

IN THE SUPREME COURT OF PENNSYLVANIA


OFFICE OF DISCIPLINARY COUNSEL,	:	No. 3057 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 92 DB 2022
	:	
v.	:	Attorney Registration No. 63122
	:	
GARY SCOTT SILVER,	:	(Philadelphia)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 16th day of October, 2024, upon consideration of the Report and Recommendations of the Disciplinary Board and Respondent's Petition for Review, Gary Scott Silver is suspended from the Bar of this Commonwealth for four years. Respondent shall comply with the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 10/16/2024

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 92 DB 2022
Petitioner	:	
	:	
v.	:	Attorney Registration No. 63122
	:	
GARY SCOTT SILVER,	:	
Respondent	:	(Philadelphia)

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

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

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

I. FINDINGS OF FACT

The Board makes the following factual findings:

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 Pennsylvania Rule of Disciplinary Enforcement (“Pa.R.D.E.”) 207, with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania or a lawyer who provides or offers to provide any legal service in this Commonwealth and

to prosecute all disciplinary proceedings brought in accordance with the various provisions of the Rules.

2. Gary Scott Silver was born in 1961 and was admitted to practice law in the Commonwealth on December 12, 1991. He is on active license status and lists an office address at 1717 Arch Street, Suite 320, Philadelphia, Pennsylvania 19103. Silver is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Silver has practiced law as a sole practitioner for approximately 20 years. Prior to that time, he practiced law in a partnership. N.T. 7.31.23 218-220.

The McClellan Matter

4. In May 2011, Mr. John McClellan, Jr. was incarcerated at the State Correctional Institution at Cresson ("SCI Cresson"), located in Cambria County, Pennsylvania. Jt. Stip. 3.

5. On May 6, 2011, Mr. McClellan, Jr. committed suicide by hanging himself. Jt. Stip. 4.

6. The circumstances surrounding Mr. McClellan, Jr.'s suicide suggested that various officials at SCI Cresson and in the Pennsylvania Department of Corrections ("the Corrections Department"), including Dr. James Harrington, the chief psychologist for SCI Cresson, may have acted negligently and violated the civil rights of Mr. McClellan, Jr., thus making them legally liable for his death. Jt. Stip. 5.

7. Sometime in the fall of 2011, John McClellan, Sr. ("Mr. McClellan") and his wife, Susan McClellan, met with Silver at Silver's office to discuss the circumstances surrounding the death of Mr. McClellan, Jr. Jt. Stip. 6.

8. Among other things, during this meeting:

- a. Mr. McClellan showed Silver letters written by Mr. McClellan, Jr. and shared other information bearing on the death of Mr. McClellan, Jr.;
 - b. Silver retained the letters that were written by Mr. McClellan, Jr.; and
 - c. Silver told the McClellans to keep in contact with him. Jt. Stip. 7.
9. Silver had not previously represented Mr. and Ms. McClellan. Jt. Stip. 8.
10. Silver agreed to represent the McClellans despite never handling a federal civil rights lawsuit on behalf of a client and not carrying any professional liability insurance. N.T. 7/31/23 293, N.T. 8/1/23 25, 105-107; ODC-31; S-9.
11. Silver failed to provide Mr. and Ms. McClellan:
- a. with a written fee agreement; and
 - b. written notice that Silver did not maintain professional liability insurance at the time he entered into the representation or at any time thereafter. Jt. Stip. 9.
12. In 2012, after the McClellans retained Silver, Silver developed a relationship with Joseph Mirarchi, Esquire that:
- a. involved Silver providing financial and staff support for Mr. Mirarchi's civil cases in return for a referral fee; and
 - b. resulted in Mr. Mirarchi handling many of Silver's civil cases in return for a referral fee payment from Silver if there was a successful outcome. N.T. 7/31/23 221, 233-242, 244, N.T. 8/1/23 25-26, 57, 81-82, 85-86.
13. Silver relied on Mr. Mirarchi to perform the legal work in the matter involving the McClellans; Mr. Mirarchi produced several drafts of a Complaint for the McClellans' matter. N.T. 7/31/23 232-234, 299-303; N.T. 8/31/23 26-28, 47.

14. In Pennsylvania, the statute of limitations for filing a tort or civil rights action is two years from the date on which the claim accrues. Jt. Stip. 10.

15. Silver failed to file a federal lawsuit on behalf of Mr. and Ms. McClellan and the estate of Mr. McClellan, Jr. against any responsible parties associated with SCI Cresson and the Corrections Department before the statute of limitations had expired, which was on or about May 6, 2013. Jt. Stip. 11. Silver realized he had missed the statute of limitations within a short time of it happening. N.T. 8/1/23 50-51, 54-56.

16. Beginning in the fall of 2011 and continuing throughout 2013, prior to the expiration of the statute of limitations, Mr. McClellan called Silver from time to time to inquire about the status of the lawsuit. Jt. Stip. 12.

17. On those occasions when Mr. McClellan spoke to Silver, he advised Mr. McClellan that all was proceeding well with the legal matter. Jt. Stip. 13.

18. Mr. McClellan provided Silver with letters from Mr. McClellan, Jr. and other documents during their initial meeting in the fall of 2011. N.T. 7/31/23 74-75.

19. Before the McClellans retained Silver, and continuing for several years after retention, Mr. McClellan located and printed documents available on the internet that related to, *inter alia*, the death of Mr. McClellan, Jr., incidents involving mistreatment and deaths of inmates at SCI Cresson and other correctional institutions, the chief psychologist at SCI Cresson, Dr. James Harrington, and the investigation of the treatment and deaths of inmates at SCI Cresson by the Department of Justice ("DOJ"); these documents originated from various organizations, including the "Human Rights Coalition," which reported on the treatment of Pennsylvania prisoners. N.T.7/31/23 75-92; ODC-32.

20. Shortly after the McClellans retained Silver and continuing throughout Silver's representation, Mr. McClellan shared the documents he obtained from the internet with Silver. N.T. 7/31/23 75-92, 245-246, 293-294.

21. Periodically, the McClellans dropped off at Silver's law office the documents that Mr. McClellan printed from the internet by delivering the documents to Silver or his secretary. N.T. 7/31/23 79, 82-85, 90, 98, 106-109, 245-246; ODC-32.

22. In or about March 2013, approximately two months before the statute of limitations would expire on the action, Mr. McClellan called and advised Silver that the Department of Justice ("DOJ") was investigating the treatment and death of inmates at SCI Cresson. Silver asked Mr. McClellan to provide him with whatever documents he had, and the McClellans provided Silver with documents. Jt. Stips. 14, 15, 16.

23. Sometime in 2014, Mr. McClellan called and advised Silver that Mr. McClellan had been visited by officials associated with DOJ and he was told by those officials that DOJ's investigation had concluded, and DOJ would provide DOJ's report to him.

a. Silver requested that Mr. McClellan provide Silver with a copy of the report. Jt. Stip. 17.

24. Sometime in 2014, Mr. McClellan received the report from DOJ. Jt. Stip. 18.

25. Sometime in 2014, Ms. McClellan went to Silver's office and provided Silver with a copy of the report from DOJ. Jt. Stip. 19.

26. The report issued by DOJ found that the mentally ill prisoners at SCI Cresson were mistreated and their constitutional rights violated. Jt. Stip. 20.

27. Approximately a week after Ms. McClellan provided Silver with a copy of the report from DOJ, Mr. McClellan called and spoke to Silver on the telephone. Jt. Stip. 21.

28. Silver told Mr. McClellan that he had reviewed the report and that all was proceeding well. Jt. Stip. 22.

29. Sometime in 2014, at least seven or eight months after the statute of limitations had run, Mr. McClellan called and spoke to Silver on the telephone. Jt. Stip. 23.

30. During this telephone conversation:

- a. Mr. McClellan stated that he had learned that there was a two-year statute of limitations in Pennsylvania and inquired if that applied to filing a lawsuit involving the death of Mr. McClellan, Jr.; and
- b. Silver told Mr. McClellan not to worry about the statute of limitations and that Silver was “doing something different.” Jt. Stip. 24.

