IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2559 Disciplinary Docket No. 3
	:	
Petitioner	:	No. 96 DB 2016
	:	
v.	:	Attorney Registration No. 25873
	:	
DONALD P. RUSSO,	:	(Northampton County)
	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 25th day of April, 2019, Respondent's request for *nunc pro tunc* relief is denied. Having been directed to show cause why a five-year suspension should not be imposed and failing to submit a timely response, and upon consideration of the Report and Recommendations of the Disciplinary Board, the Petition for Review and the response, Donald P. Russo is suspended from the Bar of this Commonwealth for a period of five years, and he shall comply with all the provisions of Pa.R.D.E. 217. Respondent is directed to pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 04/25/2019

Attest: Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL Petitioner	:	No. 96 DB 2016
v.	:	Attorney Registration No. 25873
DONALD P. RUSSO Respondent	:	(Northampton 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

By Petition for Discipline filed on December 6, 2017, Petitioner, Office of Disciplinary Counsel, charged Respondent, Donald P. Russo, with violations of the Rules of Professional Conduct ("RPC") in connection with his representation of two clients in separate matters. Respondent filed an Answer to Petition on January 16, 2018.

District II Hearing Committee ("Committee") Members Sean Murphy, Esquire, Charles J. Myers, Esquire, and Joseph H. Meltzer, Esquire were appointed to conduct a disciplinary hearing. Committee Chair Murphy held a prehearing conference

on March 1, 2018. Petitioner provided Respondent with copies of its proposed hearing exhibits. On April 6, 2018, Respondent filed a document titled "Respondent's Memorandum in Support of Mitigation Consideration."

The Committee conducted a disciplinary hearing on April 13, 2018. Petitioner offered into evidence, without objection, Exhibits ODC-1 through ODC-138 and ODC-89.151(1) through 89.151(12). Petitioner presented the testimony of four witnesses. Respondent appeared pro se and testified on his own behalf. He presented no witnesses and introduced an undated, unmarked letter.

At the conclusion of the hearing, prior to the close of the record, the Committee gave Respondent ten days to supply documentation related to communication with his client in the Keister matter, regarding the merits of the case, and background information on Respondent addressing topics required in D. Bd. Rule §89.151(b) (related to evidence relevant to type of discipline). Respondent submitted a 72-page compilation of "Ernest Keister Emails," to which Petitioner did not object. Respondent failed to provide any documentation related to Board Rule §89.151(b).

Petitioner filed a Brief to the Committee on June 4, 2018. Respondent filed a Brief to the Committee on June 29, 2018. Respondent's Brief included several exhibits marked A-J and additional materials referred to as "Miscellaneous Exhibits." Respondent did not seek to introduce these exhibits into evidence at the hearing or during the ten-day time period in response to the Committee's request for additional information. Petitioner, by letter dated June 29, 2018, objected to the Committee giving consideration to the documents and arguments made by Respondent in reference to the documents, and requested that the Appendix be stricken from the record. After considering the parties' arguments, the Committee denied Petitioner's request.

The Committee filed a Report on August 28, 2018, concluding that Respondent violated Rules of Professional Conduct ("RPC") 1.1, 1.3, 1.5(a), 3.1, and 8.4(d). The Committee further concluded that Respondent did not violate RPC 1.15(b) and RPC 1.15(i). The Committee recommended that Respondent be suspended for a period of five years.

On September 13, 2018, Respondent filed a Brief on Exceptions to the Committee's Report and requested oral argument before the Board.

On September 20, 2018, Petitioner filed a Brief Opposing Exceptions.

A three-member Board panel held oral argument on October 19, 2018.

The Board adjudicated this matter at the meeting on October 25, 2018.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at 601 Commonwealth Avenue, Suite 2700, Harrisburg, PA, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter Pa.R.D.E.), with the power and the duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of the aforesaid Rules.

2. Respondent, Donald P. Russo, was born in 1952, was admitted to practice law in the Commonwealth of Pennsylvania on October 20, 1977, and maintains his office at 20 E. Broad Street, Bethlehem, Northampton County, Pennsylvania 18018.

3. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

4. Respondent has a background in commercial law and worked for a bank for seven years. He concentrates his practice in labor and employment law, litigation, commercial fraud and domestic relations. NT 334, 335.

Findings of Fact Related to Moore Matter

5. Robert Moore was employed by Air Methods, an air transportation business, as a helicopter pilot from 2004 to 2011. Petition for Discipline ("PFD"), Respondent's Answer ("RA") ¶ 4; NT 26-27.

6. Mr. Moore was a member of Local 109 ("Union"), a labor organization and collective bargaining representative. PFD, RA ¶ 5.

7. On January 5, 2012, the Union filed a grievance on behalf of Mr. Moore, alleging that Air Methods had discharged Mr. Moore without just cause in violation of the Collective Bargaining Unit (hereinafter "CBA"). ODC-6; PFD, RA ¶ 10.

8. On April 5, 2012, the Union's representative, Dan McDade, Local 109's President at the time, notified Mr. Moore by email and letter that the Union would not assist him further in his grievance against Air Methods. Mr. Moore received the April 5, 2012 email and attached letter on the same day they were sent. ODC-5, 8; PFD, RA ¶¶ 14, 16; NT 27.

9. Mr. Moore's claims in connection with his termination from Air Methods were governed by the six-month statute of limitations adopted by the United States Supreme Court in ***DelCostello v. International Brotherhood of Teamsters***, 103 S.Ct. 2281 (1983) ODC-40, p. 13; NT 114.

10. The statute of limitations period for Mr. Moore's claims in connection with his termination from Air Methods commenced on April 5, 2012. ODC-40, pp. 25-26; NT 30-31.

11. On April 19, 2012, Mr. Moore emailed the Union's representative and requested the Union re-consider its position. The Union did not respond to Mr. Moore's April 19, 2012 email. ODC-9; PFD, RA ¶¶ 19, 20; NT 64, 252.

12. The statute of limitations period for Mr. Moore's claims in connection with his termination from Air Methods expired in October 2012. ODC-40, pp. 25-26; NT 27-28.

13. In August 2013, Mr. Moore decided for the first time to consult a lawyer about his termination when no one from the Union had responded to his request for reconsideration. PFD, RA ¶ ¶23, 24; NT. 28.

14. In August 2013, ten months after the statute of limitations had expired, Mr. Moore retained Respondent to represent him in a claim against Air Methods and the Union. PFD, RA ¶ 25; NT 28.

15. On December 16, 2013, fourteen months after the statute of limitations had expired, Respondent initiated suit on behalf of Mr. Moore by filing a Writ of Summons in the Court of Common Pleas of Carbon County. The Writ was never served on the Defendants. ODC- 1; PFD, RA ¶ 27; ODC-40, pp. 25-26; NT 28.

16. On March 4, 2014, almost seventeen months after the statute of limitations had expired, Respondent filed a Civil Complaint on behalf of Mr. Moore in the Court of Common Pleas of Carbon County. ODC-1, 40 pp. 25-26; PFD, RA ¶ 32; NT 28-29.

17. The Complaint, served upon the Union on March 18, 2014 and upon Air Methods on March 20, 2014, alleged that Air Methods wrongfully discharged Mr. Moore and that the Union breached its duty of fair representation to him. PFD, RA ¶ ¶ 36, 37.

18. Because the Complaint had been improperly filed by Respondent in state court, Mr. Moore's action was removed on April 8, 2014, to the United States District Court for the Middle District of Pennsylvania. PFD, RA ¶ 39; NT 75.

19. On May 22, 2014, Air Methods filed a Motion for Judgment on the Pleadings alleging that Mr. Moore's claim was barred by the applicable statute of limitations; on June 26, 2014, United States District Judge Robert D. Mariani converted Air Method's Motion into a Motion for Summary Judgment (ODC-13; PFD, RA ¶ ¶ 40, 41) and permitted a period of discovery concluding on October 1, 2014, limited to any material pertinent to the statute of limitations issue. PFD, RA ¶ 42; NT 29.

20. At his August 14, 2014 deposition, Mr. Moore testified that he never received a response to his April 19, 2012 email asking for reconsideration of the decision not to pursue his grievance and that he had no basis or facts to believe he would receive a response, rather he was "hoping that they would respond to it." ODC-18; ODC-40 pp. 22-23; PFD, RA ¶ 43.

21. By letter to Respondent dated October 15, 2014, Claudia Davidson, Esquire, attorney for the Union, set forth why the continued prosecution of Mr. Moore's Complaint was without any factual or legal support and requested that the Complaint be withdrawn pursuant to Federal Rule of Civil Procedure 11. ODC-20; PFD, RA ¶ 45; NT 29, 30.

22. On October 23, 2014, Jonathon M. Watson, Esquire, Counsel for Air Methods, contacted Respondent, expressing his belief that Respondent and Mr. Moore might have exposure to sanctions and requesting that Respondent withdraw the Complaint. Respondent advised Mr. Watson that Respondent did not have time to discuss the issue and that he would not withdraw the Complaint. ODC-21; PFD, RA ¶ 46.

