

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1833 Disciplinary Docket No. 3
Petitioner :
 : No. 52 DB 2011
v. :
 : Attorney Registration No. 70597
MELANIE D. NARO, :
Respondent : (Lackawanna County)

ORDER

PER CURIAM:

AND NOW, this 12th day of July, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated March 6, 2012, it is hereby

ORDERED that Melanie D. Naro, is suspended from the practice of law for a period of six months, followed by a period of probation for one year subject to the following conditions:

1. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel.
2. The practice monitor shall do the following during the period of Respondent's probation:
 - a. Meet with Respondent at least monthly to examine her progress towards satisfactory and timely completion of client legal matters, including regular communication with clients in returning telephone calls and responding to written correspondence;

b. Periodically examine Respondent's law office organization and procedures to ensure that she is maintaining an acceptable tickler system, filing system and other administrative aspects of her practice;

c. Verify that Respondent is surrendering papers and property to which the clients are entitled and refunding any unearned fees, if her representation is terminated;

d. File quarterly written reports on a Board-approved form with the Secretary of the Board; and

e. Immediately report to the Secretary of the Board any violations by Respondent of the terms and conditions of her probation.

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 7/12/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 52 DB 2011
Petitioner	:	
	:	
v.	:	Attorney Registration No. 70597
	:	
MELANIE D. NARO	:	
Respondent	:	(Lackawanna 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 April 7, 2011, Office of Disciplinary Counsel filed a Petition for Discipline against Melanie D. Naro. The Petition contains two charges primarily involving lack of diligence and communication in divorce matters. Respondent filed an Answer to Petition on May 9, 2011.

A disciplinary hearing was held on July 26, 2011, before a District III Hearing Committee comprised of Chair Jason J. Legg, Esquire, and Members Philip H. Spare, Esquire and Barbara A. Zemlock, Esquire. Respondent appeared pro se. Petitioner

presented the testimony of two witnesses and introduced without objection seven exhibits. Respondent testified on her own behalf and introduced without objection seven exhibits.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on November 3, 2011, concluding that Respondent violated the Rules of Professional Conduct as charged in the Petition, and recommending that she be suspended for a period of three months.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on January 18, 2012.

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, 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 Melanie D. Naro. She was born in 1966 and was admitted to practice law in Pennsylvania in 1994. Her current registered public address is 305 East Drinker Street, Dunmore, PA 18512. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of discipline in Pennsylvania. She received a Private Reprimand in 2006 for violation of RPC 1.15(a), 4.1(a) and 8.4(c). In 2007, an Informal Admonition was administered for violation of RPC 1.1, 1.3, 1.4(a) & (b), 1.15(a) & (b), 1.16(d) and 8.4(c).

Alber Matter

4. In or about late April 2008, Respondent was consulted by Robert Alber relative to representing him in a divorce action against his wife.

5. On May 6, 2008, Mr. Alber signed Respondent's fee letter and paid her a retainer of \$2,500, which Respondent deposited into her IOLTA account.

6. On May 6, 2008, Respondent represented Mr. Alber at a PFA hearing against his wife.

7. On May 20, 2008, Respondent filed a complaint in divorce in the Court of Common Pleas of Pike County, on her client's behalf. The complaint sought a divorce, equitable distribution and custody of a minor child.

8. At or around this time, Mr. Alber began to pay spousal support to his wife.

9. On June 4, 2008, Respondent wrote to Attorney Thomas Farley, who represented Mrs. Alber, and provided Mr. Farley with documents relative to the divorce.

10. On June 19, 2008, Respondent filed a petition for contempt against Mrs. Alber based upon her failure to attend a parenting class, and a hearing was scheduled, but never occurred, as Mrs. Alber eventually attended the class.

11. On July 3, 2008, Respondent attended a custody conciliation conference on her client's behalf.

12. On July 8, 2008, Respondent appeared and represented Mr. Alber at a support conference.

13. On September 26, 2008, Respondent appeared and represented Mr. Alber at a domestic relations conference.

14. On September 29, 2008, Respondent wrote to the Prothonotary and enclosed an acceptance of service, which was filed on September 30, 2008. This was the last activity of record that Respondent took on behalf of Mr. Alber in his divorce matter.

