BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

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| OFFICE OF DISCIPLINARY COUNSEL, Petitioner | : | No. 17 DB 2023 |
| v. | : | Atty. Reg. No. 63600 |
| ROBERT SCOTT CLEWELL, Respondent | : | (Philadelphia) |

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**BRIEF OF OFFICE OF DISCIPLINARY COUNSEL TO HEARING COMMITTEE**

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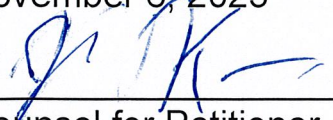
I hereby certify that I have this day served by E-mail and/or First-Class Mail the within document upon all parties of record in this proceeding in accordance with the requirements of 204 Pa. Code § 89.22.

November 6, 2023



Counsel for Petitioner

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## METHOD OF CITATION USED

Numbers and letters in parentheses indicate documents and location as follows:

N.T.___ indicates a page or pages of notes of testimony of the September 19, 2023 hearing;

Petition, __ indicates a numbered paragraph from the Petition for Discipline, filed on March 16, 2023;

ODC-__ represents a (numbered) Petitioner's Exhibit;

ODC-__, pp. __ represents the page numbers in the upper right corner of Petitioner's Exhibits.[1]

PFOF- ___ refers to a numbered Proposed Finding of Fact in Section II, infra; and

PH N.T., ____ indicates a page or pages of notes of testimony of the August 2, 2023 prehearing conference.

[1] For purpose of clarity, Petitioner will identify the page numbers without the prefix "ODC."

## TABLE OF AUTHORITIES

**Cases** **Page(s)**

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*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.

## I. STATEMENT OF THE CASE

This matter is before the Hearing Committee ("Committee") on a Petition for Discipline ("Petition"), charging Respondent with violations of Rules of Professional Conduct ("RPC") 1.1 (3 counts), 1.3 (3 counts), 1.4(a)(2) (2 counts), 1.4(a)(3) (3 counts), 1.4(a)(4) (3 counts), 1.4(c), 1.5(a) (2 counts), 1.5(b), 1.15(e) (2 counts), 1.16(d) (3 counts), 3.3(a)(1), 8.4(c) (2 counts), and 8.4(d).

Pursuant to the Joint Stipulations of Law and Fact ("Joint Stipulations"), Respondent admitted the factual averments and rule violations alleged in the Petition. As set forth in the Petition, in November 2016, TEC Electrical Contracting ("TEC") retained Respondent for representation in multiple matters. Respondent failed to inform TEC that he lacked professional liability insurance. (Petition, ¶¶6-8) He then failed to file a brief in opposition to a dispositive motion in a critical matter (the "CRD Case"), and failed to appear before the trial court on the motion. (Id., ¶47) As a result, the court struck TEC's mechanic's lien—which was for $489,487.47—without any opposition. (Id., ¶¶4, 49) Respondent further failed to provide work on an additional matter for TEC (the "Passi Case"), which resulted in a court striking another mechanic's lien without opposition, this time in the amount of $77,308.52. (Id., ¶¶46, 48; ODC-13)

After incompetently representing TEC in these matters, Respondent abandoned his client entirely, failing to respond to repeated requests for information. (Id., ¶¶55-60) And when TEC sued Respondent for his neglect in the CRD Case, his answer to the complaint included the false (or at least grossly misleading) assertion that he had terminated his representation prior to missing the deadlines, while concealing that he was later paid in full and agreed to complete the work. (Id., ¶¶62-66) The answer was filed by his counsel—presumably based on information from Respondent—and Respondent verified that he had "read the foregoing Answer and New Matter and the averments of fact made therein are true and correct based on knowledge, information, and/or belief." (Id., ¶64)

On June 2, 2020, Michael Cifone paid Respondent a "flat fee" of $775 to file a lawsuit against a former customer and to represent him in that case. (Id., ¶¶73-77) Following one additional communication—in which Respondent promised to file the case "shortly"—he abandoned Mr. Cifone, failing to file the case and ignoring his client's requests for information. (Id., ¶¶78-81). Respondent nonetheless kept the unearned fee Mr. Cifone had paid him. (Id., ¶84)

In or around February 2020, Paul Kollhoff retained Respondent to assist him in dissolving a business he had formed with a partner and

dividing up its assets. (Id., ¶96) Respondent orally agreed to send a letter to Mr. Kollhoff's partner and follow up with him in exchange for a $575 fee. He failed, however, to communicate the basis or rate of the fee in writing. Respondent sent an email to Mr. Kollhoff's partner, but took no further action. (Id., ¶¶97-112)

In February 2021, Mr. Kollhoff paid Respondent an additional $4,250 to file a lawsuit against his former partner. (Id., ¶¶121-124)[2] Respondent failed to initiate the lawsuit and repeatedly failed to respond to his client's requests for information. (Id., ¶¶125-209) When Respondent did reply, he falsely claimed to have obtained a Writ of Summons, to have served opposing counsel, and to have been in the process of scheduling depositions. (Id., ¶¶125(c), 148-51, 159-62, 165-66, 168-69, 173-74, 183-84) Respondent again retained the entire fee he was paid for this non-existent "representation." (Id., ¶210)

Respondent filed his Answer to the Petition on May 1, 2023. He admitted his misconduct related to representation of Mr. Cifone and Mr. Kollhoff, but denied several rule violations related to his representation of TEC. (ODC-51)

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[2] Respondent provided a fee agreement for this additional representation. (Id., ¶¶122-23)

By a Reference for Disciplinary Hearing, dated May 16, 2023, the Board Prothonotary appointed the Committee. The Pre-Hearing Conference took place on August 2, 2023. By a Pre-Hearing Order, dated August 2, 2023, the Chair set deadlines for the exchange of exhibits, identification of witnesses, objections to exhibits and witnesses, identification of experts, and production of expert reports.

Office of Disciplinary Counsel ("ODC") provided its exhibits to Respondent prior to the Pre-Hearing Conference (PH N.T. 8/2/23, 7, 14), and identified its witnesses by the specified deadlines. Respondent did not offer any objections. Nor did he identify any exhibits or witnesses he intended to present. (N.T. 16)

On September 19, 2023, the disciplinary hearing was held. To establish the relevant violations of the Rules of Professional Conduct, ODC marked and moved into evidence the Joint Stipulations and Exhibits ODC-1 through ODC-51. (Id., 17-18, 149) In its case pursuant to D.Bd. Rules §89.151, ODC further marked Exhibits ODC-52 through ODC-59. (Id., 61, 149)

ODC also presented testimony from the three Complainants, Brian Turner, Michael Cifone, and Paul Kollhoff. These witnesses testified about the impact Respondent's conduct had on them and on their view of the

legal profession. (Id., 25-60) Respondent declined to cross-examine the witnesses.

Respondent testified on his own behalf, offering purported "context" regarding his actions in the three disciplinary matters. (Id., 63-77) He also expressed his "embarrass[ment]" and "shame" for his conduct. (Id., 77-78) Respondent further testified about mental health issues he claimed to have suffered for "the better part of 10 to 15 years" and the steps he is taking to address those issues. (Id., 79-91). Respondent presented no other witnesses and introduced no exhibits.

This brief is submitted pursuant to D.Bd. Rules, § 89.162.[3]

[3] The Chair extended the word limit for this brief to 10,000 words. (N.T. 161)

## II. PROPOSED FINDINGS OF FACT

### A. FACTS ESTABLISHING RESPONDENT'S MISCONDUCT.

1. ODC incorporates by reference the Joint Stipulations, which are attached as Exhibit A. As set forth in the Joint Stipulations, Respondent stipulated to the factual averments and rule violations set forth in the Petition.

### B. AGGRAVATING FACTORS.

**Respondent's Record of Discipline**

2. Respondent was admitted to practice law in Pennsylvania on December 6, 1991. (Petition, ¶2; N.T. 92)

3. By Order dated November 30, 2000, the Supreme Court placed Respondent on inactive status for failing to file his annual attorney registration statement and pay his annual fee. (ODC-52; N.T. 92-93)

4. By Order dated April 30, 2014, the Supreme Court reinstated Respondent to active status. (ODC-53; N.T. 93)

5. On September 27, 2019, Respondent received an informal admonition for violating RPC 1.1, 1.3, 1.4(a)(3), 1.4(a)(4), 1.4(b), and 1.15(b). (ODC-54, p. 593; N.T. 93-94) The conduct leading to that discipline included a lack of competent representation, a lack of diligence, a failure to respond to a client's emails and telephone messages, and a

failure to promptly refund an unearned fee. (ODC-54, pp. 594-95; N.T. 95-99)

6. The informal admonition did not even temporarily deter Respondent from committing additional misconduct, as reflected in the following:

a. Respondent was retained by Mr. Cifone on June 2, 2020—just nine months after he had received private discipline—and he promptly committed similar misconduct (Petition, ¶¶73-81, 84; N.T. 100-103);

b. Mr. Kollhoff retained Respondent to represent him in dissolving his company in or around February 2020, paid him to file a lawsuit in February 2021, and Respondent went on to again commit similar, and more egregious, misconduct (Petition, ¶¶96-211; N.T. 104-5); and

c. On September 17, 2021, Respondent made his misrepresentations to the trial court in responding to TEC's lawsuit. (Petition, ¶¶63-66)

7. On June 3, 2021, ODC served Respondent with a DB-7 Request for Statement of Respondent's Position related to his representation of Mr. Cifone; this similarly had no impact on his behavior, as he continued to neglect Mr. Kollhoff's case—which was ongoing—and make false claims about his supposed progress. (ODC-37; N.T. 106-8)

**The James Floor Covering, Inc. Lawsuit**

8. On March 7, 2022, another former client filed a Complaint against Respondent in the Court of Common Pleas of Bucks County. See

James Floor Covering, Inc. v. Robert Clewell *et al.*, No. 2022-01073. (ODC-59, pp. 639-86)

9. The Complaint alleged, inter alia, that:

   a. between December 2020 and October 2021, Respondent neglected obligations to complete legal work in multiple matters for which the former client had retained him;

   b. Respondent failed to communicate with his client; and

   c. Respondent failed to return his unearned legal fees. (Id.; N.T. 108-115)

10. On February 27, 2023, James Floor Covering, Inc., filed a Motion for Summary Judgment asserting, inter alia, that Respondent had failed to respond to two sets of Requests for Admissions. (ODC-59, pp. 696-744)

11. By Order dated May 25, 2023, the trial court granted the Motion for Summary Judgment. (ODC-59, p. 745; N.T. 110, 116)

**Respondent's Lack of Competence In Handling His Own Professional Matters.**

12. On November 8, 2021, Mr. Cifone filed a claim with the Lawyers Fund for Client Security ("LFCS") against Respondent. (Petition, ¶85)

13. The LFCS sent notices to Respondent on November 9, 2021, December 9, 2021, and April 19, 2022, seeking his position on Mr. Cifone's claim, but Respondent provided no response. (Petition, ¶¶86-91)

14. In his Answer to the Petition, Respondent explained his failure to respond to the LFCS by asserting that he did not open mail related to the matter and that even as of the date of his answer (May 1, 2023), much of his mail "remain[ed] unopened":

> I was allowing mail to pile up and was neglecting to even open up mail during this time-period. Much of the mail, including the mail from the Fund, remains unopened even as of this date as it has been neglected for such a long period that I assume deadlines have passed and there is very little I can do to cure any problems. This is particularly the case with any mail that appeared from the envelope to be related to a problem or issue that I was avoiding.

(ODC-51, pp. 579; N.T. 119-21)

15. In the action TEC filed against Respondent, Respondent's insurance carrier determined that he had not been covered at the time of the alleged malpractice; his counsel filed a motion to withdraw, informing the trial court that Respondent had not responded to their attempts to address the issue with him. (Petition, ¶67; ODC-30).

16. Respondent similarly testified that in the James Floor Covering, Inc., lawsuit he "avoided looking at" the complaint (although he, in fact, answered it), and that he still had mail he had not opened related to the case. (N.T. 110-111, 113-118)

**Respondent's Lack of Financial Responsibility**

17. On December 20, 2012, Respondent and his wife filed a petition for bankruptcy under Chapter 13 of the Bankruptcy Code. (ODC-50, p. 599)

18. By Order dated February 21, 2014, the bankruptcy court confirmed their plan. (Id., pp. 601, 607-09)

19. By Order dated November 21, 2016, the bankruptcy court dismissed the petition due to a failure to make the required payments. (Id., pp. 618-621)

20. Respondent has open judgments in the following matters arising in New Jersey:

a. a default judgment entered on June 4, 2014, in Stonegate Community v. Robert Clewell, No. BUR DC-001904-14, in which the amount demanded was $1,903 (ODC-56);

b. a judgment of $2,378.11, entered on January 21, 2021, in Division of Taxation v. Robert S. Clewell, No. DJ-007331-21 (ODC-57); and

c. a judgment of $1,093.40, entered on August 10, 2021, in LVNV Funding LLC v. Robert Clewell, No. BUR DC-006671-20 (ODC-58).

