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**ORDER ADOPTING STANDING COMMITTEE REPORT AND RECOMMENDATION IN ITS ENTIRETY SUSPENDING PETITIONER FOR FIVE YEARS FROM PRACTICE OF LAW EFFECTIVE IMMEDIATELY, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT, (OCTOBER 21, 2025)**

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UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

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IN RE: ROBERT J. MURPHY

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No. 20-8004

Before: CHAGARES, Chief Judge, HARDIMAN, SHWARTZ, KRAUSE, RESTREPO, BIBAS, PORTER, MATEY, PHIPPS, FREEMAN, MONTGOMERY-REEVES, CHUNG, and BOVE, Circuit Judges.

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Upon consideration of the Report and Recommendation of the Standing Committee on Attorney Discipline, the exceptions thereto, and the record in this matter, it is hereby ORDERED that the Report and Recommendation is adopted in its entirety.

For the reasons set forth in the Report and Recommendation, Robert J. Murphy is hereby SUSPENDED from the practice of law in this Court for a period of five years, effective immediately.

For the Court,

/s/ Michael A. Chagares
Chief Judge

Dated: October 21, 2025

**REPORT AND RECOMMENDATION, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT (SEPTEMBER 4, 2025)**

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

IN RE: ROBERT J. MURPHY

No. 20-8004

Before: SHWARTZ, BIBAS, and PORTER, Circuit Judges.

**REPORT AND RECOMMENDATION OF THE STANDING COMMITTEE ON ATTORNEY DISCIPLINE**

This contested attorney-discipline matter comes before the Standing Committee on Attorney Discipline after Robert J. Murphy, Esq., was ordered to show cause whyh he should not be suspended for five years, reciprocal to the suspensions imposed by the Supreme Court of Pennsylvania and the U.S. District Court for the Eastern District of Pennsylvania. In accordance with Rule of Attorney Disciplinary Enforcement 11.3, we set forth our findings and recommend that this Court impose a reciprocal five-year suspension.

## I. Background

We begin by briefly summarizing the relevant background, taking the facts from the other courts' disciplinary decisions. *See* R.A.D.E. 10.7, 10.9.

Murphy represented a claimant in a Pennsylvania workers' compensation case before Workers' Compensation Judge Patricia Bachman. The parties on the other side were represented by Neil Dombrowski, Esq. On February 12, 2010, about one week before a scheduled hearing, WCJ Bachman ruled on certain outstanding matters and instructed her secretary to notify Murphy and Dombrowski by phone so they would be aware of the rulings while preparing for the hearing. The judge's secretary called Dombrowski first, conveyed the rulings, and did not discuss the merits or facts of the case. She then called Murphy and left a voice message with the same information. Dombrowski later sent a confirmatory letter to the judge, copying Murphy. Having her secretary provide telephonic notice of rulings before a hearing was WCJ Bachman's administrative practice. (Murphy himself was familiar with and had previously participated in this practice.)

At the scheduled hearing, Murphy asked WCJ Bachman to recuse herself based on these "numerous ex-parte communications" with Dombrowski. (Pa. Disc. Bd. R. & R. 8.) The judge denied the motion. After the hearing, Murphy sent the judge three letters renewing and reiterating his request that the judge recuse based on improper ex-parte communications with Dombrowski.

WCJ Bachman scheduled a hearing on the recusal request, but before it occurred Murphy brought the issue to the Commonwealth Court of Pennsylvania. He filed litigation against WCJ Bachman, and several times he repeated his allegations of improper ex-parte

communications and claimed the judge had admitted to the conversations and their impropriety.

Though she maintained she had done nothing improper, WCJ Bachman recused herself from the workers' compensation case in October 2010, after Murphy's litigation against her.

Workers' Compensation Judge Joseph Hagan took over the case. During an early hearing before WCJ Hagan, Murphy repeated his accusations against WCJ Bachman and Dombrowski. He also moved to recuse the new judge as supposedly tainted from reviewing the record.