15. On December 1, 2008, Respondent wrote to Attorney Farley and enclosed a tuition bill.

16. On January 26, 2009, Respondent wrote to Mr. Alber enclosing a copy of Mr. Farley's email advising that Mr. Alber's son's trust account was closed.

17. On May 4, 2009, Mr. Alber emailed Respondent about the lack of progress in his case. Respondent did not respond.

18. In May 2009, Respondent informed her client that they should obtain an appraisal of the marital home and that she would contact the wife's attorney to see if they could agree on an appraiser.

19. On August 23, 2009, Mr. Alber emailed Respondent about the appraiser and noted that he had heard nothing back from her. Mr. Alber complained about the lack of communication. Respondent did not respond.

20. On September 25, 2009, Mr. Alber again emailed Respondent and reiterated his complaints regarding her failure to communicate with him in any way. Respondent failed to respond.

21. On October 7, 2009, Respondent wrote to Mr. Alber and enclosed a letter dated October 2, 2009 that she had received from Mr. Farley wanting to set up visitation between Mrs. Alber and her daughter.

22. In the same correspondence, Respondent included an Inventory and Appraisal as well as an Income and Expenses Statement that she had requested Mr. Alber fill out.

23. On November 14, 2009, Respondent met with Mr. Alber and reiterated the need for an appraisal of the marital residence. This was the last time Respondent met with her client.

24. On March 20, 2010, Mr. Alber emailed Respondent regarding the appraisal of the marital residence. Mr. Alber indicated that he wanted to get the appraisal done and then pursue a divorce on May 20, 2010 as that date marked the end of the two year period since the filing of the divorce action.

25. On April 11, 2010, Mr. Alber again emailed Respondent and complained that three weeks had passed since his previous email and repeated his desire to get the appraisal completed and move for a divorce. Respondent did not respond.

26. On April 18, 2010, Mr. Alber sent another email to Respondent and complained about the lack of communication and information. Respondent did not respond to that email.

27. On April 30, 2010, Mr. Alber spoke to Respondent, terminated her as his counsel, and requested an accounting of her time and a refund of any unearned fees.

28. On May 5, 2010, after he had not received an accounting, Mr. Alber wrote to Respondent and reminded her that he was waiting for the accounting and refund.

29. By invoice dated June 7, 2010, Respondent sent the requested accounting to Mr. Alber, which indicated that he owed \$589.02 in unpaid fees and costs.

Cesare Matter

30. On November 18, 2005, Jerry Cesare initiated a divorce against his wife in the Court of Common Pleas of Lackawanna County. At that time, Mr. Cesare was represented by Patrick Rogan, Esquire,

31. Several years later, Attorney Rogan advised Mr. Cesare that he was not going to be handling family law cases and referred him to Respondent.

32. On March 6, 2008, Mr. Cesare met with Respondent and she agreed to represent him in the ongoing divorce.

33. From November 18, 2005 through March 6, 2008, when Respondent took over the case, Mr. Cesare believed that there had been no progress on his divorce litigation and he felt frustrated.

34. Respondent failed to discuss what fee she would charge Mr. Cesare and failed to advise him in writing of the basis or rate of her fees.

35. On March 12, 2008, Respondent emailed her client suggesting that she communicate with opposing counsel and propose that the parties split an outstanding joint account and demand an accounting of the money and assets that Mrs. Cesare had already received.

36. Mr. Cesare responded on the same day and agreed to split the bank account with his wife and that his wife should provide an accounting, but Respondent never called opposing counsel as she indicated that she would do.

37. On March 28, 2008, Attorney Rogan forwarded a \$1,000 check to Respondent which represented a refund of the unused portion of Mr. Cesare's retainer fee.

