

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 3059 Disciplinary Docket No. 3
	:	
	:	No. 13 DB 2023
	:	
Petitioner	:	
	:	Attorney Registration No. 58782
	:	
v.	:	(Allegheny County)
	:	
	:	
RALPH DAVID KARSH,	:	
	:	
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 23rd day of August, 2024, upon consideration of the Report and Recommendations of the Disciplinary Board, Ralph David Karsh is suspended from the Bar of this Commonwealth for a period of three months. The suspension is stayed in its entirety, and Respondent is placed on probation for a period of two years, subject to the following conditions:

1. Respondent shall abstain from using alcohol, drugs, or any other mind-altering chemicals except under the supervision of a prescribing physician.
2. Respondent shall attend Alcoholics Anonymous or Narcotics Anonymous meetings weekly.
3. Respondent shall obtain a sponsor in Alcoholics Anonymous or Narcotics Anonymous and maintain weekly contact with that sponsor.
4. A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule § 89.293(c).
5. With the sobriety monitor, Respondent shall:
 - a. meet at least twice per month;

- b. maintain weekly telephone contact;
 - c. furnish the sobriety monitor with his Alcoholics Anonymous or Narcotics Anonymous sponsor's contact information; and
 - d. cooperate fully.
6. Respondent shall file quarterly written reports with the Disciplinary Board.
7. The sobriety monitor shall:
- a. monitor Respondent's compliance with the terms and conditions of the order imposing probation;
 - b. meet with Respondent at least twice a month and maintain weekly telephone contact with Respondent;
 - c. maintain direct monthly contact with the Alcoholics Anonymous sponsor;
 - d. file with the Disciplinary Board Prothonotary quarterly written reports; and
 - e. immediately report to the Disciplinary Board Prothonotary any violations by Respondent of the terms and conditions of the probation.

Respondent shall pay costs to the Disciplinary Board. See Pa.R.D.E. 208(g).

Justice Wecht did not participate in the consideration or decision of this matter.

A True Copy Nicole Traini
As Of 08/23/2024

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 13 DB 2023
Petitioner	:	
	:	
v.	:	Attorney Registration No. 58782
	:	
RALPH DAVID KARSH,	:	
Respondent	:	(Allegheny County)

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

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

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

I. HISTORY OF PROCEEDINGS

On January 20, 2023, Petitioner, Office of Disciplinary Counsel, filed a Petition for Discipline alleging that Respondent, Ralph David Karsh, violated the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement through his representation of a client in a criminal matter and through his actions concerning his annual attorney registration form. Pursuant to a Stipulation for a one-time 20-day extension, Respondent filed a counseled Answer to Petition for Discipline on March 3, 2023.

Following a prehearing conference on June 23, 2023, a District IV Hearing Committee (“Committee”) held a disciplinary hearing on August 22, 2023. On that date, Petitioner offered the testimony of its Auditor/Investigator and exhibits ODC 1-20, which were admitted into evidence in its case-in-chief. During the dispositional phase of the hearing, Petitioner offered exhibits ODC 21-23, 27, 29, and 30, which were admitted into evidence. Respondent testified on his own behalf and presented the testimony of 10 additional witnesses, including expert witness Sandra A. Davis, Ph.D. Respondent offered exhibits R-A and R-B. Due to the unavailability of Respondent’s other expert witness, Bruce Wright, M.D., the record remained open and the deposition of Dr. Wright was taken on September 28, 2023.

On November 9, 2023, Petitioner submitted a post-hearing brief to the Committee and requested that the Committee recommend to the Board that Respondent be suspended for a period of one year and one day. On December 18, 2023, Respondent submitted a post-hearing brief to the Committee and requested that the Committee recommend to the Board that Respondent be subjected to a public reprimand.

By Report filed on February 27, 2024, the Committee concluded that Respondent violated Rules of Professional Conduct 1.3, 1.4(a)(3), 8.4(c), and 8.4(d) and Pennsylvania Rule of Disciplinary Enforcement 219(d)(1)(v).¹ The Committee further concluded that Petitioner failed to meet its burden as to Rules of Professional Conduct 1.5(a), 1.15(b), 1.15(e), 1.15(i), and 1.16(d). The Committee recommended that Respondent be suspended for a period of three months, with the suspension stayed in its entirety and probation imposed for a period of two years with a sobriety monitor. The

¹ By Order dated July 25, 2023, the Court adopted amendments to Pa.R.D.E. 219, governing attorney registration. New Pa.R.D.E. 219(c)(1)(iii) replaces former Rule 219(d)(1)(v).

parties did not take exception to the Committee's Report and recommendation. The Board adjudicated this matter at the meeting on April 10, 2024.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, PA 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving alleged misconduct of any 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 said Rules.

2. Respondent was born in 1958 and was admitted to practice law in the Commonwealth of Pennsylvania on November 26, 1990. Respondent's attorney registration mailing address is 5516 Baywood Street, Unit 3, Pittsburgh, PA 15206. (ODC 1 Bates 2, ODC 2 Bates 21)

3. Respondent has no record of prior discipline.

Misconduct in the Eric Taylor Matter

4. On May 5, 2016, after a jury trial, Eric Taylor was convicted of, among other offenses, Third Degree Murder of an Unborn Child and Criminal Attempt-Murder of the First Degree filed in the Allegheny County Court of Common Pleas at CP-02-CR-0010212-2014. (ODC 1 Bates 2, ODC 2 Bates 21)

5. On August 3, 2016, Mr. Taylor was sentenced to a period of incarceration of 180 to 360 months on the charge of Third Degree Murder of Unborn Child, and 90 to 180 months on the charge of Criminal Attempt Murder of the First Degree, to run consecutively. (ODC 1 Bates 3, ODC 2 Bates 21)

6. On August 12, 2016, Rachael Santoriella, Esquire filed Post Sentence Motions on behalf of Mr. Taylor. (ODC 1 Bates 3, ODC 2 Bates 21)

7. By Order of Court dated November 29, 2016, Mr. Taylor's Post Sentence Motions were denied. (ODC 1 Bates 3, ODC 2 Bates 21)

8. Ms. Santoriella was counsel for Mr. Taylor in his appeals to both the Superior Court and the Pennsylvania Supreme Court. (ODC 1 Bates 3, ODC 2 Bates 22)

