

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2704 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 248 DB 2018
	:	
v.	:	Attorney Registration No. 93666
	:	
MATTHEW GERALD PORSCHE,	:	(Erie County)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 29th day of May, 2020, upon consideration of the Report and Recommendations of the Disciplinary Board, Matthew Gerald Porsch is suspended from the Bar of this Commonwealth for two years, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent shall pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 05/29/2020

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 248 DB 2018
Petitioner	:	
	:	
v.	:	Attorney Registration No. 93666
	:	
MATTHEW GERALD PORSCHE	:	
Respondent	:	(Erie County)

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

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

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

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on December 21, 2018, Petitioner, Office of Disciplinary Counsel, charged Respondent, Matthew Gerald Porsch, with violations of the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement arising out of Respondent's conduct in three separate client matters. On January 9, 2019, Petitioner personally served the Petition on Respondent. Thereafter, Respondent failed to file an Answer to the Petition.

Following a prehearing conference on April 26, 2019, a District IV Hearing Committee ("Committee") conducted a disciplinary hearing on June 7, 2019. At that time, Petitioner's Exhibits 1 through 4 were offered and admitted into evidence. Petitioner presented the testimony of three witnesses during the dispositional phase. Respondent appeared pro se and testified on his own behalf. He called no other witnesses and offered no exhibits.

On June 25, 2019, Petitioner filed a brief with the Committee and recommended that Respondent be suspended for a period of one year and one day.

Respondent did not file a brief with the Committee.

By Report filed on October 10, 2019, the Committee concluded that Respondent violated the rules as charged in the Petition for Discipline and recommended that he be suspended for a period of one year and one day.

The parties did not take exception to the Committee's Report and recommendation.

The Board adjudicated this matter at the meeting on January 16, 2020.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereafter "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, Matthew Gerald Porsch, was born in 1978. He was admitted to practice law in the Commonwealth of Pennsylvania on November 4, 2004. Respondent's attorney registration mailing address is 1001 State Street, Suite 813, Erie, Pennsylvania 16510.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

4. Respondent failed to answer the Petition for Discipline; pursuant to Rule 208(b)(3), Pa.R.D.E., the factual allegations contained therein are deemed admitted.

CHARGE I: THE FRANTZ-BENDER MATTER

5. In May 2013, Sherry Frantz-Bender consulted with Respondent regarding a divorce action.

6. In late June 2013, Ms. Frantz-Bender paid to Respondent an \$800 retainer toward his representation of her and Respondent filed a divorce action on behalf of Ms. Frantz-Bender at case number 2013-11625 in the Court of Common Pleas of Erie County, Pennsylvania.

7. Between September 2015 and June 2016, Ms. Frantz-Bender attempted to contact Respondent by telephone but the phone would ring and she would not get an answer.

8. On May 13, 2016, Ms. Frantz-Bender sent Respondent a letter to his office address of 155 West Fifth Street, Erie, Pennsylvania, to which he did not respond.

9. On June 6, 2016, Ms. Frantz-Bender called Respondent's law office and received an answer. At that time, she learned that Respondent was no longer practicing with his former law partner and had not been for some time. She was not provided with a forwarding address or telephone number where she could reach Respondent.

10. Ms. Frantz-Bender then contacted the Erie County Bar Association for assistance in locating Respondent. She was given the address of 1001 State Street, Suite 813, Erie, Pennsylvania, where Respondent was practicing, but the Erie County Bar Association was unable to provide a phone number for Respondent.

11. Ms. Frantz-Bender then called Atair, a property management company, for the property located at 1001 State Street. The woman she spoke with on the telephone confirmed that Respondent was renting suite number 813, but she was unable to provide a telephone number for Respondent.

12. On June 15, 2016, Ms. Frantz-Bender went to 1001 State Street, Suite 813, and was able to speak with Respondent.

13. At that time, Ms. Frantz-Bender requested her "vital box" from Respondent. This was a postal box in which Ms. Frantz-Bender had original financial documents and information, including birth certificates.

14. Respondent informed Ms. Frantz-Bender that it was not in his office but he would get it out of storage for her.

15. In August 2016, counsel of record was entered on behalf of Gerald Bender, Ms. Frantz-Bender's husband, in the divorce action.