38. On April 7, 2008, Mr. Cesare executed a General Release releasing Attorney Rogan from his divorce action and approving the refund of \$1,000 which had already been forwarded to Respondent.

39. On July 31, 2008, Mr. Cesare sent Respondent an email inquiring as to the status of the negotiation over splitting the joint bank account and obtaining an accounting from his wife as Respondent had suggested in her March 12, 2008 email.

40. On that same date, Respondent responded by email to Mr. Cesare and indicated that she had not heard from opposing counsel, but she would make one last attempt to negotiate a settlement. Respondent indicated that if she could not obtain an agreement that she would seek the appointment of a master, which would cost \$750.

41. Respondent had never contacted opposing counsel in any manner to discuss the divorce or even to inform opposing counsel that she was now representing Mr. Cesare.

42. On October 7, 2008, Mr. Cesare emailed Respondent and expressed his frustration that the divorce had been dragging on for over four years. Mr. Cesare also questioned whether it was still necessary to continue to pay automobile insurance for two vehicles that his wife had taken with her when they separated.

43. On October 15, 2008, Respondent advised her client to cancel the automobile insurance and to tell his wife that he would be transferring the two vehicles into her name.

44. Upon following Respondent's advice, Mr. Cesare discovered that he could not cancel the insurance without a divorce decree, but the insurance company began to charge him a higher premium given that the parties were now separated.

45. On October 21, 2008, Respondent emailed Mr. Cesare and advised him she was going to move to have a master appointed and she encouraged him to contact his wife to make arrangements for the transfer of title to the two vehicles.

46. Respondent did not move for the appointment of a Master.

47. On April 1, 2009, Mr. Cesare emailed Respondent and noted that a year had passed since he had retained her and he had not heard anything regarding any settlement.

48. Respondent did not reply to Mr. Cesare's email and she took no action toward finalizing Mr. Cesare's divorce.

49. On March 12, 2010, nearly a year later, Mr. Cesare emailed Respondent requesting that the divorce be finalized and he noted that he had not heard anything new for the past two years.

50. Respondent did not respond to this email.

51. By letter dated April 16, 2010, Mr. Cesare inquired as to the status of his divorce and complained that he had not heard from Respondent for a long time and she was no longer replying to his emails. Respondent did not respond to this letter.

52. On August 31, 2010, Mr. Cesare sent Respondent a letter dismissing her as his attorney based upon her failure to communicate with him by telephone, letter, or email, and he requested a return of his file, an accounting of fees and a refund of any unearned fees.

53. Respondent did not respond to Mr. Cesare, she did not turn over his file immediately to him, and she failed to provide an accounting and prompt refund of any unused fee.

54. Mr. Cesare obtained new counsel and Respondent turned over Mr. Cesare's file to new counsel and refunded the full \$1,000 fee she had initially received from Attorney Rogan.

55. Respondent testified at the disciplinary hearing.

56. Respondent expressed sincere remorse for her misconduct and accepted full responsibility for her actions.

57. Respondent found it difficult to explain where things went wrong with the Alber and Cesare cases. She recalled thinking that she would eventually deal with the two files at a future time but never did. (N.T. 44-45, 47, 58)

58. Respondent has scaled-down her law practice to a more manageable level and finds it easier to accomplish tasks.

59. Respondent has altered her practice to make certain that she calls clients once a week and assures that there is an open line of communication between her and her clients.

60. Respondent is an active and respected member of her community as evidenced by her membership in various boards and election to a local municipality. (R Ex-7)

61. Respondent has a reputation for being an excellent attorney. (R Exs. 1-6)

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.
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
3. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.
4. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.
5. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.
6. RPC 1.5(b) – When the lawyer has not regularly represented the client the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.
7. RPC 1.15(e) – Except as stated in this Rule or otherwise permitted by law or 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.
8. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, 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.

IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges filed against Respondent alleging violations of the Rules of Professional Conduct 1.3, 1.4(a)(3), 1.4(a)(4), 1.1, 1.3, 1.4(a)(2), 1.15(e), and 1.16(d) in her representation of two clients. Respondent filed an Answer to the Petition, wherein she admitted most of the facts and specifically admitted to the ethical violations alleged in the Petition.

