IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2395 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 29 DB 2016
	:	
v.	:	Attorney Registration No. 201184
	:	
SHARMIL DONZELLA McKEE,	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 18th day of October, 2017, the Joint Petition to Reopen the Record is granted and, upon consideration of the Report and Recommendations of the Disciplinary Board, Sharmil Donzella McKee is suspended for two years from the Bar of this Commonwealth. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 29 DB 2016
v.	:	Attorney Registration No. 201184
SHARMIL DONZELLA McKEE 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 February 16, 2016, Office of Disciplinary Counsel charged Sharmil Donzella McKee, Respondent, with professional misconduct in ten separate matters stemming from her alleged neglect, failure to communicate, failure to refund fees, failure to competently represent her client, failure to properly manage client funds, misrepresentation of facts to opposing counsel, and actions prejudicial to the administration of justice. On April 1, 2016, Respondent filed an Answer to Petition for

Discipline. Respondent did not contest the factual allegations of the Petition, but requested to be heard in mitigation.

A disciplinary hearing was held on June 30, 2016, before a District I Hearing Committee comprised of Chair Linda M. Hee, Esquire, and Members Meredith A. Mack, Esquire, and Philip N. Pasquarello, Esquire. Petitioner offered into evidence ODC-1 through ODC-21. Glenn A. Brown, Esquire, represented Respondent at the hearing. Respondent testified on her own behalf and offered the testimony of one expert witness. Respondent offered into evidence Exhibit B.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 6, 2016, concluding that Respondent violated the rules as contained in the Petition for Discipline and recommending that she be suspended for a period of two years.

The parties did not file briefs on exception to the Hearing Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on April 28, 2017.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at 601 Commonwealth Avenue, Suite 2700, Harrisburg, PA, 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 Sharmil Donzella McKee. She was admitted to practice law in the Commonwealth in 2005 and maintains an attorney registration address of 6622 Castor Ave., Philadelphia, PA 19149. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. By Order dated October 5, 2016, effective November 4, 2016, the Supreme Court of Pennsylvania placed Respondent on administrative suspension for nonpayment of her license fee.

4. Respondent has no prior record of discipline.

5. On February 16, 2016, Petitioner filed a Petition for Discipline against Respondent, charging her with professional misconduct in ten matters. ODC-1.

6. Respondent filed a response, in which she admitted the factual allegations of the matter. ODC-2.

The Salazar Matter

7. In September 2006, Donald Salazar, a Utah resident, was involved in a traffic accident in Philadelphia.

8. Mr. Salazar's Utah lawyer retained Respondent to file a lawsuit on behalf of Mr. Salazar against Harjit Cab Company ("Harjit"), the cab company believed to have been responsible for the accident.

9. On September 22, 2008, Respondent filed a Municipal Court action on behalf of Mr. Salazar against Harjit. Mr. Salazar was awarded $2,000.00 plus $100 in costs. Respondent appealed to the Philadelphia Court of Common Pleas.

10. Respondent received two letters offering to settle the pending appealed matter for $2,665.99. Respondent failed to inform Mr. Salazar or his counsel in Utah of the offer.

11. Respondent received notice from the court in early April 2010 that the case was set for arbitration on August 9, 2010.

12. Mr. Salazar's Utah counsel sent Respondent an email seeking information concerning the status of the case. This email was a follow-up to several telephone calls, emails, and letters to which Respondent had not responded.

13. Respondent's last contact with Utah counsel was an April 27, 2010, email in which Respondent promised to review the matter and give Utah counsel a comprehensive summary of where the matter stood within one week.

14. Respondent did not appear at the arbitration on August 9, 2010, and Mr. Salazar's complaint was denied. Respondent did not appeal the arbitration award.

15. Respondent did not respond to any of Utah counsel's numerous subsequent attempts to contact her to obtain an update on the status of the matter.

16. Respondent did not seek the court's permission to withdraw from the representation nor did she consult with her client or Utah counsel concerning withdrawing from the case.

The Slomsky Matter

17. Respondent entered her appearance on behalf of the defendants, S.A. Smith Enterprises, LLC, *et. al.*, in an action in the United States District Court for the Eastern District of Pennsylvania, which was assigned to the Honorable Joel Slomsky.

