

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 2175 Disciplinary Docket No. 3
Petitioner :
 : No. 119 DB 2013
v. :
 : Attorney Registration No. 42795
JOHN J. KORESKO, V., :
Respondent : (Montgomery County)

ORDER

PER CURIAM:

AND NOW, this 4th day of September, 2015, no response having been filed to a Rule to show cause why John J. Koresko, V, should not be disbarred, the Rule is made absolute. John J. Koresko, V, is disbarred; he shall comply with all the provisions of Pa.R.D.E. 21; and he shall pay costs to the Disciplinary Board pursuant to Pa.R.D.E. 208(g).

A True Copy Patricia Nicola
As Of 9/4/2015

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 119 DB 2013
Petitioner	:	
v.	:	Attorney Registration No. 42795
JOHN J. KORESKO, V	:	
Respondent	:	(Montgomery 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") 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 August 28, 2013, Office of Disciplinary Counsel charged John J. Koresko, V, with violations of Rules of Professional Conduct 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) and 8.4(d). Respondent filed an Answer to Petition on October 29, 2013.

A disciplinary hearing was held on January 23, 2014, February 26, 2014 and March 6, 2014, before a District II Hearing Committee comprised of Chair Raymond

J. Santarelli, Esquire, and Members Carin O'Donnell, Esquire and Philip D. Press, Esquire. Respondent was represented by James J. Rodgers, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on September 18, 2014, concluding that Respondent violated the Rules as charged in the Petition and recommending that Respondent be suspended for three years.

Respondent filed a Brief on Exceptions on October 14, 2014. Petitioner filed a Brief Opposing Exceptions on October 29, 2014.

This matter was adjudicated by the Disciplinary Board at the meeting on January 15, 2015.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at the Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania 17106, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and duty to investigate all matters involving alleged misconduct of any attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules.

2. Respondent, John J. Koresko, V, was born in 1958 and was admitted to practice law in the Commonwealth of Pennsylvania in 1985. Respondent's attorney registration address is 200 W. Fourth Street, Bridgeport, PA 19405.

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

3. By Order dated December 19, 2013, Respondent was placed on emergency temporary suspension pursuant to Rule 208(f)(1), Pa.R.D.E., in an unrelated case. That matter is still pending.

4. Respondent was admitted to practice law in the State of Florida. At this time he is administratively suspended in Florida for failure to complete required Continuing Legal Education requirements.

5. On July 27, 2004, Respondent and his ex-wife, Bonnie Jean Koresko, sold a home located at 1021 Woodland Avenue, East Norriton, PA ("Property") to Maria White.

6. At all relevant times, Ms. White was a co-worker of Ms. Koresko. Before the sale, Ms. White resided in the Property as a tenant of Respondent and Ms. Koresko. (N.T. January 23, 2014, 19-20)

7. Ms. White was a first time home buyer, with little, if any, experience with attorneys or formal legal matters. (Id. at 45-6, 51, 53)

8. Ms. White believed that Respondent and Ms. Koresko were working with her out of a desire to help her purchase a home when she otherwise would not have been able to afford one for herself and her four children. (N.T. January 23, 2014, 24-5, 55)

9. Ms. White initially considered purchasing a home after a conversation with a representative from her bank, Norsco Federal Credit Union. (N.T. January 23, 2014, 20-1) Ms. White recalls a Norsco representative suggesting that she could obtain a 15 year home equity line mortgage. Id. at 21. During or soon after this

conversation, the Norsco representative suggested that Ms. White could afford to make payments on a \$170,000 mortgage. Ms. White conveyed this figure to Respondent and Ms. Koresko. Id. This figure became the basis for the sale price for the Property purchase. Id. at 22.

10. Soon thereafter, Respondent offered to sell the Property to Ms. White for the \$170,000 amount along with a \$10,000 “seller assist.” Id.

11. Ms. White stated that Respondent wished to sell her the home for the same amount he paid for it. Id. at 27.

12. As the approved attorney for Penn Attorneys Title Insurance Company in this transaction, Respondent worked on behalf of the title company, which was insuring the transfer of clear title of Respondent's and Ms. Koresko's property in the pending transaction with Ms. White. (ODC Exhibit 1; Pet. For Disc. at para. 6; Ans. at para. 6)

13. In this capacity, Respondent was obligated to disclose to Ms. White any defects, mortgages, encumbrances, liens or other objections to valid title to the Property. Id. Respondent did not disclose his role as Penn Attorneys' Approved Attorney to Ms. White before the sale. Id.

14. At the time of the sale, two recorded mortgages encumbered the property. The first mortgage was held by EMC. The second mortgage was held by the Estate of William Vagnoni and the William Vagnoni Trust. Respondent knew about the existence of both mortgages. The Vagnoni mortgage originated as part of a Settlement Agreement to end a legal malpractice claim brought against Respondent by the Vagnoni family. (ODC Exh. 1; Pet for Disc. at para, 7; Ans. at para. 7)

15. Because Respondent, as Penn Attorneys' Approved Attorney, concluded that the Vagnoni mortgage was an invalid conveyance, he believed he was not obligated to satisfy the mortgage during the period prior to the closing. (Pet for Disc. at para. 10; Ans. at para. 10)

16. Respondent conceded that even though he believed he "was in the unique circumstance to make a determination of validity," he never provided a written opinion letter or similar notice at the time of his decision.¹ (ODC Exh. 26)

17. Accordingly, Respondent, as the Approved Attorney for Penn Attorneys concluded that he, as the property seller, was under no obligation to disclose the existence of the mortgage to Ms. White. (Pet. For Disc. at para 10; Ans. at para 10; ODC Exh. 26)

18. Respondent never satisfied the Vagnoni mortgage. Id.

19. Neither Respondent, nor his employees working under his direction and supervision, ever disclosed any information about either mortgage to Ms. White. (N.T. January 23, 2014 at 28)

20. Respondent used the proceeds from the sale to satisfy the EMC mortgage, but chose not to satisfy the Vagnoni mortgage. (Pet. For Disc. at para. 10-12; Ans. at para. 10-12)

21. At the real estate closing, Ms. White was given a blue folder containing a packet of forms to be completed upon closing. The forms included in the packet were: (1) the HUD-1 form, (2) the agreement of sale, (3) the completed deed and (4) a copy of the check from Norsco Credit Union. (N.T. January 23, 2014, 49-50)

¹ Respondent claims that although, "this is where lawyers differ", he "was imbued with the authority to make a determination" of mortgage validity. Id.