16. Discovery was subsequently conducted in the divorce case by both parties.

17. From October 2016 through June 2017, Ms. Frantz-Bender made numerous attempts to reach Respondent by telephone and left messages requesting that Respondent call her. Respondent did not return her telephone calls.

18. On December 14, 2016, Respondent called Ms. Frantz-Bender to find out if she had received a copy of the First Set of Interrogatories and Request for Production of Documents filed in the divorce action. At that time, she again requested the return of her box of original documents and Respondent told her that he would get it to her.

19. On June 9, 2017, Respondent called Ms. Frantz-Bender and left a message for her to call him. Ms. Frantz-Bender returned his telephone call and left a message asking that Respondent contact her.

20. On June 13, 2017, Ms. Frantz-Bender went to the courthouse to review the docket of her divorce action and learned that she had missed court hearings and was being held in contempt of court.

21. Respondent failed to notify Ms. Frantz-Bender of the hearings and the action in her case.

22. Ms. Frantz-Bender then immediately went to Respondent's office where she was able to speak with him. At that time:

- a. She expressed her frustration with Respondent's representation;
- b. She again requested that Respondent return to her the box with her original documents;
- c. Respondent informed her that he had the box in storage; and,
- d. He would find it that night and call her the next day.

23. Respondent then failed to contact Ms. Frantz-Bender or return her box of original documents to her.

24. Ms. Frantz-Bender sought other representation in the divorce action and on June 28, 2017, sent to Respondent a letter by certified mail in which she requested that he return to her the box of personal documents and that he refund to her the initial retainer.

25. On July 24, 2017, the letter addressed to Respondent and sent by certified mail was returned to Ms. Frantz-Bender as unclaimed.

26. Ms. Frantz-Bender retained Attorney Kari Ann Froess to represent her in the divorce action and Ms. Froess entered her appearance therein on June 28, 2017.

27. Ms. Frantz-Bender subsequently filed a complaint with Petitioner.

28. In October 2017, Respondent was apprised of the complaint and Respondent assured Petitioner that he would immediately return Ms. Frantz-Bender's documents to her and confirm same with Petitioner.

29. Respondent did not, however, contact Petitioner regarding the matter.

30. On December 1, 2017, Disciplinary Counsel called and left a voicemail message for Respondent asking for a return call regarding Ms. Frantz-Bender's matter and confirmation of whether Respondent had returned her original documents to her.

31. Respondent did not return the telephone call to Disciplinary Counsel.

32. On January 31, 2018, Petitioner sent Respondent a DB-7 Request for Respondent's Statement of Position in this matter by first class and certified mail. The letter was personally served on Respondent by a constable on February 27, 2018.

33. On April 4, 2018, Respondent met with Disciplinary Counsel in an unrelated matter and was encouraged to provide a Statement of Respondent's Position to Petitioner and to return Ms. Frantz-Bender's documents to her. Respondent at that time told Disciplinary Counsel that he would need to retrieve Ms. Frantz-Bender's documents from storage and would do so and confirm same with Petitioner.

34. Thereafter, Respondent did not retrieve Ms. Frantz-Bender's documents or contact Petitioner.

35. Respondent failed to provide a Statement of Respondent's Position to Petitioner in this matter.

36. On May 9, 2018, Petitioner sent a letter to Respondent at his then-current attorney registration address informing him that his failure to respond to the Request for Statement of Respondent's Position was a violation of Rule 203(b)(7), Pa.R.D.E., and this office would also be pursuing his violation of Rule of Professional Conduct 8.1(b) due to his failure to respond.

37. The letter was sent to Respondent by first class and certified mail. Neither copy of the letter was returned to Petitioner.

38. While Petitioner never received a green card evidencing delivery to Respondent, www.usps.com shows that the certified mail was delivered on May 25, 2018.

39. Ms. Frantz-Bender credibly testified at the disciplinary hearing that Respondent has never returned her original documents to her, and further testified that this experience has been very upsetting. N.T. 18, 19.

CHARGE II: THE ADAMS MATTER

40. On June 27, 2017, Respondent met with Maureen Adams for a free consultation regarding a divorce.

41. At that meeting, Ms. Adams retained Respondent and paid him \$750 to represent her in a divorce action.

42. On June 30, 2017, Respondent filed a divorce action on behalf of Ms. Adams at case number 11832-2017 in the Court of Common Pleas of Erie County, Pennsylvania.

