

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2176 Disciplinary Docket No. 3  
Petitioner :  
 : No. 152 DB 2013  
v. :  
 : Attorney Registration No. 14406  
THOMAS M. NOCELLA :  
Respondent : (Philadelphia)

ORDER

**PER CURIAM:**

AND NOW, this 20<sup>th</sup> day of October, 2015, the Petition of Respondent to Withdraw the Objections and to Cancel the Oral Argument is GRANTED. Furthermore, having withdrawn his objections, Respondent Thomas M. Nocella is disbarred from the Bar of this Commonwealth, and he shall comply with all the provisions of Pa.R.D.E. 217.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 10/20/2015

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 152 DB 2013
Petitioner	:	
	:	
v.	:	Attorney Registration No. 14406
	:	
THOMAS M. NOCELLA	:	
Respondent	:	(Philadelphia)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on December 5, 2013, Office of Disciplinary Counsel charged Thomas M. Nocella with violations of Rules of Professional Conduct 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b) and 1.16(d) related to his representation of a client in a divorce matter. Respondent filed an Answer to Petition on January 10, 2014.

By Joint Stipulation dated March 4, 2014, Respondent admitted violating the Rules as contained in the Petition for Discipline.

A second Joint Stipulation was entered into by the parties on March 4, 2014, relating to Respondent's conduct while pursuing a seat on the Court of Common Pleas of Philadelphia County. This Stipulation removed the need for Petitioner to file a Petition for Discipline. Therein, Respondent admitted that he violated Rule of Professional Conduct 8.4(c). Respondent later admitted to violating Rules of Professional Conduct 8.2(b) and 8.4(d).

A hearing was held on March 26, 2014, before a District I Hearing Committee comprised of Chair Maria-Louise G. Perri, Esquire, and Members Ria C. Momblanco, Esquire, and Thomas H. Chiacchio, Esquire. Respondent was represented by Samuel C. Stretton, Esquire.

Following the submission of Briefs by the parties, the Hearing Committee filed a Report on October 17, 2014. The majority of the Committee recommended disbarment. The dissenting Member recommended a suspension of five years retroactive to November of 2011.

On October 23, 2014, Respondent filed a Brief on Exceptions and requested oral argument before the Disciplinary Board.

Petitioner filed a Brief Opposing Exceptions on November 10, 2014.

Oral argument was held before a three-member panel of the Board on December 23, 2014.

This matter was adjudicated by the Board at the meeting on January 15, 2015.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Ave., Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent is Thomas M. Nocella. He was born in 1944 and was admitted to practice law in the Commonwealth in 1971. His attorney registration address is 4000 Gypsy Lane, #113, Philadelphia, PA 19129. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a prior record of discipline consisting of an Informal Admonition administered on February 2, 2011, for violations of RPC 4.1(a), 8.4(a), 8.4(c) and 8.4(d). In February of 2008, Respondent made misrepresentations to the counsel for the Philadelphia Board of Ethics by stating that The Appreciation Fund had no assets and assisted the treasurer of The Appreciation Fund in violating two court orders requiring The Appreciation Fund to pay the Philadelphia Board of Ethics \$39,000.00.

#### **The Divorce Matter**

4. Sometime in July of 2011, Ms. Marta D. Maciuk retained Respondent to represent her in obtaining a divorce. Divorce Matter Stipulations, 3.

5. Respondent advised Ms. Maciuk that the fee for obtaining a divorce from her husband, Grzegorz Maciuk, was \$1,875.00. Divorce Matter Stipulations, 4.

6. Ms. Maciuk agreed to pay Respondent the sum of \$1,875.00. Divorce Matter Stipulations, 5.

7. On August 8, 2011, Ms. Maciuk paid Respondent the sum of \$1,300.00 in cash. Divorce Matter Stipulations, 6.

8. Respondent provided Ms. Maciuk with a receipt dated August 8, 2011, which acknowledged his receiving a cash payment of \$1,300 for a divorce and indicated an outstanding balance of \$575.00. Divorce Matter Stipulations, 7.

9. On August 12, 2011, Respondent filed a Complaint in Divorce on behalf of his client with the Family Court Division for the Philadelphia Court of Common Pleas. Divorce Matter Stipulations, 8 & 9.

10. On August 29, 2011, Ms. Maciuk paid Respondent the sum of \$575.00 in cash. Divorce Matter Stipulations, 10.

11. Respondent provided Ms. Maciuk with a receipt dated August 29, 2011, which acknowledged his receiving a cash payment of \$575.00 for a divorce and indicated that the balance was paid in full. Divorce Matter Stipulations, 11 and 12.