More litigation in the Commonwealth Court ensued in late 2010. In a new petition, Murphy claimed that WCJ Hagan committed misconduct, engaged in improper ex-parte communications himself, and admitted to this. Murphy also referenced his old allegations against WCJ Bachman, adding that she also had improper ex-parte conversations with Dombrowski's clients.

Murphy pressed these claims before the Supreme Court of Pennsylvania as well. In briefs filed there in 2011, he continued to argue that WCJ Bachman committed and admitted misconduct, and he claimed WCJ Hagan, too, had acted unethically.

## II. The Pennsylvania Disciplinary Proceedings

By 2012, Pennsylvania's Office of Disciplinary Counsel was investigating Murphy for his allegations against WCJ Bachman, WCJ Hagan, and Dombrowski. At that time, the ODC notified Murphy of its investigation (in a "Form DB-7" letter). It did not commence formal disciplinary proceedings, however, until after

the underlying workers' compensation case concluded in 2016. It then petitioned for discipline and filed an amended petition (the operative charging document) in July 2017.

The Disciplinary Board of the Supreme Court of Pennsylvania initially assigned the proceedings to a hearing committee. It later appointed a special master instead. After substantial proceedings regarding evidence, witnesses, discovery, and other disputes, the special master held a week-long evidentiary hearing in 2018. WCJ Bachman, WCJ Hagan, Dombrowski, and WCJ Bachman's secretary all testified at the hearing. Murphy participated but did not testify. Finding sufficient evidence that Murphy violated Pennsylvania's Rules of Professional Conduct, the special master then held a separate evidentiary hearing on the type of discipline to be imposed. Murphy testified at that hearing.

Based on this record, the special master concluded Murphy violated several RPCs and recommended a five-year suspension. Murphy objected, but the Disciplinary Board overruled his objections in 2019.

According to the Board's report, WCJ Bachman, WCJ Hagan, Dombrowski, and WCJ Bachman's secretary all testified credibly. WCJ Bachman expressly denied having prohibited ex-parte communications with Dombrowski or his clients. WCJ Hagan testified similarly, and denied Murphy's other allegations of judicial misconduct. For his part, Dombrowski denied that either judge had ex-parte communications with him or his clients. Murphy presented no evidence to support his allegations of improper ex-parte communications and judicial misconduct. He also presented

no evidence of his subjective state of mind or whether he actually believed the allegations.

The Board noted that ex-parte communications are not always prohibited. It referenced Pennsylvania Code of Judicial Conduct Rule 2.9, which broadly speaking, permits ex-parte communications for administrative purposes as long as they do not address substantive matters, no party will gain an advantage, and the other parties are notified. Even if the calls made by WCJ Bachman's secretary were ex parte, they would not have been prohibited under that Rule. Although having no basis to think these communications addressed substantive matters, Murphy "used this anodyne communication [ . . . ] to initiate a full-throated attack on the tribunal and his opposing counsel." (Pa. Disc. Bd. R. & R. 31.) He accused them of improper ex-parte communications and of admitting to doing so.

According to the Board, the evidence showed Murphy's accusations "were frivolous, false, and were made knowingly or with reckless disregard as to the truth or falsity of such assertions." (Pa. Disc. Bd. R. & R. 21.) Murphy "failed utterly to establish that the accusations [he] made were true or that he had an objective, reasonable belief that they were true." (Pa. Disc. Bd. R. & R. 34.) He made these false statements "many times, having no evidence that his assertions were true." (Pa. Disc. Bd. R. & R. 31.) And his "repeated, false assertions against judges and opposing counsel undermined the integrity of the tribunals, eroded the public's confidence in the courts and prejudiced the administration of justice." (Pa. Disc. Bd. R. & R. 35.)