43. By letter dated July 5, 2017, Respondent forwarded to Ms. Adams a copy of the divorce complaint and letter which he had mailed to Mr. Adams, along with two copies of his fee agreement. Additionally, Respondent requested that Ms. Adams pay him \$270.56 for filing fees and costs.

44. The fee agreement letter which Respondent provided to Ms. Adams reflected the basis and rate of his representation, which was a flat fee of \$750, and acknowledged receipt of \$750 from Ms. Adams on June 27, 2017 by check number 6712.

45. Ms. Adams subsequently paid Respondent \$270.66 for "court costs reimbursement" by check.

46. On July 19, 2017, Respondent forwarded to Ms. Adams a copy of the letter he received from Attorney Edward J. Niebauer dated July 5, 2017 and in Respondent's letter:

- a. Stated that Mr. Niebauer would be representing Mr. Adams in the divorce proceedings;
- b. Provided a receipt for the \$270.56 check which Respondent received from Ms. Adams for payment of court costs; and,
- c. Requested that Ms. Adams obtain any statements regarding her retirement accounts.

47. Ms. Adams obtained the financial information requested and faxed those papers to Respondent's office shortly thereafter.

48. On August 11, 2017, Ms. Adams called and informed Respondent that she had discovered that her husband was having an unexpected estate sale at the marital residence on August 12 and 13, 2017. At the time that she spoke with Respondent, he told her that he would contact Mr. Niebauer to inform him of this.

49. On August 15, 2017, Ms. Adams contacted Respondent's office and spoke with Respondent to inform him that she had discovered a "For Sale by Owner" sign on the front lawn of the marital residence. Again, Respondent told Ms. Adams that he would contact Mr. Niebauer regarding this matter.

50. Subsequently, Ms. Adams tried to contact Respondent numerous times. Starting the week of September 24, 2017, she called Respondent's office between two to three times a week. She left messages requesting that Respondent return her calls.

51. Respondent failed to return Ms. Adams's calls.

52. Additionally, Ms. Adams sent to Respondent two text messages and sent him one email, but she received no response from Respondent.

53. On or about October 2, 2017, Mr. Niebauer served Respondent with Interrogatories and Requests for Production of Documents directed to Ms. Adams.

54. Respondent failed to contact Ms. Adams or notify her about these discovery requests.

55. On November 15, 2017, an Order of Court was entered in response to a Motion to Compel Answers to Interrogatories and Requests for Production of Documents filed by Mr. Niebauer, requiring Ms. Adams to respond to the discovery requests within 10 days or suffer the imposition of further sanctions. Ms. Adams was ordered to pay \$250 in attorney's fees to Mr. Niebauer with the fees waived if she responded within 10 days.

56. Respondent failed to contact Ms. Adams or notify her about the Motion to Compel and resulting Order of Court.

57. In about January 2018, concerned that something had happened to Respondent, Ms. Adams contacted the Public Defender's Office in Erie, knowing that Respondent did work for that office, and learned that they saw Respondent often and that he was still practicing law.

58. On January 5, 2018, Ms. Adams contacted the Prothonotary at the Erie County Courthouse to inquire about the status of her divorce action and she was told that it had not moved forward and that additional paperwork was needed from Respondent.

59. Because Respondent had not moved Ms. Adams' matter forward, she subsequently terminated Respondent's representation of her and on January 19, 2018, Attorney Andrea G. L. Amicangelo entered her appearance on behalf of Ms. Adams in the divorce case.

60. Respondent did not refund to Ms. Adams the unearned portion of the \$750 flat fee which she paid to him for the representation.

61. On February 7, 2018, Petitioner sent Respondent a DB-7 Request for Statement of Respondent's Position in this matter by first class and certified mail. The letter was personally served on Respondent by a constable on February 27, 2018.

62. On April 4, 2018, Respondent met with Disciplinary Counsel in an unrelated matter and was encouraged to provide a Statement of Respondent's Position.

63. Respondent failed to provide a Statement of Respondent's Position to Petitioner in this matter.

64. On May 9, 2018, Petitioner sent a letter to Respondent at his then-current attorney registration address informing him that his failure to respond to the Request for Statement of Respondent's Position was a violation of Rule 203(b)(7), Pa.R.D.E., and this office would also be pursuing his violation of Rule of Professional Conduct 8.1(b) due to his failure to respond.

65. The letter was sent to Respondent by first class and certified mail. Neither copy of the letter was returned to Petitioner.