18. By Order dated January 10, 2011, Judge Slomsky scheduled a Pretrial Conference pursuant to F.R.C.P. 16 for February 19, 2011, and directed that: (a) the parties make initial disclosures pursuant to F.R.C.P. 26(a) within 14 days; (b) the parties commence discovery immediately; and (c) counsel consult with each other and complete the required report pursuant to F.R.C.P. 26(f) on or before February 26, 2011.

19. Respondent received the Order.

20. Respondent (a) failed to make the required disclosures; (b) failed to commence discovery; and (c) failed to consult with opposing counsel.

21. Respondent and her clients failed to appear at the Rule 16 conference on February 19, 2011.

22. On February 22, 2011, plaintiff's counsel filed a Motion to Compel Initial Disclosures.

23. On February 23, 2011, Judge Slomsky scheduled a March 1, 2011, hearing on plaintiff's Motion to Compel and rescheduled the Rule 16 Conference at which Respondent had failed to appear when it was originally scheduled.

24. On May 1, 2011, Respondent and her clients failed to appear at the hearing and Respondent failed to notify the court of her unavailability.

25. On March 2, 2011, Judge Slomsky scheduled another status conference for March 22, 2011.

26. The court sent to Respondent a notice that: (a) failure to appear could result in a default judgment against the defendants; (b) the defendants were to file a timely response to the Motion to Compel; and (c) failure to file a timely response to the Motion to Compel would result in the granting of the Motion.

27. Respondent received the notice from the court.

28. Respondent failed to appear or inform the court of her unavailability and failed to respond to the Motion to Compel.

29. By Order dated Mach 29, 2011, Judge Slomsky granted plaintiff's Motion for a Default Judgment against defendants pursuant to F.R.C.P. 37(b)(2)(A)(vi).

30. Respondent did not write to the judge or his clerk concerning the matter in general or to explain her non-attendance at the conference. Further, Respondent did not file a motion to withdraw as counsel, nor did Respondent call the Judge's chambers prior to the March 1 or March 22, 2011 conferences.

The Joseph Matter

31. Respondent agreed to represent Sansom Joseph pursuant to a written fee agreement dated July 24, 2009, for a fixed fee of $1,500.00.

32. On January 18, 2010, in the Court of Common Pleas of Philadelphia County, Respondent filed suit on behalf of her client in ***Joseph v. East West Realty Group, LLC et. al.***, 0110 No. 1902.

33. On September 1, 2010, Respondent took a default judgment against the defendant in the amount of $206,000.00.

34. Respondent told Mr. Joseph that she would agree to collect the judgment for an additional fee of $2,500.00 plus a contingency fee of 20% of the gross amount collected on the judgment.

35. On September 20, 2010, Mr. Joseph paid Respondent with a check for $2,500.00.

36. Thereafter, Mr. Joseph gave Respondent two checks noted in the memo section as "Sheriff fee." The first check, dated October 29, 2010, was for the

amount of $2,500.00. The second check, dated March 3, 2011, in the amount of $2,000.00, was also identified on the instrument as "for Sheriff fee."

37. Respondent deposited both checks in the Police and Fire Credit Union account, a non-IOLTA account.

38. On several occasions subsequent to March 3, 2011, Mr. Joseph sought information from Respondent concerning the status of his matter and the payment of the sheriff's fees. He received no information or response from Respondent.

39. Respondent made no further efforts to enforce the judgment in favor of her client.

40. Mr. Joseph subsequently sought new counsel.

41. Respondent wrote to Mr. Joseph's new counsel that Mr. Joseph had not paid her the $10,000.00 (the balance of the fee Respondent claimed that she and Mr. Joseph had orally agreed upon) and when Respondent received that money she would proceed to execute on his judgment.

42. Respondent offered to settle her dispute with Mr. Joseph by offering to "waive" the balance of her claimed unpaid fee against Mr. Joseph while keeping the balance already paid, even though she had done nothing to earn any of the fee in her possession and did not offer to return the monies forwarded to her that had been described as "sheriff fees."

The Kadoch Matter

43. Respondent represented Express Furniture, Inc. ("Express") in July 2011, at the request of Marc Kadoch, Express's president, against Express's landlord, Harrowgate, Inc. ("Harrowgate").