12. On September 2, 2011, Respondent filed an Affidavit of Personal Service in the divorce case, which represented that the Complaint in Divorce had been served on Mr. Maciuk. Divorce Matter Stipulations, 13.

13. Respondent could not take any action to finalize the divorce until ninety days had elapsed from the date that Mr. Maciuk had been served the Complaint in Divorce. By no later than December 2, 2011, the waiting period had elapsed. Divorce Matter Stipulations, 14 and 14(a).

14. However, after September 2, 2011, Respondent failed to take any additional action to obtain a divorce for his client. Divorce Matter Stipulations, 15.

15. On November 8, 2011, Respondent was elected to serve as a judge of the Philadelphia Court of Common Pleas. Divorce Matter Stipulations, 16.

16. After Respondent was elected, but before he was sworn in and began his term as a judge, Respondent failed to advise Ms. Maciuk that:

a. He had been elected to serve as a judge in the Philadelphia Court of Common Pleas;

b. He was unable to continue to represent her in obtaining a divorce from Mr. Maciuk;

c. He would be withdrawing his appearance in the divorce case;

d. She should retain other counsel to complete the divorce case.

Divorce Matter Stipulations, 17(a), (b), (c),(d).

17. After Respondent was elected, but before he was sworn in and began his term as a judge, Respondent failed to:

a. Provide Ms. Maciuk with the legal file he maintained for the divorce case; and

b. Refund to Ms. Maciuk the advance payment of his fee that went unearned.

Divorce Matter Stipulations, 18(a) and (b).

18. In January 2012, Respondent was sworn in and began his term as a judge of the Philadelphia Court of Common Pleas. Divorce Matter Stipulations, 19.

19. Beginning sometime in the fall of 2011 and continuing until April 2012, Ms. Maciuk called Respondent from time to time on his office telephone number and cell phone number to obtain information on the status of the divorce case. Divorce Matter Stipulations, 20.

20. Respondent failed to return Ms. Maciuk's messages. Divorce Matter Stipulations, 21.

21. Sometime in April 2012, Ms. Maciuk discovered that Respondent had ceased the private practice of law and had begun serving his term as an elected judicial official for the Philadelphia Court of Common Pleas. Divorce Matter Stipulations, 22.

22. As of March 5, 2013, the date Respondent received from Office of Disciplinary Counsel notice of Ms. Maciuk's disciplinary complaint, the only actions Respondent had taken on Ms. Maciuk's file were to have the Complaint in Divorce filed and served. Divorce Matter Stipulations, 23.

23. By letter dated June 13, 2013, counsel for Respondent, Samuel C. Stretton, Esquire sent a letter to Disciplinary Counsel Richard Hernandez in which Mr. Stretton enclosed a \$1,200 check dated June 12, 2013, made payable to Ms. Maciuk and her new attorney, David Crosson, Esquire. Divorce Matter Stipulations, 24 and 25.

24. Disciplinary Counsel Hernandez mailed the \$1,200 check to Ms. Maciuk. Divorce Matter Stipulations, 26.

#### **Pursuit of Judgeship Matter**

25. Office of Disciplinary Counsel was conducting an investigation at Board File No. C1-13-770 of alleged misconduct on the part of Respondent in violation of the Rules of Professional Conduct. Judgeship Stipulations, 1.

26. Respondent, after consulting with his counsel, knowingly, intelligently and voluntarily waived the submission of a Form DB-3 (Referral of Complaint to Reviewing Hearing Committee Member) and the review process attendant thereto under the provisions of Rule 208(a)(2) and (a)(3), Pa.R.D.E. and §87.8(b), *et seq.*, D.Bd. Rules, and the filing of a petition for discipline pursuant to the Rules, with the understanding that the matter at C1-13-770 and these Stipulations would be consolidated with the Petition for Discipline docketed at 152 DB 2013 and immediately referred to a Hearing Committee. Judgeship Stipulations, 2 and 3.

27. Respondent was a judicial candidate in Philadelphia in the following three primary elections:

- a. 2001, for the Municipal Court;
- b. 2005, for the Court of Common Pleas;
- c. 2009, for the Municipal Court.

Judgeship Stipulations, 5(a), (b), (c).

28. Respondent lost all three primary elections. Judgeship Stipulations, 6.

29. Respondent was not a judicial candidate in the 2011 primary election. Judgeship Stipulations, 7.

30. On August 25, 2011, following nomination by the Philadelphia Democratic ward leaders, Respondent became the party candidate in the general election for a vacated judicial seat with the Philadelphia Court of Common Pleas. Judgeship Stipulations, 8.