22. The respective testimonies of witnesses present confirmed that Respondent, Ms. Koresko, Margaret Lawson and Michelle Sullivan, both employees under the supervision, direction and control of Respondent, the Norsco representative, and Ms. White attended the settlement in Respondent's law office. (Pet. For Disc. at para 10-12; Ans. at para 10-12; N.T. January 23, 2014 at 24; ODC Exh. 45)

23. During the closing, Ms. White informally asked Ms. Koresko if she should have her own attorney present. Ms. Koresko answered in the negative, stating that Respondent was an attorney who "wrote the papers" to execute the sale and would complete the required work correctly. (N.T. January 23, 2014 at 47)

24. Ms. White never retained Respondent to represent her in any capacity whatsoever in connection with her purchase of the Property. Id.

25. Respondent and Ms. Koresko sold the Property to Ms. White and received in return a \$170,000 Mortgage, a \$10,000 "seller assist", and an additional \$5,000 note that Respondent created on the day of the closing. Id. at 26.

26. During settlement, Respondent left the room to prepare the \$5,000 note. When he returned, Respondent told Ms. White that she could make payments to satisfy the note at her convenience. Id. at 26-7.

27. Ms. White's legal representation in the underlying dispute on the Vagnoni mortgage is almost entirely covered by her title insurance policy. However, representation for the dispute over the \$5,000 note is not covered by the policy. Id. at 43.

28. After the closing, Ms. White entered into a subsequent mortgage agreement with Norsco for an increased mortgage amount. Id. at 22-23. According to Ms. White, the purpose of this transaction was to consolidate outstanding bills and to

pay the cost of her children's tuition. The new Norsco mortgage was for \$215,000. Id. at 23.

29. Nearly four years later, in early 2008, Ms. White arrived home to find a Post-it Note addressed to her on her front door. Id. at 28-29. The note instructed her to contact the Vagnoni family, which she did. Ms. White then contacted Ms. Koresko, who gave the call to Respondent at once. Id. at 29.

30. Respondent instructed Ms. White to ignore any contact from the Vagnoni family or their representatives regarding any claim. Id. Respondent assured Ms. White that he would settle any alleged dispute with the Vagnoni family, if one actually existed. Id. at 29-30.

31. Ms. White subsequently received written notice of foreclosure on her home on account of the Vagnoni mortgage. Ms. White delivered the letter to Ms. Koresko, who then delivered it to Respondent. Id. at 30.

32. The Estate of Richard Vagnoni filed suit against Ms. White, Respondent, and Ms. Koresko on February 27, 2008. Respondent and Ms. Koresko were named as co-defendants in an action for mortgage foreclosure and breach of contract. Ms. White was named as defendant in a related action. (Pet. for Disc. at para 14; Ans. at para. 14; ODC Exhibit 14)

33. On February 29, 2008, Respondent sent a letter on his firm's stationery to Mark Himsworth, the Vagnoni attorney. Respondent's letter notified Mr. Himsworth that Respondent had been retained by Ms. White, regarding the Vagnoni mortgage dispute. (ODC Exh. 2)

34. Additionally, on March 10, 2008, Respondent wrote to Penn Attorneys similarly informing it that his firm “represents Maria White.” (ODC Exh. 3)

35. Both of Respondent’s communications were knowingly false statements because there was no attorney-client relationship between Ms. White and Respondent at that time. Respondent initially learned that the Vagnoni complaint had been filed from Ms. White. (N.T. January 23, 2014 at 30.) Ms. White never made any additional comments about the lawsuit to Respondent. Id. at 33. There is no credible evidence in the record that would lead to a conclusion that Ms. White ever authorized Respondent to represent her in any capacity. Id.

36. After 4:00 p.m. on March 10, 2008, the same day that Respondent dated his letter to Penn Attorneys, Joan Gaughan, an employee of Respondent, sent an email to Ms. White. (ODC Exh. 4 N.T. January 23, 2014 at 69.) The purpose of the email was Respondent’s attempt to secure Ms. White’s consent to his legal representation in the Vagnoni matter. Id.

37. In response to Ms. White’s question whether a conflict of interest existed based on Respondent’s direct involvement in his failure to disclose the Vagnoni mortgage, Ms. Gaughan offered two replies:

a. Respondent was quite certain that no conflict of interest existed,, and

b. Respondent’s firm must have Ms. White’s consent to be represented by Respondent by the end of the following day so that Respondent could represent her. (Pet. for Disc. at para 20; (N.T. January 23, 2014 at 31-2)

38. Ms. White credibly testified that after this communication from Ms. Gaughan, she was certain that a conflict of interest existed between her interests and those of Respondent's. *Id.* at 32-3.

39. Ms. Gaughan's email responding to Ms. White's inquiry concerning a conflict of interest was the only attempt Respondent or his staff made to address Respondent's conflict of interest with Ms. White. *Id.* at 33-4.

40. Respondent never executed a written representation agreement or any other type of fee arrangement with Ms. White. (Pet for Disc. at para 22; Ans. at para. 22) Ms. White never paid Respondent for any form of legal representation. (Pet. For Disc. at para 23; Ans. at para 23)

41. Ms. White never agreed in writing to waive any conflict of interest with Respondent, nor did she ever do so orally in any discussion with Respondent or anyone at his firm. (N.T. January 23, 2014 at 33)

42. Ms. White never agreed to be represented by Respondent in this or any other matter. *Id.* at 30, 32.

43. At this point, Ms. White independently obtained legal counsel. On March 27, 2008, Ms. White's initial attorney, Joseph Caprara, wrote to Respondent to obtain confirmation of Respondent's purported representation of Ms. White. *Id.* at 34. Through his letter, Attorney Caprara memorialized Ms. White's concerns regarding the non-waivable conflict of interest that existed because of Respondent's "legal, ethical and financial involvement" in the Vagnoni mortgage dispute. (ODC Exh. 5)

44. Attorney Caprara requested that Respondent forward any documentation in his possession to "resolve this matter" of Respondent's publicly representing to opposing parties that Ms. White had retained him as her attorney. *Id.*

45. No evidence was produced demonstrating that Respondent responded to Attorney Caprara's request.

46. Attorney Caprara represented Ms. White for a brief period of time. Ms. White testified credibly that Attorney Caprara withdrew from representing Ms. White, in part, out of concern that Respondent would sue Attorney Caprara in some future litigation, or otherwise delay and obstruct Attorney Caprara's ability to conduct discovery on Ms. White's behalf. (N.T. January 23, 2014 at 59)

47. On November 17, 2008, Attorney Craig Fleischman filed suit on behalf of Ms. White and against Respondent and Ms. Koresko in the Montgomery County Court of Common Pleas. In that action, Ms. White sought relief from the damages she incurred as a result of Respondent's failure to disclose and satisfy the Vagnoni mortgage. (ODC Exh. 7)

48. Attorney Fleischman filed an Amended Complaint, adding the Vagnoni family members as adverse parties, on February 17, 2009. This amended complaint established two separate causes of action: an Action to Quiet Title and Breach of Warranty Deed. Id.

