

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2675 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 190 DB 2018
	:	
v.	:	Attorney Registration No. 81511
	:	
HERCULES PAPPAS,	:	(Out of State)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 23rd day of January, 2020, upon consideration of the Report and Recommendations of the Disciplinary Board, Respondent's Petition for Review, and the Office of Disciplinary Counsel's response, the Petition for Review is denied. Hercules Pappas is suspended from the Bar of this Commonwealth for a period of one year and one day. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 01/23/2020

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 190 DB 2018
Petitioner	:	
	:	
v.	:	Attorney Registration No. 81511
	:	
HERCULES PAPPAS	:	
Respondent	:	(Out of State)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on October 15, 2018, Petitioner, Office of Disciplinary Counsel, charged Respondent, Hercules Pappas, with multiple violations of the Pennsylvania Rules of Professional Conduct, New Jersey Rules of Professional Conduct, and Pennsylvania Rules of Disciplinary Enforcement arising out of alleged misconduct in three separate matters. Respondent did not file an Answer to Petition for Discipline.

Following a prehearing conference on January 14, 2019, at which Respondent failed to appear, a District II Hearing Committee (“Committee”) conducted a disciplinary hearing on February 25, 2019. Respondent appeared pro se. In its case in chief, Petitioner offered into evidence, without objection, exhibits ODC-1 through ODC-36. Petitioner presented the testimony of three witnesses. Respondent testified on his own behalf and presented the testimony of two witnesses. Respondent offered no exhibits into evidence.

Following the disciplinary hearing, the Committee held the record open for seven days to permit Respondent to present evidence that he referred to during his testimony. By Order dated March 6, 2019, the Committee admitted into the record all documents submitted by Respondent, but for one.

On March 27, 2019, Petitioner filed a Brief to the Committee and requested that the Committee recommend a suspension for one year and one day.

On May 2, 2019, Respondent, represented by counsel, filed a Brief to the Committee and requested that the Committee recommend either a private or public reprimand, or a public censure or stayed suspension with probation.

On June 25, 2019, the Committee filed a Report, concluding that Respondent violated the rules as charged in the Petition for Discipline and recommending that he be suspended for a period of one year and one day.

On July 9, 2019, Respondent filed a Brief on Exceptions and requested that the Board reject the Committee’s Report and recommendation and impose either a private or public reprimand with probation, or recommend to the Court that Respondent be publicly censured with probation or at most, a stayed suspension be imposed with probation and a practice monitor. Respondent requested oral argument before the Board.

On July 17, 2019, Petitioner filed a Brief Opposing Exceptions and requested that the Board adopt the Committee's recommendation and recommend that the Court suspend Respondent for one year and one day.

Oral argument was held on September 16, 2019, before a three-member Board panel.

The Board adjudicated this matter at the meeting on October 17, 2019.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is situated at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, Pennsylvania 17106, 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 any 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.

2. Respondent is Hercules Pappas, born in 1970 and admitted to practice law in the Commonwealth of Pennsylvania in 1998. His attorney registration address is Hercules Law Group LLC, 76 E. Euclid Ave., Ste. 101, Haddonfield NJ 08033. Respondent is subject to the disciplinary jurisdiction of the Supreme Court of Pennsylvania.

3. Respondent has no record of prior discipline.

4. On October 19, 2018, Susan Roehre, an auditor/investigator with the Office of Disciplinary Counsel, personally served a Petition for Discipline on Respondent. N.T. 108.

5. Respondent failed to file an Answer to Petition for Discipline.

6. All factual allegations contained in the Petition for Discipline are deemed admitted, pursuant to Rule 208(b)(3), Pa.R.D.E.

The Bankruptcy Matter

7. On August 8, 2013, Respondent filed a Chapter 7 Bankruptcy Petition on behalf of Bryn Michael Wevodau in the United States Bankruptcy Court for the Eastern District of Pennsylvania. Petition for Discipline (“P for D”) 4.

8. By Order dated September 26, 2013, Mr. Wevodau's case was dismissed due to Respondent's failure to timely file all necessary schedules and statements. P for D 5.

9. On March 6, 2014, Respondent filed a second Chapter 7 Bankruptcy Petition on behalf of Mr. Wevodau in the United States Bankruptcy Court for the Eastern District of Pennsylvania. P for D 6.