The Board concluded Murphy had violated the following RPCs:

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| RPC 3.1, | prohibiting frivolous litigation; |
| RPC 3.3(a)(1), | prohibiting false statements to a tribunal; |
| RPC 8.2(a), | prohibiting false statements concerning the integrity of a judge; |
| RPC 8.4(c), | prohibiting conduct involving dishonesty, fraud, deceit, or misrepresentation; and |
| RPC 8.4(d), | prohibiting conduct prejudicial to the administration of justice. |

Turning to the appropriate amount of discipline, the Board considered "numerous weighty aggravating factors, which increase the severity of [Murphy's] conduct." (Pa. Disc. Bd. R. & R. 35.) First, Murphy had failed to accept responsibility or demonstrate remorse. To the contrary, his conduct during the disciplinary proceedings "demonstrated only that he will not be deterred from alleging whatever he thinks is necessary to obtain the relief he desires, even if by doing so he violates the Rules of Professional Conduct." (Pa. Disc. Bd. R. & R. 36.) Second, Murphy had "resisted proper authority and attempted to create a perception of a conspiracy against him." (Pa. Disc. Bd. R. & R. 36.) He defended the disciplinary charges with a "scorched earth strategy of seeking recusal of anyone he deemed an obstacle," "railed against the disciplinary system at every opportunity," and "demonstrated a thorough and complete lack of respect

for the disciplinary system." (Pa. Disc. Bd. R. & R. 36-37.) Third, Murphy exhibited "poor advocacy throughout the hearing" by failing to be prepared, ignoring instructions, lacking credibility, being obstreperous, and preparing "verbose and confusing" written materials. (Pa. Disc. Bd. R. & R. 37-38.) Fourth, Murphy procured a misleading statement from WCJ Bachman's secretary for use in the proceedings. Fifth, Murphy had been criticized for similar misconduct in the past. And sixth, Murphy "attempted to derail this disciplinary proceeding" by filing a federal lawsuit against the Board and disciplinary officials. (Pa. Disc. Bd. R. & R. 39.)

The only mitigating factor was that Murphy had practiced law for nearly five decades without incident, but the Board gave this "little weight [ . . . ] due to the serious nature of [Murphy's] misconduct and the weighty aggravating factors, which include his pattern of behavior throughout the instant proceedings." (Pa. Disc. Bd. R. & R. 40.)

Putting it all together, the Board opined that Murphy "has exhibited an extreme degree of unprofessionalism and neither appreciates nor apparently is concerned with[] the impact of his conduct on the profession." (Pa. Disc. Bd. R. & R. 46.) He "has persistently and consistently abused the tribunals before which he appeared and displayed a conspicuous lack of remorse for his behavior." (Pa. Disc. Bd. R. & R. 31.) After surveying precedents, the Board recommended a five-year suspension for Murphy's "egregious misconduct." (Pa. Disc. Bd. R. & R. 46.)

Murphy asked the Supreme Court of Pennsylvania to reject this recommendation, but it adopted it. The Court imposed a five-year suspension on December

19, 2019. *Office of Disciplinary Counsel v. Murphy*, 2019 Pa. LEXIS 7026 (Dec. 19, 2019). Murphy asked the Supreme Court of the United States for review, but it denied certiorari. *Murphy v. Office of Disciplinary Counsel*, 140 S. Ct. 2805 (2020).

## III. The District-Court Disciplinary Proceedings

The Pennsylvania suspension prompted the U.S. District Court for the Eastern District of Pennsylvania to begin reciprocal disciplinary proceedings against Murphy.

Murphy filed a lengthy answer opposing reciprocal discipline. The matter was thereafter referred to a three-judge Committee, which held a hearing in August 2021. Murphy participated in the hearing.

The Committee issued its report and recommendation in November 2021. It noted that an attorney can avoid reciprocal discipline by demonstrating

(1) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) that there was such an infirmity of proof as to give rise to the clear conviction that the district court could not, consistent with its duty, accept as final the conclusion on that subject;

(3) that the imposition of the same discipline or prohibition by the district court would result in grave injustice; or

(4) that the misconduct or other basis established for the discipline or prohibition is deemed by

> the district court to warrant substantially different action.

*See* E.D. Pa. Local R. Civ. P. 83.6, R. Att'y Conduct II(D); *see also In re Surrick*, 338 F.3d 224, 231-32 (3d Cir. 2003) (citing *Selling v. Radford*, 243 U.S. 46, 50-51 (1917)).

According to the Committee, Murphy's "rambling, eighty-five page Answer" challenged Pennsylvania's discipline on all four grounds. (E.D. Pa. R. & R. 6.) For the reasons briefly discussed below, the Committee rejected all of Murphy's arguments and recommended imposition of reciprocal discipline.