66. While Petitioner never received a green card evidencing delivery to Respondent, www.usps.com shows that the certified mail was delivered on May 25, 2018.

67. Ms. Adams credibly testified at the disciplinary hearing that her experience having Respondent represent her was stressful because she could never contact him and was unable to discuss her case. Ms. Adams confirmed that Respondent never refunded any portion of the \$750 fee she paid for the divorce. N.T. 28-29.

68. Respondent apologized to Ms. Adams at the hearing and stated he intended to refund her monies. N.T. 29.

CHARGE III: THE MAXWELL MATTER

69. On May 12, 2016, criminal charges were filed against Amanda Mary McKnight in the Court of Common Pleas of Erie County at docket number CR-1582-2016.

70. On September 14, 2016, Ms. McKnight pled guilty to various criminal charges that had been filed against her.

71. On October 25, 2016, the Honorable William R. Cunningham sentenced Ms. McKnight to a minimum of 11 ½ months to a maximum of 23 months incarceration.

72. On about December 7, 2017, Ms. McKnight had a parole hearing at which parole was denied.

73. On December 7, 2017, Tatianna Maxwell, Ms. McKnight's daughter, called and retained Respondent to file a motion on behalf of her mother to be paroled and released from the Erie County Prison and to represent Ms. McKnight at any hearing necessary to accomplish this goal.

74. Respondent orally informed Ms. Maxwell that his fee to represent Ms. McKnight would be \$500.00.

75. Respondent had never before represented Ms. McKnight or Ms. Maxwell.

76. Respondent did not communicate to Ms. McKnight or Ms. Maxwell any writing setting forth the rate or basis of his fee, either before or within a reasonable period of time after his representation of Ms. McKnight in the criminal matter commenced.

77. On December 7, 2017, Ms. Maxwell provided Respondent with her debit card number for Respondent to be paid his \$500.00 fee.

78. On December 7, 2017, Respondent received the \$500.00 from Ms. Maxwell.

79. The \$500.00 which Respondent received from Ms. Maxwell was entrusted funds.

80. Respondent did not deposit any of the funds that Ms. Maxwell paid to him into an IOLTA or trust account or any other account for the deposit of entrusted funds.

81. Respondent informed Ms. Maxwell during his initial call with her that he could get the motion filed in two weeks or less in hopes of having Ms. McKnight paroled long before her 60-day review that was scheduled for February 10, 2018.

82. Shortly thereafter, Ms. Maxwell's sister, Morghan, delivered various papers to Respondent that he had requested from Ms. Maxwell in regard to Ms. McKnight's case.

83. On several occasions in the latter part of December and the beginning of January of 2018, Ms. Maxwell and Morghan called and left messages for Respondent to call them about the status of Ms. McKnight's matter.

84. Respondent did not respond to their inquiries.

85. By email dated January 4, 2018, Morghan asked Respondent about the status of Ms. McKnight's matter.

86. Respondent did not respond to Morghan's email dated January 4, 2018.

87. On January 9, 2018, Ms. Maxwell again called Respondent about the status of Ms. McKnight's matter.

88. Respondent informed Ms. Maxwell that he had just “dropped off” the motion that morning with the Erie County Clerk of Courts and expected to hear something from the Judge by the end of the week.

89. Respondent’s representation to Ms. Maxwell that he had filed a motion on behalf of Ms. McKnight was not true.

90. On January 12, 2018, Ms. Maxwell called Respondent and left a voicemail message for him to call her about Ms. McKnight’s matter.

91. Between January 18 and 24, 2018, Ms. Maxwell called and left various messages for Respondent to call her about the status of Ms. McKnight’s matter.

92. Respondent did not respond to any of Ms. Maxwell’s inquiries.

93. By email dated January 26, 2018, Morghan informed Respondent, among other things, that:

- a. She was extremely disappointed in the lack of communication regarding her mother’s case;
- b. Both her sister and she had contacted him multiple times since January 9 and had heard nothing in return;
- c. Due to the lack of communication, they had to find out information themselves;
- d. While doing so, they found that his statement that he had filed a motion on January 9 was not true;

- e. According to the Judge's chambers and the Clerk of Courts no such document was filed;
- f. At this point, they needed their money back since he had not done what he was hired to do; and,
- g. Either her sister or she needed to hear from him by the end of the day or she would be filing a complaint with the Erie County Bar Association and with the Pennsylvania Disciplinary Board.

