

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1811 Disciplinary Docket No. 3
Petitioner :
: No. 225 DB 2010
v. :
: Attorney Registration No. 94914
DONNA MARIE ALBRIGHT-SMITH, :
Respondent : (Potter County)

ORDER

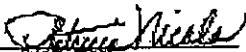
PER CURIAM:

AND NOW, this 30th day of May, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 30, 2011, it is hereby

ORDERED that Donna Marie Albright-Smith is suspended from the Bar of this Commonwealth for a period of two years and she shall comply with all the provisions of Rule 217, Pa.R.D.E.

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

A True Copy Patricia Nicola
As Of 5/30/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 225 DB 2010
Petitioner	:	
	:	
v.	:	Attorney Registration No. 94914
	:	
DONNA MARIE ALBRIGHT-SMITH	:	
Respondent	:	(Potter County)

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

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

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

I. HISTORY OF PROCEEDINGS

On November 10, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Donna Marie Albright-Smith. The Petition alleges that Respondent committed professional misconduct in eight separate client matters. After numerous unsuccessful efforts at personal service, constructive service was made by mailing a copy to Respondent's last registered address of 411 Dwight Street, Coudersport PA 16915, on December 13, 2010, pursuant to Pa.R.D.E. 212 and documented by a Certificate of Service. Respondent did not file an Answer to Petition.

A disciplinary hearing was held on April 28, 2011 before a District III Hearing Committee comprised of Chair Victor A. Neubaum, Jr., Esquire, and Members David J. Solfanelli, Esquire, and Edward H. Jordan, Jr., Esquire. Respondent appeared pro se. Petitioner introduced five exhibits and presented the testimony of three witnesses. Respondent testified on her own behalf.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on August 17, 2011, concluding that Respondent violated the Rules of Professional Conduct and recommending that Respondent be suspended for a period of one year and one day.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on October 18, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located 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 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 Donna Marie Albright-Smith. She was born in 1973 and was admitted to practice law in Pennsylvania in 2005. Her current registered attorney address is 411 Dwight Street, Coudersport PA 16915. Respondent was administratively suspended by Supreme Court Order dated March 25, 2010, pursuant to Rule 111(b), Pa.R.C.L.E. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of prior discipline.

Culp Matter

4. On or about June 12, 2005, Aaron and Jean Culp consulted with Respondent for a fee of \$25 regarding a problem with their neighbor, Stuart Culp, who was blocking the driveway to their house.

5. On September 20, 2005, the Culp's retained Respondent's services and paid her a fee of \$1,000.

6. Respondent failed to communicate to the Culp's in writing the basis or rate of her fee within a reasonable time after commencing her representation. Instead, she orally advised the Culp's that \$1,000 should be enough with an additional \$100 for one day of trial.

7. On February 7, 2006, Respondent provided the Culp's with a deed search and copy of a Complaint in Equity which Respondent had filed against Stuart and Nancy Culp.

8. Respondent did not have the Culp's review the Complaint before it was filed, and it contained some errors.

9. On or about February 9, 2006, the Culp's advised Respondent about the errors that they noticed. Respondent never moved to amend the Complaint.

10. On February 24, 2006, Jessica Songster, Esquire, filed an Answer to the Complaint on behalf of Stuart and Nancy Culp. Respondent did not provide her clients with a copy of the Answer.

11. The Culpes called Respondent on many occasions to determine the status of their matter. The vast majority of the calls were unanswered.

12. On October 11, 2007, the Culpes complained to Respondent in writing of her inaction on their case.

13. On February 11, 2008, Respondent advised her clients that a hearing was scheduled for February 25, 2008.

14. On February 25, 2008, Respondent and Attorney Songster met with the judge after which Respondent informed her clients that a surveyor was needed to resolve the dispute. The hearing was rescheduled for April 28, 2008.

15. On April 11, 2008, the Culpes sent Respondent a list of their witnesses, advised Respondent that they had contacted a local surveyor, and requested Respondent to return to them their original documents.

16. Respondent did not subpoena the witnesses nor did she return the Culpes' original documents.

17. On April 24, 2008, office staff from Respondent's office called the Culpes and advised them that the hearing for April 28, 2008, had been continued at the request of the defendants.

18. In fact, on April 23, 2008, without the Culpes' consent or knowledge, Respondent moved for a continuance and falsely alleged that the parties were close to reaching an agreement.

19. The judge granted Respondent's request and rescheduled the hearing for June 17, 2008.

20. On May 12, 2008, the Culps met with Respondent in her office. They advised Respondent that they wanted the Court to decide the matter and did not want to resolve it with Attorney Songster. They also advised Respondent that she was running out of time to prepare the surveyor.

21. Respondent agreed to make copies of a prior survey and deed and deliver them to Jon Norquest, the surveyor, and meet him at the property. Respondent never did any of these things.