23. By letter to Ms. Davidson dated October 23, 2014, Respondent advised he would not withdraw Mr. Moore's Complaint. ODC-22; PFD, RA ¶ 47.

24. By letter dated October 24, 2014 to Attorney Watson, Respondent, *inter alia*:

a) advised that Respondent had previously informed Ms. Davidson "that Mr. Moore will not withdraw his claims, notwithstanding Defendants' baseless threats of Rule 11 sanctions";

b) claimed that the "Defendants' self-serving references to Rule 11 motions reflect a lack of understanding of Third Circuit precedent on this subject"; and

c) "suggest[ed] that [Mr. Watson] carefully review the law in this circuit before filing such a specious motion."

ODC-23; PFD, RA ¶ 48.

25. On November 3, 2014, the Union filed a Motion for Summary Judgment and Statement of Material Facts as to which there is no Genuine Issue. ODC-25, 26; PFD, RA ¶ 49; NT 81.

26. On November 20, 2014, Respondent filed a Brief in Opposition to the Union's Motion for Summary Judgment and the Plaintiff's Answer to the Union's Statement of Material Fact. (ODC-27, 28) Respondent's Brief, *inter alia*:

a) focused on facts claiming that the Plaintiff could not have timely filed his grievance since he was incarcerated and that his attorney made phone calls to various representatives of Air Methods (ODC-40, p. 19);

b) offered no serious argument that the Plaintiff did not receive unequivocal notice on April 5, 2012 that the Union would proceed no further with his grievance; (*Id.*)

c) cited a case for the unsupported proposition that "the Union Proffered a 'Ray of Hope' for Reconsideration" to Mr. Moore (*Id.* at 22).

27. On November 26, 2014, Air Methods filed a Renewed Motion for Summary Judgment and Statement of Undisputed Facts and a Motion for Sanctions, alleging that Respondent and Mr. Moore violated Rule 11 by filing and prosecuting a frivolous complaint that was barred by the statute of limitations. ODC-29, 31; PFD, RA ¶¶ 50, 51.

28. On December 16, 2014, Air Methods filed a Reply Brief in Support of its Motion for Sanctions averring, *inter alia*, that Respondent had a history of problematic conduct and had been warned by judges that the Respondent's behavior bordered on Rule 11 violations. ODC-38; PFD, RA ¶ 53.

29. On December 17, 2014, Judge Mariani granted the Union's motion to join Air Methods' Motion for Sanctions. PFD; RA ¶ 54.

30. On July 10, 2015, Judge Mariani entered Summary Judgment in favor of the Union and Air Methods on the basis that:

a) Mr. Moore had unequivocal notice as of April 5, 2012, that the Union would not take any further action on his behalf;

b) The statute of limitations period commenced on April 5, 2012;

c) Nothing in the record created a genuine issue of fact that the Union proffered a "ray of hope" that the Plaintiff's cause would ultimately prevail;

d) There was no evidence of record to support Respondent's contention that Mr. Moore reasonably believed that the Union was continuing to represent him beyond the Union's April 5, 2012 email and letter informing Mr. Moore in the clearest language that the Union was not going to pursue his grievance further or take any further action on his behalf; and

e) the lawsuit that Respondent filed on behalf of Mr. Moore was time-barred.

ODC-40, 41; PFD, RA ¶ 55; NT 30-31.

31. By Order dated July 29, 2015, Judge Mariani:

a) granted Air Products' Motion for Sanctions to the extent it sought a determination that Respondent violated Rule 11 by proceeding against the Defendants without a factual basis for doing so in light of the applicable statute of limitations and facts indicating when Mr. Moore's cause of action accrued;

b) imposed a sanction upon Respondent of a Public Declaration of a Rule 11 violation; and

c) directed that Mr. Moore's case be closed because Summary Judgment had previously been entered in favor of the Defendants. ODC-43; P FD, RA ¶ 56; NT 31.

42. On July 29, 2015, Judge Mariani filed a Memorandum Opinion stating, *inter alia*:

a) "[T]he Court finds that there is a compelling factual basis on which to find that Plaintiff and Plaintiff's counsel knew or should have known that their cause of action accrued and the statute of limitations began to run when Plaintiff received the April 5, 2012 e-mail and attached letter of that same date from Local 109 wherein it informed the Plaintiff that the Executive Board of Local 109, after carefully considering the merits of the Plaintiff's grievance concerning his termination and after consulting with his legal counsel, had decided that it would not take the Plaintiff's grievance to arbitration or take any further action on the Plaintiff's behalf";

b) "At no time did the Plaintiff offer an argument that the statute of limitations governing his suit against Local 109 and Air Methods was something other than the six-month limitations period which, under well-established case law, governed his suit";

c) It was not objectively reasonable for Respondent, at the time the suit was filed on December 16, 2013, to believe that the Union was considering pursuing Mr. Moore's grievance based on Mr. Moore's April 19, 2012 email requesting the Union to reconsider its position not to pursue his grievance;

d) Respondent's claims and other legal contentions on behalf of Mr. Moore "were not warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law";

e) **"[T]his is a case where the Plaintiff's claim was 'patently unmeritorious or frivolous' so that some form of sanction is appropriate"**;

f) "While in this case, it was or should have been clear to Plaintiff and Plaintiff's counsel at the outset that the statute of limitations had expired long before they initiated suit, the decision to do so appears to be one of bad judgment or recklessness rather than bad faith"; and

g) "[Respondent's] litigation history is troubling but it is this Court's view that a public acknowledgment of a Rule 11 violation nonetheless presents a significant sanction."

ODC-42; PFD, RA ¶ 57 (emphasis added); NT 31-32.

43. On August 7, 2015, Respondent filed, on behalf of Mr. Moore, an appeal to the Third Circuit Court of Appeals from Judge Mariani's Order dated July 10, 2015, granting the Defendants' Motions for Summary Judgment. ODC-46; PFD, RA ¶ 60; NT 33.

44. Respondent did not appeal Judge Mariani's July 29, 2015 Order finding Respondent had violated Rule 11 and imposing a public declaration of a Rule 11 violation. PFD, RA ¶ 61.

45. By letter to Respondent dated August 24, 2015, Patrick Scully and Raymond Deeny, associates of Mr. Watson, provided formal notice of Air Methods' intent to seek sanctions against Respondent and Mr. Moore pursuant to Fed.R.App.P. 38 and 28 U.S.C. §1912 for the Respondent's "frivolous appeal of the District Court's July 10, 2015 Order granting summary judgment in favor of Defendants." ODC-46; PFD, RA ¶ 62.

46. By letter to Respondent dated August 25, 2015, Ms. Davidson provided formal notice that the Union intended to seek sanctions against Respondent and Mr. Moore for Respondent's frivolous appeal of the District Court's July 10, 2015 Order granting summary judgment. ODC-47; PFD, RA ¶ 63.

47. On August 25, 2015, Respondent filed with the Third Circuit a Concise Summary of the Case raising one issue - that Mr. Moore's breach of contract/breach of representation was not time barred. ODC-45, 48.

48. By email dated August 29, 2015, Respondent advised Mr. Scully and Ms. Davidson of the following:

> Your recent letters raising the issue of Rule 11 and "bad faith" were themselves sent in bad faith. Rule 11 must never be used as a litigation tactic for intimidating opposing counsel from asserting a meritorious position. (citations omitted) To the extent that your respective letters were intended to chill my client's statutory rights, they are utterly inappropriate.
> ODC-49; PFD, RA ¶ 65.

49. Mr. Scully replied to Respondent's August 29, 2015 email on the same date as follows: "I think you need to go back and re-read my letter. It does not cite Rule 11." ODC-49; PFD, RA ¶ 66.

50. In November 2015, Mr. Moore, Air Methods, and the Union entered into a Confidential Settlement Agreement in which:

a) Mr. Moore acknowledged that Air Methods and the Union deny any wrongdoing or liability to Mr. Moore and deny each and every allegation asserted in the Action and the Appeal;

b) Mr. Moore agreed that he had received all compensation and wages to which he is or may be entitled and that other than the consideration of the Defendants waiving their right to recover costs

associated with defending the action he was not entitled to other consideration; and

c) Mr. Moore agreed to dismiss the Appeal by filing a Stipulation of Dismissal.

ODC-52; PFD, RA ¶ 67.

51. On November 18, 2015, Respondent filed in the United States Court of Appeals for the Third Circuit a Stipulation of Dismissal Pursuant to F.R.A.P. 42(B). ODC-53; PFD, RA ¶ 68.

52. By Order dated November 19, 2015, Mr. Moore's Appeal was dismissed in accordance with the agreement of the parties. ODC-54; PFD, RA ¶ 69.

53. Robert Moore never filed a complaint or inquiry against Respondent. NT 50-51.

Findings of Fact Related to Keister Matter

54. Ernest J. Keister began working at PPL Susquehanna, LLC ("PPL") in 1978. PFD, RA ¶ 71.

55. Mr. Keister was a member of the International Brotherhood of Electrical Workers Local 1600 ("Union"). PFD, RA ¶ 72.

56. Mr. Keister was a member of a collective bargaining agreement ("CBA") between PPL and the Union. PFD, RA ¶ 73. The CBA includes a specific process to request a job re-evaluation, including grievance and arbitration procedures in the event that PPL denies the request. PFD, RA ¶ 74.