**1. Due Process**

Murphy argued his due-process rights were violated during the state disciplinary proceedings because (1) he was not provided adequate notice of the charges, (2) Pennsylvania Code of Judicial Conduct Rule 2.9 was referenced in the Board's report but not effective at the time of Murphy's conduct, (3) the ODC suppressed favorable evidence, and (4) the Supreme Court of Pennsylvania did not hold an evidentiary hearing.

The Committee rejected these arguments. It pointed out Pennsylvania gave Murphy full access to ODC's petition for discipline, a prehearing conference, several days of hearings, chances to present witnesses and documentary evidence, an opportunity to object to the special master's report, and oral argument before the Disciplinary Board. He had notice of the charges and ample opportunity to respond. Murphy's argument that Pennsylvania retroactively applied Pennsylvania Code of Judicial Conduct Rule 2.9—which did not

become effective until after the ex-parte communications at issue—was deemed a "red herring." (E.D. Pa. R. & R. 7.) The Committee agreed with the evidentiary decisions made during the state proceedings. And finally, it believed the Supreme Court's review comported with due process.

**2. Infirmity of Proof**

Despite Murphy's insistence that WCJ Bachman, WCJ Hagan, and Dombrowski actually engaged in and admitted to improper ex-parte communications, the Committee determined "his accusations were contradicted by the evidence presented before the Disciplinary Board." (E.D. Pa. R. & R. 10.) Murphy had an "untenable view of the evidence." (E.D. Pa. R. & R. 10.) In reality, the Committee found "[a]mple evidence" supporting Pennsylvania's discipline. (E.D. Pa. R. & R. 9.)

**3. Grave Injustice**

The Committee rejected Murphy's claim that a reciprocal suspension would be a grave injustice. He had "fail[ed] to present any evidence to support this assertion," and "[s]imply labeling reciprocal discipline as unjust does not make it so." (E.D. Pa. R. & R. 11.)

**4. Substantially Different Discipline**

Murphy also failed to submit evidence to support his argument that different discipline was warranted. The Committee recounted that Murphy had "single-handedly launched what turned into years' worth of unfounded accusations against the Pennsylvania judiciary." (E.D. Pa. R. & R. 11.) The Committee saw

no reason that would "warrant[] anything other than reciprocal discipline." (E.D. Pa. R. & R. 11.)

* * *

The district court's Committee therefore recommended a reciprocal five-year suspension. Murphy filed objections. The district court overruled his objections and, in a February 2022 order, reciprocally suspended Murphy for five years (retroactive to the date of his state-court suspension).

Murphy appealed. Finding no abuse of discretion, this Court affirmed. *In re Murphy*, 2023 WL 4578786 (3d Cir. July 18, 2023). Of particular note, this Court considered that Pennsylvania Code of Judicial Conduct Rule 2.9 was not effective at the relevant time, but "even under the applicable law in 2010, the phone call between the Judge's secretary and opposing counsel was not improper." *Id.* at *3. The mention of Rule 2.9 in the Board's report was therefore "harmless." *Id.* This Court also rejected Murphy's argument that the years-long delay between his conduct and the formal disciplinary proceedings deprived him of due process. *Id.*

Murphy asked the Supreme Court of the United States for review, but it denied certiorari in 2024. *Murphy v. U.S. Dist. Ct.*, 144 S. Ct. 2522 (2024).

## IV. This Court's Disciplinary Proceedings

This Court began its own reciprocal disciplinary case in 2020, upon receipt of Pennsylvania's suspension order. The proceedings were stayed, however, during the district court's reciprocal-discipline proceedings and Murphy's appeal therefrom. Once the district court's suspension was affirmed, our proceedings

resumed and Murphy was ordered to show cause why he should not be reciprocally suspended.

Murphy filed a lengthy response. He contested reciprocal discipline and, as is permitted by Rule of Attorney Disciplinary Enforcement 10.2, requested that we hold a hearing on the matter.

Against that backdrop, we must now decide whether to reciprocally suspend Murphy from practicing law before our Court.