9. On December 9, 2016, a notice of appeal was filed on behalf of Mr. Taylor. (ODC 1 Bates 3, ODC 2 Bates 22)

10. On September 25, 2018, the Superior Court affirmed the Judgment of Sentence. (ODC 1 Bates 3, ODC 2 Bates 22)

11. On October 25, 2018, a Petition for Allowance of Appeal was filed on behalf of Mr. Taylor. (ODC 1 Bates 3, ODC 2 Bates 22)

12. On March 22, 2019, Mr. Taylor's Petition for Allowance of Appeal was denied by the Supreme Court of Pennsylvania. (ODC 1 Bates 4, ODC 2 Bates 22)

13. Thereafter, Respondent was retained to represent Mr. Taylor by Mr. Taylor's aunt, Michelle Kenney. (NT 20-21)

14. Respondent submitted a fee agreement letter to Ms. Kenney dated December 30, 2019, which stated, in relevant parts:

a. Respondent was willing to represent Mr. Taylor in the matter by investigating and filing a Post-Conviction Relief Act (PCRA) Petition and a

"first appeal to Superior Court, to be negotiated depending on circumstances";

b. His fee for the representation was \$15,000;

c. "Any additional cases will involve additional fees to be negotiated";

d. "All fees are non-refundable" and "All fees are considered earned when paid";

e. "In addition to [Respondent's] fee [Ms. Kenney] was responsible for costs which may include private investigators, ... experts associated with trial, ... and any other necessary expenses"; and

f. If Mr. Taylor failed to fulfill his responsibilities under the terms of the fee agreement, Respondent would withdraw from representing Mr. Taylor, but there was no provision regarding Respondent's obligations to Mr. Taylor or Ms. Kenney if Respondent failed to discharge his duties under the agreement.

15. On or about January 27, 2020, Ms. Kenney met Respondent and provided Respondent with PNC Bank Cashier's Check No. 7899112, drawn in the amount of \$25,000, made payable to Respondent, and dated January 27, 2020. (ODC 1 Bates 5, ODC 2 Bates 22, ODC 14 Bates 145-147)

16. At the time Respondent received the \$25,000 check, he did not discuss with Ms. Kenney why she provided \$10,000 in excess of the \$15,000 fee he had requested in his written communication about the fee. (ODC 1 Bates 5, ODC 2 Bates 22; NT 43-45)

17. Respondent testified that prior to Ms. Kenney signing the fee agreement, he discussed with her the procedure for PCRA petitions, the success rate, and the length of time it might take to pursue the matter, and mentioned that it might cost her "a hundred thousand" in the end. (NT 43-45)

18. On January 27, 2020, Respondent negotiated the \$25,000 check by depositing \$17,500 of the proceeds of the check to his PNC Bank IOLTA ending 7692

and receiving \$7,500 in cash. (ODC 1 Bates 5, ODC 2 Bates 22, ODC 14 Bates 145-147, ODC 15 Bates 150-156; NT 22)

19. The following are the dates, transaction amounts, and balances for Respondent's PNC Bank IOLTA activity:

<u>Date</u>	<u>Transaction</u>	<u>Amount</u>	<u>Account Balance</u>
01/27/20	deposit	\$17,500.00	\$17,648.06
01/28/20	withdrawal	6,000.00	11,648.06
02/03/20	withdrawal	2,500.00	9,148.06
02/26/20	withdrawal	3,000.00	6,148.06
03/12/20	withdrawal	3,000.00	3,148.06
03/25/20	withdrawal	2,000.00	1,148.06
04/16/20	check	800.00	348.06
06/08/20	check	300.00	48.06

20. Following his retention as counsel, Respondent met with Mr. Taylor on February 7, 2020 at SCI-Huntingdon for approximately three hours. (NT 19, 35, 47)

21. Thereafter, Respondent did not meet again with Mr. Taylor or keep either Mr. Taylor or Ms. Kenney apprised of the progress of the representation and, ultimately, failed to file a PCRA petition on behalf of Mr. Taylor. (ODC 1 Bates 7, ODC 2 Bates 23-24; NT 19, 63-64, 68, 74-75)

22. On several occasions between January 2020 and late April 2021, Ms. Kenney inquired of Respondent, both by telephone calls and text messages, about the

status of the PCRA petition and proceedings. (ODC 1 Bates 7, ODC 2 Bates 24; NT 63-64)

23. During Respondent's initial communications, he told Ms. Kenney that he was working on Mr. Taylor's case and asked her to be patient. (ODC 1 Bates 7, ODC 2 Bates 24)

24. These communications were false, as Respondent was not working on the case.

25. Respondent testified that he knew there was no merit to support pursuing a PCRA petition, but he "didn't have the heart to tell this woman that I couldn't help her -- help her nephew." (NT 55, 74-75)

26. At some point between January 2020 and April 2021, Ms. Kenney became aware that Respondent had not filed a PCRA Petition on behalf of Mr. Taylor. (NT 17- 18, 63-64, 74-75)

27. Thereafter, text messages were exchanged between Respondent and Ms. Kenney about the services Respondent had agreed to perform for Mr. Taylor and the \$25,000 she had advanced for fees and expenses. (ODC 1 Bates 8, ODC 2 Bates 24)

28. Among the text messages they exchanged on April 4, 2021, were the following:

a. Ms. Kenney demanded that Respondent refund the \$25,000 that he had received from her because Respondent had not performed the services for which he had been retained;

b. Ms. Kenney stated that if Respondent did not refund the \$25,000 she would file a disciplinary complaint against him or sue him; and

c. Respondent requested that Ms. Kenney give him until the end of that week and asked her to speak with him by phone.

(ODC 1 Bates 8, ODC 2 Bates 24)

29. Subsequently, on April 19, 2021, Respondent and Ms. Kenney exchanged text messages as follows:

- a. Respondent stated he was trying to come up with a viable plan and his "money situation is not good";
- b. Respondent stated he knew that Ms. Kenney had "blasted" him on social media but he wanted her to remember that if "[he] can't work [he] can't pay";
- c. Respondent "[would] not claim to be right" if Ms. Kenney sued him;
- d. Respondent would "try to get [Ms. Kenney] paid but ... [i]t will take forever for that case to settle if you sue and I do have some time in"; and
- e. Ms. Kenney stated she had not hired successor counsel for Mr. Taylor because she "can't afford one and [Respondent] missed the deadline dates so [Mr. Taylor] is screwed."