57. If a request for a job re-evaluation is not approved, a bargaining unit employee such as Mr. Keister may appeal the denial. ODC-97 PPL's Statement of Undisputed Facts ("SUF") ¶ 31; ODC-104 Plaintiff's Response to PPL's SUF, ¶ 31.

58. If after the appeal, the Union and PPL still disagree, the employee may proceed by initiating a formal written grievance or request that one be submitted on the employee's behalf. Id.

59. On January 7, 2011, Mr. Keister:

a) retained Respondent to represent him in a potential dispute with PPL ("PPL Matter");

b) was provided a *New Client Intake Form* and a *General Office Fee Policy;* and

c) drew check #2679, with the notation "PPL Pay Issues," payable to Respondent for $4,000.00.

ODC-57; PFD, RA ¶ 77.

60. On May 4, 2011, Mr. Keister emailed Richard Sopko, Chief Steward for the Union, with regard to Mr. Keister's job description issues including whether his position would be turned into a management position, and thus outside of the CBA. ODC-59; ODC-97 PPL's SUF ¶¶ 52-54; ODC-104 Plaintiff's Resp. to PPL's SUF, ¶ ¶52-54, NT 139, 140.

61. In response to Mr. Keister's email, Mr. Sopko informed him as follows:

> The Union has no interest in giving up a [bargaining unit] position. If the company wants to create a new management position and put you in it, that can be at their discretion. The new job would not include the duties you currently perform. If your intent is to turn your current position into a management job, I can't help you with that. Sorry.....**The Union will support a job evaluation to determine if the position is paid correctly. You know I believe it is too low.** Id. (emphasis added)

62. On or about May 4, 2011, Mr. Keister submitted to Brad Drysdale, his manager at PPL, a job re-evaluation request regarding M. Keister's position as a Nuclear Information Services Technician ("Nuclear Tech"). PFD, RA ¶78, ODC-60; ODC-97 PPL's SUF ¶ 56; ODC-104 Plaintiff's Resp. to PPL's SUF, ¶ 56.

63. Mr. Keister made the job re-evaluation request because he believed he was undercompensated and his actual performance went above and beyond what is required from a Nuclear Tech. PFD, RA ¶ 79.

64. Prior to his May 4, 2011 re-evaluation request, the Union had provided Mr. Keister with information in connection with processing a job re-evaluation. ODC-58, 59.

65. Mr. Drysdale mistakenly approved the request for re-evaluation on May 5, 2011 and James Gorman, Drysdale's supervisor at PPL, immediately retracted the approval. ODC-61; ODC- 97 PPL SUF ¶ 57, ODC-104 Plaintiff's Resp. to PPL's SUF ¶ 57; NT 157, 158.

66. Mr. Keister later found out that the request for re-evaluation had been erroneously approved.

67. PPL ultimately took no action on Mr. Keister's May 4, 2011 request for re-evaluation of his employment position. PFD, RA ¶ 82.

68. Mr. Keister never filed a grievance or requested a grievance be filed on his behalf in accordance with the CBA as a result of PPL's failure to act on his May 4, 2011 request for re-evaluation. ODC-97 PPL's SUF¶ ¶ 60, 63, 70, 74; ODC-104 Plaintiff's Resp. to PPL's SUF ¶¶ 60, 63, 70, 74.

69. On June 28, 2011, Respondent filed an Equal Employment Opportunity Commission ("EEOC") Charge of Age Discrimination against PPL on behalf of Mr. Keister. ODC-62; PFD, RA ¶ 84.

70. The EEOC Charge reflected Mr. Keister's knowledge that PPL had failed to act on his May 4, 2011 request for re-evaluation and alleged, *inter alia,* that:

a) Mr. Keister "is not being paid for what he is actually doing. His job description and his pay grade do not reflect his actual job duties";

b) Mr. Keister "was invited to re-write his job description and in fact he submitted a proposal";

c) "[PPL] made no effort to re-write [Keister's] job description which signifies to [Keister] that [PPL] has been less than serious in its efforts to remedy the pay disparity and job classification shortcomings"; and

d) Mr. Keister "believes that due to his age, [PPL] had decided to do nothing to resolve the problem..." and "[PPL] is motivated by an age bias against him."

ODC-62.

71. On December 5, 2011, Mr. Keister drew check #1205 payable to Respondent for $1,800.00 in connection with the PPL matter. ODC-63; PFD, RA ¶ 86.

72. On January 7, 2012, Mr. Keister drew check #2841 payable to Respondent for $150.00 in response to Respondent's request for a "2012 Adjustment Cost." ODC-64; PFD, RA ¶ 87.

73. On March 20, 2012, Mr. Keister had a phone conversation with Daniel Zerbe, a Union representative, at which time: Mr. Keister stated that he wanted PPL to make his position a management job (NT 04/13/2018, 140:8-11); Mr. Zerbe said

the Union would not support moving his job out of the bargaining unit but Mr. Keister was free to apply for a management position if he desired; Mr. Keister expressed dissatisfaction with the job evaluation done in 2002 and working outside his job description; Mr. Zerbe told Mr. Keister he should file a request for job evaluation/re-evaluation; Mr. Keister replied that he had already filed a Request Form on May 4, 2011 and that management had taken no action; Mr. Zerbe explained that he was limited to assisting Mr. Keister through the internal grievance process to address his job duties and the Request he had filed; and Mr. Zerbe told Mr. Keister to speak to Mr. Sopko to file a grievance about his request for re-evaluation and Mr. Keister said he would do so. ODC-94; ODC-97 PPL's SUF ¶¶ 65-69, ODC-104 Plaintiff's Response to PPL's SUF ¶¶ 65-69.

74. Mr. Keister never contacted Mr. Sopko or any Union representative concerning his request for re-evaluation. ODC-94; ODC-97 SUF PPL's ¶ 70, ODC-104 Plaintiff's Resp. to PPL's SUF ¶ 70.

75. Mr. Keister never filed a grievance, or requested that an official grievance be filed on his behalf with regard to his request for re-evaluation. *Id.*

76. Mr. Keister did not exhaust the CBA's grievance procedures in connection with his request for re-evaluation. *Id.*

77. On May 18, 2012, Mr. Keister drew check #2893 payable to Respondent for $150.00 in response to Respondent's request for a "Cost Adjustment." ODC-65; PFD, RA ¶ 92.

78. On August 30, 2012, the EEOC dismissed Mr. Keister's charge and mailed him a *Dismissal and Notice of Rights* ("right-to-sue letter"). ODC-66; PFD, RA ¶94.

79. The right-to-sue letter: was mailed to an address where Mr. Keister had previously received multiple correspondence from EEOC and where Mr. Keister had

lived uninterrupted for the previous twenty years; and stated that any subsequent lawsuit Mr. Keister sought to initiate "must be filed WITHIN 90 DAYS of [his] receipt of this notice" (capitalization and underlining in original). ODC-66; ODC-97 SUF ¶¶ 1-7, ODC-104 Plaintiff's Response to PPL SUF¶ ¶ 1-7.

80. On November 8, 2012, Mr. Keister drew check #2966 payable to Respondent for $4,000.00 in connection with the PPL matter. ODC-67; PFD, RA ¶ 96.

81. Mr. Keister's ADEA Complaint was required to be filed by December 3, 2012. ODC-111, p. 38.

82. On January 8, 2013, Mr. Keister drew check #2995 payable to Clerk of Courts for $350.00 in connection with a filing fee. ODC-69; PFD, RA ¶ 98.

83. On January 17, 2013, Respondent filed a Complaint on behalf of Mr. Keister in the matter captioned: ***Ernest Keister v. PPL Corporation and International Brotherhood of Electrical Workers***, United States District Court, Middle District of Pennsylvania, #4:13-cv-00118-MWB. ODC-71; PFD, RA ¶ 99; NT 125.

84. The January 17, 2013 Complaint was filed one year and seven months after Mr. Keister initiated his EEOC charge, ten months after Mr. Keister's last meaningful communication with the Union, and four months after the EEOC dismissed Mr. Keister's charge and issued a right-to-sue letter. ODC-118, p. 2.

85. The January 17, 2013 Complaint contained:

a) a claim of age discrimination under the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§621 et seq. ("ADEA");

b) a second claim of age discrimination under the Pennsylvania Human Relations Act, 43 P.S. §§951 et. seq. ("PHRA"); and

c) a third claim alleging a violation of §301 of the Labor Management Relations Act of 1947, §29 U.S.C. 185(a) ("LMRA").

86. The January 17, 2013 Complaint asserted all three claims against a single defendant "PPL Corporation, International Brotherhood of Electrical Workers (IBEW)," incorrectly identified as a single entity, and the Complaint and improperly named PPL Corporation as Mr. Keister's employer. ODC-71, 74 p.1.