49. Subsequently, Attorney Fleischman wrote a letter to Respondent, seeking that Respondent satisfy the outstanding \$5,000 note on behalf of Ms. White. (N.T. January 23, 2014 at 37-8, 58-9, 84)

50. In a reply letter dated October 15, 2009, Respondent made the following claims and demands to Ms. White:

- a. Ms. White defrauded Respondent and Ms. Koresko by applying for and receiving a larger mortgage after the settlement closing;

- b. As a result of the alleged fraud, Respondent had incurred damages of \$75,000;
- c. Ms. Koresko never signed the July 27, 2004 Agreement of Sale;
- d. As a result, the property sale was invalid;
- e. Ms. White does not have title insurance;
- f. Respondent advised Ms. White that he was contacting Penn Attorneys to disclaim and cancel the title insurance policy; and
- g. Ms. White was a trespasser on the property and must vacate within 2 weeks.

(Id. at 37-41, ODC Exh. 10; ODC Exh. 17)

51. Additionally, Respondent acknowledged that his challenge to her title of ownership created a cloud on the property. Respondent declared an intention to file an injunction to prevent Ms. White from refinancing her mortgage. Id.

52. Ms. White testified at length concerning the effect of the cloud on her property's title and the lengths to which Respondent had prolonged the litigation, leaving her "stuck." (N.T. January 23, 2014 at 40-2)

53. On December 9, 2009, in the underlying litigation, Ms. Koresko signed an affidavit contesting the validity of the Settlement Deed. In the sworn document, Ms. Koresko stated as follow:

- a. The signature on the settlement deed was not her signature;
- b. She did not appear in person on the day of settlement; and
- c. She never authorized her signature to be placed on any document relating to the sale of the Property to Ms. White.

(ODC Exh. 11)

54. Ms. Koresko's December 2009 affidavit was notarized by Michelle Sullivan, an employee of Respondent's law firm. Ms. Sullivan also notarized the original July 27, 2004 settlement deed. (ODC Exh. 11; ODC Exh. 1)

55. On January 26, 2010, Respondent filed an Answer and New Matter to the Vagnoni complaint. In this filing, Respondent raised defenses and introduced counterclaims against five third-party defendants. (ODC Exh. 12; ODC Exh. 16)

56. On February 9, 2010, Ms. Sullivan executed a signed affidavit at Respondent's request. (ODC Exh. 13) In this document, Ms. Sullivan contested the validity of the settlement deed she notarized on July 27, 2004. Specifically, Ms. Sullivan stated the following:

a. "Other than what appears in my Notary journal and on the face of the document I do not have an independent recollection of the events relating to the deed and signatures."

b. She was "aware that there is litigation between the Koreskos and Ms. White involving the property noted on the deed. Other than this I have no information relating to the subject of the lawsuit or any additional information as to the abovereferenced deed and signatures."

(ODC Exh. 13; ODC Exh. 14, Exh. C)

57. Ms. Sullivan's Affidavit was executed nearly five years and seven months after her 2004 deed notarization. Ms. Sullivan's Affidavit was made two years

after the initiation of the Vagnoni Complaint and two months after Ms. Sullivan notarized Ms. Koresko's affidavit. Id.

58. The February 2010 Sullivan Affidavit was attached to Respondent's Motion for Protective Order to preclude Ms. White's attorney from deposing Ms. Sullivan. In the Motion, Respondent claimed that Ms. Sullivan's deposition would not produce discoverable facts. (ODC Exh. 14, Exh. C)

59. On March 11, 2010, Attorney Fleischman, on behalf of Ms. White, filed a Motion to Disqualify Respondent from representing Ms. Sullivan in the consolidated matters. Id.; N.T. January 23, 2014 at 89.

60. Respondent filed an Amended Joinder Complaint on March 17, 2010. In this filing, Respondent sought to join three individual opposing attorneys as individual party-opponents, as well as in their professional capacity. (ODC Exh. 12; ODC Exh. 16)

61. Respondent's Amended Joinder Complaint raises the following claims:

- a. Tortious Interference with Business Contracts, specifically Respondent's alleged legal representation of Ms. White and his former role as an Approved Attorney with Penn Attorneys Title Insurance Company;
- b. Violation of the Dragonetti Act for wrongful initiation of civil suits without probable cause;
- c. Abuse of Process in civil legal proceedings;
- d. Intentional Infliction of Emotional Distress; and

e. Civil Aiding and Abetting with regard to Ms. White in her alleged wrongful trespass and possession of the Property that Respondent and Ms. Koresko sold to Ms. White.

(ODC Exh. 16)

62. No factual or legal basis was presented to support Respondent's assertion of such claims. (ODC Exh. 18)

63. Based upon Respondent's accusations that Ms. Koresko did not attend the settlement and did not sign the Agreement of Sale, Attorney Fleischman sought to depose the Notary, Ms. Sullivan. (ODC Exh. 14, Exh. C) The deposition was initially scheduled for February 18, 2010. Id.

64. Despite the issuance of a valid subpoena, Respondent's firm notified Attorney Fleischman that Ms. Sullivan would not appear for testimony. Id. Respondent's firm suggested that Attorney Fleischman submit interrogatories for Ms. Sullivan to answer, in lieu of the deposition. Id.

65. Respondent's staff communicated to Attorney Fleischman that Respondent would not be available to discuss the matter. Id.

66. At Respondent's direction, in lieu of appearing for the properly noticed deposition, Ms. Sullivan submitted a second sworn affidavit dated April 16, 2010. (ODC Exh. 15)

67. The second Affidavit contained the following new claims, which conflicted with Ms. Sullivan's first Affidavit:

a. Ms. Sullivan notarized the settlement documents under pressure from Margaret Lawson, her former supervisor;

b. Ms. Sullivan notarized the deed despite not having witnessed Ms. Koresko sign it; and

c. Ms. Sullivan had no independent recollection of Respondent's or Ms. Koresko's attending the settlement. Id.