31. Silver failed to advise Mr. McClellan that Silver had failed to file a federal lawsuit on behalf of Mr. and Ms. McClellan and the estate of Mr. McClellan, Jr. against any responsible parties associated with SCI Cresson and the Corrections Department before the statute of limitations had expired. Jt. Stip. 25.

32. For the years 2015 through June 2021, Mr. McClellan called Silver from time to time to inquire about the status of the lawsuit. Jt. Stip. 26.

33. On those occasions when Silver spoke with Mr. McClellan, Silver told Mr. McClellan that all was proceeding well. Jt. Stip. 27.

34. Sometime in 2015, Mr. McClellan called and advised Silver about a federal lawsuit that had been filed by the family of Brandon Palakovic, an inmate who had died while incarcerated at SCI Cresson.

- a. Silver told Mr. McClellan that Silver would monitor that lawsuit. Jt. Stip. 28.

35. In or about April 2020, Mr. McClellan called and advised Silver that the Pennsylvania Board of Psychology (“the Psychology Board”) had revoked the license of Dr. James Harrington and in so doing, had issued an Order that, *inter alia*, found that the death of Mr. McClellan, Jr. was “both definitely foreseeable and preventable.” Jt. Stip. 29.

36. Silver requested a copy of the Psychology Board’s Order. Jt. Stip. 30.

37. Ms. McClellan went to Silver’s office and provided Silver with a copy of the Psychology Board’s Order. Jt. Stip. 31.

38. Sometime after April 7, 2021, Mr. McClellan called Silver. Jt. Stip. 32.

39. Among other things, during this telephone conversation:

- a. Mr. McClellan advised Silver that the family of Brandon Palakovic had settled their federal lawsuit for a payment of \$675,000 from the Corrections Department;
- b. Mr. McClellan requested to meet with Silver to review the case and to obtain a copy of the legal file; and
- c. Silver arranged for Mr. McClellan to meet with him at Silver’s office on May 13, 2021. Jt. Stip. 33.

40. On May 13, 2021, Mr. and Ms. McClellan went to Silver's office and Mr. McClellan called Silver because Silver was not at the office. Jt. Stip. 34; N.T. 8/1/23 9-10.

41. Silver told Mr. McClellan that he was in Delaware County and that he was unable to make the meeting; however, he advised that Mr. McClellan could obtain a copy of the legal file from Silver's secretary. Jt. Stip. 35.

42. Mr. and Ms. McClellan obtained from Silver's secretary a copy of a draft complaint that was 41 pages and signed by Silver, but the complaint had not been finalized and filed with the United States District Court for the Western District of Pennsylvania. Jt. Stip. 36; ODC-6.

43. Sometime after May 13, 2021, Mr. McClellan called to discuss with Silver the draft complaint that Mr. McClellan had received from Silver's secretary. Jt. Stip. 37.

44. Among other things, during this telephone conversation:

- a. Mr. McClellan inquired what would occur next with the case;
- b. Silver answered Mr. McClellan that there should be a proceeding in federal court sometime in August 2021, and that Silver would have more information after June 7, 2021, because Silver had received an email that the federal courts might reopen and resume operations; and
- c. Silver advised Mr. McClellan to call him two weeks after June 7, 2021. Jt. Stip. 38.

45. On June 21, 2021, Mr. McClellan called Silver, but there was no answer so he left a message requesting that Silver call him. Jt. Stip. 39.

46. By letter dated June 24, 2021, sent to Silver by certified mail, return receipt requested, Mr. McClellan, *inter alia*:

- a. noted that ten years had passed since he had met with Silver to discuss, and provide Silver with documents related to, the circumstances surrounding the death of Mr. McClellan, Jr.;
- b. stated that Silver had conveyed to Mr. McClellan and his wife during that initial meeting that Silver would file a lawsuit on their behalf, but the matter would take some time to resolve and to maintain contact with Silver;
- c. expressed his concern that over the last ten years he had maintained contact with Silver and provided him with additional documents and information, but there had been no progress in moving the lawsuit forward toward a resolution;
- d. summarized what Silver had conveyed to Mr. McClellan over the last ten years when he inquired of Silver about the case;
- e. stated that Silver had claimed that he had filed “something” in federal court, but the complaint that Mr. McClellan had received from Silver’s secretary lacked dates and a case number;
- f. recounted his recent telephone conversation with Silver, during which Silver told Mr. McClellan that there should be a court proceeding in August 2021;
- g. advised that he was sending Silver the letter because Silver had not called him back as he requested in the message he left for him on June 21, 2021; and

- h. requested that Silver call him to discuss the concerns raised in his letter and the current status of the case. Jt. Stip. 40.
47. Silver's agent received this letter on June 28, 2021. Jt. Stip. 41.
48. On June 29, 2021, Mr. McClellan called Silver to discuss the June 24, 2021 letter. Jt. Stip. 42.
49. During this telephone conversation:
 - a. Mr. McClellan inquired if Silver received the June 24, 2021 letter;
 - b. Silver acknowledged receiving the letter, but claimed he had not reviewed the letter;
 - c. Mr. McClellan asked Silver when the matter would proceed to court;
 - d. Silver told Mr. McClellan that Silver and his partner were working to have the matter heard in court, but a court proceeding might occur several months after August 2021; and
 - e. Silver asked Mr. McClellan to call him back on July 1, 2021. Jt. Stip. 43.
50. On June 30, 2021, Mr. McClellan called Silver after receiving notification that Silver had called him that day. Jt. Stip. 44.
51. Among other things, during the June 30, 2021 telephone conversation:
 - a. Silver advised Mr. McClellan that he had accidentally called Mr. McClellan and that Silver had read Mr. McClellan's June 24, 2021 letter;
 - b. Silver told Mr. McClellan that he understood Mr. McClellan's concerns; and

- c. Silver claimed that federal court proceedings had been delayed due to the Covid-19 pandemic, but that he was working on the case and that he hoped to settle the matter. Jt. Stip. 45.

52. Beginning sometime in 2014 and continuing through June 30, 2021, Silver misrepresented to Mr. and Ms. McClellan that he had filed and was pursuing a federal lawsuit on their behalf and the estate of John McClellan, Jr. against any responsible parties associated with SCI Cresson and the Corrections Department, and that the legal matter remained active. Jt. Stip. 46.

53. In early July 2021, Mr. McClellan had a telephone conversation with Robert T. Lynch, Esquire, to discuss the legal matter that Silver was handling on behalf of Mr. and Ms. McClellan and Mr. McClellan's concern that the lawsuit was not progressing. Jt. Stip. 47.

54. Following that telephone conversation, Mr. McClellan provided documents to Mr. Lynch's office, including the draft complaint that Mr. McClellan had received from Silver's secretary. Jt. Stip. 48.

55. On July 9, 2021, Mr. Lynch called Silver to discuss the legal matter that Silver was handling on behalf of Mr. and Ms. McClellan. Jt. Stip. 49.

56. Among other things, during the July 9, 2021 telephone conversation:

- a. Mr. Lynch explained that Mr. McClellan had contacted Mr. Lynch about the legal matter that Silver was handling on behalf of Mr. and Ms. McClellan and that Mr. Lynch was unable to locate a federal lawsuit that had been filed by Silver on their behalf;
- b. Mr. Lynch asked Silver in what federal court he had filed the lawsuit;

- c. Mr. Lynch inquired if Silver had appeared in court and conducted any discovery;
- d. Silver answered no as to whether he had appeared in court and conducted any discovery; and
- e. Silver told Mr. Lynch that he would review his file and contact Mr. Lynch that Monday (7/12/21) with an update. Jt. Stip. 50.

57. Silver falsely told Mr. Lynch a federal lawsuit was filed “ages ago” and Mr. Mirarchi—who had been disbarred by Order of the Supreme Court dated March 18, 2019—had been involved. N.T. 7/31/23 34, 39, 42, 45-46, 63, 234-236; N.T. 8/1/23 85; ODC-1, 5, 31; Pet. 50; S-50.