22. The Culps on their own contacted Mr. Norquest, who told them that Respondent had not contacted him.

23. Attorney Songster made an offer to the Culps, which Respondent presented to her clients on June 9, 2008. The Culps rejected the offer.

24. The Culps believed they were being forced into settlement because they knew no witnesses had been subpoenaed and they had no surveyor. Based on this belief, the Culps emailed Respondent a proposal on June 12, 2008.

25. On June 13, 2008, the Culps emailed Respondent withdrawing their proposal, but Respondent later advised them that the defendants had accepted their proposal and the case was settled. Despite the Culps protestations, Respondent indicated that the case was over.

26. Even though Respondent knew that her clients were not really willing to settle their case, Respondent advised the judge's office that the case had been settled.

27. From January 10, 2006, through June 16, 2008, the Culps' phone records indicate 99 calls made to Respondent's office, the vast majority of which Respondent failed to return.

28. Attorney Songster did not timely draft a settlement agreement and by letter to her dated October 17, 2008, Respondent inquired if she was still working on it. Respondent failed to indicate that her clients were unwilling to settle.

29. On March 19, 2009, the Culps sent Respondent a letter notifying her that her services were no longer desired. They enclosed an accounting on a copy of Respondent's billing statement indicating that they owed Respondent the sum of \$176, for which amount they enclosed a check.

30. Despite having been paid all fees billed, Respondent failed to send the Culps their entire file.

Barrett Matter

31. Respondent represented Melinda Sue Barrett in a custody matter. A hearing in the case was scheduled for September 3, 2008 in Potter County. Ms. Barrett asked Respondent to make sure that Dr. John Addis would be present at the hearing. Respondent advised her client that Judge Williamson was going to see to the doctor's appearance.

32. About a week prior to the hearing, Respondent sent Dr. Addis a subpoena, however she sent it to the wrong address. Thereafter, Respondent failed to attempt any other contact with Dr. Addis.

33. Dr. Addis did not appear at the hearing on September 3, 2008. The Judge indicated that he wanted to hear from the children's' counselors, teachers and

school psychologists. Ms. Barrett gave Respondent a list of the names of those people and where they were employed.

34. The next custody hearing was scheduled for October 31, 2008. Respondent did not provide Ms. Barrett with any information as to how Dr. Addis would be brought to court.

35. Unbeknownst to Ms. Barrett, on September 11, 2008, Judge Williamson inquired of counsel as to how the next hearing would proceed. Counsel for the father stated he would call Dr. Glass. Respondent failed to respond.

36. By Order of September 25, 2008, Judge Williamson scheduled the hearing for October 31, 2008 and directed that if Ms. Barrett wanted the testimony of Dr. Glass, she should submit a subpoena and arrange for proper service by the Sheriff. Respondent failed to make any inquiry as to why the Order mentioned Dr. Glass and not Dr. Addis.

37. On October 13, 2008, Ms. Barrett requested that Respondent file a petition for contempt against her children's father for his failure to take the children to their Cub Scout meeting and for dropping their medical insurance coverage.

38. On October 20, 2008, Ms. Barrett contacted Respondent's office and was told that Respondent would file for contempt. Ms. Barrett was also asked to forward names and addresses of her witnesses for the hearing. On October 22, 2008, Ms. Barrett emailed to Respondent's office the names and addresses of the witnesses to be subpoenaed.

39. On October 26, 2008, Ms. Barrett called her witnesses and was advised that they had not received subpoenas. Immediately thereafter, Ms. Barrett called

Respondent's office and was incorrectly advised by staff that subpoenas had been sent out.

40. On October 29, 2008, Ms. Barrett called Respondent's office and was advised that subpoenas had not gone out, that a contempt petition was on Respondent's desk, and that Ms. Barrett had to pay for Dr. Addis to appear at the October 31 hearing.

41. By letter of October 29, 2008, to Judge Williamson, Respondent asked for a continuance of the hearing if it was Ms. Barrett's obligation to have Dr. Addis testify.

42. On October 30, 2008, Ms. Barrett called Respondent's office and was advised that the subpoenas had still not been sent out.

43. Ms. Barrett called Respondent's office three times that afternoon but only reached Respondent's answering machine. Ms. Barrett stopped at Respondent's office to drop off two post-dated checks.

44. While in Respondent's office on October 30, 2008, Respondent's secretary gave Ms. Barrett a copy of an order that had just arrived by fax. By Order of October 30, 2008, Judge Williamson accepted responsibility for Respondent's confusion as to the appearance of Dr. Addis at the hearing. The Order concluded that the hearing would continue with the understanding that the children would testify and Dr. Glass would testify.

45. Ms. Barrett waited for Respondent in her office on October 30, 2008 until 4 p.m., but Respondent did not appear. Respondent did not call Ms. Barrett that day.