(ODC 1 Bates 8-9, ODC 2 Bates 25).

30. Between April 26, 2021 and April 30, 2021, the following text messages were exchanged:

- a. Respondent requested that Ms. Kenney answer his phone call;
- b. Respondent wanted her permission to pursue the Court's permission to file a PCRA Petition *nunc pro tunc*;
- c. Ms. Kenney replied, "Send me my [money] otherwise I will have to sue you";
- d. Respondent asked Ms. Kenney to give him until Wednesday, April 28, 2021, because he was waiting to hear "to see if I can do this"; and
- e. Ms. Kenney gave Respondent until Friday, April 30, 2021, to refund her money or she would "take legal action the following Monday, which is May 3, 2021."

(ODC 1 Bates 9-10, ODC 2 Bates 25)

31. On May 4, 2021:

- a. Ms. Kenney texted Respondent because she had not heard back from him nor received a refund of her \$25,000;

b. Respondent replied to Ms. Kenney by stating "I have \$2,000. I can send [it] to you right now and am meeting with family to try and get more this weekend";

c. Ms. Kenney agreed to accept the \$2,000 but asked Respondent when he planned on repaying the full amount that he owed to her; and

d. Respondent replied "I will pay your money back but if I can't work I can't pay. I couldn't find a way to win this case."

(ODC 1 Bates 10-11, ODC 2 Bates 25)

32. Respondent began refunding money to Ms. Kenney via Cash App on May, 5, 2021. (ODC 1 Bates 11, ODC 2 Bates 25)

33. By text message to Respondent dated May 6, 2021, Ms. Kenney confirmed her receipt of the first \$2,000 refund and requested that he send her every document in his possession regarding Mr. Taylor's case. (ODC 1 Bates 11, ODC 2 Bates 25)

34. Respondent testified to his belief that he returned the file to Ms. Kenney in a matter of days after her request. (NT 57) The testimony of ODC's Auditor/Investigator confirmed that the file was returned to Ms. Kenney by June 2021 at the latest. (NT 30).

35. Respondent fully refunded the \$25,000.00 fee as follows:

<u>DATE</u>	<u>AMOUNT</u>
05/05/21	\$2,000
06/03/21	2,000
07/01/21	2,000
07/29/21	2,000
08/31/21	2,000
10/04/21	1,000
10/06/21	1,000
12/13/21	500
12/17/21	500
01/04/22	1,000
01/25/22	1,000
02/01/22	1,000
02/23/22	1,000
03/17/22	500
04/04/22	1,000
06/10/22	1,000
<u>06/10/22</u>	<u>2,500</u>
TOTAL	\$25,000

(ODC 1 Bates 11-12, ODC 2 Bates 25; NT 7-8, 30)

36. On August 8, 2022, Mr. Taylor filed a pro se "Motion for Post Conviction Collateral Relief" in the Allegheny County Court of Common Pleas, alleging, *inter alia*, failure of Respondent to file his appearance on behalf of Mr. Taylor, ineffective assistance of counsel to collaterally attack his conviction, and abandonment of Mr. Taylor by Respondent in his earlier PCRA matter. (ODC 19 Bates 239, 257-270; NT 68-75)

37. On December 15, 2022, Mr. Taylor filed a pro se "Motion to Reinstate Appellate Rights" in the Allegheny Court of Common Pleas, making the same allegations. (ODC 19 Bates 271-272)

38. On February 2, 2023, the Court of Common Pleas filed a Notice of Intention to Dismiss Mr. Taylor's PCRA Petition and Motion to Reinstate Appellate Rights within 30 days, pursuant to Pennsylvania Rule of Criminal Procedure 907. (ODC 19 Bates 276)

39. Mr. Taylor filed his pro se Petitioner's Response to the Court's Notice of Intention to Dismiss. (ODC 19 Bates 277-281)

40. By Order of Court dated March 16, 2023, the Court dismissed Mr. Taylor's pro se PCRA (ODC 19 Bates 282)

41. On April 12, 2023, Mr. Taylor filed a Notice of Appeal to the Superior Court from the Order dated March 16, 2023. (ODC 19 Bates 284)

42. By Order of the Superior Court dated May 22, 2023:

[T]he PCRA court is DIRECTED to clarify in writing whether this is Appellant's first PCRA petition for trial court docket CP-02-CR-0010212-2014. The PCRA court is further DIRECTED to clarify in writing... whether counsel was appointed to represent Appellant for this PCRA petition [...]. If Appellant was entitled to counsel, the trial court shall appoint counsel to represent Appellant and inform [the Superior] Court forthwith so that the March 16, 2023 order can be vacated and the matter remanded for further proceedings [...].

(ODC 19 Bates 287-288)

43. By letter dated July 19, 2023, the Court of Common Pleas informed the Superior Court that, upon review of the record, the Court determined that the filing was Mr. Taylor's first PCRA Petition and, therefore, he was entitled to court-appointed counsel. The Court further stated that by its Order of the same date, counsel was appointed to represent Mr. Taylor in his PCRA matter. (ODC 19 Bates 289-290)

44. On Respondent's 2020-2021 PA Attorney's Annual Fee Form, he did not list a business/operating account maintained or used by him in his law practice. (ODC 1 Bates 13, ODC 2 Bates 25)

Testimony of Respondent's Witnesses

45. Respondent presented credible character witness testimony as follows:

a. Attorney Guiseppi Roselli: Attorney Roselli credibly testified that he has been in private practice for 22 years, mostly in the criminal law area. Attorney Roselli worked for Respondent when he first got out of law school and for the next six years. Attorney Roselli testified that nobody had contributed more to his career than Respondent. Mr. Roselli stayed in touch with Respondent over the years. Respondent was candid with Mr. Roselli about his early difficulties with addiction, but Mr. Roselli was unaware of his struggles with sobriety leading to the issues in this case. (NT 77-85) Mr. Roselli testified that there are really "two Ralphs": the passionate advocate and the addicted Ralph. Mr. Roselli testified the Respondent is known to be an honest and trustworthy person. (NT 82-83)

b. Attorney Mark Flaherty: Attorney Flaherty has been practicing law since 1986. (NT 113-114) Attorney Flaherty testified that he is a recovering alcoholic, sober for 32 years and very active in Lawyers Concerned for Lawyers, including serving as its President for 12 years. (NT 115-125) Attorney Flaherty has known Respondent since undergraduate school and became reacquainted with Respondent when Mr. Flaherty was first getting sober. Mr. Flaherty has hosted the Thursday meeting of impaired lawyers in Pittsburgh for years, which made him become involved in Lawyers Concern for Lawyers as well as the Lawyers Assistance Committee of the Pennsylvania Bar Association. (NT 117-118). Mr. Flaherty testified that he received a call from Respondent in the Spring of 2021 when he was informed of Respondent's current disciplinary problems and concerns about getting back into sobriety. (NT 118-119). Mr. Flaherty directed that