58. On July 12, 2021, Silver called Mr. Lynch. Jt. Stip. 51.

59. Among other things, during the July 12, 2021 telephone conversation:

- a. Silver told Mr. Lynch that he had not filed a federal lawsuit on behalf of Mr. and Ms. McClellan and had committed a “huge error”;
- b. Silver expressed to Mr. Lynch the hope that Mr. Lynch could resolve the claims that Mr. and Ms. McClellan had against the Corrections Department and other parties responsible for the death of Mr. McClellan, Jr.;
- c. Mr. Lynch advised Silver that the expiration of the statute of limitations meant that no action could be taken against the parties responsible for the death of Mr. McClellan, Jr.;
- d. Mr. Lynch inquired if Silver had malpractice insurance; and
- e. Silver answered no. Jt. Stip. 52.

60. During the July 12, 2021, telephone call, Silver mentioned that Mr. Mirarchi might carry professional liability insurance, but he acknowledged he had not employed Mr. Mirarchi nor had he formally transferred the legal file to Mr. Mirarchi. N.T. 7/31/23 41-42, 62-63; ODC-1, 31; Pet. 52; S-52.

61. On July 15, 2021, Mr. Lynch met with Mr. McClellan and Mr. Lynch conveyed what he had learned from speaking with Silver on the telephone on July 9 and 12, 2021. Jt. Stip. 53.

62. On July 15, 2021, Mr. McClellan called Silver and inquired if he could retrieve from Silver the letters authored by Mr. McClellan, Jr. Jt. Stip. 54.

63. During this telephone conversation:

- a. Silver told Mr. McClellan that he could retrieve the letters;
- b. Silver apologized for mishandling the legal matter involving the death of Mr. McClellan, Jr. and requested six additional weeks to “straighten this out”;
- c. Mr. McClellan responded that there was nothing Silver could do in six weeks to rectify his mishandling of the legal matter involving the death of Mr. McClellan, Jr.; and
- d. Mr. McClellan said that he would call Silver on July 19, 2021, for the purpose of retrieving Mr. McClellan’s son’s letters. Jt. Stip. 55.

64. On July 19, 2021, Mr. McClellan called Silver and spoke to Silver’s secretary.

- a. Silver’s secretary advised Mr. McClellan that Silver had not left with her any letters to give to Mr. McClellan and that she would have Silver call Mr. McClellan. Jt. Stip. 56.

65. On July 19, 2021, Silver called Mr. McClellan and arranged for him to come by the office the next day to retrieve Mr. McClellan's son's letters. Jt. Stip. 57.

66. On July 20, 2021, Mr. McClellan went to Silver's office and retrieved Mr. McClellan's son's letters. Jt. Stip. 58.

67. Silver placed the documents he received from the McClellans (and other documents), inside a "Large Flat Rate Box" that he mailed to Mr. Lynch on July 29, 2021, in response to Mr. Lynch's written request for the file involving the death of Mr. McClellan, Jr. N.T. 7/31/23 50-52, 64, 96-98, 101, 293-294; N.T. 8/1/23 27; ODC-10-11, 32.

68. After initially declining to represent Mr. McClellan and the estate, Mr. Lynch decided to accept the representation, despite the matter being in a "terrible posture." N.T. 7/31/23 47-50, 68-70; ODC-5.

69. Although Mr. Lynch proposed \$675,000 to resolve the claims arising from the death of Mr. McClellan, Jr., by relying on a publicized \$675,000 settlement involving the suicide of another inmate incarcerated at SCI Cresson, the Pennsylvania Department of Corrections made a non-negotiable settlement offer of \$25,000, which the McClellans accepted. N.T. 7/31/23 56-59.

The DB-7 Matter

70. By DB-7 Request for Statement of Respondent's Position ("DB-7 letter") dated November 22, 2021, sent by certified mail to Silver at Silver's office address, Petitioner notified Silver of the allegations relating to the complaint filed against him by Mr. McClellan and that the failure to respond to the DB-7 letter without good cause would be an independent ground for discipline pursuant to Pa.R.D.E. 203(b)(7). Jt. Stip. 59.

71. The DB-7 letter was signed for by Silver's agent on November 26, 2021. Jt. Stip. 60.

72. On December 27, 2021, February 8, 2022, and March 21, 2022, Silver sent Petitioner written communications requesting extensions of the deadline for submitting a response to the DB-7 letter. Jt. Stip. 61.

73. Petitioner twice extended the deadline for Silver to submit a response to the DB-7 letter. Jt. Stip. 62.

74. By email dated March 21, 2022, Silver advised Petitioner that he was requesting a third extension until March 28, 2022. Jt. Stip. 63.

75. By letter dated March 23, 2022, Petitioner advised Silver that if Silver's response was received by March 28, 2022, Petitioner would consider that response in arriving at a recommendation as to the disposition of Mr. McClellan's complaint. Jt. Stip. 64.

76. Silver failed to submit to Petitioner a response to the DB-7 letter by March 28, 2022 or present to Petitioner evidence that he had good cause for not responding to the DB-7 letter by March 28, 2022. Jt. Stip. 65.

The Disciplinary Proceeding at No. 92 DB 2022

77. On July 8, 2022, Petitioner filed a Petition for Discipline against Silver, charging him with violations of Rules of Professional Conduct 1.1 (lack of competence), 1.3 (lack of diligence), 1.4(a)(3) (failure to keep clients informed of status of matter), 1.4(b) (failure to explain matter to permit clients to make informed decisions), 1.4(c) (failure to inform clients that the lawyer does not have professional liability insurance), 1.5(b) (failure to have a written fee agreement), 1.7(a)(2) (concurrent conflict of interest), and 8.4(c) (engaging in dishonesty, deceit, and

misrepresentation), and Pennsylvania Rule of Disciplinary Enforcement 203(b)(7) (failure to respond to Disciplinary Counsel's request for statement of position) arising out of the conduct as set forth above. ODC-1.

78. Silver was personally served with the Petition on July 20, 2022. PHC N.T. 49.

79. By letter dated July 20, 2022 and received by Petitioner on July 26, 2022, Silver responded untimely to Petitioner's November 22, 2021 DB-7 letter. ODC-34. Silver testified at the disciplinary hearing that his responses to the DB-7 letter were "boilerplate," even though at the time, he knew the answers to Petitioner's questions. N.T. 8/1/23 21, 98. Silver admitted that at that point in July 2022, he was still trying to avoid a disciplinary proceeding. N.T. 8/1/23 98-99.

80. Silver did not file an Answer to the Petition for Discipline. The factual allegations in the Petition are deemed admitted pursuant to Pa.R.D.E. 208(b)(3).

81. By Notice dated September 23, 2022, a Hearing Committee ("Committee") was appointed and dates scheduled for the prehearing conference on November 17, 2022 and disciplinary hearing on January 5 and 10, 2023.

82. The prehearing conference was held on November 17, 2022, before the Committee Chair. Silver appeared pro se.

83. On December 8, 2022, Mark B. Cedrone, Esquire and Carson B. Morris, Esquire entered their appearance on behalf of Silver and filed a request for a 90 day continuance of the disciplinary hearing. By Order dated December 13, 2022, the Board Chair granted a 45 day continuance. The disciplinary hearing was rescheduled to March 15 and 16, 2023.

84. On January 23, 2023, Silver filed a Motion for Permission to Respond to the Petition for Discipline. On January 24, 2023, Petitioner filed a response in opposition to the Motion.

85. By Order dated January 25, 2023, the Board Chair denied Silver's motion.

86. On March 10, 2023, Silver filed a continuance request for at least 30 days based on his contention that he suffered from a medical condition known as Bell's Palsy, and attached a March 9, 2023 letter from his doctor. Silver did not provide any other medical records to confirm his condition. Petitioner did not file a response in opposition to the continuance request.

87. By Order dated March 14, 2023, the Board Chair granted the continuance on the condition that Silver present a letter from a medical provider verifying an examination and conclusion that Silver suffered from Bell's Palsy and was unable to attend and participate in the disciplinary hearing.

88. On March 15, 2023, the Committee convened the disciplinary hearing. Silver did not appear and did not present a letter pursuant to the Board Chair's Order. Silver's counsel appeared and advised that Silver had attempted to see his doctor and obtain a letter in accordance with the March 14, 2023 Order, but was unable to do so in a short time frame, and decided not to attend the hearing due to the flare-up of the Bell's Palsy. Silver's counsel provided a photograph of Silver to demonstrate his medical condition. N.T. 3/15/23 7-10; Exhibit B.