94. Respondent did not respond to Morghan's email dated January 26, 2018.

95. Respondent never filed any motion for parole or request for an expedited hearing on behalf of Ms. McKnight.

96. By letter dated February 6, 2018, sent to Respondent by certified mail and first-class mail, Ms. Maxwell informed Respondent, among other things, that:

- a. On December 7, 2017, she hired him to represent her mother and to file a motion on her behalf regarding her release;
- b. She paid him the \$500 that he requested for his services over the phone by debit card;
- c. Respondent said he could file the motion within two weeks to get it filed long before the end of Ms. McKnight's 60-day review date on February 10, 2018;
- d. Those two weeks had passed;

- e. Respondent had stated on January 9, 2018, that he had filed the motion that morning;
- f. Morghan, her mother, and she had tried to contact him regarding the status of the motion and had since found out that there had been no motion filed via Judge Cunningham's chambers and the Erie County Clerk of Courts;
- g. She was hereby terminating Respondent's services in connection with his representation of Ms. McKnight; and,
- h. She requested a full refund of the \$500 that was paid to him be sent to her address listed above within 14 days of receiving this letter.

97. Respondent did not respond to Ms. Maxwell's letter dated February 6, 2018 and failed to refund to Ms. Maxwell any portion of the \$500 that he was paid to represent Ms. McKnight.

98. On February 15, 2018, Petitioner sent a DB-7 Request for Statement of Respondent's Position to Respondent in this matter by first class and certified mail. The letter was personally served on Respondent by a constable on February 27, 2018.

99. On April 4, 2018, Respondent met with Disciplinary Counsel in an unrelated matter and was encouraged to provide a Statement of Respondent's Position.

100. Respondent failed to provide a Statement of Respondent's Position in this matter.

101. On May 9, 2018, Petitioner sent a letter to Respondent at his then-current attorney registration address informing him that his failure to respond to the Request for Statement of Respondent's Position was a violation of Rule 203(b)(7), Pa.R.D.E., and that Petitioner would also be pursuing his violation of Rule of Professional Conduct 8.1(b) due to his failure to respond.

102. The letter was sent to Respondent by first class and certified mail. Neither copy of the letter was returned to Petitioner.

103. While Petitioner never received a green card evidencing delivery to Respondent, www.usps.com shows that the certified mail was delivered on May 25, 2018.

104. Ms. Maxwell credibly testified at the disciplinary hearing and confirmed that Respondent has not refunded any portion of the \$500 fee she paid for the representation. Ms. Maxwell explained that she is from a low-income family and losing \$500 without getting legal services was a hardship. N.T. 35.

ADDITIONAL FINDINGS

105. Respondent testified on his own behalf that he took the matters seriously and understood that his inactions affected his clients. N.T. 39. He further testified that he is "trying to do my best to make sure that I follow through with all my duties as an attorney." N.T. 40.

106. Respondent is a sole practitioner who also works as a part-time public defender in Erie County. Respondent does not employ a secretary or other support staff at his private office. N.T. 39-40, 45, 51.

107. Respondent testified that he made changes in his practice to improve communications with his clients by switching his cellular phone carrier. N.T. 40, 50, 58.

108. Respondent testified that he had no reason why he never paid back the monies to his clients, but expressed his willingness to do so. N.T. 52.

109. Respondent testified that he tried to locate Ms. Frantz-Bender's document box, but cannot find it. N.T. 41, 53.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct ("RPC") and Pennsylvania Rules of Disciplinary Enforcement ("Pa.R.D.E.):

The Frantz-Bender matter

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 1.15(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.

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 8.1(b) - An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

7. Pa.R.D.E. 203(b)(7) – The following shall also be grounds for discipline: 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.

The Adams Matter

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 1.5(a) - A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.
5. RPC 8.1(b) - An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.
6. RPC 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.
7. Pa.R.D.E. 203(b)(7) - The following shall also be grounds for discipline: 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.

The Maxwell Matter

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 1.5(a) - A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.
5. 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 the representation.
6. 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.
7. RPC 1.15(e) - Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, 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.

8. 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.

9. RPC 8.1(b) - An applicant for admission to the bar, or a lawyer in connection with a bar admission application or in connection with a disciplinary matter, shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

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

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

12. Pa.R.D.E. 203(b)(7) - The following shall also be grounds for discipline: 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.