46. At the October 31, 2008 hearing, Ms. Barrett was extremely upset and broke down during her testimony. At the conclusion of the hearing, Judge Williamson gave the children's father physical custody of the children and issued a written Interim Amended

Custody Order dated October 31, 2008, which specified when Ms. Barrett could have visitation, among other things.

47. Respondent did not timely provide Ms. Barrett a copy of the Order.

48. One week after the hearing, Ms. Barrett stopped payment on the first of her post-dated checks; she later stopped payment on the second post-dated check.

49. Ms. Barrett had one telephone conversation with Respondent following the hearing. Respondent threatened to initiate bad check charges, to which Ms. Barrett responded that she had not issued bad checks, but rather had stopped payment.

50. By letter dated November 23, 2008, Ms. Barrett complained to Judge Williamson of Respondent's lack of communication and diligence in preparing for the custody hearings, further complained Respondent had yet to send her a copy of the Order of October 31, 2008, and requested that all communications be sent directly to Ms. Barrett.

51. In response, by Order of December 1, 2008, Judge Williamson directed Respondent to advise the Court in writing if Respondent still represented Ms. Barrett and directed that copies of all correspondence be sent directly to Ms. Barrett.

52. By letter of December 29, 2008, to Judge Williamson, Respondent apologized for her late response to the Order of December 1, 2008, and explained that she had medical problems. Respondent stated that she vehemently disagreed with Ms. Barrett's depiction of the events of the representation.

53. Respondent's letter also stated that Respondent was not sure if she could "...adequately address Ms. Barrett's allegations without compromising certain ethical and professional obligations..." but went on to state, "Otherwise, I will only say that Ms. Barrett's efforts to facilitate the attorney/client relationship, cooperate in trial preparation, and otherwise meet her obligations to this firm were wholly consistent with her ability to

parent her children effectively. I will leave it to the Honorable Court to draw its own conclusions from there..." Finally, Respondent's letter indicated that Respondent had no intention of further representing Ms. Barrett and wanted to know if the Court desired a formal motion to withdraw.

54. By letter dated May 9, 2009, Respondent advised Judge Williamson that Respondent would not be representing Ms. Barrett at an upcoming de novo hearing on May 29, 2009, and that Respondent would be filing a Petition to Withdraw as Counsel on May 11, 2009, a copy of which Respondent enclosed. Respondent explained that her delay since December 2008 was due to medical difficulties and personal tragedies.

55. In Respondent's Motion to Withdraw as Counsel, Respondent averred that Respondent "...cannot in good faith represent a client without a good faith belief in the client's veracity." Respondent sent copies of her letter of May 9, 2009 and Motion to Withdraw to Ms. Barrett. Ms. Barrett responded to Judge Williamson by letter dated May 18, 2009, wherein she agreed that Respondent should be allowed to withdraw but objected to Respondent's personal attacks upon her.

56. By separate letter to Respondent of May 18, 2009, Ms. Barrett requested that Respondent send her "...a revised, more descriptive statement of fees and services before rendering payment for such."

57. Respondent did not respond to Ms. Barrett's letter.

58. Judge Williamson granted Respondent's Motion to Withdraw on May 22, 2009.

Miller Matter

59. On January 16, 2006, Douglas B. Miller was sentenced to a minimum of 8 days to a maximum of eight years in prison upon his plea of guilty to indecent assault

on a person less than 13 years of age and corruption of minors, in Bradford County. In February and March 2006, Charles Davis, a friend of Mr. Miller, contacted The Cochran Firm and retained it to represent Mr. Miller on his pending direct appeal and subsequent PCRA if needed. Mr. Davis paid The Cochran Firm a total of \$25,000.

60. By letter dated March 13, 2006, The Cochran Firm notified Mr. Miller that Respondent would be his attorney.

61. The Cochran Firm later changed its name to Imhoff and Associates, of which Mr. Miller was notified.

62. On January 3, 2007, the Superior Court affirmed Mr. Miller's Judgment of Sentence. Thereafter, Respondent was to file a PCRA. Respondent had few communications with Mr. Miller and did not file his PCRA until October 29, 2007.

63. By Order dated February 20, 2008, Respondent was directed to file an Amended PCRA no later than March 21, 2008, specifically setting forth the facts supporting claims made in the original PCRA.

64. On March 24, 2008, Respondent filed a motion seeking an extension of ten days to file the Amended PCRA. Respondent was granted an additional ten days.

65. Respondent did not file an Amended PCRA.

66. In or about July 2008, having heard nothing from Respondent, Mr. Miller contacted the Bradford County Court of Common Pleas and learned that no Amended PCRA had been filed.

67. Again, having heard nothing from Respondent, in September 2008 Mr. Miller started communicating with Imhoff & Associates to determine the status of his PCRA.

