Thomas J. Farrell
Chief Disciplinary Counsel

Raymond S. Wierciszewski
Deputy Chief Disciplinary Counsel

Anthony P. Sodroski
Disciplinary Counsel-In-Charge,
Special Projects

District I Office
1601 Market Street
Suite 3320
Philadelphia, PA 19103-2337

(215) 560-6296
FAX (215) 560-4528

THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL
www.padisciplinaryboard.org

Disciplinary Counsel-In-Charge
Ramona M. Mariani

Disciplinary Counsel
Richard Hernandez
Gloria Randall Ammons
Harriet R. Brumberg
Michael D. Gottsch
Jeffrey M. Krulik
Mark F. Gilson

October 26, 2023

FILED ELECTRONICALLY
Marcee D. Sloan, Board Prothonotary
The Disciplinary Board of the Supreme
Court of Pennsylvania
Pennsylvania Judicial Center
601 Commonwealth Avenue, Suite 5600
P.O. Box 62625
Harrisburg, PA 17106-2625

RE: Office of Disciplinary Counsel v. William J. Weiss
No. 133 DB 2021
Attorney Registration No. 47701
(Philadelphia)

Dear Ms. Sloan:

Enclosed for filing please find Brief of Office of Disciplinary Counsel on Exceptions to the Report of the Hearing Committee in the above-referenced matter, pursuant to §89.201 of the Disciplinary Board Rules. As noted on the cover of the Brief, I am also serving copies on all parties via first class mail and/or email.

Sincerely,

Harriet R. Brumberg
Disciplinary Counsel

HRB:red
Enclosures
cc: Catherine Nora Harrington, Esquire Chair, Hearing Committee
Robert B. Mulhern, Jr., Esquire, Member, Hearing Committee
Harris Bock, Esquire, Member, Hearing Committee
William J. Weiss, Respondent
Thomas J. Farrell, Chief Disciplinary Counsel
Raymond Wierciszewski, Deputy Chief Disciplinary Counsel

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 2873 Disciplinary Docket No. 3
v.	:	No. 133 DB 2021
	:	Atty. Registration No. 47701
WILLIAM J. WEISS, Respondent	:	(Philadelphia)

BRIEF OF OFFICE OF DISCIPLINARY COUNSEL ON EXCEPTIONS TO THE REPORT OF THE HEARING COMMITTEE

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell
Chief Disciplinary Counsel

Harriet R. Brumberg
Disciplinary Counsel
1601 Market Street, Suite 3320
Philadelphia, PA 19103
(215) 560-6296

I hereby certify that I have this day served the within document by first class mail and/or email upon all parties of record in accordance with the requirement of 204 Pa. Code §89.22.

Harriet R. Brumberg

Harriet R. Brumberg
Counsel for Office of Disciplinary Counsel

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases* Page(s)

Rules

*Unreported Disciplinary Board opinions can be accessed at: http://www.pacourts.us/courts/supreme-court/court-opinions. From the pull-down box for "Court Type" select Disciplinary Board, then enter the Disciplinary Board docket number (use the four-digit year for the case in the Board Docket Number field), select an appropriate Date Range according to the year of the case (*e.g.*, 01/01/1995 and 01/01/2000 in the date range fields), and use the dropdown features to clear the month and year fields. Click search, then click on the pdf link to the opinion. If the unreported Disciplinary Board opinion pertains to a reinstatement matter, add "-R" to the end of the four-digit year for the case in the Board Docket Number field.

METHOD OF CITATION USED

Citations to numbers and letters designate documents as follows:

NT _____ indicates a page of testimony from the May 4, 2023 disciplinary hearing;

ODC- _____ refers to an exhibit of Office of Disciplinary Counsel relevant to Respondent's violation of the Rules of Professional Conduct and Rules of Disciplinary Enforcement;

D- _____ refers to an exhibit of Office of Disciplinary Counsel relevant to the D.Bd. Rules § 89.151(b) portion of the hearing;

HC FOF _____ refers to a numbered paragraph of the Hearing Committee's Proposed Finding of Fact;

HC COL _____ refers to a numbered paragraph of the Hearing Committee's Proposed Conclusions of Law;

PFD ¶ _____ refers to a paragraph of the Petition for Discipline;

PCOL ____ refers to a numbered paragraph of ODC's Proposed Conclusions of Law;

PFOF ____ refers to a numbered paragraph of ODC's Proposed Findings of Fact;

R-_____ refers to an exhibit of Respondent introduced at the

D.Bd. Rules § 89.151(b) portion of the hearing; and

HC Rpt. ____ indicates page(s) of the Report of the Hearing Committee.

I. STATEMENT OF THE CASE

This matter is before the Disciplinary Board (Board) on exceptions to the October 10, 2023 Report of Hearing Committee (HC Rpt.) wherein a majority of the Hearing Committee recommended that Respondent, who had been suspended on three prior occasions, receive an additional three-year suspension.[1] Office of Disciplinary Counsel maintains that the Hearing Committee erred in failing to find any rule violations on one charge and disregarding salient facts and established precedent supporting Respondent's receipt of a five-year suspension.

By Supreme Court Order dated March 6, 2019, Respondent was suspended from the practice of law for one year and one day on consent. (Petition ¶3) Subsequently, Respondent appeared at case management conferences in three client matters, the ***Historic Qingdao***, ***Revella Coles***, and ***David On*** matters. After Respondent appeared in the ***Historic Qingdao*** matter, an Assistant City Solicitor warned Respondent not to appear at any case management conferences as Respondent was a suspended attorney. Respondent then appeared, with impunity, at case management conferences in the ***Revella Coles*** and ***David On*** matters. In the ***Historic***

[1] One Hearing Committee member dissented and recommended that Respondent receive a one-year suspension.