44. Respondent filed an action captioned ***Express Furniture, Inc. v. Harrowgate Plaza, Inc.***, No. 11063273, in the Court of Common Pleas of Philadelphia County.

45. After two hearings in July 2011, at which Harrowgate did not appear, the court granted Express certain injunctive relief concerning the opening of the premises in question.

46. Subsequently, when Mr. Kadoch sought to have Respondent seek damages against Harrowgate, Respondent ceased communicating with Mr. Kadoch and did nothing to proceed with the matter, or to respond to Mr. Kadoch's requests for information as to the status of the matter.

The Gunter Matter

47. Respondent represented herself in the Court of Common Pleas of Philadelphia County in her domestic relations matter involving the custody and support of her minor child.

48. At a support hearing on April 18, 2012, in the Court of Common Pleas of Philadelphia County, before Master in Support Michael J. Pandolfi, Respondent testified falsely that her minor child was covered by private health insurance when she knew he was covered exclusively by the Department of Welfare (Medicaid) from the date of his birth.

49. Respondent testified falsely that she had paid $107.00 per month on her student loan debt when in fact she had not made any payments in over a year.

50. Respondent improperly represented to Karin Gunter, Esquire, counsel for the child's father, that she (Respondent) represented two of the witnesses

that the father had subpoenaed. Both of these individuals testified under oath at the support hearing that Respondent had never represented them.

51. Respondent improperly redacted non-privileged information from her business bank account that she had been ordered by the court to produce to the child's father.

52. The court ordered Respondent to pay $5,000 in attorney's fees for her failure to provide court-ordered discovery and to follow the court's orders.

53. Respondent intentionally commingled client and non-client funds in her IOLTA account.

The Gilliand Matter

54. In 2010, James Gilliand retained Respondent to form a Limited Liability Corporation ("LLC").

55. Subsequently, Mr. Gilliand paid Respondent $750 on February 7, 2012, for the dissolution of the LLC.

56. Between July 6, 2012 and September 12, 2012, Mr. Gilliand attempted to contact Respondent by cell phone, Facebook posts, and email concerning the status of his matter.

57. Respondent did not respond to Mr. Gilliand's various attempts to discover the status of his matter.

58. As of December 18, 2014, Respondent had not contacted Mr. Gilliand nor had she completed the dissolution of the LLC.

The Frazier Matter

59. In early 2013, Gwendolyn Y. Frazier retained Respondent to handle a mortgage foreclosure action that had been filed against her.

60. Respondent entered her appearance in the matter on June 24, 2013.

61. On June 24, 2013, Respondent attempted to perfect Ms. Frazier's right to a jury trial.

62. On July 31, 2013, the Bank filed a Motion to strike the Jury Trial. On August 26, 2013, that motion was granted by the court.

63. On August 13, 2013, Respondent again attempted to perfect Ms. Frazier's right to a jury trial.

64. Conciliation conferences were scheduled for July 30, 2013, October 31, 2013, December 12, 2013, and January 30, 2014. Respondent did not appear at any of the scheduled conciliations and did not inform Ms. Frazier on any of the four occasions that she would not be in attendance.

65. On February 4, 2014, Ms. Frazier's case was removed from conciliation and docketed to proceed to litigation as a result of Respondent's repeated failure to attend schedule conciliation conferences.

66. On February 21, 2004, Ms. Frazier's right to a jury trial was stricken by the Court.

The Gregg Matter

67. Lisa Gregg retained Respondent to represent her in two separate matters, one against DirecTV and one against Ms. Gregg's landlord.

68. Respondent agreed to represent Ms. Gregg *pro bono* in the landlord/tenant action.

69. Respondent agreed to charge Ms. Gregg $1,500.00 for the DirecTV matter.

70. Respondent collected a settlement in the amount of $10,000.00 on behalf of her client against DirecTV. Further, DirecTV agreed to remove a $900.00 improper delinquency charge on Ms. Gregg's credit report.

71. Respondent has retained the full proceeds of the settlement and has refused to communicate with Ms. Gregg about the matter on the telephone or in response to written communications.

72. Respondent provided Ms. Gregg with a list of costs in excess of $22,000.00 that Respondent claimed she had expended in the prosecution of Ms. Gregg's matter.