68. On September 29, 2008, Respondent had a phone conversation with Vincent Imhoff, Esquire, and advised him that she had a courier file an Amended PCRA but had not received back a time-stamped copy. Respondent further indicated that she was planning to prepare an affidavit for the courier to sign.

69. On October 7, 2008, Respondent had another phone conversation with Mr. Imhoff during which she advised him that she had kept Mr. Miller advised of the status of his case through communication with Mr. and Mrs. Davis. Respondent indicated she needed to complete work on the courier's affidavit and would do so within two weeks.

70. By letter to Mr. Miller dated October 8, 2008, Mr. Imhoff advised him of Respondent's telephone conversation. Respondent was sent a copy of that letter.

71. By letter sent on or about November 1, 2008, to Mr. Imhoff, Mr. Miller contested Respondent's claim of having advised him of the status of his case. Mr. Miller asked that all communications be directly with him, and that he be provided with an explanation of the status of his matter.

72. Respondent received Mr. Miller's letter, but did not have any further communication with him.

73. Respondent never filed anything further in Mr. Miller's case.

74. Between October 28, 2008 and December 17, 2008, Respondent was contacted numerous times on behalf of Mr. Miller, but Respondent never returned the calls.

75. Mr. Imhoff called Respondent's office several times during October 2008, leaving messages, but Respondent never returned them. Mr. Imhoff continued his calls in December 2008, January 2009 and February 2009, but he did not receive a call back.

76. A conference call was arranged for March 25, 2009, but Respondent failed to participate.

77. By letter to Respondent dated March 25, 2009, Mr. Imhoff asked if Respondent intended to proceed with Mr. Miller's case. Respondent failed to respond.

78. Subsequently, Imhoff & Associates refunded \$25,000 to Mr. Davis on May 29, 2009.

Jones Matter

79. William V. Jones retained Respondent in June 2008 to represent him regarding a contract with Mills Plumbing, which did not complete work for Mr. Jones.

80. Respondent indicated she would write to Mills Plumbing urging them to finish the work agreed to. While Mr. Jones was led to believe that Respondent wrote such a letter, she failed to provide a copy to him.

81. Mr. Jones met with Respondent on August 5, 2008, at which time Respondent suggested he contact other contractors to provide opinions and quotes as to how best to address the unfinished work. Mr. Jones did as Respondent suggested and delivered to her the documents obtained along with pictures of the unfinished project for use in litigation Respondent was to initiate against Mills Plumbing.

82. Mr. Jones sold the house in August 2008 and made concessions with the new owners due to the unfinished work.

83. On September 2, 2008, Mr. Jones signed a fee agreement with Respondent which provided for an initial retainer of \$500, that Respondent would bill at the rate of \$125 an hour, that he was responsible for all costs, and that Respondent would send him monthly bills. Mr. Jones paid Respondent the retainer and incurred \$250 in expenses in carrying out Respondent's directives.

84. Respondent did not deposit the \$500 into an IOLTA account.

85. Over the next few months, Respondent ignored emails and calls from Mr. Jones to Respondent's office.

86. By letter dated December 11, 2008, Mr. Jones complained of Respondent's inaction. In response, Respondent advised Mr. Jones that she had been ill but that his case would be a priority in January 2009; however, Respondent took no action to pursue Mr. Jones' claim against Mills Plumbing.

87. Mr. Jones emailed Respondent in February 2009 and asked of the possibility of his lawsuit moving forward. Respondent did not respond.

88. By certified letter of May 29, 2009, received in Respondent's office on June 1, 2009, Mr. Jones complained of Respondent's inactivity and failure to respond to his emails and calls over the last six months, and gave Respondent until June 12, 2009 to either file the paperwork to sue Mills Plumbing or withdraw and refund his retainer fee and expenses. Respondent did not respond.

89. Respondent had not sent Mr. Jones any monthly billing and as far as he was aware, Respondent did nothing to pursue Mr. Jones' legal interests.

90. A DB-7 letter was sent to Respondent on June 22, 2009.

91. On June 30, 2009, Respondent sent Mr. Jones a three-page letter stating she had received his complaint, explaining her personal problems, and apologizing for her inactivity and lack of communication. Mr. Jones immediately wrote back and asked Respondent to call him.

92. By letter dated July 9, 2009, Mr. Jones advised Disciplinary Counsel of Respondent's letter of June 30 and his reply, but noted that Respondent had not called him.

93. By letter of September 15, 2009, Mr. Jones advised that Respondent still had not communicated with him or refunded the retainer.

94. By email to Disciplinary Counsel on February 2, 2010, Respondent stated that while she did some work on Mr. Jones' case, she did not complete nor file a Complaint on his behalf, and she sent him a refund of \$1,250.

95. By letter to Disciplinary Counsel dated April 27, 2010, Mr. Jones acknowledged that Respondent had sent him a check for \$1,250.

