

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1871 Disciplinary Docket No. 3
Petitioner :
 : No. 212 DB 2011
v. :
 : Attorney Registration No. 70597
MELANIE D. NARO, :
Respondent : (Lackawanna County)

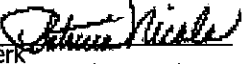
ORDER

PER CURIAM:

AND NOW, this 6th day of December, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 19, 2012, it is hereby ORDERED that Melanie D. Naro 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 12/6/2012

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL | : | No. 212 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 December 21, 2011, Office of Disciplinary Counsel filed a Petition for Discipline against Melanie D. Naro. The Petition charged Respondent with violation of the Rules of Professional Conduct arising from her representation of a client in a divorce matter. Respondent filed an Answer to Petition on January 23, 2012.

A disciplinary hearing was held on April 10, 2012, before a District III Hearing Committee comprised of Chair Lori R. Hackenberg, Esquire, and Members Vincent Cimini, Esquire, and Timothy A. Bowers, Esquire. Respondent appear *pro se*.

The Hearing Committee filed a Report on June 22, 2012 and recommended that Respondent be suspended for 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 July 21, 2012.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania, 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 the Commonwealth in 1994. Her current registered attorney address is 305 East Drinker Street, Dunmore PA 18512. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of discipline in Pennsylvania. By Order of July 12, 2012, Respondent was suspended from the practice of law for a period of six months to be followed by probation of one year and a practice monitor. Respondent engaged in neglect, lack of communication and failure to promptly return files and unearned fees in two divorce matters.

4. Respondent received an Informal Admonition in 2007 and a Private Reprimand in 2006.

5. On February 2, 2010, Mary P. Stephenson met and retained Respondent to conclude the equitable distribution aspects of her divorce.

6. Ms. Stephenson never signed a fee agreement with Respondent, even though Respondent had not regularly represented Ms. Stephenson in the past.

7. Respondent received interrogatories and requests for production of documents from opposing counsel. These documents were given to Ms. Stephenson, who completed them and returned them to Respondent the first week of July 2010.

8. Respondent never promptly forwarded the answers to the interrogatories and requests for production of documents to opposing counsel.

9. On the following dates and times, Ms. Stephenson called Respondent's office in an effort to determine the status of her case and left messages for Respondent to return her calls, most of the times on an answering machine but two or three times with Respondent's assistant: July 21, 2010 at 9:43 a.m. and 2:20 p.m.; September 13, 2010 at 1:04 p.m.; September 15, 2010 at 12:38 p.m.; September 16, 2010 at 3:24 p.m.; September 20, 2010 at 4:23 p.m.; September 24, 2010 at 1:37 p.m.; October 18, 2010 at 12:20 p.m.; and October 25, 2010 at 9:38 a.m. Respondent failed to return any of those calls.

10. In October 2010, opposing counsel sent Respondent a copy of a motion to discontinue alimony and a request for \$500 in attorney's fees due to the failure of Respondent's client to answer Interrogatories and Requests for Production of Documents.

11. Opposing counsel filed the Motion and a hearing was scheduled for November 30, 2010.

12. Respondent never advised Ms. Stephenson of the Motion and hearing.

13. Ms. Stephenson eventually learned of the hearing scheduled for November 30, 2010, when she contacted the Venango County Court of Commons Pleas in an attempt to determine the status of her case. The Prothonotary sent Ms. Stephenson copies of the Motion.

14. Respondent filed a continuance in the case and the hearing was rescheduled for January 26, 2011.

15. Respondent turned discovery over to opposing counsel on January 21, 2011.

16. After this time, Ms. Stephenson had very little communication with Respondent, although she was anxious to conclude the matter.

17. Ms. Stephenson attempted to terminate Respondent's services on several occasions beginning in June of 2011; however, Respondent did not respond to Ms. Stephenson's communications, and did not return Ms. Stephenson's file.

18. Ms. Stephenson filed a complaint with Office of Disciplinary Counsel and a DB-7 Request for Statement of Respondent's Position was sent to Respondent on October 25, 2011. She did not answer the DB-7.

19. Respondent eventually withdrew her appearance from Ms. Stephenson's matter in November of 2011.

20. Respondent admitted she did not adequately represent Ms. Stephenson.

21. Respondent admitted that she neglected Ms. Stephenson's case.

22. As of the date of the hearing, Respondent had not returned Ms. Stephenson's file.

III. CONCLUSIONS OF LAW

By her conduct 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(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.
6. RPC 1.5(b) – When the lawyer has not regularly represented the client the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.
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.

8. RPC 1.16(a)(3) – Except as stated in paragraph (c), a lawyer shall not represent a client, or where representation has commenced, shall withdraw from the representation of a client if the lawyer is discharged.

9. 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.

10. Pa.R.D.E. 203(b)(7) – Respondent's failure to respond to the DB-7 Request for Statement of Respondent's Position without good cause is an independent ground for discipline.