Respondent abstain from alcohol, go to meetings, get a sponsor, get a home group, and show up at the Thursday meetings. (NT 120) Respondent complied with those directions and further obtained a sobriety monitor. Attorney Flaherty described Respondent as becoming "more open minded" and showing humility by his willingness to ask for help and admitting his mistakes. (NT 123-124) Attorney Flaherty further testified Respondent had an excellent reputation for honesty and trustworthiness. Attorney Flaherty also assured the Hearing Committee that Respondent was remorseful for his actions, noting that part of the twelve-step process in Alcoholics Anonymous is to make amends, which is more than just saying you are sorry but to "fix what you broke." (NT 125-127)

c. Attorney Bruce Carsia: Attorney Carsia was admitted to practice in 1973 and has known Respondent since Respondent began working for him during law school. (NT 127-128) By the time he met Respondent, Attorney Carsia was already sober and has been sober since 1982. At some point in time, Attorney Carsia learned that Respondent had started to use substances again. (NT 129) Attorney Carsia testified that since 2021, Respondent returned to recovery meetings not only in the Thursday lawyer meetings but also meetings they shared in the Shadyside area. To Attorney Carsia's knowledge, Respondent is clean and sober and has a good prognosis. (NT 129-131) Attorney Carsia also testified that Respondent was an excellent attorney and "one he would call if he had a problem." (NT 131)

d. Barry Zwibel: Mr. Zwibel owned a printing company and is currently retired. He has been in recovery for 50 years and remains active in the recovery community. (NT 133) Mr. Zwibel first met Respondent in 1986 when Respondent first entered recovery. Respondent went on to get married and move forward with his professional life. (NT 134) Mr. Zwibel testified that Respondent backed off recovery after many years and went through a series of setbacks leading to his lack of sobriety. (NT 135) Mr. Zwibel testified that it was the disciplinary process in this case that seemed to reflect the "bottom" of Respondent's fall. In recovery, the bottom is when an addict or alcoholic decides that recovery is the only avenue. Mr. Zwibel became Respondent's sponsor and remains Respondent's sponsor as of the time of the disciplinary hearing. (NT 136) Mr. Zwibel testified that since May 2021, Respondent has been sober and they continue to see each other weekly in a group at Ritter's Diner (NT 136) and also a Wednesday discussion group in Shadyside (NT 136-137). Mr. Zwibel and Respondent share a home group in Fox Chapel and a separate AA meeting where they study "the big book." (NT 137) Mr. Zwibel explained that Respondent was instrumental in getting an AA group back together following Covid. Mr. Zwibel credibly testified that Respondent's situation is rare because it is hard to "come back" as it is humbling to have to do so. Mr. Zwibel testified that Respondent has a good chance of continued recovery. Mr. Zwibel knew Respondent at both times of his recoveries and said that this time he is

humbler and he is well aware of what he could lose if he does not remain clean and sober. (NT 138-139)

e. Attorney Alan E. Lewis: Attorney Lewis credibly testified as to his relationship with Respondent over a period of 50 years, beginning in high school. Since college, Respondent and Attorney Lewis have maintained contact, including their families vacationing together and Respondent inspiring Attorney Lewis to go to law school at night in Brooklyn. (NT 143) Attorney Lewis had a career in entertainment, ending up as an in-house attorney at the Walt Disney Corporation. (NT 143-144) At some point in time, Attorney Lewis learned that Respondent was dealing with difficulties after Covid and that he became difficult to contact. (NT 144-145) Since then, Attorney Lewis has learned of Respondent's recovery as well as his disciplinary problems. (NT 145) Attorney Lewis testified that he felt that there was no malicious intent on the part of Respondent to take a client's money but he simply lacked the mental capacity at that point to do the work. (NT 146) Attorney Lewis testified that he felt Respondent was very sorry for what had happened and that his full restitution showed Attorney Lewis that Respondent was remorseful, meaning that Respondent was not just concerned for his license but for the people involved. (NT 148-149)

f. Attorney Ned Spells, Jr.: Attorney Spells was admitted to the bar in 1992 and is a judicial law clerk for Pennsylvania Superior Court Judge Judith F. Olson. He is also the current President of Pennsylvania Lawyers Concerned for Lawyers, and has been sober since July 2006. Attorney Spells was introduced to Respondent by Mark Flaherty in August 2021 because Respondent was interested in starting a sobriety monitoring program. Since August 2021, Attorney Spells and Respondent speak regularly, attend meetings together, and have become friends involved in recovery. (NT 152) Attorney Spells assured the Committee that Respondent was going to meetings and Attorney Spells keeps a list of meetings they attend together which he then gives to Mr. Flaherty. (NT 154) Respondent has talked with Attorney Spells about his disciplinary problems, and Attorney Spells is aware of the PCRA Petition matter. (NT 154) Attorney Spells indicated that Respondent expressed remorse over the client's situation. (NT 155) Attorney Spells testified that if a monitor would be required after the disciplinary proceeding, he would be more than willing to serve in that capacity. (NT 155)

g. Mark Collins: Mr. Collins is a social friend of Respondent. Their families have grown up together in the North Hills of Pittsburgh. (NT 156-157) Mr. Collins was aware of Respondent's first sobriety efforts prior to law school and Mr. Collins stayed in touch with Respondent during his long period of sobriety. When Respondent "fell off the wagon" in more recent years, Mr. Collins had difficulty contacting Respondent but then Respondent began coming out of his addiction with a dramatic change. (NT 159) Mr. Collins testified that Respondent has shown remorse and accountability with this round of recovery. (NT 159) Over the past two years,