10. Respondent failed to obtain Mr. Wevodau's signature on this petition. P for D 7.

11. By Order dated April 10, 2014, the Wevodau Bankruptcy was dismissed due to Respondent's failure to file a Certificate of Credit Counseling. P for D 8.

12. On July 28, 2014, George M. Conway, United States Trustee, filed a Motion for an Order Disgorging Counsel's Fees on the basis of inaccuracies and omissions in several of Respondent's filings. P for D 12.

13. By Order dated September 10, 2014, the Honorable Stephen Raslavich of the United States Bankruptcy Court for the Eastern District of Pennsylvania, *inter alia*:

- a. Directed Respondent to complete six (6) hours of Continuing Legal Education credits dealing with bankruptcy, at least one (1) of which was to be in ethics related to bankruptcy ("Required CLE Credits"), on or before April 1, 2015;
- b. Enjoined Respondent from filing or otherwise participating in any bankruptcy case filed after the date of the Order in any United States District, with the exception of the Wevodau Bankruptcy, until he obtained the Required CLE Credits;
- c. Directed Respondent, upon completion of the Required CLE Credits, to file a certificate of completion with the Court, a copy of which was to be served on the United States Trustee.

P for D 13.

14. Respondent consented to the relief granted in the September 10, 2014 Order. P for D 14.

15. Respondent failed to complete the Required CLE Credits by April 1, 2015, or at any time thereafter. P for D 15

16. On or about October 29, 2015, Respondent filed a Chapter 7 Bankruptcy Petition on behalf of Roman P. Osadchuk in the United States Bankruptcy Court for the District of New Jersey ("Osadchuk Bankruptcy"). P for D 17.

17. On March 30, 2016, Respondent filed a Chapter 11 Bankruptcy Petition on behalf of Roman P. Osadchuk, LLC in the United States Bankruptcy Court for the District of New Jersey (“RPO Bankruptcy”). P for D 19.

18. By letter to Judge Jerrod N. Poslusny, Jr., dated April 21, 2016, Adam D. Greenberg, Esquire, disclosed the contents of the September 10, 2014 Order and advised that Respondent did not appear to have obtained the Required CLE Credits. P for D 22.

19. By letter to Judge Poslusny dated April 26, 2016, Respondent advised that he only recently realized that the September 10, 2014 Order “sought to prohibit filings not only in [the Eastern District of Pennsylvania], but in any jurisdiction” and that he was arranging to complete the Required CLE Credits. P for D. 25.

20. By Order in the Osadchuk Bankruptcy and the RPO Bankruptcy dated May 26, 2016, Respondent was:

- a. Again enjoined from filing any bankruptcy cases in any district until he obtained the Required CLE Credits;
- b. Enjoined from filing any bankruptcy pleadings and cases in the District of New Jersey for a period of six months following his satisfaction of the provisions of the September 10, 2014 Order; and
- c. Required to complete an additional six (6) Continuing Legal Education credits in bankruptcy law and to submit a certificate of completion to the United States Trustee in order to reinstate his ability to file bankruptcy cases in the District of New Jersey.

P for D 26.

21. By DB-7 letter to Respondent dated April 9, 2018, Disciplinary Counsel requested Respondent's Statement of Position regarding the allegations of the bankruptcy matters. P for D 28.

22. On April 11, 2018, Respondent received the April 9, 2018 DB-7. P for D 29.

23. Respondent failed to respond to the April 9, 2018 DB-7. P for D 30.

The Therese Papa Matter

24. On or about May 28, 2013, Therese Papa was involved in a motor vehicle accident and sustained injuries. P for D 31.

25. James K. Taviano, who was operating the vehicle that collided with Ms. Papa's vehicle, died at the scene of the accident. P for D 32.

26. The statute of limitations on any claims that Ms. Papa had arising out of the motor vehicle accident expired on September 5, 2015. P for D 35.

27. In or about March of 2015, Ms. Papa retained Respondent, on a contingency fee basis, to pursue claims on her behalf arising out of the motor vehicle accident. P for D 36.

28. On August 31, 2015, Respondent filed a complaint against "The Estate of James K. Taviano" in the Court of Common Pleas of Delaware County ("Civil Proceedings"). P for D 37.

29. The Complaint was required to be served upon the Defendant by the Sheriff of Delaware County. P for D 38.

30. As of August 31, 2015, no estate had been raised for Mr. Taviano. P for D 39.

31. Respondent failed to raise an estate for Mr. Taviano. P for D 40.

32. Respondent failed to effectuate proper service of the complaint. P for D 42.

33. On December 28, 2015, Joseph Branca, Esquire, entered an appearance in the Civil Proceedings on behalf of the Estate of James K. Taviano. P for D 45.