73. Respondent did not provide copies of any of the alleged bills or canceled checks she issued in payment of the alleged bills and has not paid over any of the proceeds of the settlement to Ms. Gregg.

ODC Matter I

74. By letter dated October 24, 2012, Respondent was notified by the Pennsylvania Lawyers Fund for Client Security ("Client Security") of an overdraft in her TD Bank IOLTA account. Respondent was given five business days to answer the inquiry in writing. Respondent did not respond to Client Security's inquiry within five days. Client Security sent Respondent a follow-up letter dated November 28, 2012.

75. On December 17, 2012, Respondent left a voicemail for Kathryn Peifer, Esquire, Executive Director of Client Security, in which Respondent told Ms. Peifer that she had sent a response to the October 24, 2012 letter.

76. Ms. Peifer telephoned Respondent and informed her that there was no record of receiving any correspondence from Respondent on this matter. By letter dated December 28, 2012, Disciplinary Counsel asked Respondent to send to Ms. Peifer a copy of the alleged correspondence.

77. Respondent's counsel provided to Ms. Peifer a copy of what was alleged to be the letter sent with accompanying documents. Ms. Peifer had never previously received the correspondence or the accompanying documents.

ODC Matter II

78. On January 15, 2015, Respondent attempted a debit transaction from her IOLTA account at TD Bank, in the amount of $187,600.00. There was a shortfall in her IOLTA account in the amount of $196,244.30.

79. On January 29, 2015, Ms. Peifer from Client Security wrote to Respondent and requested that she provide an explanation of why the overdraft occurred. Respondent was requested to provide that explanation to Client Security within seven business days of receipt of the letter.

80. Respondent did not respond to the January 29, 2015 letter from Ms. Peifer.

81. On February 24, 2015, Ms. Peifer wrote to Respondent seeking an explanation of her overdraft within five business days of Respondent's receipt of the letter.

82. At present, Respondent has not responded to Ms. Peifer's letter of February 24, 2015.

83. Respondent created an overdraft in her IOLTA account at TD Bank in the amount of $296,244.30.

84. By DB-7 Letter of Inquiry dated June 4, 2015, Petitioner requested a statement of Respondent's position and related documentation.

85. Respondent failed to respond without good cause to the June 4, 2015, DB-7 letter.

86. A disciplinary hearing was held on June 30, 2016. At the hearing, Respondent relied upon her own testimony and that of her behavioral health expert, Martha M. Durkin.

87. Ms. Durkin is a social worker and licensed therapist and has been employed by Evergreen Counseling and Psychological Associates since 1995. N.T. 15.

88. Ms. Durkin credibly testified that Respondent sought counseling with Ms. Durkin in the spring of 2015 as a result of anxiety, which manifested itself in symptoms such as insomnia, change in appetite, confusion about decision-making, insecurity, and other physical symptoms. N.T. 16.

89. Ms. Durkin testified that Respondent informed her at the first meeting that she had disciplinary allegations pending against her, but Ms. Durkin further testified that she and Respondent never discussed the allegations during the course of therapy. N.T. 17. Ms. Durkin testified that she did not know the details of the misconduct that Respondent engaged in. N.T. 43.

90. Ms. Durkin testified that Respondent experienced changes in her life connected with the birth of her child in 2010, the onset of single parenthood, and a difficult custody situation with the child's father. N.T. 18–22.

91. Ms. Durkin diagnosed Respondent with adjustment disorder, with mixed emotions of anxiety and depression, generally considered as external stress-related disorders. N.T. 32-33, 40; ODC-14, 15.

92. Ms. Durkin testified that Respondent was not receptive to the idea of medication, so they did not explore that option. Instead, Ms. Durkin developed strategies for Respondent to deal with the stresses caused by her personal life. N.T. 21-22, 23-25, 34.

93. Respondent treated with Ms. Durkin until the fall of 2015. At that time, Respondent could no longer afford treatment. N.T. 29-30, 69.

94. Ms. Durkin testified that she cannot relate specifically Respondent's emotional health to her professional misconduct. N.T. 40.

95. Ms. Durkin testified that Respondent's anxiety should not impair Respondent's understanding of right and wrong. N.T. 43-44.