Qingdao and ***Revella Coles*** matters, Respondent spoke with opposing counsel and advocated on behalf of his client; in the ***David On*** matter, Respondent attended a case management conference with the attorney of record on a matter where Respondent had previously represented the client and the attorney introduced Respondent as his "assistant" without further explanation. Respondent remained at the conference with the attorney.

On October 25, 2022, ODC served Respondent with a two-count PFD charging him with engaging in the unauthorized practice of law and prohibited law-related activities in three client matters, failing to file notices of engagement, making material omissions of fact on his annual attorney registration statements, failing to file an accurate and timely Statement of Compliance, and failing to notify all jurisdictions where he was admitted to practice law of his suspension. Since Respondent failed to Answer the PFD, all facts set forth in the PFD are deemed admitted.

On May 4, 2023, Respondent's disciplinary hearing commenced. Following opening statements, ODC moved its exhibits into evidence and rested its case. (NT, 32-33) Respondent then testified he "did not practice law after [he] was suspended" (*id.* at 34) and did not "remember" or "recall" participating in the February 28, 2023 Prehearing Conference. (*Id.* at 36-38) Since Respondent failed to provide ODC with any exhibits prior to his

disciplinary hearing, the Hearing Committee denied Respondent's request to introduce into evidence his seven exhibits (*id.* at 43), which Respondent volunteered he had only compiled the previous day. (*Id.* at 38) ODC briefly cross-examined Respondent, who admitted that he had received notice of the disciplinary rules applicable to formerly admitted attorneys and knew he had a duty to obey the rules. (*Id.* at 46-47)

After the Hearing Committee concluded that ODC met its burden of proof and Respondent violated at least one RPC (*id.* at 54), the Committee proceeded to hear evidence pursuant to D.Bd. Rules § 89.151(b). In an angry, profanity laced, and high-decibel presentation, Respondent testified: denying he engaged in the misconduct for which he had received a two-year suspension in 2008, including his prior discipline for unauthorized practice of law and converting fiduciary funds (*id.* at 66, 67, 68-69); accusing Disciplinary Counsel of not having "prosecute[d] [him] for the right crime" (*id.* at 66), not "want[ing] to hear the truth" (*id.* at 69), and "making it appear as though [Respondent] is Al Capone here trying to practice law" (*id.* at 74); blaming the lawyer for whom Respondent had been employed for Respondent's unauthorized practice of law in the current matter (*id.* at 69-71); and admitting to handing memos to *judges pro tem* for his employer. (*Id.* at 69-70)

On cross-examination, Respondent: claimed he had not read the Disciplinary Board's 2008 Report (*id.* at 82-85) and did not "care what [the Report] says" (*id.* at 84); minimized his prior inactive attorney status as Respondent being "the thousandth lawyer in the city today who failed to complete his CLE" (*id.*); and admitted that he did not report being suspended by the EDPA in his 2017-2018 Annual Attorney Registration Statement (ODC-18). (*Id.* at 92)

Following closing arguments, the Hearing Committee established a briefing schedule. ODC timely submitted its brief to the Committee. Respondent failed to file a brief to the Committee.

On October 10, 2023, the Hearing Committee filed its Report and Recommendation. The Committee's Report ignored the clear wording of the disciplinary rules and erroneously concluded that Respondent did not violate *any* charged rules for his conduct in the ***David On*** matter. (HC COL 6) The Hearing Committee also erred in rejecting ODC's recommendation that the recidivist Respondent receive a five-year suspension for the totality of his misconduct and weighty aggravating factors.

ODC submits this brief on exceptions pursuant to D.Bd. Rules §§ 89.201(d).

II. SUMMARY OF ODC'S BASIC POSITION

On March 6, 2019, Respondent was suspended from the practice of law for one year and one day. Subsequently, Respondent appeared at two case management conferences, spoke with opposing counsel, and advocated on behalf of his clients before a judge pro tem. Respondent also attended a case management conference with another attorney on behalf of David On, a client that Respondent had represented prior to his suspension. At the conference, the attorney introduced Respondent as his "assistant" and Respondent remained with the attorney throughout the conference.

The Hearing Committee erred in concluding that "ODC has not met its burden of proving that Respondent violated any RPC or RDE by his conduct" (HC COL 6) in the ***David On*** matter. The Committee reasoned that Respondent was a "non-lawyer" and "free to attend such conferences." (HC Rpt. at 16) This reasoning is patently incorrect, as Respondent was a "formerly admitted attorney" (Pa.R.D.E. 102(a)) and engaged in law-related activities expressly prohibited by Pa.R.D.E. 217(j).

The Committee also erred in not recommending that the recidivist Respondent receive a five-year suspension. The Committee correctly found that Respondent engaged in the unauthorized practice of law and prohibited law related activities in multiple client matters, failed to comply with the rules

for formerly admitted attorneys, and committed misconduct before the EDPA. (HC COL 1-5) But a majority of the Committee concluded that Respondent's misconduct was "limited" and recommended a three-year suspension. (HC Rpt. at 21) The Majority's recommendation, however, did not include consideration of the ***David On*** matter.