89. The Committee granted Silver's continuance after Petitioner expressed no opposition. N.T. 3/15/23 16-18.

90. On July 27, 2023, Petitioner circulated to the Committee the parties' Joint Stipulations of Fact and Law. The parties stipulated to the vast majority of the

allegations of the Petition for Discipline, but for ¶¶ 7(b), 33(b), 38(a), 45(d), 45(e), 50(b), 50(d), 50(f), 52(f), 52(g), 52(h), and 59. Silver stipulated to all of the rule violations of the Petition for Discipline. ODC-31.

91. The Committee conducted a disciplinary hearing on July 31 and August 1, 2023.¹

92. Petitioner presented its case on the issue of Silver's misconduct by offering the testimony of Robert Lynch, Esquire, Mr. McClellan, and Ms. McClellan, and moving into evidence 13 exhibits, ODC -1 through ODC-11 and ODC-31 and ODC 32.

93. As Silver stipulated to all of the rule violations charged, the matter proceeded to the sanction phase, during which Petitioner moved into evidence 19 exhibits, ODC-12 through ODC-30.

94. On the issue of sanctions, Silver testified on his own behalf, called two character witnesses, and introduced exhibits GS-1 and GS-2.

95. During Silver's cross-examination, Petitioner introduced exhibits ODC-33 and ODC-34.

96. Mr. McClellan, Ms. McClellan, and Mr. Lynch testified credibly at the disciplinary hearing.

97. Mr. McClellan testified that after he learned that Silver had failed to file a lawsuit before the statute of limitations expired, he:

¹ At the hearing, Petitioner moved under Pa.R.D.E. 208(b)(3) that the specific factual allegations that were not incorporated in the Joint Stipulations be deemed admitted. The Committee allowed the parties to state their positions for the record, then ruled that the specific allegations were deemed admitted, as Silver had not filed an Answer to the Petition for Discipline.

a. was “heartbroken” and unable to understand how Silver could have misled him for 10 years by repeatedly stating “everything is looking good, we’re moving along” when “nothing was done at all”; and

b. “felt like [he] was made a fool of” by Silver because Silver encouraged him to continue to provide documents to Silver years after Silver had failed to timely file a lawsuit. N.T. 7/31/23 101-102.

98. Mr. McClellan testified that he wanted Silver to be honest with him, and if Silver could not handle the matter, he should have just said so and the McClellans would have gone to someone else. N.T. 7/21/23 102.

99. Mr. McClellan testified that he had no reason not to believe Silver when Silver told him not to worry about time running out, because Silver was an attorney. “Because he was an attorney, I was going by what he was telling me.” N.T. 7/31/23 94.

100. Ms. McClellan tearfully² testified that when she discovered that Silver had failed to timely file a lawsuit, she “felt like I lost Johnny all over again. Like, when you lose a child, it feels like your heart is just squeezed that you can’t breathe, and to find out that nothing was done on his behalf, it just--it’s just like that devastated me. I can’t believe how Mr. Silver could string my husband and myself along for ten years without doing anything.” N.T. 7/1/23 110.

101. Silver testified on his own behalf.

102. Silver acknowledged the arrangement with Mr. Mirarchi but testified that Mr. Mirarchi had no responsibility for the McClellan case and Silver took full responsibility

² The Committee specifically found Ms. McClellan’s testimony to be tearful, and we adopt this finding. HC Rpt. Finding of Fact 7.

because he was the person speaking on a continuous basis with Mr. McClellan and was in charge of the case. N.T. 7/31/23 232-233, 245.

103. Silver admitted that he did nothing substantive on the McClellan matter between May 2011 and May 2013, knew that the statute of limitations was coming up in May 2013, and allowed it to lapse without filing a complaint. N.T. 8/1/23 50-51, 54-56.

104. Silver acknowledged 40 to 50 communications with Mr. McClellan during a nine year period. N.T. 8/1/23 87.

105. Silver agreed that each time he lied to the McClellans, he committed another dishonest act. N.T. 8/1/23 63.

106. As far as his misconduct, Silver testified that "I knew this day was coming" and that he would have to answer for his "error" with the McClellans. Silver admitted that he never approached Mr. McClellan to admit his misconduct; Mr. McClellan came to him after ten years to get his file because Mr. McClellan was planning to speak with Attorney Lynch. Silver admitted that he lied to his client, and further that he stopped lying once Attorney Lynch exposed the lies. N.T. 7/31/23, 229, 230, 306; N.T. 8/1/23 15.

107. Silver admitted his misconduct, but was unable to identify a specific reason for his actions. N.T. 7/31/23 247; N.T. 8/1/23 56.

108. Silver admitted that he did not tell his clients he missed the statute of limitations because he did not wish to face the consequences of his "error," particularly because he knew that he had been suspended from practice by the Supreme Court in 2005 for unprofessional conduct. Silver admitted that he lied repeatedly to avoid the potential for a disciplinary action against him. N.T. 7/31/23 296; N.T. 8/1/23 64.

109. When questioned whether he would have continued to lie and evade the McClellans had Attorney Lynch not discovered the misconduct, Silver acknowledged that he could not testify that he would have disclosed the misconduct to his clients. N.T. 8/1/23 60-61, 76-77.

110. When questioned whether he would have self-reported his misconduct to Office of Disciplinary Counsel after Attorney Lynch confronted him, Silver acknowledged that he could not testify that he would have. N.T. 8/1/23 60-61, 79-80.

111. Silver testified that he experienced anxiety and nervousness over conversations with Mr. McClellan because “I knew I had to say things that were not accurate and did not come clean with him.” N.T. 8/1/23 87. Silver claims he is still feeling the effect of “just how horrific my performance was.” N.T. 8/1/23 88.

112. Silver acknowledged anxiety, stress and professional embarrassment, as well as financial reversal due to the disciplinary circumstances. N.T. 8/1/23 89.

113. Silver expressed remorse for his mistreatment of the McClellans and acknowledged his fault. He credibly testified, “[a]nd I think listening to Mr. McClellan’s testimony is where it’s clear that I betrayed him and I abandoned him because I didn’t do what I was supposed to do.” Further, “just the kind of horrible things that happened with regard to Mr. McClellan’s son became even more horrible because of my actions to him, so I compounded their emotional loss.” N.T. 7/31/23 230, 248-249; 8/1/23 22 64-65.

114. The parties stipulated that on July 15, 2021, during a telephone conversation, Silver apologized to Mr. McClellan for mishandling their legal matter. Jt. Stip. 55.

115. Silver's stipulation to the facts and rule violations in this matter demonstrates acceptance of responsibility and cooperation with Petitioner, tempered by his earlier acts to ignore Petitioner by failing to respond to the DB-7 letter and failing to file an answer to the Petition for Discipline.

History of Prior Discipline

116. On September 6, 2001, an informal admonition was administered to Respondent for his violations of the rules in two separate complaint matters. In the first matter, Silver failed to: appear for an arbitration hearing, resulting in the entry of a judgment against his client; advise his client of the date, time, and location of the arbitration hearing and of the entry of a judgment against her; and respond to his client's written inquiry for a status update. Silver misrepresented to his client the status of the matter in several conversations, in order to conceal his mishandling of the matter. In the second matter, Silver failed to: finalize a divorce; provide a written fee agreement; and release his client's file after his representation was terminated. He further misrepresented to his client the status of her legal matter. ODC-12.

117. On December 4, 2002, Silver was administered a private reprimand for his misconduct in one client matter. Silver failed to: obtain his client's approval to withdraw a pending petition; complete and finalize his client's divorce and pursue the equitable distribution of marital assets; respond to his client's inquiries; provide a written fee agreement; and release his client's file to her new attorney. ODC-13.

118. By Order dated April 6, 2005, the Supreme Court of Pennsylvania suspended Silver from the practice of law for six months and placed him on probation for twelve months with a practice monitor. The misconduct involved two separate matters. In the first matter, Silver commingled nonfiduciary funds with fiduciary funds

held in his law firm's trust accounts; failed to maintain in the trust account \$7,477.52 on behalf of a client; and failed to maintain complete records of client and third party funds for five years after the representations were terminated. In the second matter, Silver failed to comply with a court order that he take action to complete the dissolution of his law partnership; sent an ex parte facsimile transmission to a judge; failed to comply with an order that found him in contempt; failed to comply with an order to file a Concise Statement of Matters Complained of on Appeal; and failed to attend a hearing on a second contempt petition, which resulted in the judge finding Silver in contempt a second time. ODC-14.