**Testimony of Complainants Brian Turner, Paul Kollhoff, and Michael Cifone**

21. Brian Turner credibly testified that:

a. he is the owner and President of TEC (N.T. 25);

b. when he retained Mr. Clewell, TEC had around 23 employees, but "it dwindled down to zero" during the course of the representation (Id., 25-26);

c. the money at issue in the CRD Case was an "extremely large amount" for him (Id., 27);

d. the money at issue in the Passi Case was also a significant amount for him (Id., 28-29);

e. Respondent not only neglected Mr. Turner during the representation, but treated him "almost like ... a nuisance" (Id., 29-30);

f. when TEC sued Respondent because of his neglect of the CRD Case, Mr. Turner "assumed that [Respondent] had malpractice insurance" (Id., 32);

g. after learning that Respondent did not have insurance applicable to the case, Mr. Turner discontinued TEC's lawsuit because he did not want to "go after [Respondent] personally" and risk harming Respondent's family (Id., 32-33); and

h. Respondent never apologized to Mr. Turner (Id., 33-34).

22. Mr. Turner provided tearful and compelling testimony regarding the impact Respondent's conduct had on him, including:

a. that he was harmed financially due not only to the loss of the liens securing his interests, but also because he was continually paying Respondent for work that "was never getting done" (Id., 34-35);

b. during the time Respondent was representing TEC, he needed to lay off "every single one of [TEC's] employees" and lost his house (Id., 35-36);

c. while Mr. Turner has since rebuilt his company, he will "never be the same" and is still "constantly scared that something is going to happen" to him (Id., 36-37);

d. he no longer has trust in lawyers or the legal system (Id. 37-42); and

e. he believes lawyers are only concerned with "understanding how much money they can get out of you ... rather than actually resolving or caring about a case that's actually being heard and doing what's best for the customer or the client." (Id., 39-40)

23. Paul Kollhoff credibly testified that:

a. he does "commercial HVAC" work (Id., 43);

b. working with Respondent was his first experience with a lawyer (Id.);

c. at the time he retained Respondent to represent him in dissolving Elite Mechanical LLC, Respondent was aware that Mr. Kollhoff was attempting to deal with issues related to his sobriety (Id., 44-46);

d. the matter he entrusted to Respondent was "[o]ne of the most important in [his] life" (Id., 46);

e. he was "dead broke" at the time he retained Respondent to sue his former partner and needed to borrow the money he paid from his parents (Id., 47-48);

f. Respondent never returned the fee he had paid (Id., 51);

g. he has a claim pending with the LFCS related to Respondent's actions (Id., 51); and

h. he needed to pay another attorney $2,500 to take on the representation for which he had previously paid Respondent. (Id., 50-51).[4]

[4] After retaining new counsel, Mr. Kollhoff eventually declined to pursue the lawsuit against his former partner. (Id.)

24. Michael Cifone credibly testified that:

a. he is an installer of ceramic tile who retained Respondent to sue a former customer who owed him $4,500 (Id., 54-56);

b. when he hired Respondent, it was the only time he had ever retained an attorney (Id., 54-55);

c. the $4,500 involved was a "lot of money" for him (Id., 56);

d. after Respondent stopped answering his calls, Mr. Cifone gave up on pursuing his case because he believed the time to file had passed (Id., 56-58);

e. his experience with Respondent adversely affected his view of the legal profession (Id., 58);

f. Respondent never apologized for his conduct or expressed any remorse (Id., 59-60);

g. Respondent never returned the fee he had paid (Id., 59); and

h. the LFCS paid him the $775 fee he paid to Respondent, but he has received no compensation for the $4,500 claim he retained Respondent to pursue (Id., 59).

## C. PROFERRED MITIGATION.

25. Respondent is entitled to mitigation based upon his cooperation with ODC and acknowledgment of wrongdoing, as reflected in his agreeing to the Joint Stipulations.

26. At the hearing, Respondent expressed remorse, testifying that he was "embarrassed" and "ashamed" about his actions, and that he was sorry for the "shame" he had brought on the legal profession. (N.T. 77-78)

27. Respondent apologized to Mr. Kollhoff for "betray[ing] [his] trust" (id., 53), but offered no apologies to Mr. Turner or to Mr. Cifone.

28. Respondent testified about his state of mind during the period of his misconduct, asserting that:

a. "for the better part of 10 to 15 years" he had been having issues with his mental health (Id., 83, 129);

b. the issues involved "feeling depression and anxiety" (Id., 84-85);

c. in November 2019, he had a heart attack and he has diabetes (Id., 84);

d. over the "last four to five years," he has felt "sadness [and] despair" on most days (Id., 85-86); and

e. he is subject to "[p]rocrastination beyond belief," has "piles of mail that are still not opened [because he does not] want to deal with it," and "avoid[s] approaching these situations" (Id., 88).

29. Respondent offered no expert witnesses, treatment records, or other evidence to corroborate his testimony regarding his mental health.[5]

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[5] Respondent claimed that during a "Zoom hour session" a counselor from "LifeStance" diagnosed him with a "major depressive disorder." (N.T. 79-80) The Chair properly excluded this inadmissible hearsay. See, e.g., Commonwealth v. DiGiacomo, 345 A.2d 605, 608 (Pa. 1975) (medical opinion reflected in hospital record not admissible where expert who allegedly offered the opinion was not available for cross-examination); Lira v. Albert Einstein Medical Center, 559 A.2d 550, 554-55 (Pa. Super. 1989) (testimony that examining physician had asked patient who had "butchered" her was inadmissible hearsay and ran afoul of the "rule which holds that expressions of medical opinions are generally inadmissible

*continued*

30. Respondent's testimony regarding his mental state is entitled to little or no weight as mitigation because he failed to satisfy his burden of proving, as required by Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989), and its progeny, that he had a psychiatric disorder that was a causal factor in the misconduct he committed.

31. Respondent testified about steps he had allegedly taken to address his mental health issues; he claimed that:

a. in the past his primary care providers had prescribed medications for him, but "[f]or many different reasons, multiple side effects and just the way [he] felt on them, none of them have worked" and he "went off them essentially in short order" (N.T. 83-84);

b. "[o]ver the last year or so ... [he] ha[s] begun to seek out professional help" (Id., 84);

c. he has "been seeing a counselor on an as-needed basis" (Id., 87);

d. he has had "a few sessions" with the counselor, but does not have "regular weekly appointments" and instead makes an appointment when he feels the need to do so (Id., 127-29);

e. he is able to "spill [his] guts" to the counselor, but she does not provide "much assistance in terms of how to cope with this or a strategy what to do" (Id., 87, 126-27);

f. he is "trying some white, some soft light therapy" (Id., 90); and

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unless the physician expressing the opinion is available for cross-examination").

g. he is taking vitamins and attempting to improve his diet. (Id., 91)

32. Respondent's testimony regarding his efforts to address his mental health issues is due little if any weight as mitigation because:

a. he offered no witnesses or medical records to corroborate his claims;

b. he claims to have suffered debilitating issues with his mental state for many years, but continued to represent clients and only purportedly sought out professional help "[o]ver the last year or so" (Id., 83-84); and

c. the steps he claims to be taking are minimal, limited to seeing a counselor on an "as-needed basis," engaging in "some white, some soft light therapy," taking vitamins, and improving his diet. (Id., 83-91)

33. Respondent testified that he has taken a position working "behind the scenes" at a law firm, but acknowledged that he is still representing "a few" of his own clients. (Id., 121-22)

34. During cross-examination, Respondent acknowledged that:

a. he has problems with "procrastination," "not getting things done," "avoiding difficult situations," "extreme mental and physical fatigue," "severe approach avoidance of anything confrontational," a "lack of mental focus and sharpness," and "mental paralysis" (Id., 124-25);

b. these problems are "not good characteristics of a good attorney (Id., 125); and

c. he is "not fit" as an attorney (Id., 114)

## III. PROPOSED CONCLUSIONS OF LAW

By Respondent's conduct set forth above, he violated the following Rules of Professional Conduct:

1. RPC 1.1 (3 counts), which states that 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 (3 counts), which states that a lawyer shall act with reasonable diligence and promptness in representing a client;

3. RPC 1.4(a)(2) (2 counts), which states that 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) (3 counts), which states that a lawyer shall keep the client reasonably informed about the status of the matter;

5. RPC 1.4(a)(4) (3 counts), which states that a lawyer shall promptly comply with reasonable requests for information;

6. RPC 1.4(c), which states that a lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least $100,000 per occurrence and $300,000 in the aggregate per year, subject to commercially reasonable deductibles,

retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client.

7. RPC 1.5(a) (2 counts), which states that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following:

(1) whether the fee is fixed or contingent;

(2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(3) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(4) the fee customarily charged in the locality for similar legal services;

(5) the amount involved and the results obtained;

(6) the time limitations imposed by the client or by the circumstances;

(7) the nature and length of the professional relationship with the client; and

(8) the experience, reputation, and ability of the lawyer or lawyers performing the services;

8. RPC 1.5(b), which states that 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;

9. RPC 1.15(e) (2 counts), which states that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting, and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

10. RPC 1.16(d) (3 counts), which states that 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;

11. RPC 3.3(a)(1), which states that 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;

12. RPC 8.4(c) (2 counts), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

13. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

## IV. ARGUMENT

### A. THE JOINT STIPULATIONS OF FACT AND LAW CONCLUSIVELY ESTABLISH THAT RESPONDENT COMMITTED THE CHARGED VIOLATIONS OF ETHICAL RULES IN THREE SEPARATE MATTERS.

ODC has the burden of proving ethical misconduct by a preponderance of evidence. Office of Disciplinary Counsel v. Quigley, 161 A.3d 800, 807 (Pa. 2017); Office of Disciplinary Counsel v. Preski, 134 A.3d 1027, 1031 (Pa. 2016). Here, Respondent stipulated to the factual allegations establishing his misconduct and to the violations of the Rules of Professional Conduct set forth in the Petition. The charged violations thus have been conclusively established. See Quigley, 161 A.3d at 807 (where Quigley stipulated to rule violations, only issue was extent of discipline).

### B. RESPONDENT'S MISCONDUCT, COUPLED WITH THE SUBSTANTIAL AGGRAVATING FACTORS, WARRANTS A SUSPENSION OF NOT LESS THAN TWO YEARS.

"The primary purpose of our system of lawyer discipline is to protect the public from unfit attorneys and to maintain the integrity of the legal system." Office of Disciplinary Counsel v. Keller, 506 A.2d 872, 875 (Pa. 1986) (citing cases). Another goal of the disciplinary system is to deter unethical conduct. Office of Disciplinary Counsel v. Czmus, 889 A.2d 1197, 1203 (Pa. 2005); In re Iulo, 766 A.2d 335, 339 (Pa. 2001).

There is no per se discipline for specific acts of misconduct. Rather, the discipline to be imposed is determined "on a case-by-case basis on the totality of the facts presented." Office of Disciplinary Counsel v. Cappuccio, 48 A.3d 1231, 1238 (Pa. 2012) Nonetheless, to "strive for consistency so that similar conduct 'is not punished in radically different ways,'" id. (citation omitted), precedent should be examined "for the purpose of measuring 'the respondent's conduct against other similar transgressions.'" Office of Disciplinary Counsel v. Clarence E. Allen, No. 190 DB 2020 (D.Bd. Rpt. 1/31/22, p. 33) (S.Ct. 4/14/22). The hearing committee must also consider any aggravating and mitigating factors. Id. Accord Preski, 134 A.3d at 1031.

In this case, Respondent is a recidivist offender who was undeterred by the imposition of private discipline and has committed a wide range of misconduct in three additional cases. His egregious misconduct, along with the substantial aggravating circumstances, warrants a suspension of at least two years.