As the third court to consider this question, we have the benefit of a large record. Murphy appeared in person during the Pennsylvania proceedings and the district-court proceedings. He has submitted written argument every step of the way and has responded in writing to this Court's show-cause order. Because we do not believe an additional hearing would aid our decision-making, we deny Murphy's request to hold one and will make our decision based on the current—and ample—record.

## V. Analysis

When a member of this Court's bar has been disciplined by another court, we may impose reciprocal discipline. *See* Fed. R. App. P. 46(b)(1)(A); R.A.D.E. 2.1(b). Although the other court's disciplinary decision does not "conclusively bind[]" us, it is nonetheless "entitled to respect." *See In re Ruffalo*, 390 U.S. 544, 547 (1968). Indeed, we impose reciprocal discipline unless the attorney demonstrates

> (1) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(2) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject;

(3) that the imposition of the same discipline by this Court would result in grave injustice; or

(4) that the misconduct established is deemed by this Court to warrant substantially different discipline.

*See* R.A.D.E. 10.9 (citing *Selling*, 243 U.S. at 50-51). It is the attorney's burden to show by clear and convincing evidence that one or more of these elements precludes reciprocal discipline. *See Surrick*, 338 F.3d at 232.

Murphy assails all four elements, but unhelpfully, he did not categorize his arguments. We will review his arguments as we understand them. We ultimately conclude Murphy does not meet his burden to show why a reciprocal five-year suspension is unwarranted.

**1. Due Process**

During the Pennsylvania proceedings, Murphy was informed of the charges against him, participated in multi-day evidentiary hearings, took advantage of many opportunities to submit written materials, and was afforded appellate-like review by the Disciplinary Board and, ultimately, by the Supreme Court of Pennsylvania. In the district-court proceedings, too, he received notice, an opportunity to be heard both in writing and at a hearing, and appellate review. Nothing about these procedures suggests a deprivation

of due process. Murphy makes essentially four argu ments, but he does not carry his burden.

First, he bemoans the ODC's delay in commencing formal disciplinary proceedings. Although there was a lengthy delay, we see no clear and convincing evidence that it deprived Murphy of due process. His conduct started in February 2010 and ended in November 2011. Within a year, the ODC had opened a complaint against Murphy and sent him a detailed DB-7 letter.[1] Murphy thus had seasonable notice that the ODC was investigating the conduct for which he would later be disciplined. As its rules allow, the Disciplinary Board then deferred action on the matter until after the underlying workers' compensation case concluded. As we explained when affirming the district court's reciprocal suspension, the Board's deferral did not deprive Murphy of due process. *See In re Murphy*, 2023 WL 4578786, at *3. Murphy argues the delay prejudiced his ability to defend the disciplinary charges because it affected witnesses' recollections and the availability of unspecified information and records. Those generalities aside, Murphy gives no concrete reason to think his defense would have been meaningfully different earlier. Murphy's misconduct was based on statements he made during litigation and in court filings, all of which were preserved, and he had access to all relevant witnesses at his disciplinary hearing.

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[1] As Murphy points out, Pennsylvania often limits itself to investigating conduct that occurred within four years of the complaint. *See* Pa. Disc. Bd. R. 85.10. The complaint against Murphy was opened by that deadline, so we reject his due-process argument invoking this limitation.

Second, Murphy claims that when the ODC eventually filed its formal charging petition, it "completely changed" the allegations from those in the DB-7 letter. We doubt that due-process principles would necessarily prevent the ODC from changing its view of the case after its investigation. But even so, Murphy is wrong that much changed from the DB-7 letter to the operative petition for discipline. The factual allegations in the two documents are largely identical, and Murphy does not credibly identify any meaningful differences. Although he points out that the DB-7 letter did not reference every RPC he was ultimately charged with violating, the only one missing (RPC 8.2(a)) was referenced in an amended DB-7 letter sent a few weeks after the first. Murphy has not shown how that slight and quick addition made a difference or prejudiced him in any way.