34. On September 13, 2016, Mr. Branca filed Preliminary Objections to the complaint, asserting that:

- a. No estate had been raised for Mr. Taviano;
- b. The complaint failed to join indispensable parties; and
- c. Service of the complaint had not been made within thirty (30) days of filing the complaint.

P for D 46.

32. Respondent failed to respond to the Preliminary Objections. P for D 47.

33. By text message to Respondent dated October 14, 2016, Gary Papa, Ms. Papa's father, stated that "[y]ou need call *[sic]* me right away. My wife is going ballistic because she looked the case up online and it said *[sic]* you filed wrong and you didn't answer." P for D 48.

34. Respondent replied that he "can only see what you see," and offered to "call the court and lawyers on mon[day]." P for D 49.

35. By text message to Respondent dated October 15, 2016, Mr. Papa asked "[d]o you think this will be a problem." P for D 50.

36. Respondent replied "I do not." P for D 51.

37. By text message to Respondent dated October 15, 2016, Mr. Papa

asked “[i]f it is true how can you correct it.” P for D 52.

38. Respondent replied “[y]ou just file to reopen the case. Its *[sic]* standard stuff.” P for D 53.

39. By Order dated November 16, 2016, the Preliminary Objections were sustained and the Civil Proceedings were dismissed with prejudice. P for D 54.

40. A copy of the November 16, 2016 Order was mailed to Respondent as counsel of record. Respondent received a copy of the November 16, 2016 Order, but he failed to advise Ms. Papa that the Civil Proceedings had been dismissed with prejudice. P for D 55-57.

41. In or about November of 2016, Ms. Papa engaged Hornstine and Pelloni, LLC, in an attempt to obtain her case file from Respondent. P for D 59.

42. By email to Respondent dated November 21, 2016, Louis F. Hornstine, Esquire, advised that he had “been requested to ask for Ms. Papa’s entire file,” and requested that Respondent contact his firm to arrange for their receipt of a copy of Ms. Papa’s file. P for D 60.

43. Respondent failed to provide Ms. Papa’s file to Mr. Hornstine, despite numerous emails. P for D 64 - 69.

44. Ms. Papa sued Respondent for malpractice and received an award. N.T. 133.

45. By DB-7 letter to Respondent dated February 6, 2017, Disciplinary Counsel requested Respondent’s Statement of Position regarding the allegations concerning Ms. Papa’s representation. P for D 71.

46. On February 8, 2017, Respondent received the February 6, 2017 DB-7. P for D 72.

47. Respondent failed to respond to the February 6, 2017 DB-7. P for D 73.

48. By letter to Respondent dated March 13, 2017, Disciplinary Counsel advised that Respondent had failed to respond to the February 6, 2017 DB-7, which constituted an independent ground for discipline, and directed Respondent to provide his Statement of Position by March 24, 2017. P for D 74.

49. By letter to Disciplinary Counsel dated March 23, 2017, Respondent provided his Statement of Position. P for D 75.

50. Respondent claimed in his Statement of Position to have “had service [of the complaint in Civil Proceedings] performed upon the Defendant by Daniel DiCinno,” who failed to provide the requested “affidavit of service form.” P for D 76.

51. Respondent conceded in his Statement of Position that he received the Preliminary Objections and made no response. P for D 77.

52. Respondent conceded in his Statement of Position that he failed to provide Ms. Papa’s case file to Ms. Papa or Mr. Hornstine. P for D 80.

The William Tillman Matter

53. On or about October 7, 2016, William Tillman was arrested and charged with, *inter alia*, rape and involuntary deviate sexual intercourse (“Criminal Proceedings”). P for D 81.

54. Mr. Tillman was detained at the Curran-Fromhold Correctional Facility on \$750,000.00 bail, pending the outcome of the Criminal Proceedings. P for D 82.

55. Mr. Tillman was unable to post bail and was detained at the Curran-Fromhold Correctional Facility for the entirety of the Criminal Proceedings. P for D 83.

56. On October 25, 2016, Roxanne Howzell, Mr. Tillman's mother, contacted Respondent about representing Mr. Tillman in the Criminal Proceedings. P for D 84.