68. This was the third affidavit Ms. Sullivan notarized or attested to within the preceding six months.

69. On May 7, 2010, Respondent filed a notice of appeal of the denial of the Amended Joinder Complaint. (ODC Exh. 10). The Pennsylvania Superior Court granted a motion to quash Respondent's appeal on June 30, 2010. (ODC Exh. 20)

70. A hearing on the motion to disqualify Respondent was heard on November 15, 2010, before the Honorable Lois Murphy of the Montgomery County Court of Common Pleas. The notes of testimony from this hearing include extensive testimony from Ms. Sullivan and lengthy argument made by Respondent. (ODC Exh. 22)

71. During this hearing, Ms. Sullivan testified under oath that she "knew from the beginning" what actually occurred at settlement on July 27, 2004. Ms. Sullivan testified that she notarized the settlement documents without actually witnessing the signatures occur. Id. at 67. This testimony contradicts the substance of Ms. Sullivan's February 2010 sworn affidavit.

72. During the same hearing, Respondent stated that he anticipated a potential disciplinary action could result from his actions, including the conflict of interest with Ms. White. (ODC Exh. 22; 163:2-13)

73. In an Opinion and Order dated November 24, 2010, Judge Murphy granted the motion to disqualify Respondent as counsel for Ms. Sullivan. (ODC Exh. 23). Judge Murphy's findings included the following:

a. Respondent and his firm failed to adequately prepare Michelle Sullivan, and protect her independent interests with respect to Ms. Sullivan's commission as a Notary, and with respect to her exposure to civil and criminal liability for making statements under oath that were not truthful or consistent.

b. Attorney Jeanne Bonney of Respondent's firm filed the Motion for Protective Order to protect Respondent's and Ms. Koresko's interests, not primarily to protect the firm's client and subordinate employee, Ms. Sullivan.

c. Respondent's ability to represent Ms. Sullivan would be materially limited by his responsibilities to to himself and Ms. Koresko.

(ODC Exh. 23)

74. Five days later, Respondent filed a Motion for Reconsideration, Withdrawal of Order and Opinion and Recusal, alleging bias, errors and impropriety by Judge Murphy. (ODC Exh. 24) Respondent claimed Judge Murphy's two, unrelated previous campaigns for United States Congress were evidence of her "liberal bias" against him, and speculated at length how Judge Murphy's pre-ordained biases prevented her from providing him with a fair hearing or ruling. Id.

75. On November 29, 2010, Respondent appeared for his scheduled deposition in the consolidated matters related to the transaction with Ms. White. (ODC Exh. 26)

76. In his deposition testimony, Respondent stated that he abdicated all responsibility for the preparation and execution of the documents relative to Ms. White's settlement to his former employee, Ms. Lawson. Id. Subsequently, Respondent terminated Ms. Lawson's employment for cause regarding an unrelated matter.

77. Respondent listed the following assignmentshe gave to Ms. Lawson as proof that he ceded to her all responsibility and involvement in the sale of his property to Ms. White:

a. The entirety of the work Respondent was required to complete in connection with his role as the Approved Attorney for Penn Attorneys Title Insurance;

b. Preparing the deed for the property;

c. Recording the completed property deed;

d. Preparing the HUD-1 Form; and

e. Preparing the Agreement of Sale.

(ODC Exh. 26)

78. On December 10, 2010, Judge Murphy denied Respondent's Recusal Motion. (ODC Exh. 27)

79. On December 21, 2010, Respondent filed a Notice of Appeal to the Superior Court from the December 10, 2014 Order denying the Recusal Motion. (ODC Exh. 27)

80. On January 5, 2011, Ms. White, through counsel, filed an application to quash Respondent's appeal of the Court's Order, disqualifying Respondent as Ms. Sullivan's counsel. (ODC Exh. 29)

81. On January 19, 2011, Respondent filed a second Motion for Protective Order. (ODC Exh. 31) In seeking his second protective order, Respondent wanted to preclude opposing counsel from deposing Ms. Lawson, after Respondent had described in great detail and under oath Ms. Lawson's involvement in all aspects of the transaction with Ms. White. (Id. See N.T. January 23, 2014 at 97-8)

82. Respondent's claimed rationale for filing the Motion for Protective Order was that any attempt to depose Ms. Lawson would be prejudicial and designed to obtain inadmissible facts through discovery. (ODC Exh. 31) Respondent contended that Ms. Lawson's deposition would risk the disclosure of confidential information. Id.

83. On February 1, 2011, Judge Murphy issued a written Opinion on Ms. White's Motion to Disqualify Respondent as counsel for Ms. Sullivan. (ODC Exh. 32). Judge Murphy's Opinion stated:

- a. Respondent's request for reconsideration was untimely, with respect to the Orders issued on March 15, 2010, April 22, 2010 and May 6, 2010;
- b. The May 6, 2010 Order had already been the subject of an appeal that the Superior Court quashed;
- c. A portion of the March 15, 2010 Order to which Respondent objected had already been vacated by the Court's April 22, 2010 Order; and
- d. The Court was unaware of the "tenuous" political connections Respondent alleged in his bias claim against her.

(ODC Exh. 32)

84. On February 16, 2011, Respondent answered Ms. White's application to quash Respondent's appeal. (ODC Exh. 29)

85. On February 18, 2011, the Superior Court granted Ms. White's application to quash Respondent's appeal. Id. The Court stated that the denial of a motion for reconsideration was not an appealable matter. Id.

86. On March 24, 2011, Respondent's Motion for Protective Order to preclude the deposition of Ms. Lawson was denied by judicial order. (ODC Exh. 35)

87. Despite this ruling, Respondent sought to relitigate his settled claim regarding the release of confidential information. (N.T. January 23, 2014 at 100-101; ODC Exh. 36)

88. On April 13, 2011, Respondent filed a petition for a Preliminary Injunction to enjoin any party from taking Ms. Lawson's deposition. Id.

89. Respondent undertook this effort despite a prior application and ruling by the court in the previous identical issue.

90. On April 13, 2011, the same day that he filed for the Preliminary Injunction to block any deposition of Ms. Lawson, Respondent also wrote a letter to Ms. Lawson's attorney. Id.