Mr. Collins has seen Respondent regularly for college basketball games. Mr. Collins testified that Respondent has remained clean and sober. Respondent talks frequently about attending recovery meetings. Mr. Collins sees Respondent as being more relaxed and more accountable in big and small things. (NT 160) Mr. Collins understood the disciplinary matters involved client funds, Respondent was to do something which he did not do and the client, when she asked for the money back, did not receive it all at the same time. (NT 162)

h. Reverend Dr. William J. Geisler: Dr. Geisler is an ordained Catholic priest currently serving in the Episcopal faith and has been active in the recovery movement in Pittsburgh for many years. (NT 163) Dr. Geisler knew Respondent from his early recovery days over 35 years ago. Dr. Geisler described Respondent as very active in recovery, helping Dr. Geisler set up a new clinic, now named the Pittsburgh Recovery Center, which is still in business. (NT 166) Dr. Geisler recently asked Respondent to be on the Board of a new facility which he is operating in Carrick, and Respondent has agreed to do so. (NT 165-166) Dr. Geisler was aware that Respondent "fell off the wagon" after a long period of sobriety but that he has returned to recovery. (NT 166-167)

i. Alison Karsh: Ms. Karsh is Respondent's daughter. She is 29 years old and works for Eton Corporation as a design thinking strategist. (NT 168-169) When Respondent first became sober, Ms. Karsh had not even been born so she knew her father as a sober person for a long time until his relapse. When she moved away from Pittsburgh and Covid happened, in her view, Respondent's health declined. Within the last several years, Respondent admitted to his family that he had started to use substances again. (NT 169-170) Ms. Karsh indicated she was surprised when she found out this fact. Although she knew her father had not been doing well, she did not think he had been using drugs or alcohol. Respondent was very active in Ms. Karsh's life. Their relationship originally became strained while he was using drugs but she encouraged him during Covid to take care of himself. Since Respondent told his family that he had been using substances again and that he was working with LCL, she felt that he had reconnected with the people important for recovery and knew that he was going to meetings and seeing a therapist. (NT 174-175) Respondent told his family about the disciplinary matters when he talked about his relapse and resumption in recovery. (NT 175) Ms. Karsh testified that she feels like she "has her father back." (NT 175-176)

46. Respondent presented credible expert testimony regarding *Braun* mitigation evidence as follows:

a. Sandra Davis, Ph.D: Dr. Davis is a licensed clinical social worker and was called as an expert witness in the field of clinical social work without objection by Petitioner. (NT 90) Dr. Davis testified as to her educational

background and professional experience leading up to her work in private practice, half of which is in drug and alcohol recovery. (NT 87-90) Dr. Davis testified as to her treatment of Respondent between May 2021 and September 2022. Dr. Davis received a complete history from Respondent as to his history of sobriety, relapse, and renewed sobriety beginning in May 2021. Dr. Davis felt Respondent was sufficiently recovered from his comorbidities that he was able to be discharged from care. (NT 95) Her final diagnosis was alcohol dependence, chemical dependence, and unspecified depression, all in remission. Dr. Davis testified as to her understanding of the complaint filed by Ms. Kenney with the Disciplinary Board and the nature of the charges against Respondent. (NT 91-92) Dr. Davis testified within a reasonable degree of professional certainty that there was a causal relationship between the diagnosed morbidities involving addiction and depression and Respondent's disciplinary problems. (NT 95-96) Dr. Davis believed that factors involving depression, isolation, and family pressures were what caused Respondent to stop attending meetings in the first place. (NT 96) Dr. Davis felt that Respondent's judgment at that point was greatly impaired and that inappropriate decisions were made. (NT 96) Dr. Davis clearly opined that the addiction led to the misconduct.

b. Bruce Wright, M.D.: Dr. Wright was qualified as an expert witness in the field of psychiatry and forensic psychiatry without objection from Petitioner. (Dep. 1-24) Dr. Wright testified that his forensic examination of Respondent consisted of two virtual conversations in which he obtained, in his view, adequate history as to Respondent's medical and psychiatric history, history of substance abuse, and current psychiatric condition. Dr. Wright found Respondent to be cooperative and candid. (Dep. 12-13) Dr. Wright traced Respondent's history of substance abuse going back to age 13, through his original bout with addiction prior to law school which occurred when he became clean and sober at around the age of 28. (Dep. 14) Dr. Wright related that Respondent told him of abstinence and sobriety for approximately 25 years before he relapsed. (Dep. 15) Between his initial relapse and the start of the pandemic in 2020, Respondent significantly increased his use of substances, most significantly OxyContin. (Dep. 16) Respondent told Dr. Wright that it was the filing of the disciplinary complaint that got him to begin sobriety efforts. (Dep. 16-17) Respondent told Dr. Wright of his participation with Lawyers Concerned for Lawyers, attending AA meetings, and his clinical therapy with Dr. Davis. (Dep 17)

c. Dr. Wright testified that based on his examination, Respondent was suffering from opioid use disorder, unspecified stimulant related disorder, unspecified alcohol related disorder, unspecified depression, and history of unspecified anxiety disorder. Dr. Wright testified that within a reasonable degree of medical psychiatric certainty, he believed there was a direct causal relationship between Respondent's diagnosed psychiatric disorders and his misconduct. (Dep. 21-22) Dr. Wright went on to explain the workings of substance abuse and the ability of an individual to function on a daily

basis. He believed that the substance abuse became a disorder and affected responsibility to function. To Dr. Wright's knowledge, Respondent had not engaged in this type of professional misconduct before. Dr. Wright opined that if Respondent continued to stay abstinent, his prognosis is good and the risk of recidivism is negligible. (Dep. 21-22) Dr. Wright opined that but for the substance abuse disorder, Respondent would not have engaged in the misconduct presented. (Dep. 22) Dr. Wright further explained that individuals suffering from mental illness have an impaired ability to function day-to-day, and substance abuse disorders and depression are recognized as psychiatric illnesses. Dr. Wright believed that Respondent's decision to stop therapy with Dr. Davis was reasonable as was his decision not to take anti-depressant medication. (Dep. 38-40)

47. Petitioner presented no testimony to counter the character or expert witnesses called by Respondent, nor did Petitioner present any evidence to contradict the written findings of Respondent's expert witnesses.