96. Ms. Durkin testified that Respondent did not resolve her issues as a result of her therapy. N.T. 29.

97. Respondent testified on her own behalf.

98. In 2010, shortly after her son was born, Respondent realized that things were not going well for her. She became forgetful and missed deadlines, and was unable to come up with clear solutions to client problems. N.T. 58.

99. In 2011, Respondent sought treatment from her primary care physician, Karen E. Bowles, M.D. Dr. Bowles diagnosed Respondent with anxiety and prescribed medication. N.T. 36-39; ODC-20, ODC-21.

100. Although Respondent stopped treating with Ms. Durkin in fall of 2015 because she could not afford the therapy sessions, she uses coping strategies taught to her by Ms. Durkin, including mindfulness, yoga, and breathing techniques. N.T. 77-78.

101. Respondent's custody and support issues remain ongoing.

102. Respondent expressed sincere remorse and understood that she failed her clients, who suffered the consequences of her actions. N.T. 92 - 93.

103. Respondent did not present any character evidence.

III. CONCLUSIONS OF LAW

By her conduct as set forth above, Respondent violated the following rules:

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

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

3. RPC 1.4(a)(1) – A lawyer shall promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules.

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

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

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

7. A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

8. RPC 1.15(b) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.

9. RPC 1.15(c) – Complete records of the receipt, maintenance and disposition of Rule 1.15 Funds and property shall be preserved for a period of five years after termination of the client-lawyer or fiduciary relationship or after distribution or disposition of the property, whichever is later.

10. RPC 1.15(e) – A lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of fiduciary administration, confidentiality, notice and accounting applicable to the fiduciary entrustment.

11. RPC 1.15(i) – A lawyer shall deposit into a trust account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

12. RPC 4.1(a) – In the course of representing a client, a lawyer shall not knowingly make a false statement of material fact or law to a third person.

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

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

15. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel's request or supplemental request under Disciplinary Board Rule, §87.7(b) for a statement of the respondent-attorney's position, shall be grounds for discipline.

16. Pa.R.D.E. 221(g) – Records required to be maintained by Pa.R.P.C. 1.15 shall be readily accessible to the lawyer and available for production to the Pennsylvania Lawyers Fund for Client Security and the Office of Disciplinary Counsel in a timely manner upon request or demand by either agency made pursuant to these Enforcement rules, the rules of the Board, the Pennsylvania Lawyers Fund for Client Security Board Rules and Regulations, agency practice, or subpoena. (1) Upon a request by Disciplinary Counsel under this subdivision (g), which request may take the form of a letter to the respondent-attorney briefly stating the basis for the request and identifying the type and scope of the records sought to be produced, a respondent-attorney must produce the records within ten business days after personal service of the letter on the respondent-attorney or after the delivery of a copy of the letter to an employee, agent or other responsible person at the office of the respondent–attorney as determined by the address furnished by the respondent–attorney in the last registration statement filed by the respondent-attorney, but if the latter method of service is unavailable, within ten business days after the date of mailing a copy of the letter to the last registered address or addresses set forth on the statement;. (2) When Disciplinary Counsel's request or demand for Pa.R.P.C. 1.15 records is made under an applicable provision of the Disciplinary Board rules or by subpoena under Enforcement Rule 213(a), the respondent-attorney must produce the records and must do so within the time frame established by those rules.

17. Respondent failed to meet her burden of proof that her psychiatric disorder caused her misconduct. ***Office of Disciplinary Counsel v. Seymour Braun***, 553 A.2d 894 (Pa. 1989).

IV. DISCUSSION

Disciplinary proceedings against Respondent were instituted by Office of Disciplinary Counsel by way of a Petition for Discipline filed on February 16, 2016. The Petition charged Respondent with violating multiple Rules of Professional Conduct and Rules of Disciplinary Enforcement in ten separate complaints, stemming from her alleged neglect, failure to communicate, failure to refund fees, failure to competently represent her client, failure to properly manage client funds, misrepresentation of facts to opposing counsel, and actions prejudicial to the administration of justice, which resulted in a contempt citation in her own support matter. Seven of these matters involved clients; two matters involved Respondent's IOTLA account; and, one matter involved Respondent's own support litigation. Petitioner must establish, by a preponderance of clear and satisfactory evidence, that Respondent's actions constitute professional misconduct. ***Office of Disciplinary Counsel v. Robert Surrick,*** 749 A.2d 441, 444 (Pa. 2000). All of the factual allegations have been admitted. Respondent offered only testimony in mitigation. The admissions, the documentary exhibits, and Respondent's testimony at the hearing demonstrate that Petitioner met its burden of proving that Respondent violated the rules as charged in the Petition for Discipline.