57. Respondent agreed to represent Mr. Tillman in exchange for a flat fee in the amount of \$5,000.00. P for D 85.

58. Respondent failed to communicate the basis or rate of his fee to Mr. Tillman in writing. P for D 88.

59. Respondent did not communicate the basis or rate of his fee to Ms. Howzell in writing. P for D 89.

60. On October 25, 2016, Ms. Howzell paid Respondent \$2,500.00. P for D 90.

61. On October 27, 2016, Respondent entered an appearance on Mr. Tillman's behalf in the Criminal Proceedings. P for D 91.

62. On November 14, 2016, Ms. Howzell paid Respondent \$500.00. P for D 95.

63. On December 1, 2016, Respondent appeared at a preliminary hearing on Mr. Tillman's behalf. P for D 96.

64. On December 13, 2016, Ms. Howzell paid Respondent \$500.00. P for D 97.

65. On February 10, 2017, Ms. Howzell paid Respondent \$700.00. P for D 100.

66. On February 14, 2017, a hearing was held in the Criminal Proceedings. P for D 101.

67. Respondent failed to appear at the February 14, 2017 hearing. P for

D 102.

68. On March 17, 2017, Ms. Howzell paid Respondent \$600.00. P for D 103.

69. In or about March of 2017, Respondent verbally advised Ms. Howzell that he was increasing his legal fee for representing Mr. Tillman in the Criminal Proceedings to \$10,000.00. P for D 104.

70. Respondent failed to communicate to Mr. Tillman in writing the basis or rate of this increased fee. P for D 105.

71. Respondent did not communicate the basis or rate of this increased fee in writing to Ms. Howzell. P for D 106.

72. On April 27, 2017, Ms. Howzell paid Respondent \$500.00. P for D 109.

73. On or about July 20, 2017, Mr. Tillman called Respondent to terminate his representation. P for D 112.

74. On July 20, 2017, R. Patrick Link, Esquire entered an appearance on Mr. Tillman's behalf in the Criminal Proceedings. P for D 114.

75. By letter to Respondent dated July 21, 2017, Mr. Link advised that he represented Mr. Tillman and requested that Respondent provide him with Mr. Tillman's file. P for D 115.

76. Despite several requests from Mr. Link regarding the file, Respondent did not provide the file to Mr. Link. P for D 116-123.

77. Respondent failed to deposit the payments advanced on behalf of Mr. Tillman into a Trust Account or IOLTA. P for D 125.

78. Respondent failed to obtain Mr. Tillman's informed consent,

confirmed in writing, to not maintain the advance payments in a Trust Account or IOLTA.
P for D 126.

79. Respondent did not obtain Ms. Howzell's informed consent, confirmed in writing, to not maintain the advance payments in a Trust Account or IOLTA.
P for D 127.

80. Respondent failed to refund any portion of the advance payments. P for D 128.

81. By DB -7 letter to Respondent dated October 31, 2017, Disciplinary Counsel requested Respondent's Statement of Position regarding the allegations in the Tillman matter. P for D 129.

82. On November 2, 2017, Respondent received the October 31, 2017 DB-7. P for D 130.

83. Respondent failed to respond to the October 31, 2017 DB-7. P for D 131.

84. By letter to Respondent dated December 28, 2017, Disciplinary Counsel advised that Respondent had failed to respond to the October 31, 2017 DB-7, which constituted an independent ground for discipline, and directed Respondent to provide his Statement of Position by January 8, 2018. P for D 132.

85. Respondent received Disciplinary Counsel's December 28, 2017 letter, but failed to respond to the DB-7. P for D 133.

Additional Findings

86. Respondent failed to appear for the January 14, 2019, prehearing conference in this matter.

87. Respondent's testimony at the disciplinary hearing on February 25,

2019, was not credible and, at times, deliberately false and misleading.

88. Respondent falsely testified that his failure to comply with the September 10, 2014 Order was investigated by the New Jersey disciplinary authorities who “found that there was no ethical violation.” N.T. 116.

89. On cross-examination, Respondent conceded that the New Jersey Disciplinary Review Board had concluded that he violated a court order and recommended that he be reprimanded. N.T. 142-146.¹

90. Respondent falsely testified he obtained the CLE credits that he was directed to obtain by Orders of the United States Bankruptcy Courts for the Eastern District of Pennsylvania and the District of New Jersey.

91. Respondent testified “And I have taken those courses since, but I have not filed any bankruptcies since.” N.T. 115.

92. On cross-examination, Respondent reiterated his claim that he completed the CLE courses by testifying “I have since taken them.” N.T. 164.