31. When an attorney becomes a candidate for judicial office in Philadelphia, the Philadelphia Bar Association Commission on Judicial Selection and



Retention notifies the judicial candidate of its confidential evaluation process and requests that the judicial candidate participate. Judgeship Stipulations, 9.

32. During the 2001, 2005 and 2009 primary elections, and the 2011 general election, Respondent participated in the Commission's evaluation process for judicial candidates. Judgeship Stipulations, 10.

33. Every judicial candidate who participates in the Commission's evaluation process is required to complete and submit a questionnaire. The information contained in a submitted questionnaire is used as a basis for the Commission to rate the candidates as "recommended" or "not recommended." Judgeship Stipulations, 11.

34. Each questionnaire contains a Certification Statement with the following language:

I certify that all the statements made in this questionnaire are true, complete and correct to the best of my knowledge and belief and are made in good faith. I am aware that any changes or additions to the foregoing information must be submitted promptly to the Commission on Judicial Selection and Retention.

Judgeship Stipulations, 12.

35. As part of the evaluation process, Respondent completed and submitted the following questionnaires:

- a. 2001 Personal Data Questionnaire;
- b. 2004 Update Evaluation Questionnaire;
- c. 2009 Personal Data Questionnaire;
- d. 2011 Update Evaluation Questionnaire.

Judgeship Stipulations, 13(a),(b), (c), and (d),

36. Respondent signed the Certification Statement on the 2001, 2004, 2009 and 2011 questionnaires. Judgeship Stipulations, 14.

37. The Commission's evaluation process also includes the appointment of a five-member Investigative Team to interview the judicial candidate and others with information concerning the candidate's background and qualifications. Judgeship Stipulations, 15.

38. The Investigative Team reports its findings on the day of the judicial candidate's scheduled appearance before the full Commission, at which time the Commission Chair questions the judicial candidate. Judgeship Stipulations, 16.

39. If the Commission concludes that the judicial candidate merits a "recommended" rating after his or her first appearance, then no further appearance is required. If the Commission decides upon a "not recommended" rating, then the judicial candidate may choose to participate in a second appearance before the Commission in order to answer additional questions and present a statement to persuade the Commission to issue a "recommended" rating. Judgeship Stipulations, 17.

40. Following evaluations by its Investigative Teams, the Commission issued the following ratings to Respondent:

- a. 2001 First Appearance: Recommended;
- b. 2005 First Appearance: Preliminary Not Recommended  
Second Appearance: Recommended;
- c. 2009 First Appearance: Preliminary Not Recommended  
Second Appearance: Recommended; and
- d. 2011 First Appearance: Recommended.

Judgeship Stipulations, 18(a), (b), (c), and (d).

41. Following Respondent's first appearance in 2005 and 2009, the Commission notified Respondent by letter of his preliminary "not recommended" rating and identified the following criteria as problematic:

- a. Financial responsibility (2005 and 2009);
  - b. Demonstrated sound judgment in one's professional life (2005 and 2009);
  - c. A record and reputation for excellent character and integrity (2009);
  - d. Demonstrated administrative ability (2009).
- Judgeship Stipulations, 19(a), (b), (c) and (d).

42. In 2005 and 2009, Respondent participated in a second appearance before the Commission and persuaded the Commission to issue a "recommended" rating. Judgeship Stipulations, 20.

43. Following Respondent's second appearance in 2005 and 2009, the Commission notified Respondent by letters of his "recommended" status. Judgeship Stipulations, 21.

44. The aforementioned letters contained the following directive requiring Respondent to disclose any material facts that altered or added to the information he submitted in his questionnaires, including the time period after the Commission issued a "recommended" rating:

The Commission's Guidelines require you to notify the Commission promptly of any material facts that would require changes to any of the answers previously supplied by you in the candidate's questionnaire.

Judgeship Stipulations, 22.

45. On February 5, 2009, Respondent completed a full-length Personal Data Questionnaire and submitted it to the Commission. At that time, Respondent was both an appointed judge of the Philadelphia Municipal Court and a judicial candidate for the same position. Judgeship Stipulations, 23 and 23(a). He served from 2008 until June 2010 in the Philadelphia Municipal Court.

46. Respondent signed the Certification Statement at the bottom of the 2009 Personal Data Questionnaire, certifying that his statements were true, complete and correct and acknowledging his duty to submit promptly to the Commission any changes or additions to the information contained in his questionnaire. Judgeship Stipulations, 24.