Moreover, numerous weighty aggravating factors support Respondent's receipt of a five-year suspension. These factors include Respondent's: failing to file a PFD Answer, comply with the Prehearing Order concerning the exchange of exhibits, and file a brief to the Committee; failing to recognize his wrongdoing or express remorse for his misconduct; challenging the findings of wrongdoing resulting in his 2008 suspension; and expressed disrespect for the attorney discipline system, Disciplinary Counsel, and his prior attorney. (HC FOF 37-45)

Most weighty is that Respondent is a recidivist, having been suspended in 2005, 2008, and 2019. Furthermore, Respondent's 2008 suspension included charges of Respondent's unauthorized practice of law. Given Respondent's demonstrated disdain for the attorney discipline system, Respondent is a danger to the public, courts, and profession. To deter the unrepentant Respondent from engaging in further misconduct, Respondent must receive a five-year suspension.

III. ADDITIONAL PROPOSED FINDINGS OF FACT

Aggravating Facts

1. Respondent received notice of the responsibilities of a formerly admitted attorney (D-1, D-3; NT, 46-47) and testified that he knew the responsibilities of a formerly admitted attorney. (*Id.* at 47-48)

2. Respondent's testimony before the Hearing Committee was, at times, not credible.

3. Respondent's letters to his clients informing them of his suspension (R-1) falsely state that Respondent was suspended from the practice of law for one year, when in fact, Respondent was suspended from the practice of law for one year and one day.

4. During his May 4, 2023 disciplinary hearing, Respondent denied converting fiduciary funds and engaging in the unauthorized practice of law for which the Supreme Court imposed a two-year suspension in 2008 (NT, 66, 67, 68-69, 84-85; D-7, pp. 6, 7-8, 10, 11-12), even though Respondent claimed to have recognized his wrongdoing and accepted responsibility at his reinstatement hearing. (D-2, ¶¶4, 40, p. 11)

5. Respondent engaged in the unauthorized practice of law and law-related activities in the EDPA. (D-9, -10, -11)

6. Respondent's conduct during his reinstatement hearing before the EDPA demonstrated a lack of competence, sincerity, and candor. (D-7, pp. 6, 9, 10, 11-12)

IV. PROPOSED CONCLUSIONS OF LAW

Respondent violated all the Rules of Professional Conduct and Rules of Disciplinary Enforcement set forth in the PFD. (ODC-1, pp. 8-11, 14-17)

V. ARGUMENT

A. THE HEARING COMMITTEE ERRED IN CONCLUDING THAT RESPONDENT, A FORMERLY ADMITTED ATTORNEY, DID NOT VIOLATE ANY DISCIPLINARY RULES IN THE *DAVID ON* MATTER.

Respondent was suspended from the practice of law for one-year-and-one-day, effective April 5, 2019. Subsequently, Respondent engaged in prohibited law-related activities in the ***David On*** matter. The Hearing Committee erred in concluding that Respondent, a "formerly admitted attorney" (Pa.R.D.E 102(a)), had not violated any RPCs or Pa.R.D.E. by doing so. (HC COL ¶6)

On April 13, 2015, Respondent entered his appearance in the ***David On*** matter. (PFD ¶30) On April 22, 2015, Mark D. Schaffer, Esquire, also entered his appearance in the ***David On*** matter. (*Id.* at ¶33) By letter to Respondent dated March 6, 2019, Marcee D. Sloan, Disciplinary Board Prothonotary, enclosed a copy of the Supreme Court's Order suspending Respondent from the practice of law for one-year-and-one-day, Standard Guidance to Lawyers Who Have Been Suspended for Over One Year, and Pa.R.D.E. 217. (*Id.* at ¶9) On April 24, 2019, following Respondent's suspension, Respondent withdrew his appearance in the ***David On*** matter. (*Id.* ¶35) On July 22, 2019, Ms. Sloan reminded Respondent of his duty to comply with Pa.R.D.E. 217 and the consequences of Respondent's failure

to comply. (*Id.* at ¶36) Respondent received Ms. Sloan's letters. (*Id.* at ¶¶10, 37)

On March 2, 2020, a case management conference was held in the ***David On*** matter before a Judge Pro Tem. Respondent and Mr. Schaffer appeared at the conference on behalf of David On. (*Id.* at ¶41(a)) During the conference, Mr. Schaffer introduced Respondent as his "assistant." (*Id.* at ¶41(b)) Respondent remained with Mr. Schaefer during the conference. (*Id.* at ¶41(c)); HC Report FOF 28.

Although the Hearing Committee found as fact that "Respondent appeared at this settlement conference when he was suspended from the practice of law" (HC FOF 29), the Committee concluded that "ODC has not met its burden of proving that Respondent violated any RPC or RDE by his conduct in the" ***David On*** matter. (HC COL 6) The Committee reasoned that "[n]on-lawyers are free to attend such conferences" and Respondent "was nothing more than an observer." (HC Rpt. at 6) The Committee's reasoning is fatally flawed.

Respondent was not simply a "non-lawyer," Respondent is a "formerly admitted attorney." *See* Pa.R.D.E. 102(a), which defines "formerly admitted attorney" as "[a] disbarred, suspended, administratively suspended, permanently resigned, retired or inactive attorney." As a formerly admitted

attorney, Respondent is subject to the prohibitions and duties of set forth in Pa.R.D.E. 217, aptly titled "Formerly Admitted Attorneys." The Note accompanying Pa.R.D.E. 217 explains that it "was adopted by the Court to limit and regulate the law-related activities performed by formerly admitted attorneys regardless of whether those formerly admitted attorneys are engaged as employees, independent contractors or in any other capacity."