Beach Matter

96. In January 2008, Steven Beach met with Respondent as he was going through a divorce and needed to file for bankruptcy.

97. In March 2008, Mr. Beach sent Respondent a check for \$2,200, of which \$1,800 was for filing a Chapter 7 bankruptcy, and the balance was for the divorce case.

98. Respondent did not deposit the funds into an IOLTA account.

99. On July 5, 2008, Respondent filed a Chapter 7 bankruptcy for Mr. Beach and the 301 Meeting of Creditors was set for September 9, 2008. On July 7, 2008, Respondent filed income records of Mr. Beach's employment from 2007.

100. On September 8, 2008, Mr. Beach called Respondent and she advised him that she would not attend the Creditors' Meeting the following day but would have another attorney there.

101. On September 23, 2008, Respondent filed evidence of wages Mr. Beach was paid in January 2008 through May 2, 2008. However, Respondent failed to file copies of evidence of payments Mr. Beach received within 60 days before the date of the filing of the Chapter 7 petition. As a result, the Trustee filed a Request by Trustee for Entry

of an Order Dismissing Case Pursuant to 11 U.S.C. Section 521 (l)(1) and (2) and Request for Review of Professional Fees.

102. To settle the Trustee's Requests, Respondent entered into a Stipulation agreeing that the case would be dismissed without prejudice to refiling, that Respondent would disgorge her fees back to Mr. Beach within 10 days, and Respondent should send copies of her cover letter and check to the Court.

103. By Order of September 29, 2008, Mr. Beach's Chapter 7 case was Dismissed Without Prejudice to Refiling.

104. Mr. Beach called Respondent as soon as he learned that his case was dismissed. However, despite the Court's Order, Respondent refused to refund Mr. Beach's money but promised to get him his bankruptcy.

105. On October 29, 2008, Respondent filed with the Bankruptcy Court copies of a letter dated October 29, 2008, from Respondent's secretary to Mr. Beach purportedly advising him a check was enclosed for \$1,809 pursuant to the Order of the Bankruptcy Judge.

106. Respondent did not actually send Mr. Beach the letter or the check. By filing copies thereof with the Court, Respondent made a material misrepresentation of fact to the Court and Trustee.

107. On November 19, 2008, Respondent filed a second Chapter 7 action for Mr. Beach and the 301 Meeting of Creditors was scheduled for January 13, 2009.

108. At the Creditors' Meeting on January 13, 2009, the Trustee directed Respondent to file a copy of Mr. Beach's 2007 federal income tax return.

109. That same date, Mr. Beach secured a copy of his return from H & R block and faxed Respondent a copy. However, Respondent failed to timely file it with the Bankruptcy Court.

110. On April 1, 2009, the Trustee filed a motion to dismiss Mr. Beach's case due to the failure to file a copy of his 2007 federal income tax return. Respondent then filed a copy of the return and on April 7, 2009, the Trustee filed a praecipe to withdraw his motion.

111. On April 22, the Chapter 7 Trustee's Report of No Assets was filed.

112. On April 26, 2009, Mr. Beach took the required credit counseling with Consumer Credit Counseling Service of Northeastern Pennsylvania, which faxed certificates of attendance to both Mr. Beach and Respondent's office. Respondent did not file the certificate with the Court.

113. As a consequence, on April 29, 2009, Bankruptcy Judge John J. Thomas entered a Final Decree discharging the Trustee and closing Mr. Beach's second Chapter 7 case without a discharge of debtor having been issued in accordance with Interim Bankruptcy Rule 4004(c)(1)(H).

114. Upon his receipt of Final Decree, Mr. Beach called the Trustee and learned that his case was closed without a discharge of his debts due to the failure to file a certificate of attendance of the counseling course he had taken. He was also advised that his Chapter 7 case could be reopened and the certificate filed but a fee of \$260 would have to be paid. Mr. Beach called Respondent and she stated that she would take care of it.

115. In about mid-May 2009, Mr. Beach called Respondent and said that she should either complete his bankruptcy or return his money, or he would report her to

the Attorney General. Respondent assured Mr. Beach that she would pay the \$260 fee but that she wanted to personally meet with him.

116. Respondent arranged to meet with Mr. Beach in Mill Hall, Clinton County at a certain time, but Respondent failed to appear.

117. Despite Respondent's agreement to pay the fee of \$260 and reopen Mr. Beach's Chapter 7 case so that the certificate of attendance could be filed, Respondent failed to do so.

118. By letter to Mr. Beach dated March 5, 2010, Respondent indicated that she was closing her law office due to significant medical problems, enclosed a check for \$1,809.00, and apologized for any inconvenience he had experienced.

Campbell Matter

119. On June 18, 2009, Theresa V. Campbell retained Respondent's services to represent her in a divorce and paid Respondent a retainer of \$2,000, which Respondent deposited into her Albright Law Firm account, and not an IOLTA account.