47. Question No. 21 in the 2009 Personal Data Questionnaire required Respondent to list cases in which he was sued by a client. Judgeship Stipulations, 25.

a. Respondent responded, "No changes since prior filing," referring to three (3) cases listed in Respondent's 2001 questionnaire and one (1) case listed in his 2004 questionnaire for a total of four (4) cases. Judgeship Stipulations, 25(a).

48. Question No. 22 in the 2009 Personal Data Questionnaire asked Respondent to list all cases in which he was "ever a party or otherwise involved in or had a pecuniary interest in any civil or criminal proceedings." Judgeship Stipulations, 26.

a. Respondent responded that in addition to cases named in prior questionnaires, he was "named as a defendant in a civil matter";

b. In 2001, Respondent named one case in which he was a defendant;

c. In 2004, Respondent did not provide additional case names;

d. Respondent's 2009 response included a total of two cases.

Judgeship Stipulations, 26(a), (b), (c), and (d).

49. The 2009 Investigative Team performed a docket search and discovered approximately 30 cases in which Respondent was either a defendant or a respondent. Judgeship Stipulations, 27.

50. In response to Questions No. 21 and 22 in Respondent's 2009 Personal Data Questionnaire, Respondent listed a total of six cases in which he was either a defendant or respondent, and he failed to disclose 24 other cases. Judgeship Stipulations, 28.

51. On February 5, 2009, Respondent was deposed by counsel for the Philadelphia Board of Ethics in a civil case filed in the Philadelphia Court of Common Pleas captioned *Philadelphia Board of Ethics v. The Appreciation Fund* ("the Ethics Board case"). Judgeship Stipulations, 29.

52. On March 11, 2009, the Philadelphia Board of Ethics filed a Petition for Contempt against the Appreciation Fund and named Respondent and Ernesto DeNofa as additional defendants in the Ethics Board cases. Judgeship Stipulations, 30.

53. The February 5, 2009 deposition and the March 11, 2009 Petition for Contempt, naming Respondent as an additional defendant in the Ethics Board case, were changes or additions to the information contained in Respondent's 2009 Personal Data Questionnaire and, therefore, material to the Commission's evaluation of his judicial candidacy. Judgeship Stipulations, 31.

54. On April 17, 2009, the Commission's Investigative Team interviewed Respondent. Judgeship Stipulations, 32.

55. Prior to Respondent's April 17, 2009 interview with the Commission's Investigative Team, Respondent failed to disclose to the Commission information about his involvement in the Ethics Board cases, specifically that he was deposed, that he was named as a defendant, and that he was the subject of a Petition for Contempt. Judgeship Stipulations, 33.

56. The Investigative Team independently discovered the Petition for Contempt and questioned Respondent about it and the Ethics Board case at the April 17, 2009 interview. Judgeship Stipulations, 34.

57. In Respondent's 2009 Personal Data Questionnaire, Respondent disclosed that he was named a party in a civil case filed in the Philadelphia Court of Common Pleas captioned *Straughter-Carter Post No. 6627, Veterans of Foreign Wars of the United States et al. v. Monastery Hill Partners, P.P. et al.* ("the VFW lawsuit"), and provided a brief description of the matter. Judgeship Stipulations, 35.

58. In response to Question No. 22 in the 2009 Questionnaire, which required Respondent to "give the particulars about any civil or criminal proceedings in which he had been a party," Respondent disclosed some information pertaining to the VFW lawsuit but failed to disclose particular, material facts about the case, including that he misrepresented his authority to execute documents and collected a \$60,000.00 fee at the property closing. (N.T. 132-135, 181-182, 195, 197-198; P-10, 18, 44-45 in conjunction with Judgeship Stipulations, 36.)

59. In the 2011 general election, Respondent was a judicial candidate for the Philadelphia Court of Common Pleas and participated in the Commission's evaluation process. Judgeship Stipulations, 37.

60. A "recommended" rating is a three-year presumptive rating. If a judicial candidate runs again within a three-year period after the "recommended" rating is issued, the Commission has discretion to either waive or require a short form Update Evaluation Questionnaire, an additional investigation and an appearance before the Commission. Judgeship Stipulations, 38 and 38(a).

61. In 2011, despite the 2009 "recommended" rating, the Commission requested that Respondent submit an Update Evaluation Questionnaire, assigned an Investigative Team to interview Respondent and others about his qualifications, and required Respondent to appear before the Commission. Judgeship Stipulations, 39.