Pa.R.D.E. 217(j)(4) states that "a formerly admitted attorney is specifically prohibited from engaging in any of the following activities: (iii) performing any law-related services for any client who in the past was represented by the formerly admitted attorney; and (iv) representing himself or herself as a lawyer or person of similar status." Furthermore, Pa.R.D.E. 217(j)(2)(iii) limits the law-related activities that may be conducted by a formerly admitted to "accompanying a member in good standing of the Bar of this Commonwealth to a . . . matter that is *not currently in litigation*." (emphasis added)

Here, Respondent accompanied Mr. Schaffer to a case management conference on a matter in litigation, the matter was on behalf of a client who Respondent previously represented, Mr. Schaffer introduced Respondent as his "assistant," and Respondent remained with Mr. Schaffer throughout the conference. While Respondent may not have "said anything at the

conference" (HC Rpt. at 16), he was Mr. Schaeffer "assistant" and not simply "an observer." Plainly, Respondent's conduct ran afoul of Pa.R.D.E. 217(j)(2) and (j)(4).

Among the duties of a formerly admitted attorney set forth in Pa.R.D.E 217 are: promptly notifying all clients, tribunals, and persons whom the formerly admitted attorney has professional contact of his suspension (Pa.R.D.E 217(b), 217(c)(2), (c)(3)); and filing a notice of engagement with the Disciplinary Board identifying his supervising attorney and certifying that the formerly admitted attorney's activities will be monitored for compliance with Pa.R.D.E. 217(j). Respondent's failure to undertake any of these duties violated Pa.R.D.E 217(b), (c)(2), (c)(3), (j). *See* ODC-12, -13, HC FOF 30 (citing PFD ¶43.)

Finally, RPC 8.4(c) prohibits an attorney from engaging in conduct involving deceit and RPC 8.4(d) prohibits an attorney from engaging in conduct prejudicial to the administration of justice. Respondent's deceitful conduct, knowingly flouting the rules for formerly admitted attorneys, was in violation of RPC 8.4(c) and prejudicial to the administration of justice in violation of RPC 8.4(d).

In sum, the unanswered PFD, ODC's and Respondent's exhibits, Respondent's disciplinary hearing testimony, and the HC's FOF and COL

establish that ODC amply met its burden of proof that Respondent violated all charged rules in the ***David On*** matter, Count II.[2]

[2] The Hearing Committee also erroneously concluded that, in Count I, Respondent's conduct did not violate RPC 3.3(a)(1) and RPC 8.1(a). (HC COL 7) In the ***Historic Qingdao*** and ***Revella Coles*** matters, Respondent violated RPC 3.3(a)(1) when he knowingly failed to disclose to a tribunal the material fact that he was a formerly admitted attorney and participated in the settlement conferences as an attorney in good standing. Respondent violated RPC 8.1(a) when he made "material omissions of fact when he failed to list his admission to the EDPA on his Annual Attorney Registration Statements for 2016-2017, 2017-2018, and 2018-2019." (HC FOF 33) *See* ***Office of Disciplinary Counsel v. Jennifer Johnson***, No. 169 DB 2021 (D.Bd. Order 2/4/2022) (Public Reprimand, ¶2, 6/17/2022) (Finding RPC 8.1(a) violated when Johnson filed false attorney registration statements failing to list her legal employment).

B. THE HEARING COMMITTEE ERRED IN CONCLUDING THAT A TOTALITY OF RESPONDENT'S MISCONDUCT AND SERIOUS AGGRAVATING FACTORS DID NOT WARRANT RESPONDENT'S RECEIPT OF A FIVE-YEAR SUSPENSION.

A majority of the Hearing Committee recommended that Respondent receive a three-year suspension for Respondent's "limited unauthorized practice of law and other misconduct." HC Rpt. at 21. The Majority's recommendation is inherently deficient because it failed to incorporate Respondent's misconduct in the ***David On*** matter and the additional weighty aggravation of Respondent's failure to file a brief to the Hearing Committee. The Majority also failed to afford sufficient weight to Respondent's disdain for the attorney discipline system and recidivist conduct. When the entirety of Respondent's rule violations and aggravating facts are considered, it is apparent that the unrepentant Respondent is a danger to the public, courts, and profession. To uphold the goals of the attorney discipline system, a five-year suspension is warranted.[3]

By Order dated March 6, 2019, effective April 5, 2019, Respondent

---

[3] The goals of the attorney disciplinary system are multi-faceted. They include protecting the public from unfit attorneys, maintaining the integrity of the Bar, upholding respect for the legal system, and deterrence. ***Office of Disciplinary Counsel v. John J. Keller***, 506 A.2d 872, 875 (Pa. 1986) (purpose of system of lawyer discipline is to protect public from unfit lawyers and to maintain integrity of legal system); ***In re Iulo***, 766 A.2d 335 (Pa. 2001) (another goal of the disciplinary system is deterrence).

was suspended from the practice of law for one year and one day for his misconduct in one client matter. (ODC-3) Thereafter, until at least March 2020, Respondent engaged in the unauthorized practice of law and prohibited law-related activities for two law firms in multiple client matters. Respondent appeared before judges *pro tem* (PFD ¶¶14, 21), advocated on behalf of clients before a tribunal (*id.*), spoke to opposing counsel (*id.*), went to court on matters in litigation (R-6, 5/17/2020, pp. 2-4), accompanied a member of the Bar to court in a matter in litigation on behalf of a former client (PFD ¶41; R-6, 4/24/2020, pp. 2-3), drafted numerous legal documents (R-7; R-6, 5/7/2020, pp. 2-4), and corresponded with clients on behalf of an attorney.[4] (R-6, p. 4/24/2020, p. 3)

In addition, Respondent failed to file notices of engagement with the Disciplinary Board (ODC-12), although Respondent knew he had a duty to do so (D-2, FOF 23; D-6, 5/7/2020, p. 4), and failed to file a Statement of Compliance until June 28, 2021 (ODC-13), over two years after the effective date of his suspension. Moreover, Respondent filed annual attorney registration statements either falsely stating that he was an "active" member

[4] None of the foregoing activities were permissible under Rule 217(j)(4)(i), which prohibits an attorney from performing *any* law-related activity for a law firm or lawyer with whom the formerly admitted attorney was associated with on or after his acts of misconduct occurred through the effective date of suspension. Respondent was associated with *both* the law firm and the lawyer for whom he engaged in law-related activities prior to and after his suspension.

of the EDPA (ODC-14, -15, -16), even though Respondent was suspended from the EDPA in 2008 (D-21), or intentionally omitting the EDPA from his registration statement (ODC-17, -18, -19), even though there was a column to mark "suspended."