120. Respondent's written fee agreement provided that the \$2,000 would cover about 16 hours of legal work at her hourly rate of \$125.

121. As Respondent did not have Ms. Campbell's informed consent to treat her \$2,000 in some other way, it should have been deposited into an IOLTA account and withdrawn only as earned by Respondent.

122. Respondent advised Ms. Campbell to move out of her marital home and to notify Respondent at which time Respondent would file for the divorce.

123. On July 30, 2009, Ms. Campbell called Respondent's secretary and advised that she had moved out of the marital home and Respondent should file for divorce.

124. On August 3 and 8, 2009, Ms. Campbell called Respondent's office to find out if Respondent had filed for her divorce and left messages for Respondent. Respondent did not call back.

125. Sometime between August 3 and 7, 2009, Respondent closed her office at 12 E. Second Street, 2nd Floor, Coudersport PA, but failed to promptly notify Ms. Campbell.

126. Respondent moved her office to Mill Hall, Clinton County, Pennsylvania.

127. On August 10, 2009, Ms. Campbell called the Potter County Prothonotary's Office and was advised that nothing had been filed on her behalf. Immediately thereafter, Ms. Campbell called Respondent's office and got her answering machine. She went to Respondent's office and discovered it was locked and that Respondent had moved.

128. The only information Ms. Campbell was able to obtain was that Respondent had moved somewhere in Clinton County.

129. Ms. Campbell filed a complaint with Office of Disciplinary Counsel on August 11, 2009.

130. On August 12, 2009, Ms. Campbell received a call from a woman named Jennifer who advised her that Respondent had an office in Lock Haven as well as Coudersport and that Respondent wanted to schedule a telephone call on August 17, 2009.

131. Ms. Campbell advised Jennifer that she wanted to discharge Respondent and get a refund of her \$2,200 retainer.

132. By certified letter to Respondent dated August 22, 2009, Ms. Campbell outlined her communications and attempted communications with Respondent and requested a written response within two weeks containing the refund amount due her. Ms. Campbell's letter was signed for on August 25, 2009, but Respondent did not provide an accounting or refund of unearned fees.

133. A DB-7 letter was sent to Respondent on September 21, 2009.

134. By letter to Ms. Campbell dated March 5, 2010, Respondent indicated that she was closing her law office due to significant medical problems, enclosed an invoice and check in the amount of \$1,135, and apologized for any inconvenience.

Jackson Matter

135. On February 25, 2009, Respondent was retained by Gregory A. Jackson to represent him in a divorce from his wife, Kim Jackson, who was represented by Rita G. Alexyn, Esquire.

136. Mr. Jackson paid Respondent her requested retainer of \$2,500.

137. Since Respondent did not have Mr. Jackson's informed consent to treat his retainer in some other way, Respondent should have deposited it into an IOLTA account and withdrawn it only as earned.

138. During the next few months, little if anything took place in the divorce action. Mr. Jackson called Respondent a number of times and left messages with Respondent's secretary, but Respondent failed to return any of the calls.

139. By letter to Respondent dated May 21, 2009, Ms. Alexyn requested that Mr. Jackson complete the Interrogatories, Income and Expenses Statement and Inventory & Appraisal forms. She asked for copies of various documents as well.

140. Respondent's office provided Mr. Jackson a copy of Ms. Alexyn's letter and he proceeded to gather the documentation and fill out the forms which he turned over to Respondent's office on June 2, 2009. Respondent failed to forward the information to Ms. Alexyn.

141. As Respondent had not responded to her communications, on July 27, 2009, Ms. Alexyn filed a Praecipe for Motion to Compel Discovery in the Potter County Court of Common Pleas. A hearing on the Motion was scheduled for September 1, 2009.

142. Beginning August 1, 2009, Mr. Jackson called Respondent's office daily leaving messages for Respondent to call him about the Motion to Compel. Respondent failed to return any of these calls.

143. On August 7, 2009, Mr. Jackson went to Respondent's office and observed that the office was unoccupied and looked closed.

144. Mr. Jackson soon discovered that Respondent no longer practiced law in Potter County.

145. By letter to Respondent dated August 27, 2009, Mr. Jackson terminated Respondent's services, requested that she send him his file by September 14, 2009, and demanded an accounting of all of her services and the refund of the balance of the \$2,500.

146. On September 3, 2009, Respondent's secretary delivered to Mr. Jackson what was purportedly his file. It contained the documents he had provided to Respondent as well as a number of documents relative to Respondent's previous representation of a different Gregory A. Jackson. It did not contain any work product that Respondent may have generated. Respondent did not refund any funds.

147. A DB-7 letter was sent to Respondent on August 25, 2009 to addresses in Coudersport and Mill Hall. Both were returned as unclaimed. A copy was emailed to Respondent on October 16, 2009.