IV. DISCUSSION

Before this Board for consideration is the matter of Melanie D. Naro, who has been charged with numerous violations of the Rules of Professional Conduct alleging that she neglected the matter of her client, Mary Stephenson. Respondent failed to file an initial response to Petitioner's DB-7 letter of inquiry, but did file a timely Answer to the Petition for Discipline. Petitioner bears 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 evidence of record demonstrates that Petitioner has met its burden of proof.

Mary Stephenson retained Respondent in 2010 to finalize the equitable distribution process in her divorce action. Respondent's first misstep was her failure to provide her client with a written fee agreement. Thereafter, Respondent failed to forward answers to interrogatories and requests for production of documents to opposing counsel, and failed repeatedly to respond to numerous calls and e-mails from Ms. Stephenson regarding her case. Opposing counsel filed a Motion to discontinue Ms. Stephenson's alimony due to the continuing failure by Respondent to provide the answers to the discovery. A hearing was scheduled; however, Ms. Stephenson did not find out about either the Motion or the hearing from Respondent. Instead, she contacted Venango County Court to ascertain the status of her case and learned of the hearing. Respondent eventually turned the discovery over to opposing counsel shortly before the scheduled hearing, some six months after Ms. Stephenson had provided the information to Respondent. Respondent withdrew her appearance from the matter after numerous requests by her client to do so, but she never returned Ms. Stephenson's file to her, despite repeated requests.

Respondent exhibited a complete lack of attention to her client's matter, allowing it to languish for months merely because she did not take the simple step of forwarding the discovery to opposing counsel. Respondent admits that her representation of Ms. Stephenson was inadequate and constituted neglect of the matter. Despite these acknowledgements, Respondent as of the date of the disciplinary hearing had not bothered to return her client's file. Her inaction is inexcusable.

The primary function of the lawyer disciplinary system is to protect the public from unfit attorneys and maintain the integrity of the legal system. Office of Disciplinary Counsel v. Stern, 526 A.2d 1180 (Pa. 1987).

This case presents a lawyer who has been through the disciplinary system three previous times. Respondent was privately reprimanded by the Board in 2006 for violations of Rules of Professional Conduct 1.15(a), 1.15(b), 4.1(a) and 8.4(c). Respondent was holding money in escrow for a third party pending the transfer of a liquor license from her client to the third party. Respondent did not properly handle the funds. An Informal Admonition was administered in 2007 for violations of Rules of Professional Conduct 1.1, 1.3, 1.4(a) & (b), 1.15(a) & (b), 1.16(d) and 8.4(c) in three separate client matters. Generally, the misconduct involved failure to communicate with clients, delay in litigating the matters, delay in returning the clients' files, and failure to refund monies after being discharged. This misconduct is similar to that of the instant matter, essentially involving neglect and lack of communication.

Respondent was suspended for six months by Order of the Supreme Court dated July 12, 2012. Probation for one year and a practice monitor were also ordered. Respondent neglected two pending divorce matters, including failing to communicate and failing to promptly return files and unearned fees when discharged. The misconduct in this matter began in approximately 2008 and continued through the summer of 2010.

The instant matter follows on the heels of the July 2012 suspension, as the misconduct in the instant matter began in February of 2010 and overlaps the time frame of the misconduct in the July 2012 matter. The misconduct in the instant matter is identical to the prior misconduct and is part and parcel of a continuing pattern of client neglect. Respondent's deficiencies in the areas of communication with clients and attentiveness to cases resulted in client dissatisfaction and the eventual termination of her representation, which in turn presented more problems for Respondent as she did not return client files.

Respondent's latest encounter with the disciplinary system shows she did not heed the seriousness of her prior discipline. Her recidivism necessitates that the instant matter be resolved with a lengthy suspension.

A suspension for a period of two years is warranted. In the matter of Office of Disciplinary Counsel v. Wilbert H. Beachy, III, No. 95 DB 2003, 869 Disciplinary Docket No. 3 (Pa. Nov. 29, 2005), Mr. Beachy engaged in neglect and did not promptly handle two client matters. He had prior misconduct consisting of one informal admonition and three private reprimands. The Board determined that the cumulative nature of Mr. Beachy's misconduct required a suspension of two years, which the Supreme Court imposed.

In the matter of Office of Disciplinary Counsel v. Michael Mayro, No. 144 DB 2001, 884 Disciplinary Docket No. 3 (Pa. Feb. 3, 2004), Mr. Mayro neglected four matters by failing to communicate, failing to respond to client inquiries, and failing to expedite litigation. He had a prior history of two informal admonitions and two private reprimands. The Court suspended Mr. Mayro for a period of two years.

The Board is persuaded that a suspension of two years will appropriately address the misconduct. The methods by which Respondent has been practicing law render her unfit. In order for the Supreme Court to protect the public, suspension is required. A two year suspension will provide Respondent with the opportunity to reflect on her law practice and the changes she must incorporate to avoid disciplinary problems in the future.

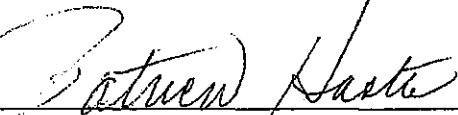
V. RECOMMENDATION

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 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: 
Patricia M. Hastie, Board Member

Date: September 19, 2012

Board Member Momjian did not participate in the adjudication.