**1. Precedent Supports The Imposition Of A Suspension Of At Least Two Years Where A Respondent Engages In Serial Neglect And Other Misconduct, And There Is Substantial Aggravation.**

The Supreme Court has "frequently imposed a minimum suspension of one year and one day on attorneys who engage in multiple, repeated

instances of client neglect." Office of Disciplinary Counsel v. Clarence E. Allen, supra, D.Bd. Rpt. p. 34. See, e.g., Office of Disciplinary Counsel v. Tangie Marie Boston, No. 99 DB 2018 (D.Bd. Rpt. 12/10/19) (S.Ct. Order 2/12/20) (***suspension of one year and one day*** where Boston committed misconduct in four matters, including neglect, lack of communication, and failure to return unearned fees; mitigation included no prior discipline, acceptance of responsibility, and recognition that she had committed sanctionable misconduct); Office of Disciplinary Counsel v. Howard Goldman, No. 157 DB 2003 (D.Bd. Rpt. 5/20/05) (S.Ct. Order 8/3/05) (***suspension of one year and one day*** where Goldman committed misconduct in four matters, including neglect, lack of communication, failure to disclose rate or basis of fee in writing to a client, and misrepresentations to two clients; aggravation included multiple lawsuits and open judgments; mitigation included no prior record, character witnesses, cooperation with ODC, remorse, and personal problems).

The greater discipline of a two-year suspension has been imposed in matters involving serial neglect where "either the scope and nature of the misconduct was more serious than those matters where a one year and one day suspension was imposed, or the balance of aggravating and mitigating factors required a more severe sanction." Office of Disciplinary

Counsel v. Clarence E. Allen, supra, D.Bd. Rpt. at p. 34 (citing authority and imposing ***two-year suspension*** for serial neglect and other misconduct). See, e.g., Office of Disciplinary Counsel v. James Harry Turner, No. 144 DB 2021 (S.Ct. Order 4/14/22) (***two-year suspension*** on consent where Turner neglected two matters, failed to properly communicate, failed to properly supervise a non-attorney employee, and failed to answer a DB-7 letter and the Petition for Discipline; aggravation included that Turner, who had practiced for forty years, had recently received an informal admonition; mitigation included acknowledgment of wrongdoing, cooperation with ODC, remorse, and agreement to repay a client's fee); Office of Disciplinary Counsel v. Michael Mayro, No. 144 DB 2001 (D.Bd. Rpt. 10/27/03) (S.Ct. Order 2/3/04) (***two-year suspension*** where Mayro neglected four client matters, failed to communicate, failed to disclose the rate or basis of his fee in writing to a client, and made misrepresentations; aggravation included two prior informal admonitions and two prior private reprimands).

Lengthier suspensions have also been imposed where warranted by the extent of the neglect and other misconduct, and the aggravating circumstances. See, e.g., Office of Disciplinary Counsel v. Robert A. Krug, No. 89 DB 2014 (S.Ct. Order 12/30/14) (***three-year suspension*** on

consent where Krug lacked diligence in four matters, failed to communicate with clients, failed to provide fee agreements, and made false statements in one matter;[6] aggravation included disciplinary record of a private reprimand and a public censure; mitigation included Krug's acknowledgment of wrongdoing, remorse, and understanding that he should be disciplined).

**2. A Suspension Of At Least Two Years Is Warranted In This Case Based Upon Respondent's Serial Neglect, Dishonest Behavior, Violations Of Other Ethical Rules, And The Substantial Aggravating Circumstances.**

Respondent engaged in misconduct over a prolonged period—from 2016 to 2022—including neglect in three client matters. He failed to diligently pursue two matters on TEC's behalf, resulting in mechanic's liens being stricken without opposition, and then abandoned his client entirely. (Petition, ¶¶29-60) The liens at issue were for $489,487.47 and $77,308.52 (Id., ¶4; ODC-4; ODC-13), amounts that were significant to TEC's business. (PFOF- 21.c., d.)

Mr. Kollhoff paid Respondent $575.00 to send a letter to his partner regarding the proposed dissolution of their business and to follow up on the

[6] The joint petition in Krug included a violation of RPC 8.4(c). Although the joint petition did not specify the acts of dishonesty at issue, the petition for discipline (which was attached to the joint petition) alleged that, in one matter, Krug made a false statement in a status report to the Register of Wills and a false statement to a client.

matter. (Petition, ¶¶97, 102). Respondent sent an email to Mr. Kollhoff's partner, but did no further work on the case. (Id., ¶¶ 99-112) Mr. Kollhoff later agreed to pay Respondent an additional $4,250.00 to file a lawsuit against the former partner. Respondent took the funds, but failed to do the promised work and ignored his client's requests for information; when he did reply, he lied about his supposed (but non-existent) progress. (Id., ¶¶122-211) Respondent's treatment of Mr. Kollhoff was particularly disturbing since, as Respondent was aware, his client was in a vulnerable state, as he was attempting to maintain his sobriety. (PFOF-23.c.) Mr. Kollhoff was also "dead broke" and needed to borrow the money he used to pay Respondent's fee. (PFOF-23.e.)

Respondent similarly neglected his work on behalf of Mr. Cifone, taking his fee and failing to file the case for which he was retained. (Petition, ¶¶73-81) Mr. Cifone confirmed that the amount at issue— $4,500 due from a customer—was "a lot of money" for him. (PFOF-24.a., c.)

Even assuming arguendo that Respondent's misconduct was limited to this serial neglect, a suspension of at least one year and one day would be warranted. Where a suspension of more than one year is imposed, a respondent is required to prove his or her fitness at a reinstatement hearing as a prerequisite to resuming the practice of law. See Pa.R.D.E. 218(c). In

this case, Respondent's serial neglect reveals that he is not currently fit to practice law; indeed, he openly acknowledged his lack of fitness at the hearing. (PFOF-34) Permitting him to resume practicing without requiring that he first prove that he has been rehabilitated and is fit to practice would pose an unreasonable danger to the public. See also Office of Disciplinary Counsel v. Tangie Marie Boston, supra, D.Bd. Rpt., pp. 28-29 (suspension of one year and one day warranted to "fulfill[ ] the predominant mission of the disciplinary system" by protecting the public from attorney who had committed serial neglect).

Respondent's misconduct, however, went well beyond his neglect of clients and warrants a lengthier suspension. Respondent failed to disclose to TEC at the outset of his representation that he lacked professional liability insurance. (Petition, ¶¶6-8) This was particularly serious because, upon learning that there was no coverage, Mr. Turner made the decision not to pursue TEC's lawsuit against Respondent. (PFOF-21.f., g.) Respondent also failed to disclose the terms of his representation to Mr. Kollhoff when he initiated his representation, doing so only a year later when his client retained him to file a lawsuit on his behalf. (Petition, ¶¶ 97-98, 122).

Despite having failed to even file the lawsuits for which Mr. Cifone and Mr. Kollhoff had paid him, Respondent kept the unearned fees. As the Board has noted, such breaches of professional ethics—retaining unearned fees for representation that was not given or even attempted— "cast[s] doubt on [a respondent's] integrity and fitness as a lawyer and demand[s] a disciplinary response." Office of Disciplinary Counsel v. Joshua M. Briskin, No. 72 DB 2021 (D.Bd. Rpt. 6/13/23, p. 11) (S.Ct. Order 8/4/23) (***suspension of three years*** where Briskin neglected two client matters, failed to communicate, failed to provide fee agreements, failed to refund unearned fees, and there were "significant aggravating factors").

Respondent's misconduct also included repeated acts of dishonesty, which strongly demonstrates his "unfitness to continue practicing law." Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730, 733 (Pa. 1981) (noting that "[t]ruth is the cornerstone of the judicial system" and that an attorney's dishonesty establishes unfitness). Respondent repeatedly lied to Mr. Kollhoff, over a period of months, as he tried to cover up his gross neglect of his client's case. (Petition, ¶¶125(c), 148-51, 159-62, 165-66, 168-69, 173-74, 183-84). And when TEC sued Respondent for his neglect of the CRD Case, he misrepresented facts to the Court of Common Pleas in an effort to escape liability. (Id., ¶¶63-66) When ODC sent Respondent

a DB-7 letter regarding Mr. Cifone's case, Respondent told ODC he would repay Mr. Cifone, but failed to do so. (Id., ¶¶ 83-84) Given Respondent's dishonesty in other circumstances where he faced the possibility of consequences for his conduct, it is reasonable to infer that he had no intent to make that payment, but rather was trying to avoid (or limit) the potential discipline for his actions.

In addition to Respondent's serial neglect, dishonesty, and other misconduct, there is also substantial aggravation in this case. Respondent was placed on inactive status in 2000, and was not reinstated until April 30, 2014. (PFOF-3, 4) Just over five years later, on September 27, 2019, he received an informal admonition for a lack of competent and diligent representation, a failure to properly communicate with a client, and a failure to return an unearned fee. (PFOF-5) Private discipline, however, proved ineffective, as he almost immediately committed similar—and more egregious—misconduct in the instant cases. (PFOF-6) That Respondent was unwilling (or unable) to even temporarily alter his behavior after receiving private discipline is a significant aggravating factor. See Office of Disciplinary Counsel v. Joshua M. Briskin, supra, D.Bd. Rpt. at 14 ("[p]recedent establishes that recidivist offenders receive more severe discipline"); Office of Disciplinary Counsel v. Clarence E. Allen, supra,

D.Bd. Rpt. at p. 32 (that Allen committed misconduct in multiple matters after having recently received an informal admonition for similar conduct "signifie[d] the need for a lengthy suspension, as [it] demonstrate[d] that Respondent ha[d] not heeded the warning of the private discipline and his continued practice pose[d] a danger to the public"). [7]

Respondent also recently lost a lawsuit in which another former client, James Floor Covering, Inc., claimed that he had failed to provide representation for which he had been paid, failed to communicate, and then retained his unearned fee. (PFOF-8 through 11) The alleged neglect occurred in 2021 and 2022, which was again shortly after he had received an informal admonition for similar conduct. (PFOF-9) Respondent's deficient representation of this additional client is further aggravation and supports ODC's recommendation of a multi-year suspension. See Office of Disciplinary Counsel v. Alex Hugues Pierre, No. 134 DB 2004 (D.Bd. Rpt. 12/21/05, pp. 11, 20) (S.Ct. Order 3/28/06) (that Pierre's conduct or competency had been placed at issue in legal malpractice cases which

[7] As this record reflects, while Respondent was admitted to practice in 1991, he was inactive for nearly fourteen years, beginning in November 2000. In just nine years since being reinstated, he has received private discipline in one case (PFOF-5), acknowledged misconduct in the instant three additional matters, and lost a malpractice case related to his neglect of another client. (PFOF- 8 through 11)

were open or resolved on terms unfavorable to him "aggravate[d] the instant misconduct").

Respondent's lack of fitness is similarly reflected in the incompetent manner in which he has handled his own professional affairs. Respondent failed to respond to multiple requests from the LFCS related to a complaint filed by Mr. Cifone; disturbingly, he attributed this failure to his ongoing inability to even open his mail if it "related to a problem that [he] was avoiding." (PFOF-12 through 14) And in TEC's lawsuit against him, Respondent failed to respond to his own counsel's attempts to contact him. (PFOF-15) Respondent, moreover, freely acknowledged that even when faced with a matter as serious as a lawsuit filed against him by a former client—James Floor Covering, Inc.—he could not bring himself to open mail about the case. (PFOF-16).

Respondent also has a history of fiscal irresponsibility, including a bankruptcy petition which was dismissed because he failed to make the required payments, as well as multiple additional unpaid judgments. (PFOF-17 through 20). That Respondent cannot properly handle his own financial affairs is further evidence that he is not fit to handle the affairs of clients. See, e.g., Office of Disciplinary Counsel v. Joseph Q. Mirarchi, No. 56 DB 2016 (D.Bd. Rpt. 5/21/18, p.68) (S.Ct. Order 3/18/19) (aggravating

circumstances included Mirarchi's "history of fiscal irresponsibility," as shown by, inter alia, civil cases seeking payment of debts and unsatisfied tax liens).