87. The January 17, 2013 Complaint improperly named IBEW as a defendant. *Id.*; NT 125.

88. By letter to Mr. Keister dated February 6, 2013, Respondent, *inter alia*,:

a) thanked Mr. Keister for retaining Respondent's services;

b) acknowledged that Respondent had agreed to represent Mr. Keister in his employment lawsuit against PPL;

c) advised that he believed Mr. Keister had "**a strong ADEA disparate treatment case against said employer**" and that Respondent "do[es] not take cases [he] do[es] not believe in"; (emphasis added)

d) explained that Respondent's hourly rate is three hundred dollars per hour and that all retainers are non-refundable and are paid to guarantee [his] ongoing availability to handle [Mr. Keister's] case;

e) recognized that they had a "longstanding attorney/client relationship" and Respondent had "billed [Mr. Keister] in certain increments as the case moves forward"; and

f) acknowledged receipt of a November 11, 2012 payment of $4,000.00 from Mr. Keister.

ODC-72.

89. On March 1, 2013, Mr. Keister drew check #3018 payable to Respondent for $2,000.00 in connection with the PPL Matter. ODC-73; PFD, RA ¶ 105.

90. On March 14, 2013, Steven Hoffman, Esquire, attorney for PPL, filed a motion to dismiss Mr. Keister's Complaint, alleging *inter alia*:

a) Plaintiff had not set forth even a bare bones case for age discrimination because he had not alleged that he was treated less favorably than a sufficiently younger individual;

b) Plaintiff's mere dissatisfaction with his pay does not provide him with a claim for age discrimination; and

c) Plaintiff had not set forth a single fact alleging that PPL breached the collective bargaining agreement.

ODC-74; PFD, RA ¶ 107.

91. By email to Mr. Keister on March 24, 2013, Respondent expressed his confidence that the matter would be resolved in six months or less. ODC-78.

92. On April 15, 2013, Respondent filed an Amended Complaint. ODC-75; PFD, RA ¶ 109.

93. The Amended Complaint now listed PPL and IBEW Local 1600 ("Union") as separate defendants. It contained the same three claims against both defendants alleged in the original Complaint, but included additional averments. Plaintiff no longer named IBEW as a defendant but continued to name it as a Defendant in the caption of each Count. ODC-75; NT 128.

94. On May 1, 2013, Mr. Hoffman filed a Motion to Dismiss Mr. Keister's Amended Complaint for failure to state a claim on largely the same bases as his previous motion. ODC-76; PFD, RA ¶ 112.

95. On May 22, 2013, Respondent emailed Mr. Keister the following:

> I was reviewing what lies ahead and I wanted to give you a heads up about fees and costs. I also wanted to provide you with an alternate plan. If we litigate this case for another year to eighteen months, which I expect we will, your fees and costs could be in the 20,000 dollar range. That is a lot of money but **it is a big case with large amounts of money at stake. Frankly, I think we got them on the Lilly Ledbetter Fair Pay Act of 2009** (Link omitted). What I would like to do is present a cost adjustment proposal: If you are amenable to paying the sum of $7,500.00 now, in advance, I will accept that payment in lieu of any further billings. I would guarantee that all litigation costs and expenses are covered. And, of course, PPL has to reimburse all of your fees if we win the case. If you do not like this alternative, then we will continue to proceed as we have been doing thus far. Let me know what you think and how you would like to approach this. Thank you.
> ODC-78; PFD, RA ¶ 114 (emphasis added).

96. By email to Respondent on May 22, 2013, Mr. Keister replied:

> What changed that you think this case will litigate another year to 18 months? I just looked at your email from 3/24/13 and you stated you were quite confident that this case will be resolved in 6 months or less. I was looking forward to having this resolved by the end of June or July at the latest. I have to take a look at my finances to see about paying the $7,500.00 in advance. I should know by the end of the month if I can do that.
> ODC-78; PFD, RA ¶ 115.

97. Respondent replied to Mr. Keister's May 22, 2013 email, by stating, *inter alia*, that he was "confident" the Judge would throw out the motion to dismiss and that "[t]he reason [Respondent] projected an earlier outcome in [his] previous email is because if we are successful at this first level, then we might be successful in encouraging PPL to think settlement." PFD, RA, ¶ 115.

98. On June 11, 2013, Quintes Taglioli, Esquire, attorney for the Union, filed a Motion to Dismiss Mr. Keister's Amended Complaint, alleging inter alia that: the age discrimination counts alleged against the Union should be dismissed because Mr. Keister failed to exhaust his administrative remedies by failing to file a charge of discrimination against the Union with the PHRC and the EEOC; Mr. Keister had not plead sufficient facts to establish that the Union breached its duty of fair representation; Mr. Keister had not alleged how PPL violated the CBA in some fashion that would give rise to a meritorious grievance which the Union then failed to pursue after Mr. Keister either filed such a grievance or requested that the Union file a grievance on his behalf; and Mr. Keister failed to file his Complaint within the applicable six month Statute of Limitations period. ODC-79, ODC-82; NT 130, 131.

99. On June 20, 2013, Mr. Keister drew check #1239 payable to Respondent for $2,500.00 in connection with the PPL Matter. ODC-80; P for D, RA ¶ 117.

100. On June 24, 2013, Respondent filed a Motion for Leave to file a Second Amended Complaint. ODC-81; PFD, RA ¶ 119; NT 230.

101. On July 10, 2013, Mr. Hoffman filed an Answer to Plaintiff's Motion to Amend Complaint. ODC-83.

102. On September 2, 2013, Respondent emailed Mr. Keister the following:

> ...As you can see, as of today, there is still no decision on the Motion to Dismiss. However, I think we will hear this week and I am certain it will be a positive result for us. I feel badly for you that the Judge has eaten up this much time. I would like to start preparing Interrogatories, Requests for Production of Documents, and Requests for Admission. There is no reason why at this point we cannot hit the ground running and start drafting our discovery requests. You may recall that earlier this summer we discussed the possibility of capping your attorney's fees. After reviewing the matter

> we sort of left it open, because obviously the amount of $7,500.00 was a large number for you to pay in one fell swoop. I am confident that we are going to win your case, and when we do, the Court will reimburse Respondent for all your fees. Moreover, the Court will make PPL pay attorney's fee to me for all the work I have done. You will of course be reimbursed for all your legal fees out of that award. In light of this strong possibility of court awarded counsel fees for us, I am willing to once again revisit the "capping" issue. I am offering to cap your legal fees for one final payment of $2,500.00. If you want to place a cap on all future billings, please forward a check to my office for that amount and I will institute the cap. Thanks Ernie
> ODC-84; PFD, RA ¶ 120 (emphasis added).

103. On September 3, 2013, Mr. Keister emailed to Respondent the following:

> I sure pray that you are right in both cases that we will hear this week, and it will be in our favor. I should be able to get a check for $2,500.00 in the mail to you this Thursday morning...
> ODC-84; PFD, RA ¶ 121.

104. On September 5, 2013, Mr. Keister drew check #1242 with the notation **"Final Payment"**, payable to Respondent for $2,500.00 in connection with the PPL Matter. ODC-85; PFD, RA ¶ 122 (emphasis added).

105. Although Respondent promised to cap his fees, he collected an additional $21,660 from Mr. Keister over the next almost four-year period.

106. By Order and Memorandum dated June 13, 2014, Judge Matthew W. Brann granted Mr. Keister's Motion to File a Second Amended Complaint. ODC-86; PFD, RA ¶ 124; NT 230.

107. On June 19, 2014, Respondent filed on behalf of Mr. Keister a Second Amended Complaint against PPL and the Union. ODC-87; PFD, RA ¶ 125. The Second Amended Complaint:

a) included the same three causes of action as the initial Complaint, but named PPL as the only defendant on the ADEA and PHRA claims;

b) maintained that both Defendants violated §301 of the LMRA;

c) supplemented various averments in support of the Plaintiff's theories;

d) averred in ¶¶ 28 through 30 that Mr. Keister "was denied a remedy to his pay disparity and his requests for a new job classification were ignored" because "Defendant had an illegal discriminatory motive for not rectifying these issues";

e) alleged in ¶ 31 that "PPL has hired younger employees into similar positions that were doing the same amount of work"; and

f) included a new allegation at ¶ 46 that the "Plaintiff attempted to convince his Union to work on his behalf within six months of his filing of this lawsuit, but the Union did not act aggressively."

ODC-87.

108. On July 3, 2014, PPL and the Union filed separate Answers to Mr. Keister's Second Amended Complaint. ODC-88, 89; PFD, RA ¶ 129.

109. On March 12, 2015, a deposition of Mr. Keister was taken, at which time Mr. Keister testified, *inter alia*, that:

a) PPL was discriminating against him as a result of his age when it failed to re-evaluate his job in June of 1986 when he was thirty-nine years of age and was treating him in the same exact manner today as it did in 1986; (ODC-90, pp. 36-37, 84-86, 107-08 and 121-22)

b) He had never filed a grievance while employed at PPL or requested that one be filed on his behalf; (ODC-90, pp. 55, 126-27)

c) PPL's failure to create a management-level position for him in 2000 was based upon his age and was the exact same complaint he has had since 1986; (ODC-90, pp. 36-37, 84-85, 107-08 and 121-22)

d) He could not identify a single, sufficiently younger, similarly situated employee at PPL that was provided more favorable treatment than him; (ODC-90, pp. 62, 81 and 112) and

e) His entire lawsuit was based upon PPL's failure to create a management level position for him at his request.