91. In his letter, Respondent stated that he intended to record a confession of judgment for \$250,000 against Ms. Lawson, "for every statement that breaches the confidentiality agreement signed by her." As a term of her former employment for Respondent's law firm, Ms. Lawson had signed a Confidentiality Agreement. Respondent added that the failure to inform his firm of the scheduled deposition already constituted a breach of the agreement. (ODC Exh. 37)

92. Respondent withdrew his Preliminary Injunction petition during a hearing on May 11, 2011. Before Montgomery County Court of Common Pleas Judge Garrett Page, Respondent entered into a stipulation, on the record, approved by the court, with regard to the scope and scheduling of Ms. Lawson's deposition. (N.T. January 23, 2014 at 101-103)

93. Ms. Lawson's deposition was scheduled for June 28, 2011.

94. The parties met on June 28, 2011, according to the agreement decided on the record before Judge Page. (ODC Exh. 40) Immediately, at the start of the deposition, and in contrast to the stipulated agreement, Respondent restated his threat to record the \$250,000 confession of judgment against Ms. Lawson for any breach of the Confidentiality Agreement. (N.T. January 23, 2014 at 101-104; ODC Exh. 38)

95.

96. Respondent's behavior caused a stalemate that necessitated an emergency hearing before Judge Page. (ODC Exh. 39) Judge Page ordered the deposition to continue as planned, with recorded objections to be ruled on at a later date. Id.

97. When the deposition reconvened, Respondent continued his threats against Ms. Lawson to the point where her attorney refused to allow Respondent's abusive treatment of his client to continue and adjourned her deposition. (N.T. January 23, 2014 at 106-7)

98. In addition, Respondent asserted a new objection to the proceedings, claiming that he had not received documents that were moved and admitted into the record during the November 15, 2010 hearing. Id. at 114-115.

99. Copies of the exhibits that Respondent disputed were delivered to his office in December 2010 and paid for by his law firm in January 2011. Id.

100. In his Answer to the Petition for Discipline, Respondent attempted to legitimize his claim by stating that any receipt of payment for court transcripts would have been handled by his law firm's clerical staff, thus relieving him of any obligation to accept notice or receipt. (Ans. at para. 87)

101. In the end, every attempt to take Margaret Lawson's deposition failed because Respondent prevented Ms. Lawson from answering almost every question she was asked. (ODC Exh. 40) Respondent's recalcitrance cost all parties involved a day of time and related expenses. (ODC. Ex. 38)

102. Attorney Fleischman was exasperated at the conclusion of the failed deposition session. (N.T. January 23, 2014 at 115-6). He made comments to the effect that Respondent was "incapable of telling the truth" and that Respondent's actions were worthy of inquiry by the Office of the District Attorney. Although Attorney Fleischman believed he had made the comments outside the earshot of Respondent, Respondent immediately announced his intention to sue Fleischman for defamation. (ODC Exh. 49)

103. On June 30, 2011, Respondent initiated a new civil action against Maria White, Craig Fleischman, Fleischman's law firm and First American Title Insurance Company, based on Fleischman's comments following the deposition. Id. Respondent's complaint alleged four claims: defamation, Uniform Trade Practice and Consumer Protection Law violations, tortious interference with business relations and abuse of process. Id.

104. On August 3, 2011, Attorney Fleischman filed a Motion for Sanctions against Respondent and Ms. Koresko, as well as for enforcement of the subpoena for Ms. Lawson's deposition. (N.T. January 23, 2014 at 108-109; ODC Exh. 41)

105. Similarly, counsel for Norsco filed a motion for sanctions seeking dismissal of Respondent's complaint with prejudice on August 31, 2011. Id.

106. Following a hearing held on the motions filed by Ms. White and Norsco, the trial court ordered the following on September 27, 2011:

a. Margaret Lawson will be deposed within 60 days, at the convenience of Ms. White and her counsel's;

b. Respondent was specifically prohibited from undertaking any act to intimidate Ms. Lawson from attending or participating in the deposition;

c. Any potential objection by Respondent, concerning the previously cited Confidentiality Agreement, is limited to a pre-worded objection: the subject matter of the question related to information covered by the Confidentiality Agreement referred to on the Record on June 28, 2011; and

d. The confession of judgment contained in the Confidentiality Agreement is "clearly limited by its terms to the disclosure of documents related to voluntary employee benefit associations (VEBAS) as well as other documents or writings. Any assertion by John J. Koresko, V in connection with this deposition that an answer to a question at deposition will subject Ms. Lawson to a possible confession of judgment for liquidated

damages shall be considered to be a violation of this Order and may subject Mr. Koresko to sanctions under Rule 4019.”

(ODC Exh. 44)

107. On November 8, 2011, Ms. Lawson’s deposition finally took place.

(ODC Exh. 45)

108. Ms. Lawson stated the following facts, under oath at her deposition:

a. Respondent and Ms. Koresko were present at the July 2004 settlement;

b. Ms. Lawson witnessed Respondent and Ms. Koresko sign all of the documents which were called into question beginning in 2009;

c. Ms. Sullivan entered the room, during the settlement, to notarize documents;

d. Ms. Sullivan was present to observe signatures of all parties prior to affixing her notarization; and

e. Ms. Sullivan was not requested to notarize any documents signed outside of her presence.

(ODC Exh. 45)

109. During the deposition, Respondent questioned Ms. Lawson in an overtly hostile manner on a wide array of irrelevant topics. Id.

110. Most notably, Respondent persisted in questioning Ms. Lawson concerning whether law enforcement agents had investigated her for a purported role in the death of her late husband. (Id. at 138-140)

111. By Order and Opinion dated May 31, 2012, Judge Arthur Tilson of the Montgomery County Court of Common Pleas sustained all preliminary objections raised by the parties in response to Respondent's June 30, 2011 action, and dismissed the action with prejudice. (ODC Exh. 53)

112. Judge Tilson found that Respondent failed to establish or prove the elements of his alleged claim, including the most basic element, the existence of a business contract with Ms. White. Id.

113. Respondent pursued another appeal to the Superior Court. In the Statement of Matters Complained of on Appeal, Respondent abandoned his previously asserted Uniform Trade Practice and Consumer Protection Law ("UTPCPL") and his abuse of process claims. Id. Despite this, Respondent in his brief continued to allege that these claims were improperly dismissed.

114. On January 15, 2013, the Superior Court affirmed the trial court ruling in a non-precedential Opinion. (ODC Exh. 56) The Court noted the following:

- a. No damages were alleged from Respondent's tortious interference claim;
- b. Comments made in connection with a deposition are privileged;
- c. UTPCPL claims are waived upon appeal because Respondent omitted them in the Rule 1925 statement;
- d. UTPCPL and abuse of process claims were not raised, and thus are considered new matter and thus waived on appeal;

e. UTPCPL and abuse of process claims fail because Respondent did not cite any binding or persuasive authority to support the claim; and

f. UTPCPL claims are limited to the purchase or lease of goods or services, primarily for personal, family or household use.