Testimony of Respondent

48. Following his admission to the bar in 1990, Respondent developed a thriving criminal law practice in the Pittsburgh area. (NT 38) For many years, Respondent had a partner and staff attorneys working for him. He later transitioned to a solo practice. (NT 39-40)

49. Respondent has no criminal history or past disciplinary action. (NT 184-86)

50. Respondent had a 25 year period of sobriety from law school through the raising of his family, spanning 1986 through 2011. (NT 50, 191-93)

51. Respondent's relapse into substance use occurred during a time when he experienced multiple personal issues and the breakup of his law partnership. (NT 50)

52. Respondent began drinking alcohol again socially in 2011, and after about four or five years "it got really bad" in terms of the decline of his sobriety. NT 50-51. Respondent was a "functioning addict" who was using alcohol, opioids, and marijuana. (NT 51, 65)

53. Respondent described himself as depressed and when the pandemic occurred, he found himself in a “total isolation funk.” (NT 51)

54. Respondent became sober in May 2021 and has maintained his sobriety since that time. (NT 65)

55. Respondent currently attends at least ten Alcoholics and/or Narcotics Anonymous meetings per week. (NT 196)

56. Respondent testified that this disciplinary action “saved my life.” (NT 193-194)

57. Respondent admits that he violated Rules of Professional Conduct 1.3 and 1.4(a)(3) in regard to his representation of Mr. Taylor. (Respondent’s Brief at 28)

58. Respondent expressed credible remorse for his misconduct and testified that he “felt terrible” about what happened with Ms. Kenney. (NT 187, 188)

59. All witnesses testified credibly.

III. CONCLUSIONS OF LAW

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

- a. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client;
- b. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter;

- c. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation;
 - d. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice; and
 - e. Pa.R.D.E. 219(d)(1)(v)² – On or before July 1 of each year all attorneys required by this rule to pay an annual fee shall electronically file with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures:
 - (1) the form shall set forth: every business operating account maintained or utilized by the attorney in the practice of law during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution, location and account number.
2. Petitioner failed to meet its burden of proof that Respondent violated Rules of Professional Conduct 1.5(a), 1.15(b), 1.15(e), 1.15(i), and 1.16(d), regarding the allegations that Respondent mishandled client funds.
3. Respondent satisfied his burden of proof to establish that his psychiatric disorder caused his misconduct, and he is entitled to mitigation. *Office of Disciplinary Counsel v. Seymour Braun*, 553 A.2d 894 (Pa. 1989).

² Current Pa.R.D.E. 219(c)(1)(iii).

IV. DISCUSSION

This matter comes to the Board for review of the Committee's conclusion that Respondent violated the Rules of Professional Conduct and Pennsylvania Rules of Disciplinary Enforcement and its recommendation that Respondent be suspended for a period of three months, with the suspension stayed in its entirety and probation imposed for a period of two years, with a sobriety monitor. The parties did not take exception to the Committee's Report and recommendation. After conducting an independent review of this record, and for the reasons set forth below, we agree with the Committee's findings and conclusions and adopt its recommendation to impose a stayed suspension and probation.

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). With this standard in mind, we review the allegations of misconduct against Respondent, which may be categorized as follows: (1) Respondent's representation of Mr. Taylor in a PCRA proceeding; (2) the fee paid by Ms. Kenney to Respondent and his handling of that fee; and (3) Respondent's compliance with rules concerning his annual registration form.

Eric Taylor PCRA Representation

Respondent admits violations of RPC 1.3 (acting with due diligence in representing a client) and 1.4(a)(3) (keeping a client reasonably informed about the status of a matter) concerning his representation of Mr. Taylor in the PCRA proceeding. As well, Respondent's conduct violated RPC 8.4(c) (engaging in conduct involving dishonesty,

fraud, deceit or misrepresentation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).³

Following his retention by Ms. Kenney to be Mr. Taylor's attorney for the PCRA proceeding, Respondent initially satisfied his obligations by meeting with Mr. Taylor at SCI-Huntingdon for several hours to review the matter. From there, however, Respondent admittedly did nothing further to progress the proceedings, culminating with his failure to file a PCRA petition on Mr. Taylor's behalf.

Respondent's lack of diligence was compounded by his dishonesty in communications with Ms. Kenney in the following weeks. On several occasions between January 2020 and late April 2021, Ms. Kenney inquired of Respondent, both by telephone calls and text messages, about the status of the PCRA petition and proceeding. Respondent responded to those communications by telling Ms. Kenney that he was working on the case and asking her to be patient. These statements were not true, as Respondent never took any action on the case beyond visiting Mr. Taylor in prison to discuss the case, and in fact, was not "working on the case." Respondent's testimony reveals that he knew there was no merit to the PCRA petition and he "didn't have the heart to tell this woman that I couldn't help her -- help her nephew." NT 55; NT 74-75 (Respondent discusses how he knew there was no merit to the PCRA proceedings and did not inform Mr. Taylor or Ms. Kenney of the same).

The failure of Respondent to pursue Mr. Taylor's PCRA petition, intensified by his deceit to Ms. Kenney concerning the status of the case, then led to a prejudice to the administration of justice as: (1) Mr. Taylor's statutory period to have a PCRA petition

³ Respondent in his post-hearing brief argued that his conduct did not violate RPC 8.4(c) or (d); however, he did not take exception to the Committee's conclusion that he violated these rules.

timely filed ran out during (and because of) Respondent's misconduct; and (2) Mr. Taylor was forced to file a pro se PCRA petition, which wasted judicial resources through the trial court's denial of the same, Mr. Taylor's appeal, and the Superior Court's review and remand for the appointment of counsel to represent Mr. Taylor. All of these additional actions flowed from Respondent's failure to proceed on the PCRA in the first instance.