IV. DISCUSSION

Herein, the Board considers the allegations of Respondent's misconduct in three separate client matters. Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). Petitioner personally served Respondent with the Petition for Discipline; however, Respondent failed to respond and failed to establish good cause for his failure to do so. Factual allegations in the Petition are deemed admitted if an answer to the Petition is not timely filed, pursuant to Pa.R.D.E. 208(b)(3). The factual allegations and Petitioner's exhibits prove that Respondent engaged in professional misconduct.

Respondent failed to act with reasonable diligence in his representation of Sherry Frantz-Bender, and failed to communicate with his client about her divorce case, despite her repeated efforts to communicate with him. Because of Respondent's inaction, Ms. Frantz-Bender missed court hearings and was held in contempt of court. After Ms. Frantz-Bender terminated the representation, Respondent failed to return his client's original documents, which included financial documents and birth certificates, despite her many requests.

Respondent exhibited similar professional deficiencies in his representation of Maureen Adams related to her divorce case. Respondent failed to act with diligence and failed to communicate with Ms. Adams. Respondent's inaction caused Ms. Adams

to be sanctioned by the court for her failure to comply with discovery requests. Following Ms. Adams' termination of Respondent's representation, Respondent failed to refund the unearned portion of the \$750 fee to Ms. Adams.

Finally, in the Maxwell matter, in addition to failing to act with reasonable diligence and failing to communicate with his client, Respondent escalated the serious nature of his misconduct by making a misrepresentation to his client concerning the status of her matter. He also failed to provide a written fee agreement to his client, failed to maintain the fee paid to him separate and apart from his own funds, and failed to return the unearned portion of the \$500 fee upon termination of the representation.

The timing of the misconduct in all three matters is notable. In the Frantz-Bender matter, Respondent was terminated by his client in June 2017, was retained by Ms. Adams in June 2017 and terminated in January 2018, and was retained in the Maxwell matter in December 2017 and terminated in January 2018. By October 2017, Respondent was already on notice by Petitioner of the underlying complaint in the Frantz-Bender matter and that Ms. Frantz-Bender wanted her documents returned. Petitioner continued to contact Respondent in December 2017 and January 2018 regarding that matter, but Respondent did not respond. In the meantime, as the timeframe demonstrates, Respondent continued to engage in subpar representation of Ms. Adams and Ms. Maxwell.

In all three matters, Respondent failed to respond to Petitioner's DB-7 requests for his position, even after Disciplinary Counsel urged him at an in-person meeting on an unrelated matter, to provide a response and to return Ms. Frantz-Bender's documents. These individual matters form a pattern of conduct where Respondent ignored and violated the Rules of Professional Conduct.

Respondent, who has been admitted to practice law in the Commonwealth since 2004, has a history of public discipline. In 2018, Respondent received a public reprimand for a matter that stemmed from his failure to appear at an informal admonition. In or about 2016, it was determined that Respondent should receive an informal admonition for his lack of diligence and communication and his failure to provide a written fee agreement in his client's divorce matter. As a condition of the admonition, Respondent was directed to refund \$700 to his client. The informal admonition was scheduled for March 13, 2017; Respondent failed to appear on that date and failed to fulfill the condition, precipitating the filing of formal disciplinary charges and a disciplinary hearing in October 2017. Ultimately, the Board imposed a public reprimand on Respondent, after considering his remorse and the fact that he had made a partial refund to his client. As a condition to the public reprimand, the Board directed that Respondent refund the remaining balance of \$527 to his client, which condition Respondent fulfilled prior to the imposition of the public reprimand.

Notably, the October 2017 disciplinary hearing in the prior disciplinary matter, the Board's February 21, 2018 order and opinion directing the public reprimand, and the imposition of the public reprimand on April 4, 2018, occurred in the midst of Respondent's misconduct in the three instant matters.

Considering the timing of these events, Respondent should have been attuned to the problems in his practice and more conscious of the importance of prompt interaction with the disciplinary authorities. Yet it appears that Respondent's prior disciplinary matter had little impact upon him. Respondent has produced no evidence to demonstrate that he has made changes to remedy these practice issues, other than to change his cellular phone carrier. The similarities between Respondent's misconduct in

the three instant matters and the prior disciplinary matter are significant. Respondent neglected matters and failed to refund monies or return documents.