Having concluded that Respondent committed professional misconduct, this matter is ripe for the determination of discipline. The Hearing Committee recommended a suspension for a period of two years. The parties did not take exception to this recommendation. After reviewing the Committee's Report, and after considering the nature and gravity of the misconduct, as well as the presence of aggravating or mitigating factors, ***Office of Disciplinary Counsel v. Gwendolyn Harmon***, 72 Pa. D. & C. 4th 115 (2004), we conclude, for the following reasons, that a suspension for a period of two years is the appropriate discipline.

Respondent offered the testimony of a behavioral health expert in mitigation of her misconduct. "Psychiatric disorder is an appropriate consideration as a mitigating factor in a disciplinary proceeding" if it is found that the disorder "was a causal factor" in the professional misconduct. ***Braun***, 553 A.2d at 894-895. We conclude that Respondent failed to meet her burden by clear and convincing evidence that she is entitled to mitigation of discipline.

Ms. Durkin first met with Respondent in the spring of 2015 and diagnosed her with an adjustment disorder, with mixed emotions of anxiety and depression. Ms. Durkin treated Respondent using a variety of non-medicinal techniques. Respondent continued to see Ms. Durkin through the fall of 2015. Ms. Durkin opined that Respondent's pregnancy, single parenthood and ongoing child custody and support issues contributed to her anxiety. While Ms. Durkin was aware that Respondent had some "disciplinary allegations," such were not the focus of the diagnosis and treatment, and Ms. Durkin acknowledged that she was unaware of the specific details of the alleged misconduct. Ms. Durkin testified that she was unable to specifically relate Respondent's mental health problems to her misconduct.

There is convincing evidence that Respondent suffers from a psychiatric disorder, but the record lacks convincing evidence of a causal connection between the diagnosis and Respondent's misconduct sufficient to constitute a lesser disciplinary sanction in this matter. Respondent cannot satisfy the ***Braun*** standard without proving the link between her psychiatric disorder and her misconduct. ***Office of Disciplinary Counsel v. Robert Monsour***, 701 A.2d 556, 559 (Pa. 1997). Ms. Durkin was unaware of the specific allegations of misconduct against Respondent, and admitted that the disciplinary issues were not a focus of Respondent's treatment. When the expert lacks sufficient familiarity with the details of the misconduct, ***Braun*** mitigation is not met. ***Office of Disciplinary Counsel v. Peter Quigley***, __A.3d __ (Pa. 2017). Further, by her own testimony, Ms. Durkin admitted she was unable to establish a causal link between Respondent's emotional problems and her misconduct. These admissions wholly undermine the strength of Ms. Durkin's testimony on the issues of mitigation.

The Board considered other mitigating factors. Respondent expressed sincere remorse and regret for her actions. She is aware that her conduct toward her clients caused them harm. Respondent's admission of the factual allegations of the matter demonstrated cooperation with Petitioner and obviated the need for Petitioner to call witnesses at the hearing. Respondent has no prior record of discipline in Pennsylvania. The Board has recognized previously that factors such as a blemish-free record of professional conduct, demonstration of genuine remorse, acknowledgment of responsibility, and cooperation with disciplinary authorities mitigate discipline. *See* ***Office of Disciplinary Counsel v. Guy N. Amatangelo***, No. 130 DB 2015 (D. Bd. Rpt. 12/19/2016) (S. Ct. Order 2/21/2017); ***Office of Disciplinary Counsel v. James Allen Steiner***, No. 103 DB 2013 (D. Bd. Rpt. 6/18/2015) (S. Ct. Order 8/7/2015); ***Office of***

Disciplinary Counsel v. Blair Harry Hindman, No. 122 DB 2013 (D. Bd. Rpt. 12/8/2014) (S. Ct. Order 2/10/2015)..