(ODC Exh. 56)

115. On June 14, 2013, the trial court granted a Motion for Summary Judgment in favor of Ms. White's and Norsco's defenses to Respondent's claims alleged in the April 2010 action. (ODC Exh. 47) After commencing formal action, which necessitated a required response by counsel for both Maria White and Norsco, Respondent made no additional effort to conduct discovery or substantiate his alleged claim over the three years that followed. (N.T. February 26, 2014 at 180-1)

116. Despite Respondent's failure to conduct discovery in these claims, on July 12, 2013, he filed another interlocutory appeal to the Superior Court to contest the trial court's partial grant of his opponent's June 2013 Summary Judgment motion. (ODC Exh. 48)

117. Throughout these proceedings, Respondent maintained that his litigation strategy was justified because he was countering what his opponents had done to him. (N.T. February 26, 2014 at 208-11.) He testified that he did not willfully violate any rule of professional conduct; instead he represented his client "in the most zealous fashion". Id. at 170-1, 188-9, 232-3. He demonstrated no remorse for his misconduct, and objected to what he perceived as Office of Disciplinary Counsel's interference with ongoing litigation in a manner he considered prejudicial to his case. Id. at 176-7, 188.

118. According to Respondent, any charge that he had presented false trial testimony was absurd. *Id.* at 198-9.

119. Respondent testified to his mental state and submitted a December 2013 letter from Christopher Bradley, M.D., Ph.D., his treating neurologist. The letter stated that Dr. Bradley had treated Respondent for post-concussive symptoms, stemming from a 2012 head injury which was re-aggravated in 2013. (N.T. March 6, 2014, 293-5.)

120. Respondent offered the testimony of two individuals as character witnesses. Both witnesses met Respondent through Alcoholics Anonymous group therapy sessions. *Id.* at 267, 346. Each offered sincere testimony as to Respondent's adherence to the AA program, and how he had influenced their lives. Each witness was unaware of the factual basis for the disciplinary charges filed against Respondent. *Id.* at 269, 348.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 – A lawyer shall provide competent representation to a client.
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
3. RPC 1.7(a) – Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if (1) the representation of one client will be directly

adverse to another client; or (2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

4. RPC 1.7(b) – Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if: (1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client; (2) the representation is not prohibited by law; (3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and (4) each affected client gives informed consent.

5. RPC 3.1 – 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.

6. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

7. RPC 3.3(a)(1) – A lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer.

8. RPC 3.3(a)(3) – A lawyer shall not knowingly offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence before a tribunal or in an ancillary proceeding conducted pursuant to a tribunal's adjudicative authority, such as a deposition, and the

lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

9. RPC 3.4(b) – A lawyer shall not falsify evidence, counsel or assist a witness to testify falsely, pay, offer to pay, or acquiesce in the payment of compensation to a witness contingent upon the content of the witness' testimony or the outcome of the case.

10. RPC 4.1(a) – In the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person.

11. RPC 4.3(b) – During the course of a lawyer's representation of a client, a lawyer shall not give advice to a person who is not represented by a lawyer, other than the advice to secure counsel, if the lawyer knows or reasonably should know the interests of such person are or have a reasonable possibility of being in conflict with the interests of the lawyer's client.

12. RPC 4.4(a) – In representing a client, a lawyer shall not use means that have no substantial purpose other than to embarrass, delay or burden a third person, or use methods of obtaining evidence that violate the legal rights of such person.

13. RPC 5.3(b) – With respect to a nonlawyer employed or retained by or associated with a lawyer, a lawyer having direct supervisory authority over the nonlawyer shall make reasonable efforts to ensure that the person's conduct is compatible with the professional obligations of the lawyer.

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

15. RPC 8.4(d) – It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

16. Respondent's evidence of an impaired mental state stemming from head trauma did not establish that his condition was a factor in causing the professional misconduct charged against him. Office of Disciplinary Counsel v. Braun, 553 A.2d 894, 895 (Pa. 1989).

IV. DISCUSSION

Disciplinary proceedings against Respondent were instituted by Office of Disciplinary Counsel by way of a Petition for Discipline filed on August 28, 2013. The Petition charged Respondent with violating multiple Rules of Professional Conduct. Respondent filed an Answer on October 29, 2013, in which he denied engaging in any misconduct. Petitioner must establish by a preponderance of clear and satisfactory evidence, that Respondent's actions constitute professional misconduct. Office of Disciplinary Counsel v. Surrick, 749 A.2d 441, 444(Pa. 2000).

Preliminarily, we address Respondent's claim that his actions are protected from prosecution by Disciplinary Board Rule §85.10(a), Stale Matters. This Rule provides, in relevant part, that "[t]he Office of Disciplinary Counsel or the Board shall not entertain any complaint arising out of acts or omissions occurring more than four years prior to the date of the complaint" Respondent contends that matters that occurred more than four years before the August 28, 2013, filing of the Petition for Discipline must be considered stale.

Complaint is defined in Pa.D.B. Rule §85.2 as "[a] grievance concerning an attorney communicated to the Office of Disciplinary Counsel or considered by the

Office of Disciplinary Counsel on its own motion. "Petition" is defined as "[a] formal pleading filed by the Office of Disciplinary Counsel with the Board requesting action by the Board under the Disciplinary Rules, and Enforcement Rules or these rules." The four-year limitation, therefore, runs from the date a complaint is lodged with the Office of Disciplinary Counsel, not the date that Disciplinary Counsel files a Petition for Discipline with the Disciplinary Board. The Petition for Discipline is not the complaint, given the distinct definitions assigned to the two terms.

Respondent raises for the first time the issue of staleness in his post-hearing brief to the Hearing Committee, after the close of evidence in this matter. His Answer to the Petition for Discipline, filed on October 29, 2013, does not allege any defense related to stale matters. For these reasons, the Board rejects Respondent's staleness arguments. We note that the date the complaint was made against Respondent is not of record, because Petitioner had no knowledge that Respondent would raise this staleness defense.. We further note that the Rule violations charged against Respondent do not refer to the July, 2004 real estate transaction; instead, the violations refer to his actions years later in response to litigation.

Having disposed of this issue, we turn to the charged violations of the Rules. Respondent denies that he has violated any of the Rules. Petitioner produced a comprehensive set of exhibits, consisting of 56 pleadings, affidavits, notes of testimony and other communications by Respondent. Petitioner produced two witnesses at the hearing: Ms. White, the purchaser of the real estate owned by Respondent and Ms. Koresko, and Ms. White's attorney, Craig Fleischman. Respondent testified on his own behalf and produced Ms. Koresko, plus two character witnesses.