Civil Lawsuits

119. Three civil lawsuits were filed against Silver in the Philadelphia Court of Common Pleas by former clients.

120. In September 2008, Ms. Denise Colangelo filed a legal malpractice lawsuit against Silver ("the Colangelo lawsuit"). ODC-15.

121. The Complaint filed in the Colangelo lawsuit alleged that Silver:

- a. agreed to represent Ms. Colangelo for injuries she sustained at a hotel while vacationing in Las Vegas, Nevada;
- b. filed a lawsuit on behalf of Ms. Colangelo in the Philadelphia Court of Common Pleas ("the Philadelphia lawsuit");
- c. failed to advise Ms. Colangelo that in March 2003, the Philadelphia lawsuit was dismissed without prejudice to file a lawsuit in Nevada;
- d. failed to advise Ms. Colangelo that he appealed the dismissal of the Philadelphia lawsuit to the Superior Court of Pennsylvania and that in July 2003, the Superior Court quashed the appeal; and

- e. misrepresented to Ms. Colangelo that the Philadelphia lawsuit was pending until April 2008. ODC-16, Bates Numbers 000207-209).

122. On April 8, 2009, a default judgment was entered against Silver in the Colangelo lawsuit because he failed to file an Answer. ODC-15, Bates Number 000199.

- a. By Order docketed on December 13, 2010, the court awarded Ms. Colangelo \$200,000 in compensatory damages and \$250,000 in punitive damages, for a total award of \$450,000.
- b. Silver has not satisfied this award. N.T.7.31.23 276-278; ODC-18.

123. In May 2007, Mr. James Manion and Ms. Sheila Manion filed a legal malpractice lawsuit against Silver ("the Manion lawsuit"). ODC-19.

124. The Complaint filed in the Manion lawsuit alleged that:

- a. Silver represented Mr. Manion in a lawsuit filed against Mr. Manion by Mr. Francis Bottone and Ms. Barbara Bottone ("the Bottones");
- b. Silver failed to appear for a March 29, 2000 arbitration hearing and to notify Mr. Manion that an arbitration hearing was scheduled;
- c. an arbitration panel entered a total award of \$100,000 in favor of the Bottones;
- d. in April 2000, Silver misrepresented to Mr. Manion that Mr. Manion prevailed at the arbitration hearing;
- e. Silver failed to advise Mr. Manion that Silver appealed the arbitration award and that in November 2000, the appeal was dismissed because Silver failed to appear at a mandatory pre-trial settlement conference;

- f. sometime in 2003, Mr. Manion learned that a \$100,000 judgment was entered against him due to a lien filed against his real property;
- g. in June 2003, Silver agreed to pay \$40,000 to the Bottones, but the Bottones reserved the right to pursue the entire judgment against Mr. Manion if the installment payments were not timely made;
- h. the Bottones revived the judgment against Mr. Manion because Silver failed to comply with the installment agreement;
- i. in May 2005, judgment was entered in favor of the Bottones and against Mr. Manion for \$88,438; and
- j. in December 2006, Mr. Manion paid \$60,000 to the Bottones to satisfy the judgment entered against him. ODC-20, Bates Numbers 000246-249, 251-252.

125. On July 17, 2007, a default judgment was entered against Silver in the Manion lawsuit because he failed to file an Answer and damages were assessed in the amount of \$60,000 as to Count II of the Complaint (breach of contract).

- a. On December 31, 2007, an arbitration panel awarded Mr. and Ms. Manion \$15,000 as to Count III of the Complaint (negligent infliction of emotional distress).
- b. Silver has not satisfied the total award of \$75,000. ODC-19-20, Bates Numbers 000240-242, 250, 253.

126. In December 2006, Mr. Brian Boyle filed a breach of contract lawsuit against Ms. Diana Glinka and Silver (“the Boyle lawsuit”). ODC-21.

127. The Complaint filed in the Boyle lawsuit alleged that:

- a. Mr. Boyle paid Silver to prepare an Agreement of Sale for Mr. Boyle to purchase real property from Ms. Glinka;
- b. Mr. Boyle paid Silver an additional \$2,500 to enforce the Agreement of Sale;
- c. Silver failed to take any action to enforce the Agreement of Sale; and
- d. Silver failed to respond to Mr. Boyle's inquiries. ODC-22, Bates Numbers 000272-273.

128. On April 3, 2007, default judgments were entered against Silver and Ms. Glinka in the Boyle lawsuit because they each failed to file an Answer.

- a. On January 9, 2008, the court assessed damages against Silver in the amount of \$10,443.61.
- b. Silver has not satisfied this award. ODC-21, Bates Numbers 000262, 265-266.

129. At the disciplinary hearing, Silver had the opportunity to testify about the factual allegations of the three civil suits. N.T. 7/31/23 271-290.

130. The Committee Chair specifically stated that if Silver did not agree with Petitioner's questions on the civil suits or the facts being posited, he was able to disagree or make an explanation. The Committee Chair further invited Silver's counsel to circle back and redirect Silver if he wanted to. N.T. 7/31/23 282-283, 289.

Tax Liens

131. In November 2005, the IRS filed a lien against Silver in the amount of \$43,645.09. ODC-23.

- a. The IRS lien remains unsatisfied. *Id.*

132. On August 2 and 10, 2005, and February 15, 2006, the Commonwealth of Pennsylvania Department of Revenue filed three liens against Silver in the amounts of \$1,063.77, \$883.43, and \$3,577.93, respectively. ODC-25-30.

- a. These three liens related to Silver's failure to pay personal income taxes for the years 2000, 2001, 2002, and 2004 ODC-26, 28, 30.
- b. These three liens remain unsatisfied. ODC-25, 27, 29.

Character Testimony

133. Silver presented character evidence through the testimony of two clients to show his competence, diligence, and truthfulness in representing clients in criminal matters.

134. John Echevarria is Silver's client and first met Silver for representation in 2013. Since that time, Silver has handled five criminal matters for Mr. Echevarria. Mr. Echevarria found that Silver was competent in handling his matters, communicated with him, and met his expectations for truth and honesty. Mr. Echevarria was satisfied with Respondent's representation. N.T. 7/31/23 149-152.

135. Amaury Cancel is Silver's client and has been represented by Silver in four or five criminal matters. Ms. Cancel testified that Silver always had a plan to carry out the representation and always appeared in court and communicated with her. Ms. Cancel never had a problem with Silver being honest and truthful with her. Ms. Cancel was satisfied with Respondent's representation. N.T. 7/31/23 176-193.

136. Mr. Echevarria and Ms. Cancel testified credibly that Silver provided competent and effective representation in their respective criminal defense cases.

137. Silver offered an exhibit that listed clients he represented in criminal and dependency matters over the last 20 years. GS-1; 7/31/23 212-213, 250-251.

The Procedural History Below

138. On August 30, 2023, Petitioner submitted a post-hearing brief to the Committee and requested that the Committee recommend to the Board that Silver be suspended for a period of 30 months.

139. On September 22, 2023, Silver submitted a post-hearing brief to the Committee and requested that the Committee recommend to the Board that he be suspended for less than one year, with the assignment of a practice monitor upon completion of his suspension.

140. By Report filed on December 5, 2023, the Committee recommended that Silver be suspended for a period of 30 months.

141. On January 16, 2024, Silver filed a Brief on Exceptions to the Report and recommendation of the Committee and requested oral argument before the Board.

142. On January 29, 2024, Petitioner filed a Brief Opposing Exceptions.

143. A three-member panel of the Board held oral argument on March 19, 2024.

144. The Board adjudicated this matter at the meeting on April 10, 2024.

II. CONCLUSIONS OF LAW

By his conduct as set forth above, Silver violated the following Rules of Professional Conduct (“RPC”) and Pennsylvania Rules of Disciplinary Enforcement (“Pa.R.D.E.”):

1. RPC 1.1 – A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.

2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

3. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

4. RPC 1.4(b) – A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5. RPC 1.4(c) – 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.

6. RPC 1.5(b) – When the lawyer has not regularly represented the client, the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

7. RPC 1.7(a)(2) – Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if: (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client, or a third person or by a personal interest of the lawyer.