A fundamental principle of Pennsylvania's attorney disciplinary system is that there is no *per se* discipline for attorney misconduct. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186 (Pa. 1983). Each case is considered individually on its facts and circumstances. ***Office of Disciplinary Counsel v. Daniel Chung***, 695 A.2d 405, 407 (Pa. 1997) However, prior similar cases guide the Board's recommendation of the appropriate sanction, so as to ensure consistency in discipline. ***Lucarini*** at 190. We conclude, after review of prior cases, that a suspension of two years is appropriate, when, as here, an attorney's multiple acts of neglect and failure to communicate with clients, and an ongoing pattern of a lack of concern for her clients' matters, as well as dishonesty, would likely pose a danger to the public if she continued to practice law.

In the matter of ***Office of Disciplinary Counsel v. James S. Bruno***, 180 DB 2011 (D. Bd. Rpt. 7/18/2014) (S. Ct. Order 11/13/2014), Bruno engaged in misconduct similar to that of the instant Respondent, involving neglect, failure to communicate and failure to comply with court orders in eleven separate matters. Like the instant Respondent, Bruno cooperated with Office of Disciplinary Counsel by entering into extensive stipulations of fact and law. Unlike the instant matter, however, the Board found that Bruno demonstrated mitigation through clear and convincing evidence that he suffered from a psychiatric disorder which caused his misconduct, and by presenting a wide array of character witnesses who testified credibly as to Bruno's good reputation. In another distinction between the cases, unlike the instant Respondent, who has no prior discipline, the Board found that Bruno had a prior record of discipline, consisting of two informal admonitions, a private reprimand with probation and a public censure, which served to

aggravate the discipline. Therein, the Board recommended a suspension of one year and one day with probation for a period of three years. The Supreme Court did not adopt the Board's recommendation and imposed a suspension for two years with probation for two years. On balance, the facts of Respondent's matter warrant a similar two year suspension as that imposed on Bruno.

An attorney who neglected eleven separate client matters and made misrepresentations concerning the status of such matters was suspended for a period of one year and one day. ***Office of Disciplinary Counsel v. Thomas William Smith,*** 21 DB 2000 (D. Bd. Rpt. 9/8/2003) (S. Ct. order 12/9/2003). In mitigation, Smith demonstrated that he suffered from alcoholism, which caused his misconduct. Smith also demonstrated remorse and recognition of wrongdoing and cooperated with Office of Disciplinary Counsel, and presented credible and persuasive character testimony. Smith had a prior public censure in his disciplinary history, but the Board concluded that the significance of such discipline was reduced as it had been many years since the imposition of the discipline. Although the Board recommended a four year period of suspension, the Supreme Court imposed a less severe sanction, albeit one that required Smith to petition for reinstatement. In the instant matter, Respondent did not demonstrate ***Braun*** and did not show evidence of good character, which would warrant a lengthier suspension than the one year and one day imposed upon Smith.

In the matter of ***Office of Disciplinary Counsel v. Robert Jay Vedatsky***, No. 121 DB 1994 (D. Bd. Rpt. 10/31/1996) (S. Ct. Order 12/31/1996), which bears similarities to the instant matter, Vedatsky had no prior discipline and neglected four cases during a one and one-half year period, after which he abandoned his practice. Vedatsky failed to

prove that his psychiatric disorder was a causal factor in his misconduct. The Board recommended, and the Supreme Court imposed, a two year period of suspension.

The primary purpose of the disciplinary system in Pennsylvania is not punitive in nature but is to protect the public from unfit attorneys and to preserve public confidence in the legal system. ***Office of Disciplinary Counsel v. Anthony Cappuccio***, 48 A.3d 1231, 1238 (Pa. 2012). The evidence produced by Office of Disciplinary Counsel convincingly proved that Respondent is not fit to practice law, and is a danger to the public and the profession itself. A suspension of two years is warranted to comply with the guiding decisions reviewed above. This suspension necessitates that Respondent prove at a future reinstatement proceeding that she has rehabilitated herself and is fit to practice law.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Sharmil Donzella McKee, be Suspended for a period of two years from the practice of law in this Commonwealth.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: Lawrence M. Kelly
Lawrence M. Kelly, Member

Date: 7/7/17