ODC-90, pp. 57-58, 92-93, 101-02, 122, 130-33 and 144-45.

110. On May 12, 2015, Mr. Hoffman served Respondent with a copy of a proposed Motion for Sanctions and a proposed Brief in Support of Motion for Sanctions, together with a letter stating in pertinent part that if the "Plaintiff does not withdraw his Second Amended Complaint within twenty-one days of service of this letter and Motion, PPL shall seek sanctions against [Respondent] pursuant to Federal Rule of Civil Procedure 11." ODC-92; PFD, RA ¶ 130.

111. On May 19, 2015, Respondent emailed Mr. Keister the following:

> Subject Hoffman Rule 11 motion. Ernie when I calculate fee structures I cannot always estimate everything down to an exact science. **This Rule 11 motion came out of the blue,** and I want to make sure that I defend it aggressively. I anticipate spending 3 hours in this process, at least. At [sic] my hourly rate is $300 this will be an expenditure of at least 900 dollars' worth of my time. If you could send me a check for $900 to cover that time I would appreciate it. If you do not want to pay that it is certainly not mandatory and I understand your position.

ODC-93; PFD, RA ¶ 131 (emphasis added).

112. On May 20, 2015, Mr. Keister emailed to Respondent that "... [he would] get the check in the mail to [Respondent] this Friday." PFD, RA ¶ 132.

113. By letter to Mr. Hoffman dated May 20, 2015, Respondent, *inter alia*:

a) claimed Mr. Hoffman's Motion for Rule 11 Sanctions was "filed in bad faith" and was "utterly unwarranted and will be vigorously opposed"; and

b) alleged that Mr. Hoffman's refusal to cooperate with Mediator William P. Carlucci "in any way" was "obstreperous and intransigent behavior" that the Respondent intended to bring to the Court's attention. ODC-93A; NT 214-15.

114. On June 29, 2015, the Union filed a Motion for Summary Judgment with proposed Statement of Undisputed Facts. ODC-95; PFD, RA ¶ 133.

115. On June 29, 2015, PPL filed a Motion for Sanctions against Respondent pursuant to Federal Rule of Civil Procedure 11. ODC-96; PFD, RA ¶ 134.

116. On June 30, 2015, PPL filed a Motion for Summary Judgment against Mr. Keister with proposed Statement of Undisputed Facts. ODC-97; PFD, RA ¶ 135.

117. On July 1, 2015, Respondent filed a Brief in Opposition to PPL's Motion for Sanctions. ODC-98; PFD, RA ¶ 136.

118. On July 2, 2015, Respondent emailed Mr. Keister the following:

> Hi Ernie. This record is getting massive. If you can help me out by sending five hundred dollars to help defray expenses I would greatly appreciate it. You are not obligated to do so however...
> ODC-99; PFD, RA ¶ 137.

119. On July 6, 2015, Respondent received check #1273 in connection with the PPL matter, which Mr. Keister had drawn payable to the Respondent for $500.00. ODC-100; PFD, RA ¶ 138.

120. On August 7, 2015, Respondent filed Briefs in Opposition to the Motions for Summary Judgment, which included the Plaintiff's Response to Defendants' Statement of Undisputed Facts. ODC-104, 105; PFD, RA ¶ 139.

121. Respondent provided an incomplete response to certain of PPL's Undisputed Facts and did not address any of the Union's Undisputed Facts. ODC-104 SUF ¶¶ 24, 47, 71; ODC-111 p. 8; ODC-118, pp. 35-39.

122. On August 10, 2015, Respondent emailed to Mr. Keister the following:

> Everything is now filed. I had to file two responses, one to the union's motion and one to PPL's motion. This required a tremendous amount of work. Thank goodness I had Lindsey and Nicole to assist me in this effort. Unfortunately I had to make the staff work overtime to get this job done on time. I ran up some unexpected costs in this process. But we're done now and **I think we nailed it**. Ernie if you could be so kind as to forward payment in the amount of $1250, it will help me to get these lawyers paid. Fortunately the work is now done and there won't be any more bills. Thank you Ernie!
> ODC-106; P for D, RA ¶ 141 (emphasis added).

123. On August 10, 2015, Mr. Keister emailed to Respondent the following:

> Your check is in the mailbox, and will go out tomorrow. Please let me know when you receive it... You stated, "But we're done now and I think we nailed it." I hope that means you think the Judge will rule in our favor.!!
> ODC-106; PFD, RA ¶ 142.

124. On September 24, 2015, Respondent emailed Mr. Keister the following:

> Ernie, there still hasn't been a decision on the Defendant's motion for summary judgment. For some reason, I'm feeling it will be in the near future. At this point, we have reached a fork in the road. If the court grants summary judgment, then **I am assuming you will want to appeal**. If the court denies summary judgment, then we are headed for trial. I am requesting that you please mail me a check to cover either outcome. I want to be ready to hit back without delay. **Please forward a check in the amount of 3500 dollars.** This will cover the 505 dollar appeal fee for the third circuit court of appeals, and it will cover the work that will have to be done to prepare the paperwork in the appeal. If the court were to deny the motion for summary judgment then I will apply those monies toward the trial work. This way, you will know that you are **paid in advance** either for the trial or **for the appeal**. **There won't be any further fees either for the trial or for the appeal**.
>
> ODC-109; PFD, RA ¶ 143 (emphasis added).

125. On September 28, 2015, Mr. Keister drew check #1280 payable to Respondent for the requested $3,500.00. ODC-110; PFD, RA ¶ 144.

126. By Order and Memorandum dated October 6, 2015, Judge Brann:

a) granted in full both Defendants' Motions for Summary Judgment;

b) outlined in detail why the claims filed by Respondent on behalf of Mr. Keister were meritless and should otherwise fail on procedural grounds;

c) explained that a Rule 11 Sanctions Hearing was appropriate because the claims filed by the Respondent were meritless; Respondent had actively complicated the disposition of Mr. Keister's claims by failing to address certain key Undisputed Facts and advancing allegations in the Second Amended Complaint that diverge significantly from the actual evidence adduced by the Plaintiff; and the "Plaintiff's Counsel is beginning

to amass a track record of questionable and unprofessional conduct in this District and other forums";

d) held in abeyance PPL's motion for Rule 11 Sanctions pending a hearing on October 29, 2015; and

e) deferred entry of final judgment pending the disposition of PPL's Rule 11 Motion.

ODC-111; PFD, RA ¶ 151; N.T. 29, 30.

127. On October 20, 2015, the Union filed a Motion for Attorney's Fees pursuant to Fed.R.Civ.P. 54(d). ODC-112; PFD, RA ¶ 152.

128. On November 3, 2015, Mr. Keister drew check #1286 payable to Respondent for $1,810.00 in connection with the PPL Matter. ODC-114; PFD, RA ¶ 153.

129. On December 7, 2015, Mr. Keister drew check #3386 payable to Respondent for $96.00. ODC-117; PFD, RA ¶ 155.

130. By Order dated December 29, 2015, Judge Brann granted PPL's Motion for Sanctions; found that Respondent violated Rule 11 on a second occasion in the United States District Court for the Middle District of Pennsylvania; and sanctioned Respondent in the form of reasonable attorney's fees. ODC-118; PFD, RA ¶ 157; NT 43.

131. By Memorandum dated December 29, 2015, Judge Brann stated the following, *inter alia*:

a) "An award of reasonable attorney's fees is the least severe sanction needed to deter [Respondent's] improper conduct";

b) "Absent [Respondent's] attempts to manufacture facts, warp the law, and utterly cloud the action's underlying allegations, this case would

have disappeared long ago, saving Defendants, the Court, and the public significant time and money";

c) "[T]his Court was led down the garden path by [Respondent] when it accepted [Respondent's] client's allegations in good faith";

d) The allegations made by Respondent "turned out to be patently untrue, but [Respondent] chose to plead them anyway in an attempt to prop up [Respondent's] client's deflated claim";

e) "[T]he allegations in Plaintiff's Second Amended Complaint were unsupported at the time [Respondent] wrote them, and were unlikely to ever gain factual support during the course of discovery, because they were simply inaccurate";

f) "[I]t became patently clear that the Plaintiff's case was nothing more than an illusion, one supported by baseless factual contentions and inapplicable legal conclusions proffered by [Respondent]";

g) "[T]he theories that [Respondent]...conjured up in [Respondent's] papers in this case have not been motivated by novelty or creativity but by a desire to confuse the Court and the parties, to shroud the straightforward weaknesses of [Respondent's] client's claim, and to manufacture disputes where none existed";

h) It was "patently clear" to the Court that "the purpose of this litigation was **to extort a settlement from Defendants on meritless facts and to otherwise run up the cost of litigation for opposing counsel**";

i) It was "apparent that a primary goal of [Respondent] in bringing this litigation was to attain a settlement to which [Respondent's] client was not rightfully entitled"; and

j) "[T]he conduct of [Respondent] here and in recent related proceedings has risen to such a troubling level that this Court would be failing its duty to the public by not somehow addressing and attempting to adequately deter it."