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

9. Pa.R.D.E. 203(b)(7) – Failure by a respondent-attorney without good cause to respond to Disciplinary Counsel’s request or supplemental request under Disciplinary Board Rules, § 87.7(b) for a statement of the respondent-attorney’s position, shall be grounds for discipline.

III. DISCUSSION

This matter is before the Board on review of the Committee’s Report and recommendation to suspend Silver for a period of 30 months as a result of serious misconduct engaged in by Silver during his representation of the McClellans. Silver raises exceptions to the Committee’s Report on four grounds and the Board panel heard argument on the issues.

In disciplinary matters, Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. *Office of Disciplinary Counsel v. Lawrence J. DiAngelus*, 907 A.2d 452, 456 (Pa. 2006). Here, Silver stipulated to the vast majority of the factual allegations and all of the rule violations in the Petition for Discipline. Given these stipulations, the Board concludes that Petitioner satisfied its burden of proof.

The record established that in May 2011, the McClellans were informed that their son had committed suicide while incarcerated in state prison. In the fall of 2011, Silver agreed to represent the McClellans for any claims arising from that suicide, but he failed to provide a written fee agreement and failed to advise them that he never had handled a case like theirs before and, critically, that he did not carry professional liability insurance. Silver took no substantive action on the matter and allowed the statute of limitations to expire in May 2013 without filing a federal lawsuit on behalf of his clients.

Silver was aware of the two year statute and also aware that the statute had expired without the filing of a complaint, but nevertheless egregiously and dishonestly led the McClellans to believe for a period of eight years, that he had filed a federal lawsuit and was actively working on their matter. Some of these deceptions were specific in nature, such as informing his clients that a proceeding would be held in August 2021 (Jt. Stip. 40), that a proceeding might occur several months after August 2021 (Jt. Stip. 43), and that the proceedings had been delayed due to Covid but that he hoped to settle the matter (Jt. Stip. 45). In the end, Silver himself never revealed to his clients his dire professional lapses; rather, it was Attorney Lynch who ultimately disclosed the regrettable circumstances to Mr. McClellan after Mr. McClellan consulted with him in July 2021.

The magnitude of Silver's professional breach and ill treatment of his clients was palpable from the McClellans' testimony at the disciplinary hearing. Mr. McClellan credibly described his heartbreak and bewilderment as to how Silver could have misled him by repeatedly stating that the case was moving forward, and his feeling that he was made of fool of by his own attorney. Tellingly, Mr. McClellan trusted Silver's representations through the years because "he was my lawyer." Similarly, Ms. McClellan emotionally expressed her feelings of devastation that nothing was done for years on their deceased son's behalf.

In the face of his clients' anguish, the best Silver could offer to explain his actions was that he had no specific reason for why he did it. N.T. 7/31/23 247. Yet, the totality of Silver's testimony and evidence of record amply revealed his true motivation. Silver placed his personal interests above his clients' interests and selfishly lied to his clients for eight years because he wanted to avoid professional discipline, testifying that "I knew that this day would come." N.T. 7/31/23 230. Silver, having been thrice-disciplined

for misconduct in prior client matters that included neglect, lack of communication, and misrepresentations to clients, was well-aware that his misconduct in the McClellan matter would subject him to scrutiny by the disciplinary authorities and possible loss of his law license, and he resisted this authority for as long as possible to preserve his own ability to practice law. Even as relatively close in time as 2022, Silver acted to thwart Petitioner's inquiries and did not candidly respond to Petitioner's DB-7 letter, instead choosing to provide boilerplate answers to Petitioner's specific questions, even though Silver knew the facts of the matter. Silver acknowledged that if Attorney Lynch had not discovered that no lawsuit was filed and he missed the statute of limitations, he would not have informed the McClellans on his own, or self-reported his misconduct to Office of Disciplinary Counsel.

Having concluded that Respondent committed serious professional misconduct, we turn next to the appropriate quantum of discipline to be imposed. In looking at the general considerations governing the imposition of final discipline, it is well-established that disciplinary sanctions serve the dual purpose of protecting the public from unfit attorneys and maintaining the integrity of the legal system. *Office of Disciplinary Counsel v. John Keller*, 506 A.2d 872, 875 (Pa. 1986). Another compelling goal of the disciplinary system is deterrence. *In re Dennis Iulo*, 766 A.2d 335, 338, 339 (Pa. 2001). The Board also recognizes that the recommended discipline must reflect facts and circumstances unique to the case, including circumstances that are aggravating or mitigating. *Office of Disciplinary Counsel v. Anthony C. Cappuccio*, 48 A.3d 1231, 1238 (Pa. 2012). And importantly, while there is no per se discipline in Pennsylvania, the Board is mindful of precedent and the need for consistency in discipline. *Office of Disciplinary Counsel v. Robert Lucarini*, 472 A.2d 186, 189-91 (Pa. 1983).

Silver's Exceptions

In the context of examining the aggravating and mitigating circumstances, we review Silver's exceptions, as three are directed to the Committee's admission of evidence, factual findings, and weight assigned in aggravation.³ First, Silver contends the Committee erred by treating factual allegations in civil complaints filed against him by former clients as admitted facts and as an aggravating factor. He argues that "the only conceivable legal principle that could have allowed the Committee to do [sic] is the doctrine of collateral estoppel," which he posits is inapplicable in the instant matter. Silver Brief on Exceptions, p. 13. Our review of the record demonstrates that Silver was not collaterally estopped. At the hearing Petitioner described the factual allegations of the civil matters to Silver, he had the opportunity to testify on those factual allegations, and the Committee made clear on the record to Silver's counsel, and indeed invited Silver's counsel, to elicit any testimony he wanted on the underlying allegations. In any event, the Board does not consider these lawsuits for their factual underpinnings, but instead draws an inference that Silver was aware that other clients experienced what they perceived as a lack of communication and poor performance on their civil matters handled by Silver. Further, Silver's allowance of default judgments and failure to satisfy the legal judgments against him—in contrast to the underlying factual allegations in those matters—were properly considered as uncontroverted facts reflective of his lack of experience in civil matters.

Next, Silver takes exception to the Committee's finding that he "cavalierly" declined to appear at a virtual hearing as a means of delaying his disciplinary proceedings

³ Silver's fourth exception goes to the Committee's recommendation for discipline and will be discussed separately.

and contends that the Committee erred in treating this absence as an aggravating factor, in light of Silver's Bell's Palsy diagnosis. The record shows that Silver filed a continuance request with doctor's note on March 10, 2023, based on his medical condition, and the Board Chair entered an order on March 14, 2023, granting the continuance conditioned on Silver obtaining a supplemental letter from a medical provider verifying an examination and conclusion by the following day. Silver was unable to obtain a letter and chose to not appear, although his counsel appeared and stated Silver's explanation on the record. Ultimately, the Chair granted a continuance after Petitioner stated it was not opposed. While we find it perplexing that Silver decided to not appear virtually on the first scheduled day of his disciplinary hearing on March 15, 2023, there is no evidence that Silver fabricated a medical diagnosis to avoid the hearing. At the March 15, 2023 hearing, the parties agreed to a continuance and Silver later appeared in person at the hearings on July 31 and August 1, 2023. While we appreciate the Committee's frustration over Silver's failure to appear as the Committee and Petitioner were prepared to proceed, we assign no weight in aggravation to his nonappearance.

Silver's third exception relates to the Committee's observation that Silver repeatedly referenced the conduct of Mr. Mirarchi in the McClellan matter in an attempt to qualify Silver's handling of the matter (HC Rpt. pp 21,22), which Silver framed as the Committee finding that Silver blamed Mr. Mirarchi for the errors that occurred. Silver contends that he did not raise Mr. Mirarchi's involvement with intent to cast blame and that he has accepted full responsibility for his misconduct. Upon review, we find that Silver's testimony about Mr. Mirarchi's involvement was fairly intended to explain Silver's law practice set-up, and was not presented as a way for Silver to abdicate his own

responsibility. The record supports the finding that Silver did not blame Mr. Mirarchi for his own failings, as borne out by his testimony:

No. No. I'm not saying it's Mr. Mirarchi's fault. I'm saying that's my fault...I was in the office every day, I was reviewing this every day, I speak to the McClellans...So it was not his responsibility. It was my responsibility. Because I was in charge of that case. (N.T. 7/31/23 244, 245);

I'm responsible for this, I didn't pass anything off. (N.T. 8/1/23 28);

But this is my doing. It's not Mr. Mirarchi's. (N.T. 8/1/23 28);

Because I'm not blaming anyone else. I'm not saying anyone else was responsible. (N.T. 8/1/23 29).