Petitioner has the burden of proving ethical misconduct by a preponderance of the evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). The record supports the conclusion that Petitioner has met its burden of proof.

Respondent's misconduct involves her extreme lack of attention to each of the matters for which she was retained. With regard to Mr. Alber's divorce, although Respondent filed a complaint in divorce in May of 2008 and took some initial steps during the first five months of representation, little else was accomplished in obtaining the divorce. Respondent did not even contact her client from October 2008 until October 2009. While a meeting between Mr. Alber and Respondent took place in November 2009, this was the last time such a meeting occurred. Mr. Alber felt continually frustrated in his attempts to communicate with Respondent and eventually terminated Respondent's services in April of 2010. Respondent accounted for her services by invoice dated June 7, 2010.

In Mr. Cesare's matter, Respondent not only neglected the divorce and failed to communicate, but failed to advise her client in writing of the basis or rate of her fees. Respondent never entered her appearance and never bothered to contact opposing

counsel to say she was in the case. Respondent failed to promptly send Mr. Cesare his file, an accounting or a refund on any unearned fee until six months after she was requested to do so, and then only upon contact by Mr. Cesare's new counsel.

Respondent accepted responsibility for her misconduct but was unable to clearly explain the reasons she abandoned the matters of these two clients. She felt that perhaps Mr. Alber would be disappointed with the end result and she had difficulty relaying this to him. (N.T. 44-45) She believed they had reached an impasse but she didn't want it to appear that she was defeated as an attorney. As to Mr. Cesare, Respondent felt that he was not really listening to what she was telling him at the initial meeting. She recalls thinking that she would "deal with the two gentlemen's files another day." (N.T. 58) Respondent was remorseful for her actions.

Respondent was asked by the Hearing Committee to provide assurances that she would not engage in this type of misconduct in the future. Respondent indicated that she realizes she cannot take on too many cases, and that she needs to pick up the phone and make a call to her clients if she doesn't have time to write a status letter, or perhaps send an email or text. (N.T. 52)

Respondent has a history of discipline. In June of 2006 she was privately reprimanded for violations of Rules of Professional Conduct 1.15(a), 4.1(a), and 8.4(c). Respondent represented the seller of a liquor license and had been given \$6,000 by the buyer to hold in escrow pending PLCB approval. The total purchase price was \$11,000 and the buyer had previously paid the seller \$5,000, which the seller never gave to Respondent to hold in escrow. However, at the seller's request, Respondent wrote a letter to the PLCB falsely stating that she was holding the \$11,000 in escrow. The seller advised Respondent that the license transfer had been approved and requested the \$6,000

Respondent had been holding to be paid to a creditor. Without checking with either the PLCB or the buyer, Respondent gave the \$6,000 to the creditor.

In August of 2007, Respondent was informally admonished by Chief Disciplinary Counsel for misconduct in three separate matters. In the first case, during 2002 through April 2004, Respondent failed to communicate with her client, misrepresented to the client that she had sent a settlement demand to opposing counsel, misappropriated the \$1,000 advanced by the client to retain an expert and failed to refund the funds after she was discharged. In the second case, after being retained in March 2004 to represent the personal representative of an estate, Respondent failed to timely file an inheritance tax return and failed to communicate with the client for period of years. In the third case, Respondent failed to prepare a QDRO or communicate with her client and delayed for two months in turning over the file to new counsel.

The misconduct subject to the informal admonition is similar to that of the instant matter, essentially involving neglect and lack of communication. Respondent was asked what steps she took following the informal admonition in 2007 to prevent similar misconduct in the future. Respondent mentioned that she sought counseling but did not elaborate. It is clear that whatever steps, if any, that were taken by Respondent failed to prevent the problems that arose during her representation of Messrs. Alber and Cesare.