Significantly, Respondent's conduct had an adverse effect on the reputation of the legal profession. Mr. Turner provided compelling testimony that, after his dealings with Respondent, he no longer has any trust in lawyers or the legal system and believes that lawyers only care about "how much money they can get out of you." (PFOF-22.d., e.) Mr. Cifone similarly testified that his dealings with Respondent adversely affected his view of the legal profession. (PFOF-24.b., e.) This testimony provides further aggravation, as Respondent's conduct undermined one of the objectives of the disciplinary system, which is to "uphold respect for the legal system." Office of Disciplinary Counsel v. Anthony Dennis Jackson, No.145 DB 2007 (D.Bd. Rpt. 11/21/08, p.13) (S.Ct. Order 4/3/09). See also Keller, 506 A.2d at 878 (in determining discipline, focus "is directed to the impact of [the respondent's] conduct upon the system and its effect on the perception of that system by the society it serves"); Office of Disciplinary Counsel v. William D. Hobson, No. 154 DB 2019 & 31 DB 2020 (D.Bd Rpt. 11/24/21, p. 58) (S.Ct. Order 2/11/22) (complainant's testimony that Hobson's conduct negatively affected her impression of, and trust in, the

legal system was aggravating and "underscored the detrimental impact of [his] unprofessional conduct not only on his client, but on the reputation of the legal profession").

Respondent's misconduct and the relevant aggravating factors are at least as egregious as in other cases, cited above, in which discipline of two- and three-year suspensions have been imposed. For example, in James Henry Turner, supra, Turner neglected clients in two matters and similarly had a record of a prior informal admonition. While Turner failed to answer a DB-7 letter and the Petition for Discipline, which did not occur here, that additional misconduct and aggravation is more than offset by Respondent's dishonesty in the instant cases, his other misconduct, and the substantial additional aggravation.

The decision in Michael Mayro, supra, similarly supports the imposition of a suspension of at least two years. Mayro's misconduct included serial neglect, lack of communication, dishonesty, and failing to disclose the rate or basis of his fee. Respondent committed similar misconduct. While Mayro had more substantial prior discipline than Respondent—although also limited to private discipline—that additional aggravation is offset by the substantial additional aggravation in the instant case, including the judgment in the James Floor Covering, Inc., case,

Respondent's demonstrated unfitness in his own professional matters, his history of fiscal irresponsibility, and the impact his conduct had on his clients' view of the legal profession.

In Krug, the respondent similarly committed serial neglect of clients, made false statements (to a client and in a status report to the Register of Wills), failed to communicate with his clients, and failed to provide fee agreements to some clients. Respondent's misconduct in the instant cases was, if anything, more egregious as he repeatedly lied to Mr. Kollhoff, made misleading statements to a court in the lawsuit TEC filed against him, falsely promised to refund Mr. Cifone's fee, retained unearned fees in two matters, failed to disclose his lack of insurance to TEC, and failed to provide a fee agreement for his initial representation of Mr. Kollhoff. While Krug had a more substantial prior record—a private reprimand and a public censure—this is again offset by the different, but similarly weighty, aggravating circumstances in this case.

### 3. Respondent's Proposed Mitigation Is Due Only Limited Weight And Does Not Undermine The Need For A Multi-Year Suspension.

The evidence of mitigation in this case includes Respondent's cooperation with ODC and acknowledgment of wrongdoing, his claims of remorse, and his assertions regarding his alleged mental health issues.

The evidence is due only limited weight and does not undermine the need to impose a suspension of at least two years.

As an initial matter, Respondent's cooperation with ODC, acknowledgment of wrongdoing, and assertions of remorse do not distinguish this case from other matters, noted above, in which suspensions of two and three years were imposed. See Turner, supra, Joint Petition at pp. 11-12 (mitigation included cooperation with ODC, acknowledgment of wrongdoing, remorse, and agreement to repay a client's fee); Krug, supra, Joint Petition at pp. 5-6 (mitigation included acknowledgment of wrongdoing, remorse, and Krug's understanding that he needed to be disciplined).

There is, moreover, substantial reason to question the sincerity of Respondent's assertions. In his Answer to the Petition, Respondent repeatedly blamed Mr. and Mrs. Turner for the problems that arose during his representation, claiming, inter alia, that they "manipulat[ed]" and "exploited" him, tried to "obfuscate and avoid the payment" of his fees, and sent emails seeking information (to which he failed to respond) merely as "a pretense in order to build a case against [him]." (ODC-51, pp. 563-65, 572) He also baselessly denied violating multiple ethical rules—such as his failure to provide competent and diligent representation—in

representing TEC, despite the clear record to the contrary. (ODC-51, p. 578)[8] And even at the hearing, after having entered into the Joint Stipulations, he still attempted to minimize the extent of his misconduct in each of these cases. (N.T. 63-76)

Respondent, moreover, never apologized to Mr. Turner or Mr. Cifone. (PFOF-21.h., 24.f.) And while he apologized to Mr. Kollhoff at the hearing and earlier, the timing of the apologies suggests they were driven by Respondent's desire to avoid the consequences of his actions. Following months of ignoring Mr. Kollhoff's text messages, and lying to him about supposed "progress" on his case, Respondent told his client that he had been dealing with "serious family issues" and apologized for the delay in getting back to him. (Petition, ¶182). But rather than take corrective measures, he continued to ignore and lie to his client. Only after Mr. Kollhoff requested a refund and threatened to report him to the "bar

[8] Despite having missed a filing deadline in the CRD Case and having failed to even enter his appearance in the Passi Case, Respondent denied violating RPC 1.1 and 1.3 (requiring that he have provided competent and diligent representation). He similarly denied failing to disclose his lack of professional liability insurance, in writing, to TEC, as required by RPC 1.4(c), apparently believing that it was sufficient that the Turners purportedly could have found this information by scouring his website. (ODC-51, p.558) And despite making a misleading representation in his Answer to the Complaint when TEC sued him, he denied knowingly making any false statements to the court (RPC 3.3(a)(1)) or engaging in conduct involving dishonesty (RPC 8.4(c)).

association," did Respondent leave a voicemail and send a text putting forth his apologies. (Id., ¶¶ 194-205) And even then, Respondent followed his apology with an attempt to deter Mr. Kollhoff from filing a complaint against him, asserting that if his license were "put in jeopardy" he would "have a very difficult time earning money to reimburse [Mr. Kollhoff]." (Id., ¶205.e).[9] This record provides ample reason to conclude that Respondent's acknowledgment of wrongdoing and statements of remorse are, in whole or in part, driven by his fear of consequences, rather than true contrition for his misconduct and the harm he caused.

Respondent focused much of his testimony on claims that he has, for many years, suffered from debilitating mental health issues. (N.T. 79-91) This testimony, however, is due little or no weight because he failed to carry his burden of proof under Office of Disciplinary Counsel v. Braun, supra, and its progeny. In Braun, the Supreme Court held that a respondent's psychiatric condition could properly be deemed mitigating where it "was a causal factor in producing the several elements of his professional misconduct." 553 A.2d at 895-96. As later decisions construing Braun have held, for a psychiatric condition to be deemed

[9] Respondent, of course, still has not repaid any portion of Mr. Kollhoff's fees. (PFOF-23.f.)

mitigating, the respondent must prove, by clear and convincing evidence, that the illness was a causal factor in the misconduct. Office of Disciplinary Counsel v. Pozonsky, 537 A.3d 830, 845 (Pa. 2018); Quigley, 161 A.3d at 808; Office of Disciplinary Counsel v. Monsour, 701 A.2d 556, 559 (Pa. 1997).[10]

Here, Respondent failed to present any expert testimony regarding his mental state, relying instead upon his own self-serving account. This unsupported testimony was insufficient to establish that he even has an actual psychiatric illness. Moreover, as the Supreme Court has stressed, expert testimony is "critical" to establishing, as Braun requires, that there is a causal link between any alleged mental illness and a respondent's misconduct:

> Our Court has never held that lay opinions alone, are sufficient to establish that an addiction or mental illness was the cause of an attorney's misconduct. Indeed, recent decisions of our Court have emphasized the critical role of expert testimony in establishing such a causal link.

[10] To be clear and convincing, evidence must be "so clear, direct, weighty, and convincing as to enable the [trier of fact] to come to a clear conviction, without hesitancy, of the truth of the precise facts in issue." Lessner v. Rubinson, 592 A.2d 678, 681 (Pa. 1991) (citation omitted).

Pozonsky, 537 A.3d at 845 (citing authority). Consistent with Pozonsky, Respondent's lay testimony is insufficient to satisfy his burden of proving that causal link. Id., 845-46 (Pozonsky failed to meet his burden of proof in satisfying Braun based upon testimony from lay witnesses, as they were "manifestly unqualified to render ... a professional opinion" that his addiction caused him to commit the misconduct). See also Office of Disciplinary Counsel v. Daniel Dixon, No. 174 DB 2020 (D.Bd. Rpt. 12/8/21, p.37) (S.Ct. Order 3/4/22) (Dixon failed to satisfy Braun where he "did not put forth the expert testimony necessary to make th[e] determination" that a psychiatric disorder had caused his underlying misconduct).

Respondent also testified regarding the steps he is now allegedly taking to address his purported impairments. (PFOF-31) Again, he offered no witnesses or other evidence to corroborate his claims. In any event, even accepting Respondent's account, his testimony is far more ***aggravating*** than mitigating.

Respondent testified to feeling depressed and to having anxiety. (PFOF-28.b., N.T. 84) He claimed to have suffered from this condition for "the better part of 10 to 15 years," and that it has gotten worse over the "last four to five years" (PFOF-28.a., d.; N.T. 83, 85-86) He attributed a wide range of symptoms to this condition, including, inter alia,

"procrastination beyond belief," "severe approach avoidance of anything confrontational," and a "lack of mental focus and sharpness." (PFOF-28.e., 34.a.) Despite this purported debilitating impairment, he continued to practice, neglecting his clients' cases, harming their interests, and damaging their perception of the legal profession. That Respondent continued to practice for years when, by his own account, he was not capable of adequately protecting his clients' interests—and continues to do so even now (PFOF-33)—is a further dereliction of his obligation to protect his clients' interests. Keller, 506 A.2d at 878 (where respondent had mental health issues affecting his conduct, he "had the responsibility to protect his clients' interests ..., such as [by] associating with another counsel who could assist in handling these matters"). See also Office of Disciplinary Counsel v. William D. Hobson, supra, D.Bd. Rpt., pp. 61-62 (where Hobson had problems that had impacted his practice for years and he only sought treatment with a psychologist a short time before the disciplinary hearing, the Board was "not convinced ... that [he would] take the future steps necessary to ensure that his misconduct w[ould] not be repeated" and concluded that he "pose[d] a danger to the public").

In any event, even by Respondent's own account, he is taking only the most meager steps to address his mental health issues. He testified

that he has started seeing a counselor, but has had only "a few sessions." (PFOF-31.c., d.) He does not have regularly-scheduled appointments with the counselor; rather, he sees her only on an "as needed basis." (Id.) And even when he does see the counselor, she does not provide him with strategies for addressing the problems he has identified. (PFOF-31.e.)

The other steps Respondent claims to be taking, such as white or soft light therapy, taking vitamins, and watching his diet (PFOF-31.f., g.), are even less substantial. Having declined to provide any expert testimony, Respondent failed to establish that these are even appropriate treatments, let alone that they offer a reasonable likelihood of resolving his alleged issues. These limited, belated steps—assuming Respondent is even taking them—are clearly insufficient to rebut the overwhelming evidence demonstrating that Respondent is currently not to fit to practice law.

Based upon the aforementioned precedent, Respondent's extensive misconduct, and the aggravating and mitigating factors presented, ODC requests that the Committee recommend that Respondent be suspended for a period of ***at least two years***.

## V. CONCLUSION

Wherefore, ODC respectfully requests that the Committee find that Respondent violated the rules charged in the Petition and recommend to the Disciplinary Board that Respondent be suspended from the practice of law for a period of at least two years.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell
Chief Disciplinary Counsel

By_____
Jeffrey M. Krulik
Disciplinary Counsel

# Exhibit A

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

| | | |
|---|---|---|
| OFFICE OF DISCIPLINARY COUNSEL, Petitioner | : | No. 17 DB 2023 |
| v. | : | Atty. Reg. No. 63600 |
| ROBERT SCOTT CLEWELL, Respondent | : | (Philadelphia) |

**JOINT STIPULATIONS OF FACT AND LAW**

The following Joint Stipulations of Fact and Law are entered into between Petitioner, Office of Disciplinary Counsel ("ODC"), through Jeffrey M. Krulik, Disciplinary Counsel, and Respondent, Robert Scott Clewell, Esquire, and are admitted in this matter pursuant to § 89.131 of the Disciplinary Board Rules.

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and 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 provisions of said Rules of Disciplinary Enforcement.