148. By letter to Mr. Jackson dated March 5, 2010, Respondent indicated that she was closing her law office due to significant medical problems, enclosed an invoice and check in the amount of \$1,442.50, and apologized for any inconvenience.

Bailey Matter

149. On October 8, 2008, Julie Bailey retained Respondent to represent her in a divorce matter. On the same day, Ms. Bailey and Respondent executed a Retainer Agreement and Ms. Bailey paid Respondent \$1,000 of the requested \$2,000 retainer with the understanding that the balance was due in 90 days.

150. Respondent did not deposit Ms. Bailey's funds into an IOLTA account.

151. On October 14, 2008, Respondent filed in Potter County a divorce complaint and a Petition for Exclusive Possession of Marital Residence on behalf of her client.

152. Within a few weeks of retaining Respondent, Ms. Bailey began repeatedly calling Respondent's office and leaving messages for Respondent to return her calls and advise her of the status of her case. Respondent failed to return her calls.

153. When Respondent did not return her calls, in about mid-November 2009, Ms. Bailey visited Respondent's office and left a note to advise Respondent that Ms. Bailey and her husband were attempting to work out an agreement, which Ms. Bailey wanted Respondent to review.

154. Over the next several weeks, Ms. Bailey tried to contact Respondent by calls to the office and Respondent's cell phone. When Respondent failed to return her calls, Ms. Bailey became frustrated and retained other counsel.

155. By letter of March 12, 2009, Ms. Bailey dismissed Respondent as her counsel and requested an accounting and refund of unearned fees. Respondent failed to do so.

156. By letter of March 31, 2009, Ms. Bailey informed Judge Leete of the significant delays in Respondent's handling of her divorce action. Judge Leete advised Ms. Bailey that he would provide Respondent with a copy of the letter.

157. Thereafter, Respondent failed to take any action to communicate with Ms. Bailey to provide an accounting or refund unearned fees.

158. On April 27, 2009, Respondent executed a Praecipe for Withdrawal of Appearance. The Praecipe was filed on April 29, 2009.

159. While Respondent admitted to Disciplinary Counsel in her email of February 2, 2010, that Ms. Bailey was entitled to a refund of \$327.75, Ms. Bailey never received the refund.

160. Respondent testified on her own behalf at the disciplinary hearing.

161. Respondent showed remorse by her forthright acknowledgement of fault and by her efforts to return funds to some of the complaining clients.

162. Respondent began experiencing serious health problems in October 2008 when she developed a blood clot, circulatory issues and cardiac issues. She was hospitalized in December 2008 for approximately one week.

163. Respondent's father died in December 2008 and her mother was involved in a serious car accident in February 2009, which required Respondent to spend large amounts of time caring for her mother.

164. Respondent admits she was not returning telephone calls.

165. Respondent admits that she was wrong to write a letter to the judge in the Barrett matter, in which she denigrated her client to the judge. She is sorry for that.

III. CONCLUSIONS OF LAW

By her actions as set forth above, Respondent violated the following Rules of Professional Conduct:

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)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.

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

5. RPC 1.6(a) - A lawyer shall not reveal information relating to representation of a client unless the client gives informed consent, except for disclosures that are impliedly authorized in order to carry out the representation, and except as stated in paragraphs (b) and (c).

6. Former RPC 1.15(b) - 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 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 such property.

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) - 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.

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 1.15(m) - All Qualified Funds which are not Fiduciary Funds shall be placed in an IOLTA Account.

11. 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 paper and property to which the client is entitled and refunding any advance payment of

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

12. RPC 3.3(a)(1) - A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

13. RPC 3.4(b) - A lawyer shall not falsify evidence.

14. 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 third person.

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

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges filed against Respondent alleging that she engaged in professional misconduct in eight separate client matters. Respondent did not file an Answer to the Petition for Discipline, resulting in the deemed admission of all factual averments, pursuant to Rule 208(b)(3), Pa.R.D.E.

Petitioner bears the burden of proving professional misconduct by a preponderance of the evidence that is clear and convincing. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Petitioner relies upon the factual averments, exhibits and testimony of the witnesses.

The evidence of record demonstrates that Respondent engaged in a broad spectrum of misconduct over the course of several years, from approximately 2005 through

2009. In eight separate client matters, Respondent failed to represent her clients in an ethical, professional manner. Respondent's pattern in these cases was very similar. She agreed to represent a client, accepted a retainer fee, which she often did not appropriately deposit into an IOLTA account, and thereafter did little to pursue the case for her clients.