Third, Murphy argues that neither the DB-7 letter nor the formal petition gave him notice "as to precise, exact facts and theories as to reach of charges against him [sic]." He is mistaken. The DB-7 letter and operative petition are both lengthy, formal documents that enumerate Murphy's improper statements, allege they were false, and explain what RPCs Murphy may have violated. There is no doubt Murphy had sufficient notice of the charges against him.

Fourth, Murphy renews his claim that favorable evidence was withheld from him during the Pennsylvania proceedings. We were unconvinced by this argument when affirming the district court's reciprocal discipline. *See In re Murphy*, 2023 WL 4578786, at *3 ("Murphy had an opportunity to present his case with all the evidence to which he was entitled.").

Furthermore, for due-process purposes, it is sufficient to point out that Murphy had a full and fair chance to litigate these evidentiary issues during the Pennsylvania proceedings. His failure to win those issues does not mean he was deprived of due process.

Murphy has therefore not clearly and convincingly shown that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process.

**2. Infirmity of Proof**

Despite Murphy's vigorous insistence to the contrary, we find there was no infirmity of proof underlying his suspension.

Murphy continues to insist that WCJ Bachman, WCJ Hagan, and Dombrowski all actually engaged in improper ex-parte communications and admitted doing so. Pennsylvania found otherwise, however, based on the factual record established during the disciplinary proceedings. Murphy has given us no reason to second guess that well-supported factual finding.

Murphy may be correct, though, that the Pennsylvania disciplinary decision referenced the wrong law governing ex-parte communications. The Disciplinary Board's report looked to Pennsylvania Code of Judicial Conduct Rule 2.9 and noted it expressly permitted ex-parte communications for administrative matters like those at issue here. Murphy argues that Rule was not in effect at the time of his conduct, so the Board should have applied 77 Pa. Con. Stat. § 2504 instead. Unlike Rule 2.9, § 2504 does not expressly allow ex-parte communications for administrative matters. To Murphy, that means the communications

about an ongoing judicial proceeding, though, when the speaker is an attorney involved in that proceeding.").

We have reviewed the record of the disciplinary proceedings. There is ample evidence to support Pennsylvania's conclusion that Murphy repeatedly made false accusations against WCJ Bachman, WCJ Hagan, and Dombrowski, thereby violating several RPCs. Murphy has given us no reason to disagree with Pennsylvania's assessment.

### 3. Grave Injustice and Substantially Different Discipline

Murphy does not meaningfully address these issues. We do not believe that reciprocal discipline would result in a grave injustice or that substantially different discipline is warranted. *See* R.A.D.E. 3.3 ("[T]he identical discipline imposed by another court is presumed appropriate for discipline imposed by this Court as a result of that other court's suspension or disbarment of an attorney.").

## VI. Recommendation

For the foregoing reasons, we conclude Murphy has not met his burden to show that reciprocal discipline is undeserved. We therefore recommend imposing a reciprocal five-year suspension.[3]

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[3] The district court's reciprocal suspension was made retroactive to the date of Murphy's Pennsylvania suspension. This Court sometimes imposes retroactive suspensions, but we do not recommend doing so here. After Murphy was suspended by Pennsylvania, he litigated an appeal before this Court where he had appealed on behalf of himself and a putative class. *See Murphy v. Office of Disciplinary Counsel*, No. 19-3526, 820 F. App'x 89 (3d Cir. 2020). Being admitted to this Court's bar

Any exceptions to this Report and Recommendation must be filed within twenty-one days. Thereafter, this Report and Recommendation and any exceptions will be submitted to the active members of the Court for a final decision. See R.A.D.E. 11.3.

Respectfully submitted,

/s/ Patty Shwartz
Circuit Judge

/s/ Stephanos Bibas
Circuit Judge

/s/ David J. Porter
Circuit Judge

Dated: September 4, 2025

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arguably advantaged Murphy during that appeal. *See Polsky v. United States*, 844 F.3d 170, 172 n.2 (3d Cir. 2016) (noting "courts have questioned whether laymen pro se litigants may represent a class"); *Hagan v. Rogers*, 570 F.3d 146, 158-59 (3d Cir. 2009) ("[W]e do not question the District Court's conclusion that pro se litigants are generally not appropriate as class representatives."). It would be incongruous to now retroactively suspend Murphy for a period during which he was actively litigating and benefiting from his bar admission.