93. The Committee permitted Respondent to submit documentation in support of his claim that he had complied with the court orders. N.T. 214 -215.

94. Respondent submitted two documents that were admitted into the record. NJ CLE Certificate BNK300; United CLE Invoice 148203.

95. Neither of the documents demonstrated that Respondent obtained any bankruptcy CLE credits after the entry of the September 10, 2014 Order.

96. NJ CLE Certificate BNK300 shows that Respondent obtained 1.20 CLE credits for “Advantages of Bankruptcy for Corporations and Investors” on August 22,

¹ By Order dated March 5, 2019, the New Jersey Supreme Court imposed an admonition for Respondent’s unethical conduct.

2014, more than two weeks before the entry of the September 10, 2014 Order.

97. United CLE Invoice 148203 lists four bankruptcy CLE courses that Respondent paid for on March 4, 2019, but does not show the date on which such courses were, or will be, held.

98. Respondent falsely testified that he provided Attorney Hornstine with an electronic case file for Ms. Papa's personal injury matter. N.T. 132 -133.

99. Respondent testified that "[t]he second time that he [Mr. Hornstine] asked for the file, I said, I can't get you the physical file right away, but I can certainly get it to you electronically....And I sent him all that. I got it to him right away." N.T. 132, 159 -160.

100. The Committee permitted Respondent to submit documentation to demonstrate that he sent Ms. Papa's electronic file to Mr. Hornstine. N.T. 214-215.

101. Respondent failed to produce an email demonstrating that he transferred an electronic case file for Ms. Papa's matter to Mr. Hornstine.

102. Despite the fact that Respondent provided no evidence that he gave Ms. Papa's case file to Mr. Hornstine, he continued to make the claim that he did so. Respondent's Brief on Exceptions, p. 6.

103. At the disciplinary hearing, Respondent testified that during the time frame of the misconduct, his paralegal got sick and failed to fulfill certain responsibilities, and his father became ill, requiring Respondent to take time out of his practice to attend to his father's care. N.T. 117, 120, 134-136, 209.

104. Respondent testified that he became "depressed" and "anxious" during the time frame of the misconduct due to his heavy caseload and the issues with his father and paralegal. N.T. 121, 122-123.

105. Respondent did not receive any medical treatment or therapy for his problems. N.T. 210-211.

106. Respondent apologized to the Board and testified that “a few things got missed.” N.T. 136, 139-140.

107. Respondent admitted that his actions caused Ms. Papa’s case to be dismissed, but he did not take responsibility for his actions in the other matters. N.T. 134.

108. Respondent’s apology is not credible, considering his false and misleading testimony designed to convince the Committee that he had met his professional obligations.

109. Respondent did not exhibit genuine remorse.

110. Respondent presented the testimony of two character witnesses.

111. Robert W. Cusick, Esquire is a Pennsylvania-licensed attorney who has known Respondent personally and professionally for approximately twenty-five years. N.T. 49 -51.

112. In a professional capacity, Mr. Cusick has referred many cases to Respondent, as recently as four months prior to the disciplinary hearing, and at the time of the hearing he was working with Respondent on a case. N.T. 50, 53-56.

113. Mr. Cusick testified that he had not reviewed the Petition for Discipline and was unaware of the facts of the underlying matters. N.T. 52.

114. Mr. Cusick became aware of Respondent’s disciplinary matter a couple of weeks prior to the hearing, when Respondent mentioned it “briefly.” N.T. 56.

115. Respondent was not concerned that he should inform Mr. Cusick of his disciplinary matter, even though Mr. Cusick referred cases to him on a regular basis. N.T. 186.

116. Devin Carpenter is Respondent's fiancée and has known him for seven years. N.T. 219-220.

116. Ms. Carpenter testified that she was unaware of the substance of the disciplinary matter against Respondent and unaware that he had been sued for malpractice. N.T. 222 - 224.

III. CONCLUSIONS OF LAW

By his conduct in the above matters, Respondent violated the following rules:

1. RPC 1.1 – A lawyer shall provide competent representation to a client;
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client;
3. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;
4. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter;
5. 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;
6. RPC 1.5(b) – When the 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 representation;
7. 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;

8. 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;

9. 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;

10. RPC 1.16(d) – Upon termination of representation, a lawyer shall refund any advance payment of fee or expense that has not been earned or incurred;

11. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client;

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

13. NJ RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal; and

14. 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 Rules, §87.7(b) for a statement of the respondent-attorney's position shall be grounds for discipline.