2. Respondent, Robert Scott Clewell, was born in 1965, and was admitted to practice law in the Commonwealth on December 6, 1991. Respondent maintains his office at Clewell Law Firm, 1617

John F. Kennedy Boulevard, Suite 1140, Philadelphia, PA 19103, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

## CHARGES

**CHARGE I: THE TEC ELECTRICAL MATTER.**

3. With respect to his representation of TEC Electrical Contracting Inc., Respondent stipulates to the factual allegations set forth in paragraphs 3 through 71 of the Petition for Discipline ("Petition for Discipline"), filed March 16, 2023 (attached as Exhibit A).

4. By his conduct as set forth in paragraphs 3 through 71 of the Petition for Discipline, Respondent stipulates that he violated the following Rules of Professional Conduct: 1.1; 1.3; 1.4(a)(3); 1.4(a)(4); 1.4(c); 1.16(d); 3.3(a)(1); 8.4(c); and 8.4(d).

**CHARGE II: THE MICHAEL CIFONE MATTER.**

5. With respect to his representation of Michael Cifone, Respondent stipulates to the factual allegations set forth in paragraphs 73 through 92 of the Petition for Discipline.

6. By his conduct as set forth in paragraphs 73 through 92 of the Petition for Discipline, Respondent stipulates that he violated the following Rules of Professional Conduct: 1.1; 1.3; 1.4(a)(2); 1.4(a)(3); 1.4(a)(4); 1.5(a); 1.15(e); and 1.16(d).

**CHARGE III: THE PAUL KOLLHOFF MATTER.**

7. With respect to his representation of Paul Kollhoff, Respondent stipulates to the factual allegations set forth in paragraphs 94 through 211 of the Petition for Discipline.

8. By his conduct as set forth in paragraphs 94 through 211 of the Petition for Discipline, Respondent stipulates that he violated the following Rules of Professional Conduct: 1.1; 1.3; 1.4(a)(2); 1.4(a)(3); 1.4(a)(4); 1.5(a); 1.5(b); 1.15(e); 1.16(d); and 8.4(c).

**HEARING PURSUANT TO D.BD. RULES §89.151.**

9. By these stipulations, Petitioner and Respondent further acknowledge that a hearing should be held pursuant to D.Bd. Rules § 89.151 to present evidence relevant on the issue of the type of discipline to be imposed.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell
Chief Disciplinary Counsel

9/14/2023
Date

By _____
Jeffrey M. Krulik, Esquire
Disciplinary Counsel

Sept. 14, 2023
Date

By _____
Robert Scott Clewell, Esquire
Respondent

# Exhibit A

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

| | | |
|---|---|---|
| OFFICE OF DISCIPLINARY COUNSEL, | : | |
| Petitioner | : | |
| | : | No. 17 DB 2023 |
| v. | : | |
| | : | Atty. Reg. No. 63600 |
| ROBERT SCOTT CLEWELL, | : | |
| Respondent | : | (Philadelphia) |

PETITION FOR DISCIPLINE

**NOTICE TO PLEAD**

To: Robert Scott Clewell, Esquire

Rule 208(b)(3) of the Pennsylvania Rules of Disciplinary Enforcement provides: Within twenty (20) days of the service of a petition for discipline, the respondent-attorney shall serve an answer upon Disciplinary Counsel and file the original thereof with the Disciplinary Board. Any factual allegation that is not timely answered shall be deemed admitted.

Rule 208(b)(4) provides: Following the service of the answer, if there are any issues raised by the pleadings or if the respondent-attorney requests the opportunity to be heard in mitigation, the matter shall be assigned to a hearing committee or a special master. No evidence with respect to factual allegations of the complaint that have been deemed or expressly admitted may be presented at any hearing on the matter, absent good cause shown.

* * * * * * * * *

A copy of your answer should be served upon Disciplinary Counsel at the District I Office of Disciplinary Counsel, 1601 Market Street, Suite 3320, Philadelphia, PA 19103, and the original and one conformed copy filed with the Disciplinary Board Executive Office, Pennsylvania Judicial Center, 601 Commonwealth Avenue, Ste. 5600, PO Box 62625, Harrisburg, PA 17106-2625 [Disciplinary Board Rule §89.3(a)(1)] or electronically by accessing the electronic filing system available on the Disciplinary Board website.

Further, pursuant to Disciplinary Board Rule §85.13, your answer, if it contains an averment of fact not appearing of record or a denial of fact, shall contain or be accompanied by a verified-statement signed by you that the averment or denial is true based upon your personal knowledge or information and belief.

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

| | | |
|---|---|---|
| OFFICE OF DISCIPLINARY COUNSEL, Petitioner | : | |
| | : | No. 17 DB 2023 |
| v. | : | |
| | : | Atty. Reg. No. 63600 |
| ROBERT SCOTT CLEWELL, Respondent | : | (Philadelphia) |

PETITION FOR DISCIPLINE

Petitioner, Office of Disciplinary Counsel, by Thomas J. Farrell, Esquire, Chief Disciplinary Counsel, and by Jeffrey M. Krulik, Esquire, Disciplinary Counsel, files the within Petition for Discipline and charges Respondent, Robert Scott Clewell, Esquire, with professional misconduct in violation of the Rules of Professional Conduct as follows:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and 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 said Rules of Disciplinary Enforcement.

2. Respondent, Robert Scott Clewell, Esquire, was born in 1965, and was admitted to practice law in the Commonwealth on December 6, 1991. He maintains his office at Clewell Law Firm, 1617 John F. Kennedy Boulevard, Suite 1140, Philadelphia, PA 19103, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

**CHARGE I: THE TEC ELECTRIC MATTER**

3. On September 8, 2015, TEC Electrical Contracting, Inc. ("TEC") filed a Mechanic's Lien Claim in the Court of Common Pleas for Montgomery County, PA, in a case captioned TEC Electrical Contracting, Inc. v. 1133 Black Rock Road LLC *et al.*, No. 2015-24536 ("CRD Case").

4. In the Mechanic's Lien Claim in the CRD Case, TEC asserted that the amount due and unpaid was $489,487.47.

5. By email dated October 26, 2016, Respondent:

a. informed TEC that he had conducted a "cursory review" of "two pending mechanic's lien litigation cases" in which TEC was involved;

b. set forth his proposed "strategy" for the cases; and

c. provided TEC with a "Flat Fee Pricing Proposal," setting forth three possible options for representing TEC.

6. In October 2016, Respondent did not have professional liability insurance.

7. Respondent did not acquire professional liability insurance until some point after June 2, 2019.

8. Respondent failed to inform TEC that he did not have professional liability insurance.

9. On or about November 1, 2016, TEC retained Respondent on a flat fee basis for representation in multiple matters.

10. Shortly after TEC retained Respondent, the terms of the agreement were expanded to include representation in the CRD Case.

11. On December 20, 2016:

a. Respondent entered his appearance as TEC's counsel in the CRD Case; and

b. TEC's prior counsel withdrew from the CRD Case.

12. On September 11, 2017, the defendants in the CRD Case filed a Motion of 1133 Black Road, LLC, C. Raymond Davis and Sons, and Liberty Mutual Insurance to Strike Mechanics' Lien and Release of Lien Discharge Bond ("First Motion to Strike Mechanic's Lien").

13. On October 16, 2017, Respondent filed a response to the First Motion to Strike Mechanic's Lien in the CRD Case.

14. By Order dated January 26, 2018, and filed on January 29, 2018, the trial court in the CRD Case scheduled argument for February 5, 2018, with respect to the First Motion to Strike the Mechanic's Lien.

15. On February 5, 2018, the trial court held a hearing in the CRD Case with respect to the First Motion to Strike Mechanic's Lien.

16. On February 12, 2018, Respondent filed a Petition to Withdraw as Counsel for TEC Electrical Contracting, Inc. in the CRD Case, claiming, inter alia, that TEC had failed to make payments toward his fee and that he had a "strained relationship" with his client.

17. By Order dated March 5, 2018, and filed on March 8, 2018, the trial court denied the First Motion to Strike Mechanic's Lien in the CRD Case.

18. By Order dated March 20, 2018, and filed on March 22, 2018, the trial court struck Respondent's Petition to Withdraw as Counsel in the CRD Case, without prejudice, because the matter had appeared on the Rule Returnable List without a proper Certificate of Service having been entered.

19. Respondent did not file a new petition to withdraw as counsel in the CRD Case, and remained as TEC's counsel.

20. In an email dated May 14, 2018, addressed to Brian Turner and Angie Turner of TEC, Respondent set forth the status of the cases in which he represented TEC, including, inter alia:

a. in the CRD Case, he was scheduled to take a deposition the next week;

b. in a matter involving Penn Asian Senior Services ("Passi Matter"), Respondent would draft and serve a new "Notice of Intent";

c. the Notice of Intent in the Passi Matter needed to be filed by June 30, 2018, and Respondent expected to have it "sent off by the end of th[e] week."

21. In Respondent's May 14, 2018 email, he also set forth the terms under which he would continue to represent TEC in the CRD Case and the Passi Matter, including:

a. he would agree to represent TEC "to the completion of [the] CRD matter for a flat-rate fee of $3,200," which would include "all representation up to this point, and all

future representation through to either settlement or judgment";

b. the flat fee for the CRD Case would be "due now, but there [would] be no additional invoices or billings" and TEC would be "paid in full";

c. he would agree to represent TEC in the Passi Matter for a flat fee of $850.00, which would "include representation up to and including the filing [of] the actual Mechanic's Lien";

d. if he needed to file a complaint to foreclose on the lien in the Passi Matter, he would "need to provide a proposal on an additional flat fee"; and

e. if he were retained to provide representation in both cases, he would reduce the "full flat fee to a total of $3,750, which is due up front."

22. During an exchange of additional emails on May 15 and 16, 2018, Brian and Angie Turner of TEC raised concerns about the progress of the CRD Case, and Angie Turner told Respondent that TEC would make a payment on the morning of a

scheduled deposition, so that TEC would "feel comfortable that this is moving forward."

23. In an email dated May 16, 2018, Respondent revised the terms for his continued representation of TEC to include:

a. TEC would pay Respondent $1,925.00, due the morning of a deposition scheduled for May 24, 2018;

b. TEC would make a second payment of $1,925.00, due upon receipt of an invoice to be sent on June 15, 2018; and

c. the "total flat-fee amount" would "cover the CRD case thru to its conclusion and anything involving the PASSI matter up to and including the filing of a ... mechanics lien claim."

24. TEC agreed to the terms Respondent set forth in his May 16, 2018 email.

25. No depositions were ever taken in the CRD Case, and TEC did not make the payments on the schedule provided.

26. As discussed, infra, TEC later paid Respondent his fee for representation in the CRD Case and the Passi Matter, and Respondent agreed to continue the representation.

27. On June 27, 2018, Brian Turner filed a Mechanic's Lien Claim on behalf of TEC against Penn Asian Senior Services

in the Passi Matter; the case was captioned TEC Electrical Contracting v. Penn Asian Senior, No. 1806M0012 ("Passi Case").

28. The Mechanic's Lien Claim Mr. Turner filed in the Passi Case was deficient in that:

a. the caption incorrectly identified the record owner of the property as "Penn Senior Asian," when the actual owner was "Penn Asian Senior Services"; and

b. it did not state when TEC had provided formal written notice of its intention to file a claim to the owner of the property.

29. On July 20, 2018, the defendants in the CRD Case:

a. filed a Motion of 1133 Black Road, LLC, C. Raymond Davis and Sons, Inc. and Liberty Mutual Insurance to Strike Mechanics' Lien and Release Lien Discharge Bond ("Second Motion to Strike Mechanic's Lien"); and

b. served a copy of the Second Motion to Strike Mechanic's Lien on Respondent.

30. Respondent received the Second Motion to Strike on July 20, 2018.

31. By email dated July 31, 2018, Angie Turner, inter alia:

a. told Respondent that TEC would be paying $500 toward its balance by Friday, August 3, 2018; and

b. told Respondent that TEC would still owe $2,150 and would pay that shortly.

32. By email to Ms. Turner, dated July 31, 2018, Respondent, inter alia, offered to send an invoice for the $500 payment.

33. By email dated August 2, 2018, Ms. Turner:

a. sought information from Respondent regarding the status of the CRD Case, including, inter alia, whether there were new dates for a deposition; and

b. told Respondent that she would be making a payment that day, but "need[ed] to see things moving."