The background of this matter is the 2004 sale of a home by Respondent and his ex-wife, Ms. Koresko, to Ms. White. At the time of the sale, Respondent failed to disclose a second mortgage that existed against the property.² In 2008, when the mortgagee learned that the house had been sold without repayment being made, litigation commenced against Respondent, his ex-wife, and Ms. White. In connection with this litigation, Respondent initiated multiple new claims against the parties and their attorneys, which Petitioner alleges were false and frivolous, needlessly delayed discovery, and resulted in blatant conflicts of interest.

Our review of this extensive record leads the Board to conclude that Respondent violated the Rules as charged in the Petition. The record is replete with multiple instances to sustain each of the alleged violations.

Respondent violated Rule 1.1 by failing to exhibit the requisite competence in professional matters. He filed numerous pleadings, motions and interlocutory appeals improperly and on meritless grounds. Similarly, he violated RPC 1.3 by deliberately blocking his opponents' attempt to conduct permissible discovery, as well as by failing to conduct discovery after filing various pleadings and claims. Although RPC 1.3 requires an attorney to act with diligence and promptness, Respondent intentionally prevented opposing counsel from taking the depositions of Michelle Sullivan and Margaret Lawson for nearly one year.

Respondent violated RPC 1.7(a) and 1.7(b) by representing his employee, Michelle Sullivan, and his ex-wife, Bonnie Koresko, as well as himself. This constituted a concurrent conflict of interest. Ms. Sullivan notarized the deed to the real property at

² The validity of that mortgage is not at issue here and is subject to pending litigation in Montgomery County. None of the disciplinary charges relate to that pending action.

issue. In 2009, Respondent submitted an affidavit from Ms. Koresko in which she claimed she did not appear at the 2004 real estate settlement and had not signed the deed. When Ms. White's attorney sought to resolve the issue by deposing Ms. Sullivan, Respondent filed a Motion for Protective Order in an effort to stop her deposition. Respondent submitted conflicting affidavits signed by Ms. Sullivan concerning the settlement. Ms. White then had to file a Motion to Disqualify Respondent and his firm from representing Ms. Koresko and Ms. Sullivan.

The Court held a hearing and ultimately precluded Respondent from representing Ms. Sullivan, finding that (1) Respondent did not "vigorously and carefully" represent Ms. Sullivan and her independent interests; (2) Respondent's ability to represent Ms. Sullivan had been materially limited by his responsibilities to Ms. Koresko and himself; and, (3) Respondent filed the Motion for Protective Order to protect himself and Ms. Koresko, not Ms. Sullivan.

An undeniable concurrent conflict existed because Respondent already represented himself and Ms. Koresko. Even if Ms. Sullivan endorsed Respondent's representation of her, no scenario exists in which Respondent could have permissibly represented Ms. Sullivan.

Respondent's frivolous filings, dishonest conduct, and bad faith efforts to obstruct his opponents' legitimate discovery violated RPC 3.1, 3.2, 3.3(a)(1), 3.3(a)(3), 3.4(b), 4.1(a) and 4.4(a). As to RPC 3.1, Respondent filed multiple false and frivolous pleadings in connection with the original mortgage foreclosure litigation. He filed a Joinder Complaint and Amended Joinder Complaint needlessly naming three lawyers individually and their respective law firms. The Court dismissed all of these claims on both substantive and procedural grounds.

In April 2010, Respondent filed suit against Ms. White and Norsco, alleging fraud, among other things. The genesis of the claims was Respondent's allegation that he and Ms. Koresko had agreed to set the purchase price of the house at the amount for which Ms. White could obtain a mortgage. Because Ms. White was able to refinance into a larger loan shortly after the sale, Respondent claimed he was defrauded. During the next three years, however, Respondent never made any effort to pursue his claims. In 2013, the trial court disposed of most of the claims by summary judgment.

In June, 2011, Respondent filed a civil action against Ms. White, her attorney and his law firm, and the title insurance company, claiming defamation, tortious interference with business relations, violation of the Unfair Trade Practices and Consumer Protection Law, and abuse of process. His basis for filing all of these meritless claims arose from two comments made by Ms. White's lawyer at the conclusion of a deposition.

The trial court sustained the preliminary objections raised by the parties and dismissed the action with prejudice. Respondent appealed to the Superior Court, which affirmed the trial court.

In addition to these lawsuits, Respondent turned his attention to the trial court in Montgomery County. After the court granted the Motion to Disqualify Respondent as Ms. Sullivan's lawyer, Respondent filed a Motion for Reconsideration, alleging that the order evidenced impropriety and a lack of impartiality, based upon Respondent's unfounded speculation about the court's political leanings.

Respondent's violation of RPC 3.2 is substantiated by his failure to make reasonable efforts to expedite the litigation, as shown by his obstructive attempts to

prevent the depositions of Ms. Lawson and Ms. Sullivan. Respondent's chosen course of action had no purpose other than to frustrate the opposing party's attempt to obtain redress.

RPC 3.3(a)(1) and 3.3(a)(3) govern a lawyer's candor toward the tribunal. Here, Respondent violated these Rules when he falsely claimed in the Joinder and Amended Joinder Complaints, court-filed pleadings, that Ms. White was his client. Similarly, the conflicting Sullivan affidavits were offered to the court in the context of Respondent's protective motion. Respondent affirmatively asserted in the motion that Ms. Sullivan "had no involvement in the transaction between the parties and no independent recollection of the events that transpired." In contradiction to those statements, Respondent later offered an affidavit and testimony from Ms. Sullivan in which she purported to have a clear recollection. The false, misleading and contradictory affidavits of Ms. Sullivan as offered by Respondent further violate RPC 3.4(b), which prohibits a lawyer from falsifying evidence or assisting a witness to testify falsely.

RPC 4.1(a) prohibits a lawyer from knowingly making a false statement of material fact or law to a third person in the course of representing a client. Respondent, in his Amended Joinder Complaint, sought damages for having suffered tortious interference with a purported former client, Ms. White. Prior to filing, he declared these false allegations on multiple occasions to his opponents.

Respondent's barrage of threats and abusive behavior at multiple targets violated RPC 4.4(a). A lawyer is prohibited from employing means that are designed to embarrass, delay, burden or violate the rights of third persons. Respondent threatened Ms. Lawson, his former employee, with the enforcement of a \$250,000 confession of

judgment if she were to testify when subpoenaed. He also threatened Ms. White with eviction. He acted to prevent the depositions of Ms. Sullivan and Ms. Lawson for a very lengthy period. Clearly, Respondent's abusive litigation behavior cannot be excused as zealous representation or good faith defensive strategies.