The Board must recommend an appropriate sanction for Respondent's misconduct within the context of the primary function of the disciplinary system, which is to determine the fitness of an attorney to continue the practice of law, and to protect the courts and the public from unfit lawyers. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983) "Where an attorney has not engaged in any misrepresentation, discipline in neglect cases ranges from a non-summary private reprimand to a suspension

of one year and one day. Generally, the amount of discipline increases with the number of matters and the extent of prior discipline.” Office of Disciplinary Counsel v. Edward C. Meehan, Jr., 26 DB 2006, 1178 Disciplinary Docket No. 3 (Pa. Sept. 18, 2006). In reviewing the various decisions in the area of attorney neglect, it is clear that it is a fact-sensitive inquiry that depends on the circumstances of each case.

We first review the recommendations made by the Hearing Committee and the parties. Petitioner argued to the Committee that a suspension of one year and one day would be appropriate, in light of Respondent's prior misconduct. Respondent contends that a private reprimand is warranted. The Committee did not accept either of these arguments, and instead recommended that Respondent be suspended for a period of three months. In making the recommendation, the Committee accounted for the nature and gravity of the misconduct and Respondent's prior discipline, but found that she accepted responsibility for her actions; therefore a shorter period of suspension was warranted. Neither party took exception to this recommendation.

The instant misconduct marks Respondent's third involvement with the disciplinary system in less than ten years. The above instances of private discipline involved similar misconduct to the instant misconduct. Respondent faces discipline yet again, and it is natural to question whether she has learned anything from her past experiences. Respondent insists that she has learned to better manage her office by reducing the number of cases she takes in and importantly, to keep clients apprised of the status of their matters by phone calls or emails. Respondent's remorse underscores the conclusion that she has gained some level of insight from this negative professional experience. However, her recidivism necessitates that the instant matter be resolved with public discipline, as private discipline no longer is appropriate.

A suspension is warranted. In the matter of Office of Disciplinary Counsel v. Dennis Joseph Spyra, 216 DB 2009, No. 1735 Disciplinary Docket No. 3 (Pa. Oct. 3, 2011), Mr. Spyra neglected two client matters and had prior misconduct consisting of a private reprimand and an informal admonition. The Board recommended that Mr. Spyra be suspended for a period of six months, which the Court imposed.

In the matter of Office of Disciplinary Counsel v. Allan G. Gallimore, No. 17 DB 2006, No. 1289 Disciplinary Docket No. 3 (Pa. Nov. 30, 2007), Mr. Gallimore was suspended for a period of three months followed by probation of six months resulting from his neglect of one client matter. In making this recommendation, the Board considered Mr. Gallimore's prior misconduct of a private reprimand and an informal admonition.

The Board is persuaded that a suspension of six months followed by probation with a practice monitor for one year will appropriately address the misconduct and provide Respondent with the opportunity to reflect on her law practice and the changes she must incorporate to avoid disciplinary problems in the future.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Melanie D. Naro, be Suspended from the practice of law for a period of six months, followed by a period of probation for one year. During the period of probation, Respondent shall do the following:

1. Respondent shall select a practice monitor subject to the approval of the Office of Disciplinary Counsel.

2. The practice monitor shall do the following during the period of Respondent's probation:

a. Meet with the Respondent at least monthly to examine Respondent's progress towards satisfactory and timely completion of client legal matters, including regular communication with clients in returning telephone calls and responding to written correspondence;

b. Periodically examine Respondent's law office organization and procedures to ensure that Respondent is maintaining an acceptable tickler system, filing system, and other administrative aspects of Respondent's practice;

c. Verify that Respondent is surrendering papers and property to which the clients are entitled and refunding any unearned fees, if Respondent's representation is terminated;

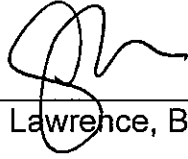
d. File quarterly written reports on a Board approved form with the Secretary of the Board; and

- e. Shall immediately report to the Secretary of the Board any violations by the Respondent of the terms and conditions of probation.

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: 
Gerald Lawrence, Board Member

Date: March 6, 2012