ODC-118; PFD, RA ¶ 158; NT 43, 44, 45, 46 (emphasis added).

132. On January 8, 2016, Mr. Keister drew check #3398 payable to Respondent for $750.00 in connection with the PPL Matter. ODC-119; PFD, RA ¶ 159.

133. By Order dated February 19, 2016, Judge Brann decreed that:

a) Respondent pay PPL $57,958.59 as a consequence of PPL's successful Rule 11 motion;

b) Respondent pay the Union $57,958.96 as a consequence of the Union's successful Rule 54 motion; and

c) The Clerk of Court enter final judgment in favor of the Defendants and against Mr. Keister and close the Keister matter.

ODC-120; PFD, RA ¶ 163.

134. To date, the Respondent has not paid either party any portion of the sanctions. PFD, RA ¶ 164; NT 46.

135. On March 4, 2016, Mr. Keister drew check #1298 payable to Respondent for $1,500.00 in connection with the PPL Matter. ODC- 122; PFD, RA ¶ 165.

136. On March 9, 2016, Respondent filed appeals to the United States Court of Appeals for the Third Circuit on behalf of Mr. Keister from the District Court's

grant of Summary Judgment and from the District Court's grant of PPL's Rule 11 Sanctions Motion and on behalf of himself from the Union's Rule 54 Motion for Fees. ODC-123 through 126; PFD, RA ¶ 171; NT 46, 47.

137. On May 5, 2016, Mr. Keister drew check #1264, with the notation **"Final Payment,"** payable to Respondent for $3,000.00 in connection with the PPL Matter. ODC-127; PFD, RA ¶ 173 (emphasis added).

138. On January 27, 2017, the Third Circuit issued an opinion and judgment affirming the grant of Summary Judgment against Mr. Keister, the grant of PPL's Rule 11 Sanctions Motion and the Union's Rule 54 Motion for Fees. ODC-128; PFD, RA ¶ 176; NT 224.

139. Circuit Judge Fisher's Opinion stated, *inter alia*:

> We agree with the District Court that **"[t]here is nothing "novel" about the ADEA and the type of claim alleged here** ...[or] the theories that Mr. Russo has conjured up...by a desire to confuse the court and the parties, to shroud the straightforward weaknesses of his client's claims and to manufacture disputes where none existed" ODC-128, pp. 8-9; NT 47 (emphasis added).

140. Judge Fisher's Opinion also agreed with the District Court's conclusion that Mr. Keister's LRMA claim against the Union was "unequivocally lacking in merit [,]...substantively frivolous as it related to his failure to show any breach of the Union's duty of good faith representations [,] wholly contrary to Third Circuit case law as it related to mandated procedural exhaustion in LMRA 301 actions..[and] factually baseless." ODC-128 at p. 9-10; NT 48, 271, 272.

141. Judge Fisher also rejected Respondent's argument that PPL refused to participate in mediation and mitigate damages as "patently untrue." ODC-128, p. 9.

142. On February 7, 2017, Respondent filed a Petition for Rehearing En Banc. He also filed on March 6, 2017, a Sur Petition for Rehearing with Suggestion for Rehearing En Banc. ODC-126, 129, 130.

143. On March 6, 2017, the Third Circuit denied the Petition for En Banc Rehearing and Petition for Panel Rehearing. ODC-126.

144. Between March 2017 and May 2017, Mr. Keister drew the following checks in connection with the PPL Matter: #501 payable to Respondent for $2,100.00; #3500 payable to Respondent for $800.00; #506 payable to Respondent for $3,000.00; #507 payable to Respondent for $2,900.00; and check #508, with the notation "Filing Fee", payable to Respondent for $300.00. ODC-131-34; PFD, RA ¶¶ 179-83.

145. On June 5, 2017, Respondent filed a Petition for Writ of Certiorari to the Supreme Court of the United States in connection with the Third Circuit's January 27, 2017 Order. ODC-135; PFD, RA ¶ 184; NT 48.

146. On June 6, 2017, Mr. Keister drew check #510 payable to Respondent for $1,500.00 in connection with the PPL Matter. ODC-136; PFD, RA ¶ 185.

147. By Order dated October 2, 2017, the Supreme Court denied the Petition for Writ of Certiorari. ODC-137; PFD, RA ¶ 186; NT 49.

148. Mr. Keister paid Respondent at least $39,206.00 in connection with the PPL matter. PFD, RA ¶ 187, NT 50.

149. Mr. Keister never filed a complaint or inquiry against the Respondent. (NT 50.

Findings of Fact Relating to Respondent's History of Discipline and Aggravating Factors

150. Respondent received an Informal Admonition on July 13, 2010, for violating RPCs 1.1, 1.3, 1.4(a)(3)(4) and 1.4(b). Respondent was non-responsive to his client's numerous inquiries about the status of her case and failed to timely prepare and file her employment discrimination complaint. Respondent's lack of diligence and communication prompted his client to: terminate his services; demand, and receive from Respondent, a refund of her $4,000.00 retainer; and file a disciplinary complaint against Respondent. ODC-89.151(1).

151. Respondent received a Private Reprimand on October 11, 2011, for violating RPCs 1.5(b); 1.15(b); 1.15(e); 1.15(i); and 1.16(d). Respondent failed to provide his clients a written statement setting forth the rate or basis of his fee. Respondent received retainers representing advanced fees that had not yet been earned and failed to deposit the funds into an IOLTA to be withdrawn as the fee was earned. After his clients terminated his representation, Respondent refused to return any monies, compelling them to file a civil complaint against him. The arbitrators found against Respondent and Respondent ultimately returned $6,250 to his clients. ODC-89.151(2).

152. Respondent received a Public Reprimand on December 14, 2015, for violating RPCs 1.1, 1.2(a), 1.3, 1.4, 3.2, and Pa.R.D.E. 219(d)(3) relating to two matters. In the first matter, over a five-year period, Respondent committed egregious procedural errors and failed to prosecute his client's federal court Qui Tam Action, resulting in the action being dismissed with prejudice. Secondly, Respondent allowed his professional liability coverage to lapse for almost five months without notifying his clients and the Disciplinary Board. ODC-89.151 (3).

153. In 2004, Respondent represented Rox-Ann Reifer who had suffered a workers' compensation injury during the course of her employment working with special

education students. Her injuries prevented her from working and she retained Respondent out of concern that her employer would bring disciplinary action against her. ODC-89.151(4)(b).

154. Respondent failed to appear at Ms. Reifer's disciplinary hearing and her employment was terminated. Respondent failed to appeal the termination, instead filing a federal lawsuit alleging violation of Ms. Reifer's employment rights, which he lost for failure to exhaust state remedies. After Ms. Reifer sought alternate employment, Respondent advised her to answer falsely in her job application. Ms. Reifer was ultimately terminated from the subsequent job and subjected to public discipline for falsely answering the employment application. *Id.*

155. On March 18, 2008, Ms. Reifer commenced a malpractice action against Respondent by serving him with a Praecipe for Writ of Summons. Respondent failed to timely notify his malpractice carrier, Westport Insurance Corp., of the claim. When he belatedly notified the carrier of the claim, his policy had lapsed and Westport refused to defend Respondent. ODC-151(5)(a-b).

156. In 2011, Respondent settled with Ms. Reifer by admitting liability as to his malpractice, but leaving a jury to decide the amount of damages by assigning his rights under his malpractice policy to Ms. Reifer. A jury awarded to Ms. Reifer a judgment against the Respondent of over $4 million dollars. ODC-89.151(4)(c-f).

157. In 2015, Respondent's former client, David Benner filed a civil complaint against Respondent alleging that Respondent breached his agreement to return a $2,000.00 legal retainer Benner had provided him. On November 19, 2015, an Arbitration Award was entered in favor of Mr. Benner and against Respondent. ODC-89.151(6)(a-c).

158. Between 2015 and 2017, four additional legal malpractice complaints were filed against Respondent by former clients. These complaints were all terminated by a Praecipe to Settle, Discontinue and End ODC-89.151(8-10).

159. Respondent has significant outstanding Federal and State Tax Liens. ODC-89.151(11-12).

160. Nicole Heritage, Esquire, testified that she worked for the Respondent from September 2014 through October 20, 2015, when Respondent terminated her employment due to economic downturn. NT 349.

161. On October 8, 2015, Ms. Heritage filed a disciplinary complaint against Respondent. Ms. Heritage had concerns about Respondent's lack of record keeping and improper accounting for money coming into the office. NT 350, 351.

162. Ms. Heritage testified that Respondent had a policy of charging clients for "cost adjustments." Twice a year, Respondent would send out mass letters to the clients requesting payment for items such as postage, printing and office supplies. These costs were not specific to an individual client, as it was a general amount that was requested of every client. After the letters were sent, Respondent instructed Ms. Heritage to make follow up calls to the clients to negotiate payment of these charges. NT 353, 354, 355, 356.

163. Towards the end of her employment, Ms. Heritage testified that Respondent was "barely" in the office and would only come in "whenever there was cash there that he would be able to pick up." NT. 360, 361.