IV. DISCUSSION

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). Petitioner met its burden by virtue of the facts pled in the Petition for Discipline, which are deemed admitted pursuant to Rule 208(b)(3), Pa.R.D.E., due to Respondent's failure to file an Answer to Petition. The admitted facts support the conclusion that Respondent violated RPC 1.1, 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(b), 1.5(b), 1.15(b), 1.15(e), 1.15(i), 1.16(d), 3.2, 8.4(d), NJ RPC 3.3(a)(1) and Pa.R.D.E. 203(b)(7).

Over the course of approximately three years, Respondent engaged in a pattern of professional misconduct in his representation of several clients in three separate matters. In connection with the bankruptcy matters, on two occasions Respondent filed a Chapter 7 Bankruptcy Petition in the United States Bankruptcy Court for the Eastern District of Pennsylvania on behalf of Bryn Michael Wevodau. The first petition was dismissed due to Respondent's failure to timely file all necessary schedules and statements. The second petition, on which Respondent failed to obtain Mr. Wevodau's signature, was dismissed due to Respondent's failure to file a Certificate of Credit Counselling. Thereafter, the United States Trustee filed a Motion for an Order Disgorging Counsel's Fees on the basis of inaccuracies and omissions in Respondent's filings. By Order dated September 10, 2014, the court directed Respondent to complete six hours of continuing legal education credits in the areas of bankruptcy by April 1, 2015 and enjoined Respondent from participating in any bankruptcy case in any United States District until he obtained the required credits.

In flagrant defiance of the court's order, Respondent failed to complete the courses and continued to participate in bankruptcy matters. On or about October 29, 2015, Respondent filed a Chapter 7 Bankruptcy Petition on behalf of Roman P. Osadchuk in the United States Bankruptcy Court for the District of New Jersey and a Chapter 11 Bankruptcy Petition on his client's behalf in March 2016. Mr. Osadchuk's bankruptcy was discharged, but the issue was raised that Respondent had not completed the court-ordered CLE bankruptcy courses. In a letter to the court, Respondent claimed that he did not understand the September 10, 2014 Order prevented him from filing bankruptcy petitions in the New Jersey District, even though the order clearly stated that fact, and Respondent further claimed that he was arranging to take the required courses. By Order dated May 26, 2016, the New Jersey Bankruptcy Court gave Respondent a second opportunity to take the courses and enjoined him from filing any further bankruptcy cases in any United States District. Consistent with his disregard for the September 10, 2014 Order, Respondent failed to obtain the CLE credits. As of the date of the disciplinary hearing on February 25, 2019, more than four years after the court first directed Respondent to complete credits, Respondent had not complied. Respondent failed to respond to Petitioner's DB-7 letter and has yet to provide an explanation for violating the clear language of the September 10, 2014 Order.

In the Therese Papa matter, Ms. Papa retained Respondent to represent her regarding her involvement in an automobile accident. Respondent exhibited incompetence and a lack of diligence in a variety of ways. Although the person who allegedly caused the accident died as a result of injuries, Respondent failed to timely raise an estate and did not effectuate proper service. After the statute of limitations on Ms. Papa's claim expired, the action was dismissed with prejudice on preliminary objections

to which Respondent failed to respond. Respondent thereafter failed to inform his client that her case had been dismissed, and further failed to comply with Ms. Papa's request to provide her case file to successor counsel. Respondent submitted to Petitioner an untimely statement of his position regarding his deficient representation of Ms. Papa. Therein, Respondent demonstrated a lack of knowledge concerning basic legal and procedural concepts and refused to take responsibility for his admitted errors. At the disciplinary hearing, Respondent admitted on the record that Ms. Papa's case was dismissed due to his failings, but he made excuses for his actions and failed to provide a plausible explanation for his failure to release the case file to Mr. Hornstine.