Aggravating Factors

This record reveals aggravating factors that weigh in favor of increased discipline.

1. *Record of prior discipline*

One weighty factor is Silver's extensive record of discipline, which exposes Silver as a recidivist offender who engaged in a pattern of continued misconduct involving neglect of client matters and deception to clients to conceal his neglect. The prior discipline consists of an informal admonition imposed in 2001 for misconduct in two client matters, a private reprimand imposed in 2002 for misconduct in one matter, and a suspension of his law license for six months followed by twelve months of probation, ordered by the Court on April 6, 2005, for misconduct in two matters. It is well-established that prior discipline constitutes an aggravating factor, even when the previous discipline is not recent. See *Office of Disciplinary Counsel v. William D. Hobson*, Nos. 154 DB 2019 & 31 DB 2020 (D. Bd. Rpt. 11/24/2021, pp. 56-57) (S. Ct. Order 2/11/2022) (the Board

recognized that Hobson's disbarment on consent imposed in 1997, nearly 25 years previously, was nevertheless part of the disciplinary record that the Board considered in 2021, along with Hobson's more recent private discipline imposed in 2018 and 2020).

Silver's prior record of discipline is significant as it reveals that instead of acting as a deterrent to future misconduct, the prior discipline had the opposite effect and encouraged Silver to commit more misconduct. The reason Silver repeatedly lied to the McClellans was precisely because he was aware that the expired statute of limitations exposed him to potential professional discipline, leading him to place his personal interests ahead of his clients time and again. Silver was more worried about keeping his law license than being honest with his clients. Because Silver's prior discipline failed to have the intended effect of deterrence, it is all the more necessary that the discipline imposed on Silver for his instant misconduct be of significant weight.

2. Civil lawsuits, default judgments and tax liens

The record reflects that between 2006 and 2008, two malpractice lawsuits and one breach of contract lawsuit were brought against Silver by former clients. Silver failed to file answers in these matters and default judgments were entered against Silver, which remain unsatisfied. The Board may properly consider these civil lawsuits pursuant to Disciplinary Board Rule § 89.151(b)(7), which governs evidence that bears on the type of discipline to be imposed, and specifically concerns civil cases "in which the respondent-attorney was or is a party defendant and which placed in issue his or her conduct or competency or charged a violation of any disciplinary rules." Similar to the prior disciplinary matters, these civil suits occurred before Silver began his representation of the McClellans in May 2011.

These lawsuits, unpaid judgments and tax liens, along with the prior disciplinary matters, form a constellation of circumstances that raise issues as to Silver's lack of ability.⁴ However, we find the existence of these civil matters much less significant as an aggravating factor than Silver's prior record of discipline when determining the appropriate sanction for his misconduct. *See Office of Disciplinary Counsel v. William D. Hobson*, No. 154 DB 2019 & 31 DB 2020 (D. Bd. Rpt. 11/24/2021, p. 58) (S. Ct. Order 2/11/2022) (the Board considered Hobson's federal and state tax liens and unsatisfied judgment in aggravation, but assigned this factor less weight in its assessment of discipline).

3. *Silver's actions relating to Petitioner's investigation*

The Committee gave weight in aggravation to its finding that Silver acted in a fashion that was dismissive and evasive of Petitioner's inquiries. We agree. The record demonstrates that Silver was not cooperative with Petitioner's initial investigation and acted to delay the ultimate disposition of this matter. As Silver himself admitted, "I knew this day was coming," (N.T. 7/31/23 230), yet rather than acknowledge wrongdoing and aid in the disciplinary process, he engaged in dilatory tactics by failing to timely respond to Petitioner's DB-7 inquiry, despite receiving several extensions of time to file a response. When Silver finally replied to the DB-7 letter months later, his pro se filing contained mostly boilerplate responses, which were not helpful to Petitioner's investigation. As well, Silver failed to file an Answer to the Petition for Discipline.

4. *Silver's testimony regarding self-reporting his misconduct*

⁴As explained above, we do not consider the specific factual allegations of the civil lawsuits as admitted facts.

When questioned by the Committee whether he would have continued to lie and evade the McClellans had Attorney Lynch not discovered the misconduct, Silver acknowledged that he could not testify that he would have disclosed his misconduct to his clients, or that he would have self-reported his misconduct to Office of Disciplinary Counsel. Silver's concessions, while candid, amply demonstrate his steadfast unwillingness for eight years to acknowledge his wrongful actions and willingness to maintain the charade that he had filed a lawsuit on behalf of the McClellans.

5. *The length and repetitive nature of Silver's deception*

As the Committee aptly observed, the most striking, and to the Board's view the most troubling, aspect of this matter is the length of time and repetitious nature of Silver's conduct in deceiving his clients. The record established that Silver was in contact with his client approximately every three to four months, and Silver admitted that he engaged in between 40 to 50 communications with the McClellans over the course of the representation. N.T. 8/1/23 87. When questioned by the Committee, Silver acknowledged that each time he lied to his clients, he committed an act of misconduct. N.T. 8/1/23 63. What is inescapable is that Silver was in control of his own actions and during any one of these numerous communications through the years, he could have admitted to his clients that he had not filed a lawsuit prior to the expiration of the statute of limitations. Selfishly, Silver chose not to do so to protect his own interests. Upon questioning by his counsel, Silver described the anxiety, stress and nervousness he experienced when having to converse with Mr. McClellan, and his later professional embarrassment and financial difficulties that resulted from his actions, but certainly the conclusion to be drawn is that Silver inflicted these problems upon himself by his steady avoidance of simply doing the

right thing and being honest with his clients. Noticeably absent during Silver's testimony was any moment during the nearly eight year pattern of concealment in which he thought to put the welfare of his clients—who were grieving the loss of a son and seeking help through the legal system—before his self-interest in avoiding further discipline.

6. *Harming the integrity of the legal profession*

Another compelling aggravating factor is the damage that Silver's serious misconduct inflicted on the integrity of the legal profession. Mr. McClellan credibly conveyed that "[b]ecause [Silver] was an attorney, I was going by what he was telling me" and therefore he had no reason to not believe Silver's repeated assurances that "everything is looking good" and "we're moving along." Quite simply, the McClellans placed their trust and confidence in Silver as their lawyer over a period of many years, and he egregiously breached that fundamental trust. As is well-established in the case law, the disciplinary system's goal of preserving the integrity of the bar is paramount, along with protecting the public. *Office of Disciplinary Counsel v. Roger Simon*, 507 A.2d 1215 (Pa. 1986). Here, Silver's shabby treatment of his clients through his dishonest actions is inconsistent with the high ethical standards of the practice of law in this Commonwealth and casts a shadow on the integrity of our profession. See, *Office of Disciplinary Counsel v. William D. Hobson*, No. 154 DB 2019 & 31 DB 2020 (D. Bd. Rpt. 11/24/2021, p. 58) (S. Ct. Order 2/11/2022) (the Board accorded aggravation to the testimony of Hobson's client, which underscored the detrimental impact of Hobson's unprofessional conduct not only on his client but on the reputation of the profession).

Mitigating Factors

Upon review of this record, we identify factors of a mitigating nature, as set forth below. We conclude that the weight accorded to these factors does not outweigh the significant aggravating factors as outlined above.

1. *Character evidence*

Silver presented two character witnesses, former clients in criminal defense matters. These witnesses are credible that Silver provided competent and effective representation to them in their respective cases. The Committee found that Silver was a “seasoned and talented” criminal defense attorney. HC Report, p. 17. We are not so willing to draw this conclusion based on the testimony of two former clients; however, we accord some weight in mitigation to this character evidence.