Respondent's Fee for the PCRA Representation

Petitioner's allegations of misconduct regarding Respondent's fee for Mr. Taylor's PCRA representation can be broken down into three categories: (1) that the fee was excessive; (2) that Respondent improperly allocated fees to himself from his IOLTA account, causing it to be out of balance; and (3) that Respondent should have refunded the fee and returned the file to Mr. Taylor/Ms. Kenney in a timely manner. On all of these points, the Committee found Petitioner did not meet its burden. Upon this record, we agree with the Committee.⁴

In regard to the fee being excessive (whether said fee was \$15,000 or \$25,000), Petitioner only states that the fee was excessive because of Respondent's failure to proceed on the PCRA matter. ODC Brief at 28. We find Petitioner's position misses the mark. Rule 1.5(a) prohibits an attorney "charging" or "collecting" an excessive fee. Petitioner has provided no evidence that, for a PCRA proceeding related to criminal homicide convictions, a \$15,000 or \$25,000 non-refundable, flat fee would be violative of Rule 1.5(a). Secondly, Respondent refunded the entirety of the \$25,000 fee without any intervention by a court, the Board, or the Lawyers Fund for Client Security. Based on the evidence of record, we conclude Petitioner failed to meet its burden.

² Petitioner did not take exception to the Committee's conclusion that Petitioner failed to meet its burden to prove violations of RPC 1.5(a), 1.15(b), 1.15(e), 1.15(i), and 1.16(d). We review these alleged violations as part of our independent review of the record.

Second, and in what can be characterized as the crux of Petitioner's contentions regarding Respondent's misconduct related to the fee for the Taylor matter, we consider whether Respondent misappropriated and/or improperly commingled \$10,000 of the \$25,000 given to him by Ms. Kenney. Respondent quoted a \$15,000 "non-refundable" flat fee in the fee agreement letter to Ms. Kenney for the Taylor matter; however, Ms. Kenney paid Respondent \$25,000 with no explanation. Petitioner argues, "Respondent did not obtain the informed consent of Mr. Taylor or Ms. Kenney, confirmed in writing, to expend any portion of the excess \$10,000 from the \$25,000 check [...]. Consequently, the \$10,000 portion of the \$25,000 check proceeds constituted an entrustment of \$10,000 from Ms. Kenney to Respondent on behalf of Mr. Taylor." ODC Brief at 25. Taking its argument to the next level, ODC contends that because the "extra" \$10,000 constituted trust funds, Respondent's periodic disbursements of the extra \$10,000 from his IOLTA account to him personally constituted an improper distribution of unearned fees and misappropriation of trust funds.

Petitioner cites to RPC 1.15 for its assertion that Respondent was required to split the \$25,000 check into the \$15,000 and \$10,000 portions. However, Ms. Kenney was not called as a witness during the disciplinary hearing to testify as to her intent regarding paying Respondent \$25,000 instead of the quoted \$15,000. Respondent's testimony revealed that he was not sure why Ms. Kenney paid the extra \$10,000. The burden of proof rests on Petitioner to prove why the extra \$10,000 should be considered trust funds in the first instance. Based on the record evidence, and especially in light of the paucity

of testimony regarding Ms. Kenney's intent surrounding the extra \$10,000, Petitioner has failed to meet its burden.⁵

Finally, Petitioner contends that Respondent violated RPC 1.16(d) by not returning the client file to Mr. Taylor/ Ms. Kenney promptly when requested, and further by not refunding the \$25,000 fee immediately upon the termination of representation. First, in regard to the file, conflicting evidence was presented at the disciplinary hearing about how quickly Respondent returned the file to Ms. Kenney upon request. According to Respondent, it was within "two days" of the request, whereas Petitioner's Investigator/Auditor testified that the file was returned in June 2021. We find neither circumstance to be a violation of the requirement that an attorney "take steps to the extent reasonably practicable" to return the file.

Concerning the return of the full \$25,000 fee, while we agree that Respondent did not pay the fee back immediately upon request, Respondent was candid with Ms. Kenney about his inability to pay back the fee immediately, and worked on a payment schedule with her to eventually pay back the entirety of the \$25,000 over the course of one year, with the final payment made on June 10, 2022. Moreover, Respondent did so prior to the filing of the Petition for Discipline and without the intervention of the disciplinary authorities.

Annual Attorney Registration Form Disclosure

Petitioner alleged, and Respondent admitted, that he failed to disclose or list his operating account information on his 2020-21 annual attorney registration form. 219(d)(1)(v). The failure to provide this mandatory information was proven by the

⁵ Given that we find Petitioner has failed to prove that the \$10,000 constituted trust funds, we need not examine the specific withdrawals that allegedly brought Respondent's IOLTA account out of balance.

admission of ODC Exhibit 18 (Respondent's form for 2020-21) and Respondent's Exhibit A, which proved the existence of an operating account. This documentary evidence satisfies Petitioner's burden in regard to this allegation.

Appropriate Discipline

Having concluded that Respondent committed ethical violations, 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). In this regard, 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).

Review of the record demonstrates that there are significant mitigating factors and no aggravating factors.

(i) *No prior record of discipline*

Respondent is 65 years old and has an unblemished disciplinary history during his approximately 33 years of legal practice. It is well-established that lack of prior discipline is properly considered in mitigation. See, *Office of Disciplinary Counsel v. Philip A. Valentino*, 730 A.2d 479, 483 (Pa. 1999).

(ii) *Remorse and acceptance of responsibility*

Respondent expressed genuine remorse for his misconduct and his actions involving Ms. Kenney, credibly testifying that he “felt terrible” about what happened. The evidence further establishes that Respondent accepted responsibility for his actions, in that he made full restitution of the \$25,000 to Ms. Kenney and admitted his ethical violations of the rules involving his lack of diligence and lack of communication on his client’s matter. *See, Office of Disciplinary Counsel v. Patrick O’Hare Regan*, No. 191 DB 2017 (D. Bd. Rpt. 10/21/2019, p. 10) (S. Ct. Order 1/2/2020) (Regan accorded mitigation for his sincere repentance and acceptance of responsibility for his criminal misconduct.)

(iii) *Character testimony*

At the disciplinary hearing, witnesses from Respondent’s community, including lawyers, long-time friends, a priest, and Respondent’s adult daughter, offered credible and compelling testimony as to Respondent’s excellent reputation for honesty and trustworthiness in the community. They described Respondent as a capable attorney, a good friend and father, and a well-established, productive member of his community. In addition, these witnesses were familiar with Respondent’s earlier addiction problems, decades-long period of sobriety, relapse into substance abuse, and renewed sobriety in the past several years. These witnesses credibly described the active efforts currently undertaken by Respondent to maintain his sobriety and to remain involved in recovery programs. *See, Office of Disciplinary Counsel v. Anthony Charles Mengine*, 66 DB 2017 (D. Bd. Rpt. 9/24/2019, p. 56) (S. Ct. Order 11/26/2019) (compelling character evidence accorded weight in mitigation).