34. On August 9, 2018, Penn Asian Senior Services filed preliminary objections in the Passi Case.

35. Respondent has provided a copy of an email which, according to him, he sent to Brian and Angie Turner of TEC, on August 28, 2018; in the email, Respondent:

a. wrote that he was "terminating representation [of TEC] in all legal matters effective immediately";

b. recommended that TEC seek out advice of new counsel;

c. noted that TEC would "lose important legal rights" if it did not meet certain deadlines; and

d. suggested that the "most immediate concern [was] the Passi matter, in which TEC could lose important legal rights if it "d[id] not file an answer or get an extension by August 30th, 2018."

36. Despite allegedly having sent TEC the letter terminating his representation, Respondent did not withdraw as TEC's counsel in the CRD Case.

37. On August 29, 2018, a Rule to Show Cause was issued in the CRD Case directing TEC to "show cause why [the defendants were] not entitled to the relief requested [in the Second Motion to Strike Mechanic's Lien] by filing an answer in the form of a written response at the Office of the Prothonotary on or before the 1st day of October 2018."

38. On August 30, 2018, counsel for the defendants in the CRD Case served the Rule to Show Cause on Respondent.

39. Respondent received the Rule to Show Cause on August 30, 2018.

40. By email dated September 11, 2018, Angie Turner asked Respondent to provide "the remainder of our agreed upon bill to ... close out the CRD and Passi cases."

41. By emails dated September 11 and 12, 2018, Respondent told Ms. Turner, inter alia, that:

a. he "agree[d] to proceed with representation on both cases [the CRD Case and the Passi Case] as long as [the bill was] paid";

b. he would send her an invoice for the balance due; and

c. the balance due was $1,950.00.

42. By email dated September 18, 2018, Respondent requested information about the Passi Case from Ms. Turner, and told her that he "would like to get caught up this week and mov[e] forward with both Passi and CRD."

43. By a text message dated September 19, 2018, Brian Turner of TEC:

a. asked Respondent to send him the balance he owed, and said he would pay it that day; and

b. told Respondent that he needed to "close out the CRD case."

44. By a text message dated September 19, 2018, Respondent:

a. informed Mr. Turner that he would "move forward as aggressively as possible on CRD";

b. asked Mr. Turner to let him know the status of the Passi Case, so that he would "know what I need to do with that case"; and

c. told Mr. Turner that he would send him the invoice and would "follow up with [him] by end of th[e] week."

45. On September 19, 2018, TEC paid Respondent the additional $1,950.00 for his representation in the CRD Case and the Passi Case; this was the total amount outstanding toward his "flat fee" for the cases.

46. Despite having agreed to provide representation in the Passi Case, Respondent never reviewed the Mechanic's Lien Claim Brian Turner had filed or filed anything on TEC's behalf in the case.

47. Respondent failed to file an answer to the Second Motion to Strike Mechanic's Lien in the CRD Case by the

October 1, 2018 due date or appear at a rule returnable hearing on that date.

48. By Order dated October 2, 2018, the trial court in the Passi Case sustained the defendant's Preliminary Objections, and struck TEC's mechanic's lien.

49. By Order dated October 3, 2018, and filed on October 10, 2018, the trial court in the CRD Case, having received no response to the Second Motion to Strike Mechanic's Lien:

a. struck TEC's Mechanic's Lien Claim;

b. released a Lien Discharge Bond; and

c. directed TEC to pay CRD attorney's fees in the amount of $1,000 incurred in presenting the motion.

50. On October 21, 2018, Respondent filed in the CRD Case a Motion of TEC Electrical Contracting, Inc., for Reconsideration and to Vacate and Open Judgment In Favor of 1133 Black Rock Road, LLC, C. Raymond Davis and Sons, Inc. and Liberty Mutual Insurance, Striking Mechanic's Lien and Release of Lien Discharge Bond ("Motion for Reconsideration").

51. In the Motion for Reconsideration, Respondent:

a. acknowledged that he had not "appeared at the hearing or filed a written answer by the rule returnable date of October 1, 2018";

b. acknowledged that he had received a copy of the Second Motion to Strike Mechanic's Lien from defendants' counsel on July 20, 2018;

c. told the court that, on August 28, 2018, he had notified TEC by email that he was terminating representation of TEC, that TEC should obtain replacement counsel for all pending legal matters, and that TEC would lose important rights if deadlines were missed;

d. acknowledged that, on August 30, 2018, he had received the notice of a Rule Returnable requiring a response by October 1, 2018, and claimed that he had intended to file a Petition to Withdraw as Counsel;

e. stated that he had never entered the Rule Returnable date on his calendar;

f. claimed that a representative of TEC, Angie Turner, was "responsible for monitoring deadlines and tasks associated with th[e] lawsuit";

g. advised the court that, on September 18, 2018, Ms. Turner had notified him that "she no

longer would have any responsibilities regarding TEC";

h. asserted that "[d]ue to the confusion," he had "missed the Rule Return date and did not file an answer or otherwise communicate with the Court or opposing Counsel";

i. suggested that having obtained a favorable ruling on the defendants' prior "identical [m]otion," TEC would have had an "excellent and compelling argument on the merits in defending the [instant motion to strike the mechanic's lien]"; and

j. asked the court to reconsider its ruling, open the judgment, and "reinstate the Mechanic's Lien Complaint and Lien Bond."

52. On November 6, 2018, the defendants in the CRD Case filed a response in opposition to Respondent's Motion for Reconsideration.

53. By Order dated November 19, 2018, and filed on November 20, 2018, the trial court in the CRD Case denied Respondent's Motion for Reconsideration.

54. The trial court's November 19, 2018 Order effectively ended the CRD Case in that court.

55. Brian Turner reviewed the docket for the CRD Case and discovered on his own that the trial court had denied the motion for reconsideration.

56. By a text message dated November 20, 2018, Mr. Turner told Respondent that he had heard that the trial court in the CRD Case had denied the Motion for Reconsideration.

57. Respondent failed to:

a. respond to Mr. Turner's text message;

b. explain to TEC the significance of this ruling; or

c. discuss possible additional steps with his client regarding the CRD Case.

58. Between February 20, 2019 and April 22, 2019, Mr. Turner sent Respondent fourteen emails seeking information regarding the status of TEC's cases.

59. Respondent failed to reply to Mr. Turner's emails.

60. Respondent failed to communicate with TEC again until TEC reached out to him in or about March 2020, at which time Respondent informed TEC that the CRD Case was over.

61. On September 29, 2020, TEC commenced a civil action against Respondent in the Court of Common Pleas for Philadelphia by filing a Praecipe to Issue Writ of Summons; the case was captioned TEC Electrical Contracting, Inc. v.

Robert S. Clewell, Esquire, and Clewell Law Firm, September Term 2020, No. 01785 ("Malpractice Case").

62. On August 18, 2021, TEC filed a Complaint in Civil Action in the Malpractice Case, alleging that Respondent and Clewell Law Firm had committed legal malpractice in the CRD Case by:

a. failing to file a written response to the Second Motion to Strike Mechanic's Lien by the deadline of October 1, 2018; and

b. failing to appear at the Rule Returnable hearing on October 1, 2018.

63. On September 17, 2021, Respondent filed, through counsel, Defendants' Answer and New Matter to Plaintiff TEC Electrical Contracting, Inc.'s Complaint ("Malpractice Answer").

64. Respondent signed a Verification, filed with the Malpractice Answer, in which he represented that he:

a. had "read the foregoing Answer and New Matter and the averments of fact made therein are true and correct based on knowledge, information, and/or belief"; and

b. understood that "false statements herein are made subject to penalty of 18 Pa.C.S. § 4904

relating to unsworn falsifications to authorities."

65. The Malpractice Answer asserted, inter alia, that:

a. "Defendants [Respondent and Clewell Law Firm] advised Plaintiff prior to the October 1, 2018 response and hearing date that they were terminating their representation of Plaintiff";

b. "Defendants also told Plaintiff that it should retain replacement counsel for all pending legal matters and if it did not, it could lose important rights if deadlines were missed"; and

c. as a result of the purported termination of Respondent's representation of TEC, "Defendants were under no duty to file a response or attend the scheduled hearing."

66. Respondent's assertion that he had advised TEC prior to October 1, 2018, that he and Clewell Law Firm were terminating representation was false or, at the least, materially misleading, because, as Respondent knew:

a. by September 19, 2018, TEC had paid Respondent in full for representation in the CRD Case; and

b. despite any earlier communications regarding the termination of Respondent's representation, he remained as TEC's counsel in the CRD Case as of October 1, 2018.

67. On November 15, 2021, Respondent's counsel filed a motion to withdraw their appearance, noting, inter alia, that:

a. Respondent's professional liability insurance carrier had determined that he was not covered by their insurance policy for the time period when TEC alleged that the legal malpractice had occurred; and

b. Respondent had not responded to counsel's attempts to discuss the issues of coverage and substitution of counsel.

68. On January 27, 2022, Respondent's counsel was granted leave to withdraw from the Malpractice Case.

69. On April 19, 2022, TEC's counsel filed a motion to withdraw from the Malpractice Case.

70. On February 8, 2023, TEC's counsel was granted leave to withdraw from the Malpractice Case.

71. As of the filing of this petition, the Malpractice Case is still ongoing.

72. By his conduct as alleged in Paragraphs 3 through 71, above, Respondent violated the following Rules of Professional Conduct:

a. RPC 1.1, which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;

b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;

c. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;

d. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;

e. RPC 1.4(c), which states that a lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least $100,000 per occurrence and $300,000 in the aggregate per year, subject to commercially reasonable deductibles, retention or co-insurance, and shall inform existing clients in writing at any time the lawyer's professional liability insurance drops below either of those amounts or the lawyer's professional liability insurance is terminated. A lawyer shall maintain a record of these disclosures for six years after the termination of the representation of a client;

f. RPC 1.16(d), which states that 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;

g. RPC 3.3(a)(1), which states that 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;

h. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

i. RPC 8.4(d), which states that it is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

**CHARGE II: THE MICHAEL CIFONE MATTER**

73. On June 2, 2020, Michael Cifone spoke with Respondent regarding representation with respect to a dispute between he and one of his customers; Mr. Cifone alleged that the customer, Daniel Phillips, had failed to make a $4,500 payment for work Mr. Cifone had performed as a tile contractor.

74. In an email dated June 2, 2020, Respondent told Mr. Cifone that:

a. he believed Mr. Cifone had an "excellent case";

b. Mr. Cifone had "the option" of filing a case in the "local magistrate court," which would require a "small filing fee";

c. he would agree to represent Mr. Cifone for a "flat rate fee of $775"; and

d. the representation would include "drafting and filing the complaint and representing [Mr. Cifone] at the hearing."

75. By email dated June 2, 2020, Mr. Cifone agreed to the representation.

76. By email dated June 3, 2020, Respondent sent Mr. Cifone an invoice reiterating that:

a. he would charge a "flat fee" of $775.00, which was "Due upon Receipt";

b. the representation would be for a "Case Involving Daniel Phillips at District Court Proceeding"; and

c. the fee did not include an appeal.

77. On June 3, 2020, Mr. Cifone paid the $775 to Respondent.

78. By email dated August 4, 2020, Respondent advised Mr. Cifone that he would:

a. file the case "shortly" in District Court in Chester County;

b. send Mr. Cifone an invoice for $196.50 to cover the filing fee and the cost of service by certified mail; and

c. "notify [Mr. Cifone] of the hearing date once it is set."

79. After sending Mr. Cifone the August 4, 2020 email, Respondent:

a. failed to file a complaint on Mr. Cifone's behalf; or

b. have any further communication with Mr. Cifone.

80. After August 4, 2020, Mr. Cifone repeatedly called Respondent and left messages seeking information about his case.

81. Respondent failed to return Mr. Cifone's calls.

82. On June 3, 2021, ODC served on Respondent a DB-7 Request for Statement of Respondent's Position ("Cifone DB-7 Letter") with respect to his representation of Mr. Cifone.

83. On August 4, 2021, Respondent served his response to the Cifone DB-7 Letter on ODC; in the response, he acknowledged that he had failed to "follow through on drafting and filing Mr. Cifone's matter" and stated that was "going to refund the entire fee of $775."

84. Respondent failed to refund Mr. Cifone's $775 fee.

85. On November 8, 2021, Mr. Cifone filed a Statement of Claim against Respondent with the Pennsylvania Lawyers Fund for Client Security ("Fund").

86. By letter dated November 9, 2021, the Fund:

a. provided Respondent with a copy of Mr. Cifone's Statement of Claim;

b. informed Respondent that he was entitled to respond to Mr. Cifone's claim and to request a hearing; and

c. informed Respondent that if the Fund did not hear from him within thirty days, the matter would "proceed accordingly."