In the William Tillman matter, Respondent was retained to represent his client on criminal charges for a flat fee of \$5,000, but failed to provide a written communication setting forth the basis and rate of the fee. Later, Respondent increased his fee to \$10,000, and again failed to provide a writing to memorialize the increase. Respondent failed to place the payments he received into an IOLTA or trust account. At the disciplinary hearing, Respondent claimed that he entered into two written agreements, but he failed to produce the alleged agreements at the hearing in support of his claims. The Committee held the record open to permit Respondent to submit the agreements; however, the documents Respondent produced were not signed by Mr. Tillman or his mother and do not support his claim that he entered into written agreements with his client. Despite being paid, Respondent neglected his client's matter, taking minimal action and failing to appear at a hearing. Eventually, Mr. Tillman terminated Respondent's representation and R. Patrick Link, Esquire, assumed representation. Respondent failed to provide the Tillman file to Mr. Link and did not return any portion of

the legal fee that was paid on Mr. Tillman's behalf. Similar to the bankruptcy matters, Respondent did not bother to respond to Petitioner's DB-7 letter.

There are several aggravating factors in this matter. Foremost is Respondent's lack of credibility, as evidenced by his contradictory and in some instances intentionally false testimony at the disciplinary hearing. A respondent's lack of candor in disciplinary proceedings is a significant aggravating factor. ***Office of Disciplinary Counsel v. Paula C. Scharff***, 53 DB 2006 (D. Bd. Rpt. 11/5/2007) (S. Ct. Order 3/31/2008).

There are three areas that cause the Board concern. First, Respondent testified on two occasions that he obtained the bankruptcy court-ordered CLE credits; however, he did not introduce evidence at the disciplinary hearing in support of his claim. After the Committee held the record open to permit Respondent to submit proof of compliance, he submitted two documents, yet neither supported his testimony that he had obtained the credits. We find Respondent's conduct related to the CLE credits disturbing. It is downright incomprehensible that Respondent appeared at the February 25, 2019 disciplinary hearing without having completed the CLE credits that were ordered some four years prior. Even more so, it is outrageous that Respondent, having failed to comply with a court order for years, had the temerity to lie repeatedly to the Committee and Petitioner that he complied with the order and took the required credits.

Next, Respondent testified that the New Jersey authorities investigated his failure to comply with the September 10, 2014 Bankruptcy Court Order and he claimed they found no ethical violation. However, Respondent admitted on cross-examination that the New Jersey Disciplinary Review Board concluded that he violated a court order and recommended that he be reprimanded.

Last, contrary to Mr. Hornstine's credible and unequivocal testimony and Petitioner's exhibits demonstrating that Respondent never provided Ms. Papa's case file to Mr. Hornstine, Respondent denied that he failed to provide Ms. Papa's file and insisted under oath that he had emailed the electronic case file to Mr. Hornstine. We note that Respondent previously conceded in his untimely Statement of Position in response to Petitioner's DB-7 letter that he had failed to provide Mr. Hornstine with Ms. Papa's file. On cross-examination, Respondent somewhat disingenuously explained that he assumed the DB-7 referred to the paper file and therefore he did not bother to say he had provided an electronic file. When given the opportunity to produce an email or other evidence to support his claim, Respondent failed to do so. However, despite producing no evidence whatsoever in support of his contention, Respondent reiterated his false claim in his Brief on Exceptions.

In further aggravation, Respondent displayed disregard for the disciplinary process in that he failed to file an answer to the Petition for Discipline² and failed to appear at the prehearing conference. Likewise, Respondent failed to take full responsibility for his actions and failed to demonstrate genuine and sincere remorse. Although Respondent latterly admitted he was at fault in the Papa matter, resulting in the dismissal of the case, he made excuses for his errors.

Respondent attempted to explain his failure to properly represent his clients and respond to Petitioner's inquiries and charges against him by alleging that the illnesses of his paralegal and his father, as well as his heavy trial practice caused him to become overwhelmed and "depressed" which led to "avoidance" of disciplinary proceedings.

² Respondent attempted to lay partial blame on his paralegal for not filing a response. N.T. 209.

However, Respondent provided no psychological mitigation as allowed by *Office of Disciplinary Counsel v. Seymour Braun*, 533 A.2d 894 (Pa. 1989), and further admitted that he did not seek professional treatment for his alleged conditions.

In mitigation, Respondent offered that he has no prior record of discipline and has practiced law for years without disciplinary action. He offered character testimony from Devin Carpenter, his fiancée, and Robert W. Cusick, Esquire, a friend and colleague, who has referred cases to Respondent. Despite his close personal and professional relationships with each of the witnesses, Respondent never advised either witness of the substance of his disciplinary matters or that he had been sued for malpractice. Mr. Cusick testified that he last referred a matter to Respondent approximately four months prior to the disciplinary hearing, was working with Respondent on another matter at the time of the hearing, and had been “briefly” informed by Respondent of the disciplinary matter approximately two weeks prior to the hearing. Despite the fact that Mr. Cusick referred “many” matters to Respondent, Respondent did not see fit to inform his colleague about disciplinary issues that might cause Mr. Cusick to not refer cases or work with Respondent.