164. Respondent failed to acknowledge his misconduct and failed to demonstrate remorse.

III. CONCLUSIONS OF LAW

By his conduct as set forth above, Respondent violated the following Rules of Professional Conduct:

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

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

3. RPC 1.5(a), which states that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee. The factors to be considered in determining the propriety of a fee include the following: (1) whether the fee is fixed or contingent; (2) the time and labor required, the novelty and difficulty of the questions involved, and the skill requisite to perform the legal service properly; (3) the likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer; (4) the fee customarily charged in the locality for similar legal services; (5) the amount involved and the results obtained; (6) the time limitations imposed by the client or by the circumstances; (7) the nature and length of the professional relationship with the client; and (8) the experience, reputation, and ability of the lawyer or lawyers performing the services;

4. RPC 3.1, which states that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration,

may nevertheless so defend the proceeding as to require that every element of the case be established; and

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

Rules of Professional Conduct Not Violated by Respondent

The Board concludes that Petitioner did not prove that Respondent violated the following Rules of Professional Conduct[1]:

1. RPC 1.15(b), which provides that a lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property and that such property shall be identified and appropriately safeguarded; and

2. RPC 1.15(i), which states that a lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.

[1] Petitioner did not take exception to the Committee's conclusions that Respondent did not violate RPC 1.15(b) and RPC 1.15(i).

IV. DISCUSSION

Herein, the Board considers the matter of Respondent's conduct in the course of litigating two federal court cases. Respondent answered the Petition for Discipline and represented himself at the disciplinary hearing. Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). After considering the evidence, the Committee recommended a five-year period of suspension. Respondent takes exception to the recommendation and contends that Petitioner failed to meet its burden of proof that he violated any ethical rules. After review of the record, and upon consideration of the parties' briefs and oral argument, we conclude that there is no substance to Respondent's arguments. Upon the record, the Board concludes that Petitioner's evidence proved that Respondent violated RPC 1.1, 1.3, 1.5(a), 3.1, and 8.4(d). For the following reasons, we recommend that Respondent be suspended for a period of three years.

In the Moore matter, in March 2014, Respondent filed a "hybrid" complaint on behalf of Robert Moore, alleging wrongful discharge by his employer, Air Methods, and breach of duty of fair representation by his Union. The lawsuit was filed in the Court of Common Pleas of Carbon County and later removed to federal court. At the time of the filing, it was clear, and was known or should have been known by Respondent, that Mr. Moore's matter was governed by the six-month statute of limitations. The limitations period commenced when Mr. Moore received notice that the Union would proceed no further with the grievance.

The undisputed evidence of record demonstrates that on April 5, 2012, Mr. Moore received an email and letter from the Union providing him clear and unequivocal

notice that the Union would not proceed with his grievance, thus beginning the limitations period. There is also undisputed evidence that Mr. Moore first sought Respondent's counsel in August 2013, some ten months after the statute of limitations had elapsed. Respondent contended before the federal court and at this disciplinary proceeding that he had a good faith belief that the case could proceed. His arguments were rejected by the court, and are unavailing here.

Respondent ignored what should have been obvious to him, and initiated suit by filing, but not serving, a Writ of Summons more than fourteen months after the statute of limitations had expired. The complaint filed on behalf of Mr. Moore was almost seventeen months after the expiration of the suit. Not only did Respondent file suit, but he pursued the matter despite receiving a Rule 11 safe harbor notice from defendants.

The defendants filed a Motion for Sanctions, alleging that Respondent violated Rule 11 by filing and prosecuting a frivolous complaint that was time-barred. Judge Mariani ruled in favor of the defendants, finding that Respondent violated Rule 11 and imposing a public declaration of a Rule 11 violation.

In his Memorandum of July 29, 205, Judge Mariani found:

> The Plaintiff's claims and other legal contentions were not warranted by existing law or by a non-frivolous argument for extending, modifying, or reversing existing law. Further, the Plaintiff's factual contentions lacked any evidentiary support at the time of the filing of the Plaintiff's complaint and after discovery was undertaken in accordance with is Court's Order of June 26, 2014. ODC-42, pp.12-13.

Respondent's actions in the Moore matter violated RPC 1.1, 1.3, 3.1 and 8.4(d).

In the Keister matter, on January 17, 2013, Respondent filed a complaint on behalf of Mr. Keister against his employer, PPL, as well as the Union for failing to adequately represent Plaintiff's interest. The complaint was filed one year and seven months after Mr. Keister initiated his EEOC charge, ten months after Mr. Keister's last meaningful communication with the Union and four months after the EEOC dismissed Mr. Keister's charge and issued a right-to-sue letter. The initial complaint contained a claim of age discrimination under the Age Discrimination in Employment Act, a second claim of age discrimination under the Pennsylvania Human Relations Act, and a third claim alleging a violation of the Labor Management Relations Act of 1947.

After motions to dismiss were filed, Respondent filed an Amended Complaint on Mr. Keister's behalf. Another round of motions to dismiss were filed, directed at the Amended Complaint. Respondent then sought permission to file a Second Amended Complaint, this time adding certain factual allegations in support of his claims. Specifically, the Second Amended Complaint alleged that "PPL has hired younger employees into similar positions that were doing the same amount of work" and also included a new allegation that "Plaintiff attempted to convince his Union to work on his behalf within six months of his filing of this lawsuit, but the Union did not act aggressively." However, it became apparent after Mr. Keister's deposition testimony that the Second Amended Complaint set forth allegations that had no basis in fact and included claims that were procedurally barred.

Shortly after Mr. Keister's deposition, the defendants served a Rule 11 safe harbor notice on Respondent. Undeterred, Respondent pressed forward, ultimately losing the case on summary judgment. In his Order and Memorandum dated October 6, 2015, Judge Brann explained that a Rule 11 Sanctions Hearing was appropriate because the

claims filed by Respondent were meritless; Respondent had actively complicated the disposition of Mr. Keister's claims by failing to address certain key Undisputed Facts and advancing allegations in the Second Amended Complaint that diverged significantly from the actual evidence adduced by the Plaintiff; and the "Plaintiff's Counsel is beginning to amass a track record of questionable and unprofessional conduct in this District and other forums." ODC-111.

Judge Brann ordered sanctions against Respondent, and in his Memorandum dated December 29, 2015, was sharply critical of Respondent's conduct in litigating Mr. Keister's matter.

Despite Judge Brann's findings, Respondent pursued Mr. Keister's case through an appeal to the Third Circuit, where the decision to dismiss the case was affirmed and the Panel was critical of Respondent's conduct. Circuit Judge Fisher's Opinion stated, inter alia: "We agree with the District Court that' [t]here is nothing "novel" about the...type of claim alleged here...[or] the theories that Mr. Russo has conjured up...by a desire to confuse the court and the parties, to shroud the straightforward weaknesses of his client's claims and to manufacture disputes where none existed." ODC-128, pp. 8-9. Similar to the lower court, Circuit Judge Fisher noted that Mr. Keister's claims were lacking in merit and frivolous. ODC-128, pp. 9-10.

Respondent was not deterred by yet another unfavorable ruling and targeted criticisms of his litigation tactics, and filed a Petition for Rehearing En Banc before the Third Circuit as well as a Sur Petition for Rehearing with Suggestion for Rehearing En Banc. The Third Circuit denied Respondent's requests. Still not satisfied, Respondent sought the extraordinary remedy of Supreme Court review by filing a Writ of Certiorari before the United States Supreme Court. This, too, was denied.

Respondent's pursuit of unmeritorious and frivolous claims cost his client a great deal of expense. Mr. Keister paid Respondent nearly $40,000.00 over a period of six and a half years, of which $16,000.00 was collected in pursuing appeals to the Third Circuit and the United States Supreme Court. There is no plausible explanation to support Respondent's decision to collect fees for what was patently a non-meritorious appeal and there is no evidence to suggest that Respondent advised his client of that fact before accepting the additional sums.

The record is replete with examples of Respondent's correspondence with his client seeking fees, even after Respondent assured his client that his fees would be "capped," only to retreat from that position on numerous occasions in the pursuit of further fees, without adequately disclosing the clear weaknesses in Mr. Keister's case. Rather, Respondent repeatedly assured Mr. Keister that his case was strong and Respondent was confident, intimating that a positive result would be achieved. These comments are not supported by the facts of the case and the existing law and at best, were misguided. At the close of the hearing, the Committee gave Respondent the opportunity to submit evidence to show that at some point he had advised Mr. Keister of the weaknesses of his case and that Mr. Keister had paid the fees with the benefit of appropriate guidance from his counsel. Respondent's submission of a lengthy compilation of emails between himself and his client did not demonstrate that Mr. Keister had the benefit of proper guidance, nor that Respondent ever candidly advised his client that his prospects of success were not good.

Respondent's misconduct in the Keister matter violated RPC 1.1, 1.3, 1.5(a), 3.1 and 8.4(d).