Early on in this matter, in 2008, Respondent delegated to his employee, Joan Gaughan, the responsibility for communicating with Ms. White regarding the Vagnoni matter. Ms. Gaughan emailed Ms. White stating that Respondent was sure that Ms. White's interest in the matter would not conflict with Respondent's own interests. She then stated that Respondent needed to know whether Ms. White agreed to the representation. This communication provided legal advice to Ms. White, who was unrepresented, and was done by Respondent's employee under his supervision, thus creating violations of Rules 4.3(b) and 5.3(b).

Finally, we analyze Respondent's actions in the context of RPC 8.4(c) and 8.4(d). Pursuant to these Rules, Respondent commits professional misconduct if he engages in conduct involving dishonesty, and conduct that is prejudicial to the administration of justice. The record is replete with instances of Respondent's misconduct under these Rules, including Respondent's false allegations in pleadings, his speculative claims about the court's political bias, his false claims that he represented Ms. White, and his filing of false, misleading, and contradictory affidavits from Ms. Sullivan.

Having concluded that Respondent violated the Rules, this matter is ripe for the determination of discipline. Petitioner seeks a suspension of at least three years, based on Respondent's egregious misconduct. Respondent argues that any discipline

imposed should be less than a three-year suspension. The Hearing Committee recommended a three year suspension.

After reviewing the parties' recommendations as well as the Committee's Report and recommendation, and after considering the nature and gravity of the misconduct as well as the presence of aggravating or mitigating factors, Office of Disciplinary Counsel v. Gwendolyn Harmon, 72 Pa. D. & C. 4th 115 (2004), we recommend that Respondent be suspended from the practice of law for a period of five years.

Respondent's actions constitute serious misconduct. While there is no *per se* discipline in Pennsylvania, prior similar cases are instructive and are suggestive of a lengthy sanction when, as here, an attorney's pattern of persistent misrepresentations would likely pose a danger to the public if he continued to practice law. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186, 189-91 (Pa. 1983). In Office of Disciplinary Counsel v. Allen L. Feingold, 93 DB 2003 (2006), the respondent-attorney engaged in misrepresentations to the Court, attempted to unlawfully obstruct his opponent's access to evidence and instigated frivolous lawsuits against opposing counsel and others. The Board recommended and the Court imposed a suspension for three years. An attorney who engaged in frivolous filings and the pursuit of baseless motions during the disciplinary proceedings against him was suspended for two years. Office of Disciplinary Counsel v. Philip J. Berg, No. 208 DB 2010 (2013). The Board noted that the attorney's course of conduct was designed to obstruct the process and further aggravated his underlying misconduct.

The Board is equally persuaded by the cases of Office of Disciplinary Counsel v. Price, 732 A.2d 599 (Pa. 1999) and Office of Disciplinary Counsel v. Donald

A. Bailey, No. 11 DB 2011 (2013). Mr. Price engaged in the filing of false accusations against two district justices and a district attorney and made misrepresentations on Department of Public Welfare (DPW) medical evaluation forms. While the Board recommended a suspension of one year and one day, the Court imposed a suspension of five years, emphasizing Mr. Price's failure to recognize the harm he caused to his victims' reputations and "to the functioning of our legal system, which is based upon good faith representations to the court." 732 A.2d at 606. The Court found that Mr. Price's misconduct was aggravated by his callous disregard for the truth, as evidenced by his misrepresentations on the DPW forms. *Id.* at 607. Respondent's false assertions in pleadings and callous disregard for the truth in the affidavits and motions he filed, as well as his refusal to acknowledge the harm he caused to his victims and the legal system, are comparable to the conduct the Court found warranted a five year suspension.

Mr. Bailey engaged in similar abuse of the legal system by making false accusations against federal judges in a Motion for Rehearing *En Banc*. Mr. Bailey accused the judges of engaging in a continuing conspiracy against him that he claimed benefitted certain attorneys while hurting his clients and damaging his legal career. The Board found that Mr. Bailey refused to accept any rulings adverse to his clients and considered the rulings as additional evidence of the judicial conspiracy against him. Mr. Bailey's response, analogous to Respondent's treatment of his adversaries, was to file more pleadings vilifying the judges who had ruled against him. The record of the disciplinary proceedings reflected a similar course of behavior by Mr. Bailey in response to the rulings made by the Hearing Committee Chair and Board Chair. The Board found

that Mr. Bailey demonstrated no remorse and recommended a five year suspension, which the Court imposed.

While the Board found that Mr. Bailey deserved some mitigation based upon his public service as Auditor General and his military service in Viet Nam, no mitigating factors are present in this case. Respondent's testimony about a prior head injury, and the December 17, 2013 letter he submitted from his neurologist, do not constitute the type of evidence required to establish a mental health disorder as a mitigating factor. Braun, 553 A.2d at 894.

Additionally, Respondent offered the testimony of two individuals as character witnesses, who had met him through Alcoholics Anonymous. Although these witnesses offered sincere testimony about the impact Respondent had on their lives, neither was aware of the factual basis for the disciplinary charges against Respondent. As a result, we give nominal weight to this testimony.

We do, however, find Respondent's lack of remorse to be a significant aggravating factor. Respondent remained intractable in his positions, despite the overwhelming evidence to the contrary. He compounded and intensified matters, over a long period of time, through his relentless misuse of civil proceedings and abusive litigation tactics designed to intimidate, lie, and obfuscate the facts. He deliberately chose his course of action each step of the way, and remained tireless in his efforts to protect his own interests and that of Ms. Koresko while laying blame on every other party. He accused his opponents of provoking the "nuclear war" that he launched in the trial and appellate court system, claiming they "brought the lawsuit that started the whole thing". N.T. February 26, 2014 at 223, 233. 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. Stern, 526 A.2d 1180 (1987). The evidence produced by the Office of Disciplinary Counsel convincingly proved that Respondent is a danger to the public and the profession itself. A suspension of five years is warranted to comply with the guiding decisions reviewed above, and to call appropriate attention to Respondent's prolonged, serious abuse of Pennsylvania's legal system.

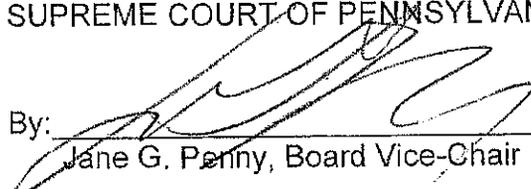
V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, John J. Koresko, V, be Suspended from the practice of law for a period of five years.

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: 

Jane G. Penny, Board Vice-Chair

Date: June 1, 2015