(iv) *Braun mitigation*

The record established that Respondent demonstrated by clear and convincing evidence that he suffers from a psychiatric disorder that caused his professional misconduct. *Office of Disciplinary Counsel v. Seymour Braun*, 553 A.2d 894 (Pa. 1989). Respondent presented the expert testimony of Dr. Davis and Dr. Wright to meet his burden. Dr. Davis is a licensed clinical social worker and treated Respondent from May 2021 until September 2022. Dr. Wright is a board certified psychiatrist who conducted a forensic examination of Respondent. Dr. Davis and Dr. Wright thoroughly and comprehensively detailed Respondent's history of substance use and abuse throughout his life. Dr. Davis's final diagnosis of Respondent was alcohol dependence, chemical dependence, and depression, all in remission. Based on his examination, Dr. Wright diagnosed Respondent with opioid use disorder, stimulant-related disorder, alcohol-related disorder, depression, and anxiety disorder. Both experts testified, to a reasonable degree of certainty, that a causal relationship existed between Respondent's diagnosed disorders and his abandonment of Mr. Taylor's representation and related misconduct. Dr. Davis specifically opined that Respondent's conduct caused him to make inappropriate professional decisions. Dr. Wright similarly testified that but for Respondent's disorders, the conduct likely would not have occurred. Petitioner did not put forth evidence or testimony to counter the *Braun* mitigation evidence presented by Respondent, nor did Petitioner's cross-examination of Petitioner's witnesses lessen their credibility.

Respondent credibly testified to his relapse into substance abuse around 2011, the result of a confluence of events in his personal life and professional life. Respondent described the early social drinking that he believed he could handle, and how it devolved into alcohol and drug addiction that became a driving force in his life. Respondent candidly

testified that the instant disciplinary action “saved his life” and through his testimony he detailed his active dedication to recovery programs to regain his sobriety. Respondent has been sober since May 2021 and continues to attend multiple AA meetings per week. There is no evidence that Respondent has engaged in any violation of the rules during his renewed period of sobriety.

Decisional Law Supports a Stayed Suspension and Probation

In order to tailor a level of discipline that will meet the concerns of the disciplinary system, the Board must weigh the totality of the circumstances and apply discipline consistent with prior similar matters. As to the severity of the misconduct, not only did Respondent completely abandon his representation of Mr. Taylor, but that abandonment caused his client to lose, at the time, his PCRA petition rights, causing Mr. Taylor to file pro se motions and involve the trial court and appellate court. Respondent’s dishonesty to Ms. Kenney by concealing the fact that he had not taken any action on the matter further underscores the need for discipline. However, we recognize that Respondent’s unethical conduct involved one client matter and was not a pattern of behavior. Accordingly, we find the nature of the misconduct and the compelling mitigating factors of Respondent’s substance abuse and depression, which caused the underlying misconduct, his current sobriety and dedicated recovery efforts, genuine expression of remorse and acceptance of responsibility, lack of prior discipline over a long legal career, and significant character evidence, militate in favor of a three month suspension, stayed in its entirety, and probation with the oversight of a sobriety monitor. See, *Office of Disciplinary Counsel v. Michael D. Rentschler*, Nos. 33 & 127 DB 2009 (D. Bd. Rpt. 6/30/2010) (S. Ct. Order 8/27/2010) (Rentschler engaged in misconduct in two client matters where he neglected the matters by failing to take any action; the Board concluded

that Rentschler was entitled to *Braun* mitigation after he established through expert testimony that he suffered from alcohol abuse and depression that caused the misconduct; Rentschler had a prior history of private discipline; the Court imposed a one year and one day suspension, stayed in its entirety, with probation for two years and a sobriety monitor); *Office of Disciplinary Counsel v. Gina Yvonne Mosley*, No. 181 DB 2014 (D. Bd. Rpt. 3/17/2016) (S. Ct. Order 5/18/2016) (Mosley failed to diligently represent and communicate with her client, and failed to appear for an informal admonition; Mosley had no prior record of discipline; the Board concluded Mosley was entitled to *Braun* mitigation because she established through expert testimony she suffered from an anxiety disorder that caused her misconduct; the Court imposed a suspension for one year, which was stayed with probation for a period of two years, under the monitoring of a mental health professional).

Here, the recommended two year probation term is appropriate in light of the fact that Petitioner has been sober for approximately three years, a relatively short period of time. Continued supervision and guidance by a sobriety monitor in tandem with rigorous conditions of probation, including mandatory quarterly reports to the Board, will ensure that Respondent remains sober and practices law within the ethical confines of the profession.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Ralph David Karsh, be Suspended for three months from the practice of law in this Commonwealth, with the suspension stayed in its entirety. The Board further recommends that probation be imposed for a period of two years, subject to the following conditions:

Conditions of Probation:

1. Respondent shall abstain from using alcohol, drugs, or any other mind-altering chemical except under the supervision of a prescribing physician.
2. Respondent shall attend Alcoholics Anonymous or Narcotics Anonymous meetings on a weekly basis.
3. Respondent shall obtain a sponsor in Alcoholics Anonymous or Narcotics Anonymous and maintain weekly contact with that sponsor.
4. A sobriety monitor shall be appointed to monitor Respondent in accordance with Disciplinary Board Rule § 89.293(c).
5. With the sobriety monitor, Respondent shall:
 - a. meet at least twice per month;
 - b. maintain weekly telephone contact;
 - c. furnish the sobriety monitor with his Alcoholics Anonymous or Narcotics Anonymous sponsor's contact information; and
 - d. cooperate fully.
6. Respondent shall file quarterly written reports with the Board.
7. The sobriety monitor shall:
 - a. monitor Respondent's compliance with the terms and conditions of the order imposing probation;

- b. meet with Respondent at least twice per month and maintain weekly telephone contact;
- c. file quarterly written reports with the Board; and
- d. immediately report to the Board any violations by Respondent of the terms and conditions of the probation.

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

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

S/Shohin H. Vance

By: _____
Shohin H. Vance, Member

Date: June 10, 2024