62. On September 29, 2011, Respondent submitted a one-page short form Update Evaluation Questionnaire to the Commission. Judgeship Stipulations, 40.

63. In Respondent's 2011 Update Evaluation Questionnaire, Respondent checked "No" in response to the following sole question:

Have any material facts occurred since you completed the last questionnaire which would require a change in any of the answers given by you?

Judgeship Stipulations, 41.

64. Respondent represented to the Commission that no material facts occurred since his February 5, 2009 Personal Data Questionnaire. Judgeship Stipulations, 42.

65. Respondent signed the Certification Statement at the bottom of the 2011 Update Evaluation Questionnaire certifying that Respondent's statements were true, complete and correct, and acknowledged his duty to submit promptly to the Commission any changes or additions to the information. Judgeship Stipulations, 43.

66. Since Respondent did not submit new information in his 2011 Update Evaluation Questionnaire, the Certification Statement related back to the information contained in the February 5, 2009 Personal Data Questionnaire. Judgeship Stipulations, 44.

67. Based on the 2005 and 2009 preliminary "not recommended" ratings, Respondent was aware that the Commission had previously identified the criteria of financial responsibility, judgment in his professional life, record of character and integrity, and administrative ability as problematic when determining Respondent's rating as a judicial candidate. Judgeship Stipulations, 45.

68. When Respondent submitted his 2011 Update Evaluation Questionnaire, he failed to disclose multiple material facts that would change Respondent's answers to the questions posed on his 2009 Personal Data Questionnaire, particularly in regard to financial and legal matters. Judgeship Stipulations, 46.

69. The multiple material facts Respondent failed to disclose included the following:

a. On September 9, 2009, Judge Gary DiVito of the Philadelphia Court of Common Pleas found Respondent and co-defendant Ernesto DeNofa in contempt of two court orders in connection with the Ethics Board cases;

b. On November 17, 2009, Respondent and Ernesto DeNofa entered into a settlement agreement with the Philadelphia Board of Ethics in the amount of \$160,000 in the Ethics Board case;



c. On March 11, 2011, two IRS liens were filed against Respondent, one in the amount of \$358,961.00 and the other in the amount of \$110,748.00;

d. On April 27, 2011, creditor Czarnecki Profit Sharing filed a judgment against Respondent in the amount of \$923,152.00;

e. On May 17, 2011, creditor Casimir Czarnecki filed a judgment against Respondent in the amount of \$306,174.00; and

f. On June 15, 2011, Respondent filed a Chapter 13 voluntary bankruptcy petition in the United States Bankruptcy Court for the Eastern District of Philadelphia, *In re: Thomas M. Nocella*.

Judgeship Stipulations, 47(a) – (f).

70. After submission of the 2011 Questionnaire and prior to the November 8, 2011 election, Respondent failed to disclose to the Commission or its Investigative Team that he had been administered an Informal Admonition on February 2, 2011, for his dishonest and contemptuous conduct in the Ethics Board case. (N.T. 217-218; P-10-11, 19)

71. After the submission of Respondent's September 29, 2011 Update Evaluation Questionnaire and prior to his October 17, 2011 interview by the Investigative Team, Respondent failed to disclose to the Commission or its Investigative Team the material facts listed in paragraph 69, all of which had occurred subsequent to the submission of his 2009 Personal Data Questionnaire. Judgeship Stipulations, 48.

72. During the Respondent's October 17, 2011 interview with the Investigative Team and his October 28, 2011 appearance before the Commission, Respondent failed to disclose the material facts listed in paragraph 69, all of which were

additions or changes to the responses in his 2009 Personal Data Questionnaire. Judgeship Stipulations, 49.

73. Throughout Respondent's 2011 judicial candidacy, Respondent failed to disclose to the Commission any of the material facts listed in paragraph 69 above, all of which had occurred after he submitted his 2009 Personal Data Questionnaire. The omission of these material facts resulted in a misrepresentation of Respondent's credentials. Judgeship Stipulations, 50 and 50(a).

74. On October 28, 2011, Commission Vice-Chair Gaeton J. Alfano contacted Respondent by telephone and advised him that the Commission rated him as a "recommended" judicial candidate. Judgeship Stipulations, 51.

75. Between October 28, 2011 and the November 8, 2011 election, Respondent failed to disclose to the Commission the material facts listed in paragraph 69, all of which had occurred subsequent to the submission of Respondent's 2009 Personal Data Questionnaire. Judgeship Stipulations, 52.