Having concluded that Respondent violated the rules, this matter is ripe for determination of discipline. It is well-established that in evaluating professional discipline, each case must be decided individually on its own unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***, 427 A.2d 186, 190 (Pa. 1983). In order to "strive for consistency so that similar misconduct is not punished in radically different ways," ***Office of Disciplinary Counsel v Anthony Cappuccio***, 48 A.3d 1231, 1238 (Pa. 2012) (quoting ***Lucarini***, 473 A.2d at 190), the Board is guided by precedent for the purpose of measuring "the respondent's conduct against other similar transgressions." ***In re Anonymous No. 56 DB 94***, 28 Pa. D. & C. 4th 398 (1995).

We first examine the aggravating and mitigating circumstances present in this matter. Respondent is a recidivist offender with a history of three instances of professional discipline. Respondent received an Informal Admonition in 2010, a Private Reprimand in 2011, and a Public Reprimand in 2015. Generally, these matters involved a range of misconduct, including incompetence, neglect, and failure to provide a written fee agreement or properly deposit retainer fees into an IOLTA account. We conclude that Respondent's history of discipline and his experience with the disciplinary process did not serve to deter his misconduct in the instant matter. Further, Respondent has been a defendant in numerous malpractice actions and has outstanding multiple judgments. These facts are relevant to the consideration of the type of discipline to be imposed, pursuant to Board Rule §89.151(b)(7).

Respondent does not appreciate the severity of his misconduct and has failed to demonstrate genuine remorse. Throughout his testimony before the Committee, he refused to consider that he did anything wrong, and would not accept responsibility for his actions. It is well-settled that a respondent's lack of remorse constitutes a significant

aggravating factor. ***Office of Disciplinary Counsel v. Thomas Allen Crawford, Jr.***, 160 DB 2014 (D. Bd. Rpt. 9/13/2017) (S. Ct. Order 11/4/2017); ***Office of Disciplinary Counsel v. Terry Elizabeth Silva***, 164 DB 2014 (D. Bd. Rpt. 5/24/2016) (S. Ct. Order 7/14/2016).

The Committee found that this matter was aggravated by Respondent's "willful, vexatious, and bad faith behavior" in pursuing his clients' matters. As discussed above, Respondent's conduct in the Moore and Keister matters violated multiple ethical rules by his meritless, frivolous, baseless claims. This conduct constitutes the basis for discipline in this matter; however, we decline to find that the same conduct also aggravates the discipline.

Respondent presented no character testimony and submitted no mitigating evidence, either at the hearing or during the ten day post-hearing period granted by the Committee for submission of evidence relevant to the appropriate discipline. Respondent's "Memorandum in Support of Mitigation Consideration," filed prior to the disciplinary hearing, did not discuss any mitigating evidence pertinent to this proceeding.

In assessing the appropriate discipline, the Board reviewed prior decisions where attorneys engaged in frivolous filings and the pursuit of baseless motions. Discipline in these matters ranged from suspension of one year and one day to disbarment.

In the matter of ***Office of Disciplinary Counsel v. John J. Koresko, V,*** No. 119 DB 2013 (D. Bd. Rpt.6/1/2015) (S. Ct. Order 9/4/2015), the disciplinary case arose from the numerous false and baseless claims Koresko filed in a real estate transaction matter against the parties, their attorneys individually, and their respective law firms. Koresko filed numerous pleadings, motions and interlocutory appeals based on

improper and meritless grounds. In addition, Koresko engaged in a blatant conflict of interest, intentionally interfered with opposing counsel's lawful efforts to conduct discovery depositions, and delayed the case for one year. All of Koresko's claims were dismissed on substantive and procedural grounds. The Board found that Koresko demonstrated a significant lack of remorse, and remained intractable in his positions, despite overwhelming evidence to the contrary. The Board concluded that Koresko violated RPC 1.1, 1.3, 1.7(a), 1.7(b), 3.1, 3.2, 3.3(a)(1), 3.3(a)(3), 3.4(b), 4.1(a), 4.3(b), 4.4(a), 5.3(b), 8.4(c), 8.4(d) and recommended a suspension for a period of five years. The Supreme Court disbarred Koresko subsequent to his failure to respond to a Rule to Show Cause why he should not be disbarred.

The Supreme Court imposed a suspension of five years in the matter of ***Office of Disciplinary Counsel v. Edward Charles Malloy, III***, No. 178 DB 2014 (D. Bd. Rpt.4/26/2016) (S. Ct. Order 6/30/2016). In a case involving Malloy's representation of one client, Malloy violated RPC 1.1, 3,1 3.2, 3.4(c), 4.1(a), 8.2(a), and 8.4(d) The disciplinary case arose out of an aborted residential real estate transaction by Malloy's client, which prompted eight years of litigation, fueled by Malloy's "relentlessly abusing the judicial system." Board Rpt. at p. 28. Malloy was ignorant of the law and incompetently represented his client, filing numerous improper and baseless pleadings, motions and interlocutory appeals. In addition, Malloy "needlessly and baselessly" impugned the integrity of two judges during the course of multiple proceedings. *Id.* He suggested the judges were incompetent and had engaged in improper conduct. Malloy made false statements of material fact or law to third parties, and prejudiced the administration of justice. The Board found that Malloy did not accept responsibility and was not remorseful for abusing the court system through a continuing pattern of filing baseless litigation for

eight years. In mitigation, the Board found that Respondent had no prior history of discipline and engaged in community service. The Board concluded that Malloy violated RPC 1.1, 3.1, 3.2, 3.4(c), 4.1(a), 8.2(a), and 8.4(d) and recommended a five-year suspension, finding that Malloy's conduct, while very serious, did not warrant disbarment, as compared to the conduct exhibited by the respondent in ***Koresko***.

In the matter of ***Office of Disciplinary Counsel v. Allen L. Feingold***, 93 DB 2006 (D. Bd. Rpt. 11/18/2005) (S. Ct. Order 3/3/2006), Feingold failed to take action after his client perjured herself in a deposition, attempted to unlawfully obstruct his opponent's access to evidence, and engaged in a pattern of frivolous lawsuits against opposing counsel and other non-parties. Feingold violated RPC 1.2(d), 3.1, 3.4(a), 3.4(b), 3.4(d), 4.1(b), 8.4(a), 8.4(c), and 8.4(d). The Board found that he demonstrated no remorse and no acceptance of responsibility, and further displayed contempt for the disciplinary process by being disrespectful to witnesses he had subpoenaed and losing control of his temper at the disciplinary hearing. In mitigation, Feingold had practiced law for 38 years without discipline. The Board recommended a suspension for three years, which the Court imposed.

In the matter of ***Office of Disciplinary Counsel v. Paul J. McArdle***, 39 DB 2015 (D. Bd. Rpt. 9/21/2016) (S. Ct. Order 11/22/2016), the Supreme Court suspended McArdle for a period of one year and one day for his misconduct involving his initiation and maintenance of six separate *pro se* court actions over the course of more than five years, each regarding the same or related causes of action against 34 defendants. McArdle's misconduct violated RPC 3.1, 4.4(a), and 8.4(d), as he continued to file actions against the same defendants raising the same or similar allegations as contained in the previously dismissed actions, in defiance of court orders. McArdle refused to cease and

desist from forcing the defendants to defend against his frivolous actions, and he displayed little remorse. The Board found mitigation in that McArdle had no history of discipline over the course of a thirty-year practice, and represented himself, not a client.

In our view, the facts of ***Koresko, Malloy,*** and ***Feingold*** are more egregious than the instant matter. In ***Koresko***, the respondent violated fifteen rules of professional conduct. In addition to filing frivolous and baseless claims, he engaged in dishonest conduct and bad faith efforts to obstruct his opponents' legitimate discovery, made speculative claims about the court's political bias, and made false claims in documents submitted to the court. In ***Malloy***, the respondent violated seven conduct rules, including making false statements and impugning the integrity of two judges. In ***Feingold***, the respondent violated nine conduct rules, including engaging in dishonest conduct and allowing his client to perjure herself. Unlike these respondents, but similar to the respondent in ***McArdle***, the instant Respondent did not engage in dishonest conduct, make false statements to third parties, or impugn the integrity of judges in front of whom he practiced. The conduct exhibited by the respondents in the ***Koresko***, ***Malloy*** and ***Feingold*** matters warranted the severe discipline imposed by the Court. Respondent's misconduct warrants a lesser sanction than the disbarment imposed in ***Koresko*** and the five-year suspension imposed in ***Malloy***.

However, the one year and one day suspension imposed in ***McArdle*** is not appropriate in the instant matter. Respondent committed more rules violations than McArdle, warranting an increased level of discipline. In addition to RPC 3.1 and 8.4(d), Respondent violated RPC 1.1, 1.3, and 1.5(a). We further conclude that Respondent's lack of remorse and failure to acknowledge responsibility, as well as his three prior

instances of professional discipline compel a more severe sanction. On balance, we conclude that the totality of the facts warrant a suspension of three years.

The primary purpose of the disciplinary system in Pennsylvania is to protect the public from unfit attorneys and to preserve public confidence in the legal system. ***Office of Disciplinary Counsel v. Suber Lewis***, 426 A.2d 1138, 1142 (Pa. 1981). A suspension of three years is warranted to comply with the decisional law reviewed above.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Donald P. Russo, be Suspended for Three 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: _____
Brian J. Cali, Chair

Date: 12/12/18