As additional mitigation, Silver presented an exhibit showing a list of clients numbering in the thousands (GS-1) to establish that with respect to criminal and dependency matters and as opposed to civil matters, he has represented many cases over his career without problems. Silver strongly argues that this list shows his problematic conduct in his representation of the McClellans and clients in his prior disciplinary matters, all of which involved civil matters, does not manifest in his representation of clients in noncivil matters. On consideration, we give no weight to this evidence, as it is simply a list of cases upon which we can draw no conclusions as to the quality of Silver’s legal work.

Silver’s continued insistence, as raised in his exceptions, that he only runs afoul of the ethical rules in civil matters and has no history of discipline or legal problems with respect to his representation of clients in criminal or quasi-criminal cases is not

persuasive as a mitigating factor. First, Silver has a duty to provide competent and diligent representation to all clients. Second, his argument raises the question why Silver agreed to represent the McClellans in a matter beyond his expertise and competency, and without professional liability insurance, if he was aware that he had issues with representation in civil matters. Silver's attempt, by way of the testimony of two clients and the exhibit, to demonstrate in mitigation that he poses no risk to the public as long as he refrains from taking civil matters, must fail.

2. Acceptance of responsibility and remorse

We find evidence that Silver accepted responsibility for his actions, was apologetic, and voiced remorse for his actions. Shortly before the disciplinary hearing on July 31 and August 1, 2023, Silver stipulated to the vast majority of the factual allegations in the Petition for Discipline and all of the charged rule violations, thus substantially narrowing the issues in dispute at the hearing. We accord weight in mitigation to Silver's acceptance of responsibility and cooperation, tempered by the fact that Silver was not cooperative with Petitioner during its initial investigation of his misconduct, as he failed to timely file a DB-7 response and failed to Answer the Petition for Discipline.

The Committee relied on its observations of Silver's comportment and demeanor over the course of the two day hearing to find that he expressed remorse (HC Report p. 21), and we conclude that this finding is supported by the record. Silver's testimony at the disciplinary hearing reveals that he understood his misconduct, held himself accountable, and showed remorse for his egregious treatment of the McClellans. N.T. 7/31/23 248-249; N.T. 8/1/23 64-65. Silver on multiple occasions made clear that the mishandling of the McClellan matter was his responsibility. N.T. 7/31/23 244-245; N.T.

8/1/23 28, 29. And, the parties stipulated that on July 15, 2021, Silver apologized to Mr. McClellan for mishandling his legal matter. Mitigation is appropriate where a respondent demonstrates remorse and acceptance of responsibility. See *Office of Disciplinary Counsel v. Robert G. Young*, No. 115 DB 2019 (D. Bd. Rpt. 11/30/2020, p. 32) (S. Ct. Order 3/16/2021) (the Board accorded mitigation for Young's acceptance of responsibility by stipulating to the underlying facts of his misconduct and expressing genuine remorse).

We note the Committee's concern that Silver was aware of his misconduct in missing the statute of limitations, engaged in additional misconduct for many years to conceal that oversight, and only expressed remorse after being caught. Clearly, Silver evaded responsibility for a long time. Nevertheless, Silver did express remorse, however late in the process, and is entitled to some mitigation for recognizing past wrongs, unlike respondent-attorneys who never admit their wrongdoing and refuse to apologize at any point during the disciplinary process. See *Office of Disciplinary Counsel v. Joseph M. Yablonski*, No. 128 DB 2022 (D. Bd. Rpt. 11/30/23, p. 18) (S. Ct. Order 2/114/2024) (the Board weighed in aggravation Yablonski's failure to accept responsibility for his misconduct and failure to express remorse).

Appropriate discipline

Having reviewed the record and considered Silver's exceptions and the parties' arguments, in light of the serious nature of the violations discussed in this Report, coupled with the weighty aggravating factors and less significant mitigation, we recommend that the Court suspend Silver from the practice of law for a period of four years.

"As is often the case with attorney disciplinary matters, there is no case precedent that is precisely on all fours..." *Cappuccio*, 48 A.3d at 1240. While our survey

of prior matters did not reveal a case that squares with the instant matter, in reviewing the decisional law, we find cases that provide a benchmark to determine the severity of discipline.

Here, the Committee recommends a suspension for 30 months, adopting the recommendation of Petitioner,⁵ while Silver advocates for a suspension of less than one year with a practice monitor. On this record, and after reviewing the precedent cited by the parties to support their respective recommendations, we find the recommended sanctions inadequate to protect the public and ensure that the Board and the Court are doing enough to maintain the public's confidence in our profession. Silver's years of deceitful conduct to promote his self-interest over that of his clients, substantially aggravated by his extensive recidivist history of disciplinary infractions that resulted in private and public discipline, calls for a more severe approach. Silver's testimony that he could not say he would have told the McClellans the truth had he not been found out is particularly impactful to the Board's decision to recommend a very lengthy suspension, as the testimony lays bare that Silver would still be lying today and harming his clients, and by extension the legal profession.

The Court has imposed lengthy suspensions in matters where the respondent-attorney has an extensive history of discipline along with other aggravating factors. In the recent matter of *Office of Disciplinary Counsel v. William J. Weiss*, No. 133 DB 2021 (D. Bd. Rpt. 3/11/2024) (S. Ct. Order 5/2/2024), the Court adopted the Board's recommendation and suspended Weiss for five years. Weiss engaged in the unauthorized practice of law in three matters while serving a suspension of one year and

⁵ At oral argument before the Board panel, Petitioner suggested that a 30 month suspension was "kind." N.T. 3/19/24 47.

one day that was imposed by the Court in 2019. In addition to the 2019 suspension, Weiss had previously been suspended for two years in 2008, for conduct that included the unauthorized practice of law. The Board found in further aggravation that Weiss failed to show remorse or accept responsibility for his actions, and demonstrated a lack of cooperation with disciplinary authorities.

In *Office of Disciplinary Counsel v. William D. Hobson*, No. 154 DB 2019 & 31 DB 2020 (D. Bd. Rpt. 11/24/2021) (S. Ct. Order 2/11/2022), after Office of Disciplinary Counsel and the Hearing Committee recommended a suspension for three years, the Board recommended a five year suspension and the Court adopted the recommendation. Hobson engaged in misconduct in three separate matters, which included ex parte communication with a judge, failure to communicate, neglect, and abandonment of representation, as well as multiple misrepresentations to a client that led the client to believe Hobson was taking action on her matter. Hobson had a prior record of discipline of a disbarment in 1997, an informal admonition in 2016, and a private reprimand in 2018, which the Board assigned substantial weight in aggravation. The Board gave some weight in aggravation to Hobson's history of tax liens and a judgment. The Board also gave some weight in mitigation to Hobson's character evidence.

In *Office of Disciplinary Counsel v. Alexander Z. Talmadge, Jr.*, No. 240 DB 2018 (D. Bd. Rpt. 12/17/2019) (S. Ct. Order 3/24/2020), following the recommendation of Office of Disciplinary Counsel and the Hearing Committee to suspend Talmadge for two years, the Board likewise recommended a two year suspension. However, the Court imposed a five year suspension. Talmadge engaged in misconduct in two client matters and failed to comply with his disciplinary probation in a third matter. In one client matter,

Talmadge failed to act with competence and diligence, failed to communicate with his client, made misrepresentations that the client's matter was pending, and abandoned the representation. In the second client matter, Talmadge conducted himself in a manner that had no substantial purpose other than to burden, harass and intimidate a third party. In the third matter, Talmadge failed to comply with a condition attached to a previous public censure to take eight hours of continuing legal education. In aggravation, Talmadge had a history of discipline consisting of a private reprimand in 2003, an informal admonition in 2005, and a public censure with probation for one year in 2012.

The precedent underscores the need for a lengthy suspension in the instant matter. However, when comparing the cited matters to the instant matter, we conclude that a four year suspension is appropriate here, where the misconduct involved one client matter, as opposed to the several matters involved in each of the cited cases, and where Silver cooperated with Petitioner by stipulating to the facts and rule violations and showed a degree of remorse and accountability for his actions. A four year period of suspension will protect the public, in keeping with the goals of the disciplinary system, by requiring Silver to prove his fitness and demonstrate that he is a changed person.

IV. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Gary Scott Silver, be Suspended for four years from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: /s/ Laura E. Ellsworth
Laura E. Ellsworth, Member

Date: 06/07/2024