76. On November 8, 2011, Respondent was elected to the position of judge on the Philadelphia Court of Common Pleas. Judgeship Stipulations, 53. He served from January 1, 2012 to November 9, 2012, when he was placed on interim suspension by the Pennsylvania Supreme Court.

77. The Court of Judicial Discipline ("the CJD") filed an opinion dated June 26, 2013, in which the CJD concluded that Respondent's conduct, as described supra, violated Rule 7B(1)(c) of the Rules Governing Standards of Conduct of Magisterial District Judges. Judgeship Stipulations, 54.

78. By Order dated August 5, 2013, the Commonwealth of Pennsylvania Court of Judicial Discipline removed Respondent from the bench and barred him from holding judicial office in the future.

79. Respondent testified at the disciplinary hearing.

80. Respondent failed to disclose on the 2011 Questionnaire, and to the Investigative Team and the Commission, the material facts listed in paragraph 69, because he desired to become a judge and was afraid that the disclosure of the material facts would result in his defeat in the general election. (N.T. 106, 122-123, 143-147, 149-150)

81. Respondent admitted that greed was responsible for his conduct in the sale of the property from the local VFW Post to Monastery. (N.T. 134, 174-175, 197)

82. Respondent admitted that his misconduct in the Ethics Board case was based on a desire to curry favor with a Democratic ward leader and City Councilwoman. (N.T. 117-118, 122-123)

83. Respondent claimed he did not disclose the Informal Admonition in the 2011 Questionnaire because he forgot about the Informal Admonition.

a. Respondent personally appeared for the administration of the Informal Admonition on February 2, 2011, eight months before he completed the 2011 Questionnaire; and

b. Respondent had previously disclosed on the 2009 Questionnaire a March 8, 2006 letter of education he had received in February 2006 from Office of Disciplinary Counsel

(N.T. 217-219, 295-298; P-10-11, 19)

84. Respondent presented character evidence by having two witnesses testify and presenting a stipulation as to the testimony of a third witness.

85. Anna M. Brown, Kathleen Berry, and Timothy Rice, Esquire testified that Respondent has a good reputation as a peaceful and law-abiding person and as a truthful and honest person. (N.T. 28-29, 68-69, 83)

86. Respondent cooperated with Petitioner by entering into stipulations of fact and by admitting the ethical rules he was charged with violating. (N.T. 11-12, 16-17, 22)

87. Respondent expressed remorse and responsibility, but he minimized his misconduct and focused on the negative consequences he experienced. (N.T. 74-75; 121-122, 124-125; 126; 140-141; 281-284; 285-286)

88. In discussing how he had changed, Respondent testified that he was "paying for [his] mistakes" and that he had "come a long way from being a Common Pleas Court judge to being out of work. So, you're going from someone who was making \$200,000 a year to someone who was making \$2,000 a month. That's the – honestly, it's that kind of change. Your positions change. Whatever status you had is lost. A lot of my friends have left me. " (N.T. 267-268)

89. In explaining why he would no longer engage in professional misconduct, Respondent testified that he lacked the motive to commit future bad acts because he is no longer ambitious. (N.T. 173, 232)

90. A Hearing Committee Member afforded Respondent the opportunity to further explain why he would not engage in similar misconduct and Respondent answered that he wanted to avoid causing further damage to his reputation. (N.T. 233)

91. From November 2011 through August 2013, the news media provided extensive coverage of Respondent's acts. (P-22)

III. CONCLUSIONS OF LAW

By his conduct as set forth above in the Divorce Matter and the Judgeship Matter, Respondent has 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)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

3. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

4. 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.

5. 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 or expense that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

6. RPC 8.2(b) – A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct.

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

8. RPC 8.4(d) – A lawyer shall not engage in conduct that is prejudicial to the administration of justice.

#### IV. DISCUSSION

Petitioner bears the burden of proving ethical misconduct by a preponderance of evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Petitioner's evidence, consisting of the Joint Stipulations, Petitioner's exhibits, and Respondent's admissions prove that Respondent violated RPC 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), 1.16(d), 8.2(b), 8.4(c), and 8.4(d). Respondent's misconduct involves one case of client neglect and, as a judge and a judicial candidate, his fraud on the evaluation and ratings commission consisting of misrepresentations and material omissions relating to his qualifications. By Order dated August 5, 2013, the Court of Judicial Discipline removed Respondent from the bench and barred him from holding judicial office in the future. The issue before this Board concerns Respondent's license to practice law and the degree of discipline warranted by Respondent's misconduct.