Application of precedent to Respondent's misconduct, the presence of many serious aggravating factors, and the absence of any mitigation lead to the inexorable conclusion that Respondent's serial misconduct warrants a five-year suspension.

Where, as here, an attorney who has engaged in the unauthorized practice of law has a record of discipline, the Supreme Court has imposed discipline ranging from a floor of a one-year-and-one-day suspension up to disbarment. The Disciplinary Board has explained that an attorney's "prior disciplinary record . . . serves to aggravate" the attorney's unauthorized practice of law and "necessitates the imposition of discipline that requires [the attorney] to undergo the reinstatement process." ***Office of Disciplinary Counsel v. Carl B. Williamson***, No. 36 DB 2019, (D.Bd. Rpt. 2/21/2020, p. 22) (S.Ct. Order 5/29/2020).

Malcolm P. Rosenberg had been suspended for one year and one day for failing to promptly distribute client funds. ***Office of Disciplinary Counsel v. Malcolm P. Rosenberg***, No. 156 DB 2014 (D.Bd. Rpt. 1/19/2016) (S.Ct.

Order 3/17/2016) Thereafter, over the course of four months while on suspension, Rosenberg represented a client involved in a dispute with her ex-fiancé over the net proceeds of a property settlement. Rosenberg filed an Answer to the PFD denying any misconduct, appeared at his disciplinary hearing, and introduced exhibits and the testimony of two witnesses. The Disciplinary Board found that the aggravating factors of Rosenberg's failure to accept responsibility for his misconduct and show remorse "support a lengthy term of suspension." (*Id.* at 16) Since Rosenberg's unauthorized practice of law was "a single representation over a short period of time," the Disciplinary Board concluded that a "suspension for three years is appropriate." (*Id.*)

The Supreme Court imposed a four-year suspension on Louis Criden, who engaged in the unauthorized practice of law for one long-standing client. ***Office of Disciplinary Counsel v. Louis S. Criden***, 42 Pa. D. & C. 4th 254 (1999) Following Criden's suspension, Criden continued to practice law over the course of twelve months "in direct violation of the Supreme Court's order suspending him." (*Id.* at 275) Although Criden admitted his misconduct and expressed remorse at his disciplinary hearing, in order "to emphasize the seriousness of practicing law while suspended," the Disciplinary Board

recommended a four-year suspension (*id.* at 274-275), which the Supreme Court imposed. (*Id.* at 276)

The Supreme Court imposed a five-year suspension on Ronald Kaplan, whose "unauthorized practice of law was limited to a single appearance on behalf of a person who not only was fully aware of [Kaplan's] suspended status [,] but also paid no money for his services." ***Office of Disciplinary Counsel v. Ronald I. Kaplan***, No. 217 DB 2010 (D.Bd. Rpt. 1/24/2012, p. 11) (S.Ct. Order 6/5/2012). While on suspension, Kaplan appeared in Family Court on behalf of a long-time client, misrepresented his identity, and participated in his client's support hearing. Kaplan answered the Petition for Discipline and testified at his disciplinary hearing that he "was aware that appearing at the support hearing and representing [his client] was wrong." (FOF 28-29) Although the Disciplinary Board concluded that Kaplan's multiple "serious ethical breaches should carry grave consequences," the Board rejected the Hearing Committee's recommendation of disbarment for Kaplan's knowing unauthorized practice of law and recommended Kaplan receive an additional five-year term of suspension. (*Id.* at 12)

Disbarment was imposed, however, on Glenn D. DeSantis, who engaged in the unauthorized practice of law in one client matter. ***Office of***

Disciplinary Counsel v. Glenn D. DeSantis, No. 149 DB 2018 (D.Bd. Order 9/6/2019) (S.Ct. Order 11/15/2019). In 1995, DeSantis was suspended from the practice of law for three years in Pennsylvania and New Jersey. In 1998, DeSantis was reinstated to the practice of law in New Jersey; DeSantis was not reinstated to the practice law in Pennsylvania. In 2015, DeSantis accepted a retainer fee to handle a Pennsylvania real estate matter, which was never completed due to the denial of a variance petition. After DeSantis was served with a PFD, he failed to answer the PFD, attend the PHC, and attend his disciplinary hearing. The Disciplinary Board noted that DeSantis's "egregious" misconduct was "aggravated by his failure to participate in the disciplinary process" (*id.* at 14) and recommended DeSantis's disbarment to "protect the public and maintain the integrity of the courts and the legal profession." (*Id.* at 15)

Yet even where an attorney participates at his disciplinary hearing, the Supreme Court has imposed disbarment for the attorney's unauthorized practice of law. ***Office of Disciplinary Counsel v. Thomas J. Turner, III,*** No. 136 DB 2008 (D.Bd. Rpt. 9/28/2009) (S.Ct. Order 12/16/2009). While working at a law firm following his two-year suspension, Turner failed to file a notice of engagement, had direct contact with clients, handled client funds, and misrepresented his identity. Turner failed to answer the PFD and offered

testimony at his disciplinary hearing that "was unapologetic and unrepentant regarding his conduct while working [at the law firm], placing blame solely on [his employer]." (*Id.* at p. 11) Turner also "expressed no remorse and defended his conduct." (*Id.*) Finding that Turner's "suspended status in no way deterred him from practicing law," the Disciplinary Board concluded that "[a]ny further suspension order would likely have little impact on [Turner's] future activities," and recommended Turner's disbarment.