Respondent testified that he takes the instant matters seriously and understands the impact his actions had on his clients, yet his actions indicate otherwise. Respondent did not respond to Petitioner's DB-7 letters and failed to respond to the Petition for Discipline. Respondent offered no explanation for his failure to do so. Had he truly been concerned about these matters, he would have made efforts to respond.

Respondent has been on notice for some time that he owes money to two clients and documents to another client, yet he has not made good on these deficiencies. The three clients credibly testified as to the negative impact of Respondent's conduct on them. Ms. Maxwell testified that the \$500 she paid Respondent for services she did not receive was a hardship on her low-income family, yet he offered no apology to her at the hearing. Respondent lost Ms. Frantz-Bender's original documents, including birth certificates, which she testified was very upsetting to her, and again, he did not apologize to her at the hearing. Respondent did, however, offer an apology to Ms. Adams. In general, Respondent stated that he had no reason for not refunding any of the monies, and indicated a current willingness to do so.

Despite Respondent's testimony, we conclude that he did not take these matters seriously, as he had ample opportunity to make practice changes to avoid discipline and take steps to right the wrongs he inflicted on his clients, but did not do so. Respondent asked for sympathy for his situation, but did not display a tremendous amount of sympathy for his clients' predicaments.

It is well-established that the goals of the attorney disciplinary system include protecting the public from unfit attorneys, maintaining the integrity of the bar, and

upholding respect for the legal system. *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986). Recognizing that there is no per se discipline in Pennsylvania, upon reviewing the totality of the facts and circumstances of this record, and after considering these important goals and the established precedent to ensure the application of consistent discipline, we conclude that Respondent's misconduct warrants a two year period of suspension. *Office of Disciplinary Counsel v. Robert Lucarini*, 427 A.2d 186, 190 (Pa. 1983); *Office of Disciplinary Counsel v. Melvin V. Richardson*, No. 35 DB 1988, 8 Pa. C. & C. 4th 344, 355 (1990).

For attorneys who engage in multiple instances of neglect; fail to communicate with clients; fail to properly protect clients' interests upon termination of representation by failing to refund unearned fees and failing to return client property; misrepresent the status of a client's case to the client; prejudice the administration of justice; and fail to respond to requests for information from disciplinary authorities; precedent supports a suspension of two years as appropriate and sufficient to address the misconduct, particularly where, as in the instant matter, the attorney has a prior record of discipline.

The Board's recommendation in this matter is informed by the recent case of *Office of Disciplinary Counsel v. Holly C. Dobrosky*, No. 207 DB 2016 (D. Bd. Rpt. 9/12/2019) (S. Ct. Order 1/13/2020). Therein, Dobrosky engaged in a pattern of repeated professional misconduct spanning approximately four years in four separate matters. Dobrosky not only neglected her clients, she mishandled the fees the clients advanced to her for her work. In each matter, she failed to refund unearned fees, which totaled \$17,500. After accepting her clients' retainers, Dobrosky failed to perform any work in the four matters. Significantly, Dobrosky's dereliction of duty to her clients included failing

to appear at two mandatory settlement conferences with the court, resulting in a show cause hearing at which Dobrosky misrepresented to the judge that her file had been “stolen” by another lawyer; and failing to appear at a client’s criminal trial, causing the court to issue a bench warrant. Dobrosky, who had no record of discipline, appeared at her disciplinary hearing, expressed remorse, and indicated that she planned to make restitution to her clients, but did not show compelling evidence that she appreciated the seriousness of her actions, which constituted abandonment of her clients. Although the Board recommended a one year and one day period of suspension, the Court imposed a three year suspension after Dobrosky failed to respond to the Court’s rule to show cause.

We take note of the ***Dobrosky*** matter, as it bears similarities to the instant matter. Herein, similar to Dobrosky’s neglect in four matters, Respondent neglected three matters by failing to act with diligence and failing to communicate with his clients. Similar to Dobrosky’s clients who suffered adverse consequences due to her inaction, Respondent’s clients in two matters were put at risk due to his inaction: Ms. Frantz-Bender was held in contempt for missing court hearings; Ms. Adams was sanctioned for failing to comply with discovery requests. Like Dobrosky’s actions in four matters involving \$17,500 of entrusted funds, Respondent in two matters failed to refund the unearned portion of fees paid to him that totaled \$1,250, and in a third matter, he failed to return his client’s vital documents. Herein, Respondent misrepresented to his client the status of the client’s case. Dobrosky made a more serious misrepresentation to a judge in court. Comparing the two matters, we find that Dobrosky’s misconduct was more serious, as it involved more client matters, more unaccounted for monies, and a more serious act of dishonesty. Unlike Dobrosky, Respondent has a history of discipline.