It is well-established that in evaluating professional discipline, each case must be decided individually on its own unique facts and circumstances. Office of Disciplinary Counsel v. Lucarini, 427 A.2d 186 (Pa. 1983). In order to "strive for consistency so that similar misconduct is not punished in radically different ways," Office of Disciplinary Counsel v. Cappuccio, 48 A.3d 1231 (Pa. 2012) (quoting Lucarini, 473 A.2d at 190), the Board is guided by precedent for the purpose of measuring "the

respondent's conduct against other similar transgressions." In re Anonymous No. 56 DB 94 (Linda Gertrude Roback), 28 Pa. D. & C. 4<sup>th</sup> 398 (1995). As always, the Board is ever mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts, and deter unethical conduct. Office of Disciplinary Counsel v. Czmus, 889 A.2d 117 (Pa. 2005).

Petitioner seeks at the least a lengthy suspension, relying on the seriousness of the misconduct, the aggravating factors, and the case precedent involving dishonest conduct while a public official. Respondent seeks either a public censure with probation or a stayed suspension of one year plus probation. Respondent's position relies primarily on mitigating factors.

The two-member majority of the Hearing Committee did not accept either recommendation, instead recommending that Respondent be disbarred. The dissenting member recommends a lengthy suspension of five years, retroactive to November 2011.

Having reviewed the parties' recommendations as well as the Committee's Report and recommendation and dissenting opinion, and after hearing oral argument on Respondent's Exceptions to the Hearing Committee Report, the Board concludes that disbarment is the appropriate discipline. While no disciplinary case in Pennsylvania is directly on point with the instant matter, prior similar cases are suggestive of the imposition of the most severe discipline. We find the following cases to be instructive, as they address the issues of truth and honesty in the legal profession, as well as attorneys who hold public office or serve in a public capacity.

Our Supreme Court has explained, "Truth is the cornerstone of the judicial system: a license to practice law requires allegiance and fidelity to truth." Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000). When an attorney engages in acts of dishonesty the Court has not hesitated to impose disbarment. See Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981)( filing a sworn pleading known to be false warrants disbarment; dishonesty on the part of an attorney establishes unfitness to practice law.); Office of Disciplinary Counsel v. Holsten, 619 A.2d 1054 (Pa. 1993) (knowingly forging a court order and certificate, lying to judicial authority upon being questioned as to origins of a document, and neglect of a legal matter warrant disbarment); Office of Disciplinary Counsel v. Czmus, 889 A.2d 1197 (Pa. 2005) (pattern of repeated dishonesty in providing false information on bar application to conceal other misconduct warrants disbarment)

The Supreme Court has addressed the issue of attorneys who are public officials or serve in a public capacity and engage in misconduct. In Office of Disciplinary Counsel v. Cappuccio, 48 A.3d 1231 (Pa. 2012), the respondent-attorney was a Chief Deputy District Attorney at the time of the conduct at issue. While Cappuccio was engaging in certain crimes, his public persona was that of a law enforcement figure. Cappuccio's "unique posture" as a public official made his offense "more serious than a singular violation of the disciplinary rules of an individual attorney." Cappuccio at 1240. See Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1197 (Pa. 1982). Because the Court found that serving as a public official was an aggravating factor, Cappuccio was disbarred, even though the Board had recommended a five year suspension.

Disbarment was imposed in Office of Disciplinary Counsel v. David J. Murphy, 188 DB 2010 (2013). While serving as a Magisterial District Judge, Mr. Murphy



conspired with his former paramour to forge 64 signatures of individuals on nominating petitions in connection with his reelection. Mr. Murphy had the nominating petitions notarized and filed with the Delaware County Election Bureau despite knowing they were false. Mr. Murphy was criminally convicted and sentenced to probation for four years and community service. He was removed from judicial office by Order of the Court of Judicial Discipline dated January 11, 2011. Although the Board recommended a five year suspension after recognizing mitigating factors, the Supreme Court disbarred Mr. Murphy.

In contrast to the disbarment matters, we note several cases involving dishonest conduct that have resulted in suspensions. A case that shares some similarities to the instant matter is Office of Disciplinary Counsel v. Jose Victor Bernardino a/k/a Joseph Bernardino, 125 DB 2007 (2008). Mr. Bernardino was suspended for four years for having submitted to the Office of Enrollment and Discipline of the United States Patent and Trademark Office two Applications for Registration to Practice that contained multiple misrepresentations and omissions in order to conceal, *inter alia*, ODC's investigation and prosecution of Mr. Bernardino in a pending disciplinary proceeding. Mr. Bernardino's misconduct and Respondent's misconduct is similar in that they involved extensive misrepresentations and omissions on multiple questionnaires. Respondent's conduct is rendered more serious by his status as a judge/candidate for judgeship, the pattern of dishonesty and the negative publicity. See also, Office of Disciplinary Counsel v. DiAngelus, 907 A.2d 452 (Pa. 2006) (misrepresenting existence of a plea agreement to an assistant district attorney resulted in five year suspension); Office of Disciplinary Counsel v. Eilberg, 441 A.2d 1197 (Pa.