Identical to Rosenberg, Criden, Kaplan, DeSantis, and Turner, who have a record of public discipline, Respondent engaged in the unauthorized practice of law while suspended from the practice of law in Pennsylvania. Consistent with precedent, Respondent should receive a lengthy suspension. Significantly distinguishable from Rosenberg, Criden, Kaplan, DeSantis, and Turner, however, is the fact that Respondent had been suspended from the practice of law on *three* occasions—in 2005, for failure to file his annual attorney registration statement and fulfill his CLE requirements (D-1, FOF 4, 5, 6); in 2008, two years for converting fiduciary funds and the unauthorized practice of law (D-2); and in 2019, one-year-and-one-day for incompetence, lack of diligence, and deceit in handling one client's legal matter (D-3). As an attorney's record of discipline is a serious

and weighty aggravating factor,[5] Respondent should receive substantially more discipline for his recidivist conduct than imposed on Rosenberg and Criden.[6]

Unlike Rosenberg, Respondent's unauthorized practice of law was not limited to "a single representation over a short period of time." ***Rosenberg***, *supra* at 16.[7] Rather, similar to Criden who received a four-year suspension, Respondent's unauthorized practice of law spanned no less than one year after the Supreme Court's Order. But unlike Criden, whose misconduct involved one client matter, Respondent's misconduct involved at least three client matters.

Importantly, Criden admitted his misconduct and expressed remorse at his disciplinary hearing. In contrast, Respondent resolutely renounced all wrongdoing, expressed no remorse, and exhibited defiance at his

---

[5] *See, e.g.,* ***Office of Disciplinary Counsel v. Allan K. Marshall***, No. 136 DB 2019 (D.Bd. Rpt.10/16/2020, p. 28) (S.Ct. Order 2/12/2021) (The Supreme Court imposes greater discipline on an attorney with a record of discipline "in recognition that the attorney has not learned from the prior discipline"); ***Office of Disciplinary Counsel v. John A. Gallagher,*** No. 65 DB 2019 (D.Bd. Rpt. 9/29/2020, p. 28) (S.Ct. Order 1/22/2021) (an attorney's history of prior discipline is an aggravating factor).

[6] In addition, Respondent was twice disciplined in the EDPA. ***In the Matter of William J. Weiss***, No. 08-mc-0182, EDPA (Order 4/25/2019) (reciprocal one-year-and-one-day suspension) (D-8) and ***In the Matter of William J. Weiss***, No. 08-mc-0182, EDPA (Order 11/20/2008) (reciprocal two-year suspension) (D-6). Moreover, Respondent was denied reinstatement in the EDPA. ***In the Matter of William J. Weiss***, No. 08-mc-0182, EDPA (11/1/2016) (Report and Recommendation denying reinstatement) (D-7)

[7] Rosenberg also filed an Answer to the PFD, albeit denying all misconduct.

disciplinary hearing. (HC FOF 42-44) An attorney's failure to recognize his wrongdoing, express remorse[8], and take responsibility for his misconduct[9] are serious and weighty aggravating factors demonstrating unfitness to practice law. Consequently, Respondent should receive a longer term of suspension than the four-year suspension imposed in ***Criden***.

Kaplan received a five-year suspension for engaging in the unauthorized practice of law in one client matter. Like Respondent, Kaplan was employed as a law clerk after his suspension and appeared before a tribunal on behalf of a client. Unlike Respondent, Kaplan misrepresented his identity before the tribunal. Yet Kaplan answered the PFD and admitted his wrongdoing at his disciplinary hearing. While the Hearing Committee recommended Kaplan's disbarment, the Disciplinary Board disagreed and

---

[8] *See, e.g.,* ***Office of Disciplinary Counsel v. Douglas Andrew Grannan,*** No. 197 DB 2016 (D.Bd. Rpt. 4/3/2019, pp. 80, 93, 94) (S.Ct. Order 7/9/2019) (Grannan's failure to demonstrate remorse for his misconduct and show appreciation of his wrongdoing were aggravating factors); ***Office of Disciplinary Counsel v. Joseph Q. Mirarchi***, No. 56 DB 2016 (D.Bd. Rpt. 5/21/2018, pp. 67, 68) (S.Ct. Order 3/18/2019) (Mirarchi's failure "to express sincere remorse [is] a significant aggravating factor" as is his failure "to acknowledge wrongdoing.") *See also* ***Office of Disciplinary Counsel v. William H. Lynch, Jr.,*** No. 70 D.Bd. 2020 (D.Bd. Rpt. 12/10/2021, p. 28) (S.Ct. Order 1/6/2022) ("In further aggravation, [Lynch] failed to address and demonstrate remorse for how his conduct impacted the reputation of the legal profession."); ***Office of Disciplinary Counsel v. Michael Elias Stosic***, No. 65 DB 2015 (D.Bd.Rpt. 6/23/2016, p. 22) (S.Ct. Order 9/14/2016) (Stosic's failure to exhibit remorse indicated that he had not accepted responsibility for his misconduct).