The Board also takes note of two recent matters that resulted in suspensions of one year and one day. In ***Office of Disciplinary Counsel v. Tangie Marie Boston***, No. 99 DB 2018 (D. Bd. Rpt. 12/10/2019) (S. Ct. Order 2/12/2020), Boston committed misconduct in four matters comprising incompetence, neglect, lack of communication, failure to refund unearned fees, and conduct prejudicial to the administration of justice. Boston answered the charges against her, stipulated to many of the facts and rule violations, subsequently admitted her derelictions, and accepted responsibility for her misconduct. Boston had no prior discipline. While the instant matter bears similarities to ***Boston***, two significant differences are that Respondent, unlike Boston, has a history of prior discipline for similar misconduct, and did not accept full responsibility as Boston did.

In ***Office of Disciplinary Counsel v. Adam Luke Brent***, No. 225 DB 2018 (D. Bd. Rpt. 12/20/2019) (S. Ct. Order 2/13/2020), Brent committed misconduct in three matters by neglecting his client's case, engaging in the unauthorized practice of law in a separate matter following his transfer to administrative suspension, and failing to respond to Office of Disciplinary Counsel's DB-7 inquiries. In the client neglect matter, Brent accepted a \$5,000 retainer and failed to refund the unearned portion after he failed to perform the services for which he had been retained. The Board found that Brent failed to recognize and accept responsibility for his actions, and failed to apologize. The Board recognized Brent's lack of prior discipline as a mitigating factor, but nevertheless recommended that he be suspended for one year and one day in order to protect the public.

In the instant matter, Respondent engaged in misconduct in three client matters, while Brent's misconduct concerned two client matters. Respondent failed to

refund an unearned fee in two matters and return documents in a third matter, while Brent failed to refund monies in one matter. Both Respondent and Brent failed to respond to Petitioner's DB-7 requests for information. Respondent's history of discipline aggravates the instant matter, which factor was not present in Brent's matter.

Comparing the ***Boston*** and ***Brent*** matters with the case at bar, we find the facts of Respondent's matter are more serious and deserve a sanction greater than a one year and one day suspension.

The Court has suspended attorneys for a period of two years in matters involving multiple instances of client neglect. See, ***Office of Disciplinary Counsel v. Donna Marie Albright-Smith***, No. 225 DB 2010 (D. Bd. Rpt. 12/20/2011) (S. Ct. Order 5/30/2012) (engaged in misconduct in eight client matters over a four-year period; agreed to represent the clients; accepted retainer fees, which often were not deposited into a trust account; failed to pursue the cases; made misrepresentations in three of the matters to either the court or clients; failed to notify clients of an office move to a different county; failed to promptly refund unearned fees, but later made reimbursement in all but one case after Office of Disciplinary Counsel's involvement; no prior history of discipline); ***Office of Disciplinary Counsel v. Michael Mayro***, No. 144 DB 2001 (D. Bd. Rpt. 10/27/2003) (S. Ct. Order 2/3/2004) (neglect of four clients matters; failing to communicate; failing to expedite litigation; failing to respond to motions; misrepresentations to clients; history of prior discipline for similar misconduct).

The Board takes seriously the responsibility to consider each disciplinary matter on a case-by-case basis. We have scrutinized the record in this matter to understand how these facts and circumstances may properly be viewed in the context of

case precedent. Upon this record, we conclude that Respondent's misconduct warrants a suspension for a period of two years.

Respondent's repeated, numerous acts of misconduct in three separate matters, his failure to refund unearned fees and return documents, his failure to respond to disciplinary authorities, and his prior public discipline warrant a suspension for two years. This discipline is necessary to address the misconduct, to protect the public, and to require Respondent to prove his fitness to practice law through the reinstatement process.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that Respondent, Matthew Gerald Porsch, be Suspended for 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: /s/ Gretchen A. Mundorff
Gretchen A. Mundorff, Member

Date: 02/20/2020