return any of Ms. Smith's calls or otherwise communicate with his client, Ms. Cloak.

64. Respondent did not notify Ms. Cloak that he closed his law office and stopped practicing law.

65. Respondent did not take action to record the deeds transferring title to Ms. Cloak's properties to the Living Trust.

66. Respondent did not refund to Ms. Cloak the unearned portion of the legal fee, nor did he refund the \$100 she paid him for the costs of transferring title to the properties.

Charge V – Weaver Matter

67. On June 8, 2001, Lillian Weaver's husband, Richard Lee Weaver, from whom she had separated, died intestate.

68. Ms. Weaver retained Respondent to represent her in the administration of her husband's estate.

69. Respondent had not previously represented her or her husband and did not communicate to her in writing the basis or rate of any fee which he was charging for his legal services.

70. On or about August 1, 2001, Letters of Administration were issued by the Indiana County Register of Wills to Ms. Weaver in her capacity as administrator of her husband's estate, at which time Respondent was acting as her attorney of record.

71. Thereafter, Respondent did not take any action of record on behalf of the Estate and did not take any appreciable action in the administration of the Estate.

72. From December 2001 to September 2003, Ms. Weaver telephoned Respondent on numerous occasions for information concerning the status of her husband's Estate.

73. On each occasion, Ms. Weaver was not able to speak with Respondent and left a message for Respondent to return her call.

74. Respondent did not return Ms. Weaver's calls.

75. In late December 2002 Ms. Weaver located a buyer for the real estate that was owned by her husband.

76. Ms. Weaver wanted to make an appointment with Respondent about the sale of the real estate, but Respondent never returned her calls and the lawyer for the prospective buyer could not contact Respondent.

77. On September 29, 2003, Disciplinary Counsel telephoned Respondent and told him about the complaint filed against him by Ms. Weaver.

78. Respondent told Disciplinary Counsel that he would call Ms. Weaver within the next week but failed to do so.

79. Disciplinary Counsel again telephoned Respondent in November 2003 and Respondent advised that he would finish the Weaver estate, but Respondent never took any appreciable action to conclude the estate.

80. Respondent did not notify Ms. Weaver that he closed his law office in October 2003 and stopped practicing law.

81. Respondent did not return to Ms. Weaver any of her documents that he had in his possession.

82. Respondent did not withdraw his appearance as attorney of record for Ms. Weaver in her capacity as Administrator of her husband's estate.

Charge VI – Pyles Matter

83. On April 10, 2003, Andrew Pyles retained Respondent regarding a property dispute matter.

84. Mr. Pyles gave Respondent a check for \$125 for Respondent to write a letter regarding the matter.

85. Respondent did not communicate to Mr. Pyles in writing the basis or rate of his fee.

86. Respondent did not negotiate the check he received from Mr. Pyles.

87. Respondent did not take any action on behalf of Mr. Pyles.

88. From May 2003 until September 2003, Mr. Pyles telephoned Respondent about his legal matter.

89. Mr. Pyles was never able to speak to Respondent and Respondent did not return any of Mr. Pyles' calls.

90. Respondent did not notify Mr. Pyles that he closed his law practice and was not practicing law.

91. On November 7, 2003, Disciplinary Counsel contacted Respondent and told him about the complaint filed against him by Mr. Pyles.

92. Respondent said he had no specific memory of Mr. Pyles and he would check his files.

93. Respondent did not return Mr. Pyles' file or otherwise communicate with him.

94. Respondent did not appear at the disciplinary hearing held on January 28, 2005.

III. CONCLUSIONS OF LAW

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

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a) – A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.

3. RPC 1.5(b) – When a lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

4. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned.

IV. DISCUSSION

This matter is before the Disciplinary Board on a Petition for Discipline charging Respondent with numerous violations of the Rules of Professional Conduct arising from his failure to complete legal work for six separate clients. Petitioner presented clear and convincing evidence that Respondent was retained by his clients to handle either estate planning, living trusts and wills or other legal matters, and despite being paid legal fees, failed to complete the work for which he was retained. In some of the cases, Respondent performed a substantial amount of work, but was not able to complete such work to the benefit of his clients. There is clearly a pattern of neglect threading these cases together; however, the Board does not find from the record that Respondent accepted

representation with no intent to perform the legal work. As noted above, Respondent did perform significant amounts of work in some of the cases. Respondent did not return any portion of the unearned fees and also failed in some cases to pay costs which had been advanced to him for the recording of deeds. Respondent did not communicate with his clients when they attempted to contact him and further complicated the situation by closing his law office and failing to inform all but one of his clients of his decision to cease practicing law.

Respondent's numerous and chronic violations of the ethical rules provide a basis for significant discipline. Consideration must be given to several aggravating factors present in this matter. Respondent has been the subject of prior discipline. He was suspended by the Supreme Court for one year and one day on December 22, 2004 for misconduct very similar to the instant misconduct involving three separate clients. Moreover, Respondent failed to appear for the disciplinary hearing in the instant matter as well as the prior matter. Respondent has offered no reason or justification for his actions. His attitude toward these disciplinary proceedings has the same air of evasiveness and disinterest as did his conduct towards his clients. Respondent has chosen not to involve himself in the process.

Based on the totality of the circumstances, the Board is persuaded that a suspension of five years, to run concurrently with the prior suspension, is warranted. This sanction serves to protect the public from harm and necessitates the filing of a petition for

reinstatement to the Supreme Court by Respondent if he desires to practice law in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Kenton R. O'Neil, be suspended from the practice of law for a period of five years, to run concurrently with a prior suspension.

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: _____
Jonathan H. Newman, Board Member

Date: June 22, 2005

Board Members Raspanti and Nordenberg did not participate in the May 18, 2005 adjudication.

PER CURIAM:

AND NOW, this 20th day of September, 2005, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 22, 2005, it is hereby ORDERRED that KENTON R. O'NEIL be and he is SUSPENDED from the Bar of this Commonwealth for a period of five years to run concurrently with the suspension ordered by this Court on December 22, 2005, and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.