[9] *See, e.g.,* ***Office of Disciplinary Counsel v. Robert Philip Tuerk***, No. 51 DB 2014 (D.Bd. Rpt. 7/20/2015, p. 16) (S.Ct. Order 10/15/2015) (Tuerk's "dodging responsibility" and "apportioning blame" to others throughout his disciplinary hearing was an aggravating factor).

recommended Kaplan's receipt of a five-year suspension, which the Supreme Court imposed.

Although Respondent has failed to recognize his wrongdoing, as the Disciplinary Board reasoned in ***Kaplan***, disbarment may not be warranted. Disbarment "is not imposed lightly as it takes away an attorney's privilege to practice law without guarantee of restoration." ***Turner,*** *supra* at 15. In contrast to Turner and DeSantis who were disbarred, there is no evidence that Respondent handled client funds. Furthermore, it appears that Respondent handled only minor and ministerial client matters on behalf of other attorneys and not himself. Under these circumstances, a disbarment may not be necessary. Nonetheless, ample additional aggravating factors support Respondent's receipt of a five-year suspension.

Foremost among the additional aggravating facts are the many facets of Respondent's unfettered and far-ranging disrespect for the attorney discipline system demonstrating his danger to the public, courts, and profession..

First, with regard to Respondent's participation in the instant disciplinary proceeding, Respondent: avoided service of the PFD (ODC-2; HC FOF 38); failed to answer the PFD; failed to recall participating in the PHC (NT, 37-38); did not read ODC's exhibits (NT, 34, 73); did not provide

ODC with his exhibits prior to the disciplinary hearing (NT 38, HC FOF 41); unabashedly scorned Disciplinary Counsel (NT, 37-38); repeatedly cursed and yelled during his testimony (NT, 68, 69, 74, 78); and failed to file a brief to the Hearing Committee. Indeed, the Hearing Committee found:

> [d]uring the hearing, Respondent was combative, rude, and disrespectful and he made disparaging comments about others, including Ms. Brumberg, Mr. Levy, and Samuel Stretton, his prior attorney.

(record citations omitted) HC FOF 42. Respondent's demonstrated disdain for the disciplinary proceeding against him is a weighty aggravating factor. *See, e.g.,* ***Marshall,*** *supra* at 27, 30 (Marshall's unfettered contempt of the attorney discipline system were factors supported Marshall's "lengthy suspension.")[10]

Second, Respondent engaged in the unauthorized practice of law and prohibited law related activities in the instant matter *with impunity.* On June 27, 2019, an Assistant City Solicitor sent an email to Respondent's employer notifying him of Respondent's unauthorized practice of law in the ***Historic***

---

[10] *See also* ***Office of Disciplinary Counsel v. Adam Luke Brent***, No. 225 DB 2018 (D.Bd. Rpt. 12/20/2019, pp. 21-22) (S.Ct. Order 2/13/2020) (Brent's failure to answer the PFD, appreciate the charges against him, educate himself concerning the disciplinary hearing procedures, and comprehend the PHC Order were factors that aggravated Brent's matter); ***Office of Disciplinary Counsel v. Perry Lynn Flaugh***, No. 112 DB 2015 (D.Bd. Rpt. 6/15/2016, p. 13) (S.Ct. Order 8/12/2016) (Flaugh's failure "to grasp the seriousness of the proceedings" against him was an aggravating factor.)

Qingdao matter, explained that Respondent was suspended from the practice of law in March, and warned Respondent's employer that he did not "expect to see [Respondent] at any future hearing or conference." (ODC-10) Respondent received a copy of Mr. Barron's email and his employer's response. Undaunted, on at least two subsequent occasions (PFD ¶¶21, 41), Respondent appeared before a tribunal. Moreover, Respondent had received notice of the responsibilities of a suspended lawyer on at least four prior occasions following Respondent's suspension in 2005, 2008, 2019, as well as during Respondent's reinstatement hearing in 2013. Respondent also testified that he had received notice of the duties of a previously admitted attorney. (NT, 46-48) Respondent's knowing and contemptuous conduct is a weighty aggravating circumstance.[11]

Third, Respondent's failure to acknowledge his wrongdoing that resulted in his 2008 suspension is further aggravation. *See, e.g.*, ***In the Matter of Howard Casper,*** No. 44 DB 1992 (D.Bd. Rpt. 1/25/2007, pp. 10,

---

[11] *See, e.g.*, ***Office of Disciplinary Counsel v. Robert Chase Cheek***, No. 129 DB 1998 (D.Bd. Rpt. 1/11/2000, p. 11) (S.Ct. Order 3/13/2000) (Cheek's continuing to practice law after being placed on inactive status was in knowing disregard of the Supreme Court's Order and an aggravating factor; Supreme Court imposed a three-year suspension); ***Office of Disciplinary Counsel v. Thomas Joseph Coleman***, No. 98 DB 2003 (D.Bd. Rpt. 1/24/2005, p. 21) (S.Ct. Order 4/19/2005) (The Disciplinary Board noted that "the Supreme Court does not tolerate lawyers who take a lax approach to the administrative rules governing the practice of law" and Coleman's continuing to sign legal documents after he received notice that he was on inactive status was contemptuous misconduct).