87. Respondent did not file a response with the Fund.

88. By letter dated December 9, 2021, the Fund informed Respondent that if he intended to defend against Mr. Cifone's claims or request a hearing, he was required to do so "immediately."

89. Respondent did not file a response with the Fund.

90. By letter dated April 19, 2022, the Fund informed Respondent that Mr. Cifone's claim was scheduled to be reviewed by the Board of the Fund at its June 10, 2022 meeting, and that he should forward within fourteen days any additional information he would like the Fund's Board to consider.

91. Respondent did not provide the Fund with any additional information.

92. The Fund awarded Mr. Cifone $775.00.

93. By his conduct as alleged in Paragraphs 73 through 92, above, Respondent violated the following Rules of Professional Conduct:

a. RPC 1.1, which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;

b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;

c. RPC 1.4(a)(2), which states that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;

d. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;

e. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;

f. RPC 1.5(a), which states that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following:

(1) whether the fee is fixed or contingent;

(2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(3) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(4) the fee customarily charged in the locality for similar legal services;

(5) the amount involved and the results obtained;

(6) the time limitations imposed by the client or by the circumstances;

(7) the nature and length of the professional relationship with the client; and

(8) the experience, reputation, and ability of the lawyer or lawyers performing the services.

g. RPC 1.15(e), which states that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided,

however, that the delivery, accounting, and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

h. RPC 1.16(d), which states that 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.

**CHARGE III: PAUL KOLLHOFF MATTER**

94. In 2019, Paul Kollhoff retained Respondent to review a contract regarding a company he was forming with Anthony Marano; the company was called Elite Mechanical, LLC ("Elite").

95. Respondent had not previously represented Mr. Kollhoff.

96. In or around February 2020, Mr. Kollhoff approached Respondent about further representation; specifically, Mr. Kollhoff wanted to withdraw as a member of Elite and divide up the assets of the business.

97. Respondent told Mr. Kollhoff that, for a fee of $575, he would send a letter to Mr. Marano regarding the matter and follow up with him.

98. Respondent did not communicate the basis or rate of his fee for this additional work to Mr. Kollhoff, in writing, before or within a reasonable time after commencing the additional representation.

99. On February 13, 2020, Respondent sent Mr. Marano an email informing him, inter alia, that:

a. he was representing Mr. Kollhoff in connection with the status of his membership interest in Elite, as well as his work status moving forward;

b. Mr. Kollhoff would no longer be reporting for work due to a personal matter;

c. Mr. Kollhoff needed to withdraw as a member of Elite;

d. Mr. Kollhoff hoped that the members of Elite would be able to reach an agreement regarding his withdrawal from Elite and the distribution of assets; and

e. all communications should be directed to Respondent's attention, rather than to Mr. Kollhoff.

100. By email dated February 13, 2020, Mr. Marano informed Respondent that he would be in touch the next week.

101. Respondent forwarded copies of his email and Mr. Marano's response to Mr. Kollhoff.

102. On February 19, 2020, Mr. Kollhoff paid Respondent $575.00 for his representation.

103. By letter dated February 27, 2020, Mr. Marano's attorney, Thomas A. Musi, Jr., Esquire:

a. informed Respondent that, effective February 14, 2020, Mr. Marano had agreed that Mr. Kollhoff was no longer a member of Elite;

b. criticized the quality of Mr. Kollhoff's work;

c. claimed that Mr. Marano had needed to replace work Mr. Kollhoff had done "at a great expense"; and

d. informed Respondent that Elite was "defunct" and that its operations had been shut down effective February 14, 2020.

104. Between March 23, 2020 and June 8, 2020, Mr. Kollhoff sent Respondent seven text messages seeking information about the case.

105. Respondent failed to respond to Mr. Kollhoff's text messages.

106. On June 24, 2020, Respondent sent Mr. Kollhoff a text message telling him that he would "call [him] back."

107. Respondent failed to call Mr. Kollhoff.

108. On July 9, 2020, Mr. Kollhoff sent Respondent text messages requesting that Respondent call him, and asserting that he would "be driving to your office pretty soon."

109. By a text message dated July 9, 2020, Respondent told Mr. Kollhoff that he:

a. had not been in his office "for a couple of weeks"; and

b. would call him the next week and "get caught up."

110. Respondent failed to call Mr. Kollhoff.

111. By an exchange of text messages on July 15 and 16, 2020, Respondent informed Mr. Kollhoff, inter alia, that:

a. Mr. Marano was "resistant to settlement";

b. Respondent would "follow up" with Mr. Marano and would "probably threaten a lawsuit to get him to be practical";

c. Mr. Marano "took a hard line initially" and his lawyer claimed that Mr. Kollhoff would actually owe him money;

d. Respondent would "reach out to give him [an] ultimatum on settlement and see if that works"; and

e. Respondent would "get back to [Mr. Kollhoff]."

112. Respondent did not:

a. "follow up" with Mr. Marano or his counsel;

b. threaten a lawsuit; or

c. "get back" to Mr. Kollhoff.

113. Between August 11, 2020 and October 26, 2020, Mr. Kollhoff sent Respondent five text messages seeking information about his case.

114. Respondent failed to respond to Mr. Kollhoff's text messages.

115. By a text message dated December 7, 2020, Mr. Kollhoff asked Respondent to "let [him] know what's up with [his] business" and threatened to "get another lawyer involved."

116. By a text message dated December 7, 2020, Respondent told Mr. Kollhoff that:

a. his situation had "taken on a different dynamic" due to the effect of Covid on businesses;

b. "as [Respondent] explained to [Mr. Kollhoff's] dad some time ago, [Respondent] received a response from [his] former partner's lawyer basically denying that there was any money left to buy [him] out" and saying "that they had to spend the money finishing the job";

c. the only option was to sue Mr. Marano; and

d. filing a lawsuit would cost money and involve risk, but that Mr. Kollhoff should let Respondent know if he was interested in discussing it.

117. By a text message dated December 7, 2020, Mr. Kollhoff replied, noting, inter alia, that:

a. Respondent had spoken to his father in March 2020;

b. when they last spoke, Respondent had indicated that he was sending Mr. Marano a letter threatening to "take him to court"; and

c. Mr. Kollhoff had been trying to talk to Respondent for almost a year about his matter.

118. By a text message dated December 7, 2020, Respondent told Mr. Kollhoff, inter alia, that:

a. he had sent Mr. Marano a letter, but "very little if anything ha[d] happened in the courts since [February]" and that "[n]othing could have progressed in terms of filing suit during that time";

b. Mr. Marano "is the type of guy that you have to sue"; and

c. Respondent was concerned about spending additional money on the case.

119. By a text message dated December 7, 2020, Mr. Kollhoff told Respondent that:

a. he understood that nothing had been happening in the court system, but that "a little communication would be great"; and

b. he wanted to sue Mr. Marano.

120. By a text message dated December 7, 2020, Respondent:

a. apologized to Mr. Kollhoff for the lack of communication;

b. told Mr. Kollhoff that if he wanted to pursue the matter, "we can file a writ of summons to institute the lawsuit";

c. told Mr. Kollhoff that he would "look at the letter from his lawyer" and advise Mr. Kollhoff further; and

d. told Mr. Kollhoff that he did "flat fees for these type of cases" and would "certainly be reasonable."

121. Following additional communications, Mr. Kollhoff agreed to retain Respondent to sue Mr. Marano.

122. By a "Clewell Law Firm Legal Services Agreement - Flat Fee" ("Fee Agreement"), which Respondent signed on February 24, 2021, Mr. Kollhoff retained Respondent's firm, Clewell Law Firm, to represent him in a matter involving the "Anthony Murano [sic]/Elite Mechanical LLC Case."

123. According to the Fee Agreement:

a. the representation would be for the "entire case from initiation of lawsuit until final disposition via trial, arbitration, or dismissal," but would not include any appeals; and

b. Respondent would receive a "flat fee" of $4,250.00, which was non-refundable and earned upon receipt.

124. On March 1, 2021:

a. Mr. Kollhoff paid Respondent the full $4,250.00;

b. Mr. Kollhoff sent Respondent a text message asking whether he needed to return the Fee Agreement before "we get started"; and

c. Respondent sent Mr. Kollhoff a text message telling him that he should send the signed Fee Agreement as soon as he could, but that Respondent would "start the process."

125. After Mr. Kollhoff paid Respondent the $4,250.00, Respondent:

a. failed to initiate a lawsuit on Mr. Kollhoff's behalf;

b. failed to respond to multiple requests for information; and

c. made knowingly false assertions regarding the status of the case, falsely telling Mr. Kollhoff that he had filed a Writ of Summons, had served the Writ of Summons on Mr. Marano's

counsel, and was in the process of scheduling a deposition of Mr. Marano.

126. By a text message dated March 24, 2021, Mr. Kollhoff asked if Respondent had sent "that initial letter to Tony's office starting our case?"

127. Respondent failed to reply to Mr. Kollhoff's text message.

128. By text messages dated March 29, 2021, March 30, 2021, and March 31, 2021, Mr. Kollhoff sought information about his case.

129. In an exchange of text messages dated March 31, 2021, Respondent, inter alia:

a. told Mr. Kollhoff that he had been "out sick for a few days" following a "covid shot";

b. told Mr. Kollhoff that the "Writ of [S]ummons" was "ready to go";

c. agreed to split the filing fee with Mr. Kollhoff; and

d. agreed to Mr. Kollhoff's request that he copy him on all letters sent to Mr. Marano, "especially that initial one [starting] our lawsuit."

130. By a text message dated April 14, 2021, Mr. Kollhoff informed Respondent that he had returned the signed Fee Agreement to Respondent's office, and asked that Respondent "[c]opy [him] on what [he] sent to [Mr. Marano.]"

131. Respondent failed to respond to Mr. Kollhoff's April 14, 2021 text message.

132. By a text message to Respondent dated April 19, 2021, Mr. Kollhoff sought information about his case, writing, "???"

133. By a text message dated April 20, 2021, Respondent told Mr. Kollhoff that he would "get in touch before the end of the week."

134. Respondent failed to "get in touch" with Mr. Kollhoff by the end of the week.

135. By a text message dated April 28, 2021, Mr. Kollhoff asked Respondent to call him.

136. Respondent failed to call Mr. Kollhoff or reply to his text message.

137. By a text message dated May 3, 2021, Mr. Kollhoff asked Respondent to send him the "[e]mail u sent [to Mr. Marano]."

138. By a text message dated May 4, 2021, Respondent told Mr. Kollhoff, inter alia, that Respondent:

a. "ha[d] the Writ of Summons ready to go";

b. was "having [his] staff file it"; and

c. would send Mr. Kollhoff a copy once Respondent received a stamped copy.

139. By a text message dated May 4, 2021, Mr. Kollhoff:

a. told Respondent that he "would love a little communication throughout the process"; and

b. asked Respondent why he had not sent Mr. Marano the Writ of Summons yet.

140. Respondent failed to respond to Mr. Kollhoff's text message.

141. Respondent failed to file a Praecipe for a Writ of Summons on Mr. Kollhoff's behalf.

142. By a text message dated May 26, 2021, Mr. Kollhoff asked Respondent, "When are [w]e getting the stamped copy back????"

143. Respondent failed to respond to Mr. Kollhoff's text message.

144. In an exchange of text messages dated June 7, 2021:

a. Mr. Kollhoff asked whether Respondent "treat[ed] all [of his] clients like this ... ?";

b. Respondent told Mr. Kollhoff that he had been out of the office for a week or so "tending to some family issues";

c. Respondent told Mr. Kollhoff he would be back in the office on Wednesday (June 9, 2021), would "check on everything," and would "get back to [him]"; and

d. Mr. Kollhoff told Respondent to call him that week or he would "tak[e] other action."

145. By a text message dated June 10, 2021, Respondent told Mr. Kollhoff, inter alia, that:

a. he "ha[d] the writ" and it was "going to be served [the] next week";

b. Mr. Marano would then "know he is getting sued";

c. he wanted to take Mr. Marano's deposition "in the next few weeks or so to get info we can include in the complaint"; and

d. he would "be in touch early [the] next week with more details."

146. Respondent again failed to file a Praecipe for a Writ of Summons on Mr. Kollhoff's behalf.

147. By a text message dated June 16, 2021, Mr. Kollhoff asked Respondent, "When is he getting served this week?"

148. By a text message dated June 16, 2021, Respondent told Mr. Kollhoff that he was out of the office, but that upon his return he would "check to see if we received an affidavit of service from [the] process server."