1982) (unlawful receipt of compensation for representation of client by Congressman's law firm before a federal agency warrants a five year period of suspension)

By applying the Pennsylvania Supreme Court's precedents regarding truth and the elevated position of those serving in a public capacity, and the well-publicized impact of Respondent's misconduct on the integrity of the legal profession and the judicial system, we find that disbarment is warranted.

Respondent's conduct consisted of dishonesty in 2009 while serving as an appointed judge of the Philadelphia Municipal Court and while he was also a judicial candidate for the same position. His dishonesty also occurred in 2011 when he was a judicial candidate of the Philadelphia Court of Common Pleas. Respondent failed to disclose multiple material facts on questionnaires he completed in 2009 and 2011 that were submitted to the Philadelphia Bar Association Commission on Judicial Selection and Retention. The material facts Respondent failed to disclose in the 2009 questionnaire while serving as an appointed Municipal Judge seeking reelection included a failure to disclose twenty-four (24) cases. When Respondent became a candidate for a seat on the Philadelphia Court of Common Pleas, he failed to disclose additional material facts on his update to the 2009 questionnaire, as listed above in Fact #69. These non-disclosures were not trivial in nature. Additionally, Respondent's neglect of his client Marta Maciuk's divorce matter must not be overlooked. Respondent basically ignored Ms. Maciuk once he was elected as judge in November of 2011. The reimbursement of Ms. Maciuk's monies was achieved only after Petitioner became involved in the matter.

Aggravating factors exist in Respondent's disciplinary matter. Respondent has a prior record of discipline consisting of an Informal Admonition administered in

February of 2011. Respondent violated Rules of Professional Conduct 4.1(a), 8.4(a), 8.4(c) and 8.4(d) for his misrepresentations made to the counsel for the Philadelphia Board of Ethics. Respondent then failed to disclose this Informal Admonition while a candidate for the Common Pleas judgeship. Furthermore, Respondent's testimony at the disciplinary hearing implied that he did not remember the Informal Admonition when asked why he did not disclose it. Other factors weighing against Respondent are his execution of legal documents under false pretenses in order to obtain a fee and the negative publicity generated by Respondent's misconduct that had a detrimental impact on the public's perception of the legal profession and judiciary.

The Board recognizes in mitigation that Respondent was a lawyer for some 42 years at the time of the hearing and cooperated with Petitioner by admitting the facts and stipulating to most of the Rules violations, and by eventually admitting the remaining violations. Respondent recognized his wrongdoing, although perhaps not as clearly as might be expected under the circumstances. His remorse was tempered by his partial explanation to the Hearing Committee that he is not a risk for future wrongdoing because he no longer has political ambitions. Further, Respondent's suggestion that his misconduct should only be sanctioned by a public censure or a stayed suspension with probation does not indicate a recognition of the seriousness of his misconduct.

Respondent introduced the testimony of three character witnesses, including one by stipulation. Ms. Anna M. Brown is a ward leader and supported Respondent for his judgeship. Ms. Kathleen Berry worked for Respondent for many years as well as performing his secretarial work during his time on the Court of Common Pleas. Timothy Rice, Esquire, has been an attorney for thirty years and was

Respondent's law clerk while Respondent served on the Court. All three character witnesses testified that Respondent has a good reputation as a peaceful and law-abiding person and as a truthful and honest person. We accept this testimony as credible. Even so, for the reasons discussed above, our inclusion of this evidence on the mitigation side of the scale does not change our agreement with the Hearing Committee's recommendation of disbarment.

The matters herein are serious and aggravated by the fact that Respondent was a judge and held to a heightened standard. Respondent's transgressions offend both the public and the bar and bring disrepute to the profession. Under the circumstances, we unanimously recommend that Respondent be disbarred from the practice of law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Thomas M. Nocella, be Disbarred from the practice of law.

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:   
Andrew J. Trevelise, Board Member

Date: June 5, 2015

Board Members Douglas W. Leonard, Tracey McCants Lewis and Lawrence M. Kelly recused.