Several of the matters involved even more egregious behavior in addition to the general neglect. In the Beach matter, Respondent filed with the Bankruptcy Court copies of a letter to Mr. Beach purportedly advising him a check was enclosed pursuant to the Order of the Bankruptcy Judge. In fact, Respondent did not actually send Mr. Beach the letter or the check. By filing a copy thereof with the Court, Respondent deceived the Court and the Trustee into believing that she had complied with the Order of the Court, when she had not. In the Culp matter, Respondent told her clients that the matter had been continued due to the defendants' request, when in fact Respondent asked for the continuance and falsely advised the court that a settlement was near. In the Barrett matter, Respondent wrote a letter to the judge in a custody matter wherein she made derogatory remarks relative to her client, and breached the confidentiality of this client.

Intertwined with Respondent's inaction was a lack of communication with clients which was extremely frustrating to the clients and led to the termination of Respondent's representation. Respondent's lack of communication included not advising some of her clients that she had moved from Coudersport to Clinton County. Mr. Jackson and Ms. Campbell found out Respondent had moved when they came to her office, on separate occasions, and realized that it was packed up and unoccupied. Even after the termination of representation, Respondent failed to fulfill her ethical responsibility to refund unearned fees. It took the filing of complaints with Office of Disciplinary Counsel to prompt

Respondent to refund monies to many of her clients. The record reflects that at least one of the clients, Julie Bailey, did not receive a refund to which she was entitled.

Respondent testified on her own behalf. She explained that in approximately October of 2008, she began experiencing serious health problems, which included a blood clot, circulatory issues and cardiac disease. She was hospitalized in December 2008 for approximately one week. Respondent admits that she was not returning telephone calls at this time. In December 2008, Respondent's father died, and in February 2009 Respondent's mother was in a serious car accident which required many months of rehabilitation, with Respondent's assistance. Additionally, Respondent was involved in a difficult situation with her former husband.

Respondent's testimony was fairly intended to explain or place in context the underlying misconduct; however, we conclude that Respondent's personal and health problems do not warrant mitigation pursuant to Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989), as Respondent did not show a causal connection between the various ailments and the misconduct.

Respondent expressed contrition for her handling of the matters of her clients, and in particular, in regard to the Barrett matter, she is sorry that she wrote a letter to the judge denigrating her client. She understands this was unacceptable. Respondent refunded unearned fees to clients with a letter of apology; however, this was not done until after the clients had filed complaints with Office of Disciplinary Counsel. One client, Ms. Bailey, never received an accounting or refund of the monies she paid to Respondent as a retainer.

Prior case law provides guidance as to the discipline warranted in the instant matter. Serial neglect, failure to communicate, and failure to refund fees have resulted in

suspensions ranging from one year and one day to two years. The attorney in Office of Disciplinary Counsel v. Rupp, No. 85 DB 2007 (Pa. Oct. 25, 2007), was suspended for one year and one day for violations of Rules 1.1, 1.3, 1.4(a)(3) and (4), 1.15(b), 1.16(d), and 8.4(d) relative to five separate matters. The misconduct occurred primarily over a period of three years. This attorney had a history of discipline consisting of two informal admonitions. In addition, the attorney was going through a contentious divorce, had been diagnosed with ADHD but could not afford medication, and was suffering severe financial difficulties.

In the matter of Office of Disciplinary Counsel v. Paula M. Lappe, No. 38 DB 2004, 1007 Disciplinary Docket No. 3 (Pa. May 11, 2005), the attorney was suspended for a period of two years for her neglect of two client matters, which included failing to keep her clients informed about their cases, failing to provide written fee agreements, and failing to return client papers and unearned fees when the representation was terminated. Additionally, this attorney was placed on inactive status and did not notify her clients of her inability to represent them.

Another matter that resulted in a two year period of suspension is Office of Disciplinary Counsel v. Michael Mayo, No. 144 DB 2001, 884 Disciplinary Docket No. 3 (Pa. Feb. 3, 2004). This attorney neglected four client matters by failing to communicate, failing to expedite litigation, and failing to respond to motions. He offered evidence that he suffered from a horse racing "obsession", but ultimately he did not persuade the Board or the Court that he was entitled to Braun mitigation. This attorney had a prior history of discipline for similar activity.

Respondent's misconduct warrants a suspension for a period of two years. The Board is persuaded that the multiple acts of neglect in each of eight cases is serious

and deserves more than the one year and one day suspension recommended by the Hearing Committee. Although we are cognizant that Respondent has no history of discipline, this fact must be placed into context with the fact that Respondent was admitted in June 2005 and the problems started almost directly thereafter, with her representation of the Culps commencing in September 2005. Therefore, we give no weight to the fact of Respondent's lack of discipline.

Respondent has admitted that she has numerous personal problems and health issues. She is not now capable of practicing law. A two year period of suspension will give Respondent the opportunity to address these concerns as well as the deficiencies in her practice.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Donna Marie Albright-Smith, be Suspended from the practice of law for a period of two years.

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: 
Mark S. Baer, Board Member

Date: December 30, 2011

Board Members Cognetti, Cohen and Jefferies dissent and would recommend a one year and one day suspension.