149. Respondent's June 16, 2021 text was knowingly false, as he had not filed a Praecipe for a Writ of Summons, and there was nothing for him to serve on Mr. Marano or his counsel.

150. By a text message dated June 22, 2021, Respondent told Mr. Kollhoff that there was "[s]till no proof of service returned" and that he was "going to resubmit it and get an answer for [him] ASAP."

151. Respondent's June 22, 2021 text message was knowingly false, as he had not filed a Praecipe for a Writ of Summons and there was nothing for him to "resubmit."

152. By a text message dated June 22, 2021, Mr. Kollhoff asked Respondent "why was the proof of service returned?"

153. Respondent failed to reply to Mr. Kollhoff's question.

154. By text message to Respondent dated June 24, 2021, Mr. Kollhoff sought a response to his question, writing "??"

155. Respondent failed to reply to Mr. Kollhoff's text.

156. By a text message to Respondent dated July 1, 2021, Mr. Kollhoff again sought a response, writing, "???"

157. Respondent failed to reply to Mr. Kollhoff's text message.

158. By a text message dated July 6, 2021, Mr. Kollhoff asked Respondent to "Answer me please."

159. By a text message dated July 6, 2021, Respondent told Mr. Kollhoff, inter alia, that:

a. he had been "having trouble" receiving text messages;

b. he had "had the writ reinstated and [would] re-serve";

c. if his efforts to serve the Writ of Summons did not work this time, "there is a procedural rule that allows for alternate service"; and

d. he would "keep [him] posted."

160. By a text message dated July 6, 2021, Mr. Kollhoff asked Respondent why the Writ of Summons kept "coming back."

161. By a text message dated July 6, 2021, Respondent told Mr. Kollhoff that:

a. the Writ of Summons "just came back once" and that happened because "[n]obody was there";

b. Respondent would "give this top priority and petition to do it via email";

c. Respondent had "to make one more attempt"; and

d. Respondent would "keep [Mr. Kollhoff] in the loop on this and be on top of it."

162. Respondent's July 6, 2021 text messages were knowingly false, as he had not filed a Praecipe for a Writ of Summons, had not obtained a Writ of Summons, and had not had any Writ of Summons "reinstated."

163. By a text message dated July 23, 2021, Mr. Kollhoff asked Respondent, "What's up with the letter[?]"

164. By a text message dated July 26, 2021, Respondent told Mr. Kollhoff that he had been out of the office and would "check and let [him] know."

165. By a text message dated August 2, 2021, Respondent told Mr. Kollhoff that:

a. "[t]he Writ was sent to [the] process server" and Respondent was "waiting for [the] affidavit of service to be returned"; and

b. if the writ was not served by the next week, Respondent was "going to request that [Mr. Marano's] lawyer accept service on his behalf."

166. Respondent's August 2, 2021 text message was knowingly false, as he had not filed a Praecipe for a Writ of Summons and no "Writ was sent to [a] process server."

167. On August 16 and 17, 2021, Mr. Kollhoff sent Respondent additional text messages seeking information about the status of the case.

168. By a text message dated August 18, 2021, Respondent told Mr. Kollhoff that he had "served [Mr. Marano's] lawyer" and would be taking Mr. Marano's deposition "at some point over the next 4 to 6 weeks."

169. Respondent's August 18, 2021 text message was knowingly false, as he had not served anything on Mr. Marano's lawyer, and had no ability to take Mr. Marano's deposition over the next four to six weeks.

170. By a text message dated August 19, 2021, Mr. Kollhoff asked if Mr. Marano could "offer to just settle before that[?]"

171. Respondent did not respond to Mr. Kollhoff's August 19, 2021 text message.

172. By a text message dated September 15, 2021, Mr. Kollhoff asked if Respondent could call him and provide him with an update.

173. By a text message dated September 17, 2021, Respondent told Mr. Kollhoff that he was "[s]till working on getting a date for [Mr. Marano's] deposition," and would "let [Mr. Kollhoff] know as soon as [Respondent knew]."

174. Respondent's September 17, 2021 text message was knowingly false, as he had not initiated a case on Mr. Kollhoff's behalf and was not "working on getting a date for a deposition."

175. By a text message dated September 17, 2021, Mr. Kollhoff asked, "What do u mean date for deposition?"

176. Respondent did not respond to Mr. Kollhoff's text message.

177. By a text message dated October 7, 2021, Mr. Kollhoff sought information about his case, writing, "Yooo bob???"

178. Respondent did not respond to Mr. Kollhoff's text message.

179. By a text message dated October 11, 2021, Mr. Kollhoff again sought information about his case, writing, "?????"

180. By a text message dated October 11, 2021, Respondent told Mr. Kollhoff that he was in a deposition, had been out of

town with a relative who was terminally ill, and would "check on everything and get back to [Mr. Kollhoff] [that] week."

181. By text messages dated October 15, 2021, October 18, 2021, and October 25, 2021, Mr. Kollhoff requested that Respondent call him.

182. By a text message dated October 25, 2021, Respondent:

a. told Mr. Kollhoff that he was dealing with "serious family issues" involving a cousin who was in the hospital;

b. apologized for "this delay";

c. acknowledged that Mr. Kollhoff "deserve[d] better service"; and

d. told Mr. Kollhoff that he would "make up for this somehow."

183. By a text message dated October 29, 2021, Respondent told Mr. Kollhoff that he "believe[d] [Mr. Marano] ha[d] been served" and that "the next step is scheduling a deposition in the next month or so."

184. Respondent's October 29, 2021 text message was knowingly false, as he had not filed a Praecipe for a Writ of Summons or attempted to serve anything on Mr. Marano or his counsel.

185. By a text message dated October 29, 2021, Mr. Kollhoff told Respondent that he was "trying to be sympathetic" to Respondent's personal issues and knew "this whole process takes time," but wanted some "communication and to know where we stand with it."

186. Respondent failed to respond to Mr. Kollhoff's October 29, 2021 text message.

187. By a text message dated November 29, 2021, Mr. Kollhoff asked that Respondent call him.

188. By text message dated December 1, 2021, Respondent told Mr. Kollhoff that he would call him later that day.

189. Respondent failed to call Mr. Kollhoff.

190. By a text message dated December 2, 2021, Mr. Kollhoff told Respondent that he was "[s]till waiting for that call."

191. Respondent failed to respond to Mr. Kollhoff's text message or call him.

192. By a text message dated December 4, 2021, Mr. Kollhoff informed Respondent that he was "[s]till waiting for that infamous phone call."

193. Respondent failed to respond to Mr. Kollhoff's text message or call him.

194. By text message dated December 9, 2021, Mr. Kollhoff:

a. requested a refund of the money he had paid to Respondent; and

b. noted that he had received only one telephone call from Respondent in the past two years.

195. Respondent failed to respond to Mr. Kollhoff's text message.

196. By text message dated December 29, 2021, Mr. Kollhoff asked Respondent, "How do you do this to one individual[?]," and noted that he had "trusted [Respondent]."

197. Respondent failed to respond to Mr. Kollhoff's text message.

198. By a text message dated January 5, 2022, Mr. Kollhoff told Respondent that unless Respondent returned the money he had paid he would report Respondent to "the bar association."

199. Respondent failed to respond to Mr. Kollhoff's text message.

200. By text message dated January 10, 2022, Mr. Kollhoff told Respondent that he was reporting him to "the bar association."

201. On or about January 13, 2022, Respondent called Mr. Kollhoff and left him a voicemail informing him that he was having personal problems that were affecting his ability to work on his case.

202. By a text message on January 13, 2022, Mr. Kollhoff told Respondent that he "ha[d] till tomorrow."

203. Respondent failed to respond to Mr. Kollhoff's message.

204. By a text message on January 14, 2022, Mr. Kollhoff asked if he would be hearing from Respondent that day.

205. By a text message on January 14, 2022, Respondent told Mr. Kollhoff, inter alia, that:

a. he had "things with [himself] and [his] family," that these things had "caused some issues," and that he was "trying to address" the issues;

b. he had done "some work" on Mr. Kollhoff's case, but agreed that Mr. Kollhoff was "owed money back";

c. he had had "some very significant financial strain in [his] practice" and did not have the money to give Mr. Kollhoff at that point;

d. he was willing to send Mr. Kollhoff "refund payments" if he was willing to give Respondent more time "to make good on it"; and

e. Respondent "suppose[d]" Mr. Kollhoff could file a report against him, but that "if [his] license [was] put in jeopardy," he would "have a very difficult time earning money to reimburse [Mr. Kollhoff]."

206. By a text message dated January 14, 2022, Mr. Kollhoff told Respondent that:

a. he had been "working with [Respondent] for a whole year" and had not received "one phone call";

b. he had "wasted a whole year of not going after [his] money" from Mr. Marano;

c. the money he had given to Respondent "was all [he] had to go after him";

d. he needed the money to pay a new lawyer;

e. in two years, all Respondent had done was "send [Mr. Marano] one notice"; and

f. he wanted Respondent to "[g]et the money," or he would "go to the bar."

207. Respondent failed to respond to Mr. Kollhoff's text message.

208. By a text message dated January 18, 2022, Mr. Kollhoff told Respondent that he was giving him a "final last chance" before he filed his complaint.

209. Respondent failed to respond to Mr. Kollhoff's text message.

210. Respondent failed to refund any portion of the fee Mr. Kollhoff had paid him.

211. Respondent's fee of $4,250.00 was an excessive fee, where he failed to even initiate the lawsuit he had contracted to litigate on Mr. Kollhoff's behalf.

212. By his conduct as alleged in Paragraphs 94 through 211 above, Respondent violated the following Rules of Professional Conduct:

a. RPC 1.1, which states that a lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation;

b. RPC 1.3, which states that a lawyer shall act with reasonable diligence and promptness in representing a client;

c. RPC 1.4(a)(2), which states that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;

d. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;

e. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;

f. RPC 1.5(a), which states that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following:

(1) whether the fee is fixed or contingent;

(2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly;

(3) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer;

(4) the fee customarily charged in the locality for similar legal services;

(5) the amount involved and the results obtained;

(6) the time limitations imposed by the client or by the circumstances;

(7) the nature and length of the professional relationship with the client; and

(8) the experience, reputation, and ability of the lawyer or lawyers performing the services.

g. RPC 1.5(b), which states that 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;

h. RPC 1.15(e), which states that except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; Provided, however, that the delivery, accounting, and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

i. RPC 1.16(d), which states that 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.

j. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

WHEREFORE, Petitioner prays that your Honorable Board appoint, pursuant to Rule 205, Pa.R.D.E., a Hearing Committee to hear testimony and receive evidence in support of the

foregoing charges and upon completion of said hearing to make such findings of fact, conclusions of law, and recommendations for disciplinary action as it may deem appropriate.

Respectfully submitted,

OFFICE OF DISCIPLINARY COUNSEL

Thomas J. Farrell
Chief Disciplinary Counsel

By _____
Jeffrey M. Krulik
Disciplinary Counsel
Attorney Registration No. 57110

1601 Market Street
Suite 3320
Philadelphia, PA 19103
(215) 560-6296

BEFORE THE DISCIPLINARY BOARD OF
THE SUPREME COURT OF PENNSYLVANIA

| | | |
|---|---|---|
| OFFICE OF DISCIPLINARY COUNSEL, Petitioner | : | |
| | : | No. 17 DB 2023 |
| v. | : | |
| | : | Atty. Reg. No. 63600 |
| ROBERT SCOTT CLEWELL, Respondent | : | (Philadelphia) |

VERIFICATION

I, Jeffrey M. Krulik, Disciplinary Counsel, verify that the statements contained in the foregoing Petition for Discipline are true and correct to the best of my knowledge or information and belief and are made subject to the penalties of 18 Pa.C.S. §4904, relating to unsworn falsification to authorities.

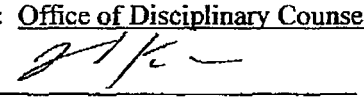
3/16/23
Date

Jeffrey M. Krulik
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: 

Name: Jeffrey M. Krulik, Disciplinary Counsel

Attorney No. (if applicable): 57110

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Submitted by: Office of Disciplinary Counsel

Signature: _____

Name: Jeffrey M. Krulik, Disciplinary Counsel

Attorney No. (if applicable): 57110