Upon review, we find that the proffered mitigation is not sufficiently compelling. Other than his lack of prior discipline, Respondent’s alleged mitigation lacks support and credibility.

Having concluded that Respondent engaged in professional misconduct, this matter is ripe for the determination of discipline. 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. Robert Lucarini*, 472 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 Anthony Cappuccio*, 48 A.3d 1231, 1238 (Pa. 2012) (quoting *Lucarini*, 472 A.2d at 190), the Board is guided by precedent for the purpose of measuring “the respondent’s conduct against other similar transgressions.”

The Committee has recommended a suspension for one year and one day, which is the same recommendation made by Petitioner. Respondent contends that a suspension is excessive and not warranted by the circumstances. Upon this record, we conclude that a suspension for one year and one day is appropriate discipline to address Respondent’s misconduct.

In light of Respondent’s misconduct, the aggravating factors, and the lack of sufficiently compelling mitigating circumstances, Respondent is not fit to practice and should be suspended. A suspension of one year and one day is appropriate in cases involving neglect, failure to take steps to remedy the neglect, failure to communicate, retaining unearned fees, defiance of court orders, and failure to respond to inquiries from disciplinary authorities.

We are guided by the discipline imposed in prior similar matters. In the matter of *Office of Disciplinary Counsel v. Joseph Maher*, 4 DB 2018 (D. Bd. Rpt. 12/14/2018) (S. Ct. Order 2/25/2019), the Court suspended Maher for one year and one day for, *inter alia*, his defiance of two court orders, his failure to file a timely appeal of a contempt order on behalf of his client, and his failure to respond to a DB-7 letter regarding the allegations. In aggravation, Maher displayed no remorse and failed to take responsibility for his misconduct, giving multiple excuses for his actions. Maher had a record of prior private discipline. The attorney in *Office of Disciplinary Counsel v. Mark David Johns*, 95 DB 2013 (D. Bd. Rpt. 10/2/2014) (S. Ct. Order 12/30/2014), was

suspended for one year and one day for neglecting two client matters, failing to communicate with clients and failing to promptly return unearned legal fees. In aggravation, Johns had a history of private discipline. Similarly, the attorney in ***Office of Disciplinary Counsel v. Richard Patrick Reynolds***, No. 179 DB 2011 (D. Bd. Rpt. 11/19/2013) (S. Ct. Order 3/31/2014), was suspended for one year and one day for failing to file an appellate brief, resulting in the dismissal of his client's criminal appeal, and for failing to communicate with his client, including failing to advise the client that the appeal had been dismissed. Reynolds apologized and showed remorse. Like Maher and Johns, Reynolds had a history of private discipline. In the instant matter, Respondent does not have a record of discipline, but his lack of credibility and lack of remorse weigh against imposing discipline less than a suspension of one year and one day.

Another similar matter is ***Office of Disciplinary Counsel v. Sterling Artist***, No. 153 DB 2005 (D. Bd. Rpt. 4/27/2007) (S. Ct. Order 7/18/2007). Therein, the Court suspended Artist for one year and one day for neglecting three client matters over a period of several years. Artist misled clients and acted in untruthful ways which demonstrated that he was not fit to practice law. Artist failed to answer the DB-7 letter setting forth the allegations against him, but subsequently entered into stipulations with Office of Disciplinary Counsel and admitted his misconduct. Artist offered his own testimony that he suffered from medical issues, including depression, but although Artist was granted the opportunity post-hearing to supplement the record regarding his medical claims, he failed to do so. In mitigation, Artist had no record of discipline. Respondent similarly has no record of discipline, but like Artist, conducted himself in a manner that shows he is unfit to practice.

It is well-established 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. Akim Czmus***, 889 A.2d 1197 (Pa. 2005). Upon this record, the Board concludes that Respondent is unfit to practice law. Respondent's pervasive misconduct, lack of credibility and false testimony, failure to accept responsibility and continued failure to comply with a court order, as well as his disregard for these proceedings, warrant a suspension from the practice of law for one year and one day.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Hercules Pappas, be Suspended for one year and one day from the practice of law in this Commonwealth.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: 
Jerry M. Lehocky, Member

Date: 11-12-19