16) (S.Ct. Order 4/20/2007) (Casper did not recognize and acknowledge the extent of his misconduct when he continued to use "borrow" to describe his misappropriation of client funds).[12] With regard to Respondent's 2008 disciplinary matter, Respondent: claimed that he had not read the Disciplinary Board's Report (NT, 82-85) and did not "care what [the 2008 Report] says" about Respondent's converting fiduciary funds (*id* at 84); failed to recognize that the Board found he had converted fiduciary funds and engaged in the unauthorized practice of law (*id.* at 66, 67, 68-69, 84-85); requested that the Hearing Committee read the transcript from the finally litigated 2008 disciplinary matter (*id.* at 101); minimized his prior unauthorized practice of law as Respondent's being "the thousandth lawyer in the City probably today who failed to complete his CLE" (*id.* at 87); and accused ODC of not having previously "prosecut[ed him] for the right crime." (*Id.* at 69) Notably, Respondent's disciplinary hearing testimony contradicted

---

[12] *See also,* ***In the Matter of William Jay Gregg,*** No. 210 DB 2009 (D.Bd. Rpt. 12/5/2017, p. 6) (S.Ct. Order 2/5/2018) (reinstatement from disbarment denied as Gregg did not fully recognize his wrongdoing and characterized his mishandling of fiduciary funds as a "bookkeeping error"), *reinstatement granted* (S. Ct. Order 12/2/2022); ***In the Matter of E. Nkem Odinkemere***, No. 129 DB 2005 (D.Bd. Rpt. 3/14/2012, p. 13) (S.Ct. Order 7/18/2012)(Odinkemere, who attempted to minimize the scope and severity of his misconduct by describing his actions as bookkeeping mistakes, had not accepted responsibility for his wrongdoing and was denied reinstatement); ***In the Matter of W. Ken Duffy,*** No. 22 DB 1977, 8 Pa. D.&C.4th 288, 293 (1990) (Duffy's failure to recognize the nature of his wrongdoing, which was misappropriation of client funds, shows that he has not learned from his mistakes and precludes reinstatement).

Respondent's testimony at his 2011 reinstatement hearing wherein Respondent accepted full responsibility for his misconduct that resulted in his 2008 suspension (D-2, ¶¶4, 40, p.11), demonstrating Respondent's current lack of candor. [13]

Respondent did not offer any evidence to mitigate his misconduct. Rather, Respondent's exhibits are further aggravation and support a suspension of no less five years.[14] Respondent's exhibits include false statements to his clients minimizing the term of his 2019 suspension (R-1),

---

[13] Respondent's lack of candor before the Hearing Committee and the EDPA is an additional aggravating factor. (*See* PFOF 10, 14) Respondent's disciplinary hearing "testimony was evasive and incredible on many points" and his "demeanor at the disciplinary hearing did not aid his case." ***Office of Disciplinary Counsel v. Anthony Dennis Jackson***, No. 145 DB 2007 (D.Bd. Rpt. 11/21/2008, p. 15) (S.Ct. Order 4/3/2009). Similarly, the EDPA found Respondent's reinstatement hearing testimony raised "significant concerns about" Respondent's "candor" and denied Respondent's reinstatement. (D-7, pp. 9, 10, 11). ***Office of Disciplinary Counsel v. Craig A. Sokolow,*** No. 83 DB 2018, (D.Bd. Rpt. 9/4/2019), FOF 64, p. 26 (S.Ct. Order 12/11/2019) (Disciplinary Board gave "great weight to the aggravating factors," including that Sokolow lacked candor as his disciplinary hearing testimony contradicted his own prior testimony and other credible evidence).

[14] *See* R-1, Respondent's letters to his clients notifying them of his suspension, on letterhead listing both William J. Weiss and Levy Law Firm, falsely state that Respondent was "suspended by the bar for one year," telling them that Bart Levy will "continue without interruption," and add that Respondent is "optimistic that the year will pass quickly." R-2, Respondent's motions to the court withdrawing his appearance, are often on stationery with the letterhead Levy Law, LLC, and list Respondent as an employee. R-3, Respondent's Statement of Compliance, dated April 26, 2019, was not filed with the Disciplinary Board until July 28, 2021 (ODC-13). R-4, Respondent's March 6, 2019 letter from prior counsel gave Respondent express notice that he had "thirty days left to practice" law. R-7, August 16, 17, and 18, 2019 email exchange between Mr. Levy and Respondent requesting that Respondent draft a case management memo for a scheduled conference and Respondent's agreement to do so.

establish Respondent continued to be employed at Levy Law, LLC, after his suspension (R-2, -7), and detail Respondent's unauthorized practice of law and law-related activities at two law firms. (R-6, -7)

All told, the Disciplinary Board's reasoning in ***Cheek***, *supra* at 10, resonates herein:

> Respondent's continuous course of conduct in contempt of the Court's [suspension] Order and total disregard for the disciplinary system demands a significant sanction in order to maintain the efficacy of the disciplinary system and to protect the public from attorneys unwilling or unable to practice in accordance with the governing rules of the legal profession.

Accordingly, ODC requests that Respondent receive a prospective five-year suspension for his unrepentant disregard of the attorney discipline system. ***Office of Disciplinary Counsel v. Paul J. McArdle,*** No. 39 DB 2015 (D.Bd. Rpt. 9/21/2016, p. 27) (S.Ct. Order 11/22/2016) (McCardle's "failure to recognize that his behavior as set forth in the record is improper. . . and unrepentant attitude renders him unfit to continue as a licensed member of the Pennsylvania Bar").

VI. CONCLUSION

WHEREFORE, Office of Disciplinary Counsel respectfully requests that the Disciplinary Board recommend to the Supreme Court that Respondent receive a prospective five-year suspension.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell
Chief Disciplinary Counsel

Date: 10/26/2023

By Harriet R. Brumberg
Harriet R. Brumberg
Disciplinary Counsel

CERTIFICATE OF COMPLIANCE

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania*: *Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

Submitted by: Office of Disciplinary Counsel

Signature: Harriet R. Brumberg

Name: Harriet R. Brumberg, Disciplinary Counsel

Attorney No. (if applicable): 31032