## ORDER TO SHOW CAUSE, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT (FEBRUARY 15, 2024)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

IN RE: ROBERT J. MURPHY, ESQUIRE

Misc. No. 20-8004
(Supreme Court of Pennsylvania No. 2649
Disciplinary Docket No. 3 No. 206 DB 2016)
(U.S. District Court for the Eastern District of
Pennsylvania, No. 2-19-mc- 00217)

### ORDER TO SHOW CAUSE

After the Supreme Court of Pennsylvania suspended Robert J. Murphy, Esquire, from that Court's bar for a period of five years, this Court ordered Mr. Murphy to show cause why he should not be reciprocally disciplined. Mr. Murphy's obligation to respond to the order to show cause, however, was stayed pending reciprocal disciplinary proceedings initiated by the United States District Court for the Eastern District of Pennsylvania. *See In re: Robert J. Murphy*, E.D. Pa. No. 2-19-mc-00217.

Following a hearing and consideration of written submissions, the district court imposed a reciprocal five-year suspension, retroactive to Pennsylvania's discipline. Mr. Murphy appealed that decision, and this Court affirmed on July 18, 2023. *See In re: Robert J. Murphy*, C.A. No. 22-1429.

Now that the district-court proceedings and Mr. Murphy's subsequent appeal have concluded, it is ORDERED that the stay of this Court's disciplinary proceedings is hereby LIFTED. It is FURTHER ORDERED that Robert J. Murphy, Esquire, must show cause within thirty (30) days of the date of this order why he should not be reciprocally suspended in this Court pursuant to R.A.D.E. 6.1 and 8.1. The response must address both the state and district-court disciplinary decisions. *Cf.* R.A.D.E. 6.1 & 6.3.

Any response to this order to show cause must include a certification that the attorney has complied with the requirement that he serve a copy of the order to show cause and copies of the disciplinary orders of the other courts to any litigant for whom the attorney has entered an appearance in any matter pending in this Court. This certification must include a list of all the litigants notified and their addresses. A form certification is available on the Court's website at http://www.ca3.uscourts.gov/attorney-discipline-forms.

The Clerk of this Court will forward a certified copy of this order to Robert J. Murphy, Esquire, by email, provided an email address is on file, and by certified mail, return receipt requested, to his last known address on file with the Clerk's Office. *See* R.A.D.E. 6.4.

This Court's Rules of Attorney Disciplinary Enforcement are available on the Court's website at: www.ca3.uscourts.gov.

For the Court,

/s/ Patricia S. Dodszuweit
Clerk

Dated: February 15, 2024

## ORDER TO SHOW CAUSE, U.S. COURT OF APPEALS FOR THE THIRD CIRCUIT (FEBRUARY 3, 2020)

UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

IN RE: ROBERT J. MURPHY, ESQUIRE

Misc. No. 20-8004
(Supreme Court of Pennsylvania No. 2649
Disciplinary Docket No. 3 No. 206 DB 2016)

### ORDER TO SHOW CAUSE

The Clerk of this Court was notified by Robert J. Murphy, Esquire, of an order of the Supreme Court of Pennsylvania suspending Robert J. Murphy, Esquire, from the practice of law in that court for a period of five years.

Accordingly, it is hereby ORDERED pursuant to R.A.D.E. 6.1 and 8.1, that Robert J. Murphy, Esquire, must SHOW CAUSE why he should not be reciprocally suspended in this Court.

Mr. Murphy's obligation to respond to this order is STAYED. It appears the United States District Court for the Eastern District of Pennsylvania has also commenced reciprocal disciplinary proceedings against Mr. Murphy (E.D. Pa. no. 2:19-mc-00217). After the district court's disciplinary proceedings and any appeal therefrom have concluded, the Clerk will lift this stay and require Mr. Murphy to file a show-cause response

in this Court addressing both the state and district-court disciplinary decisions. *Cf.* R.A.D.E. 6.1 & 6.3.

Upon receipt of this order to show cause, Robert J. Murphy, Esquire, must serve by mail or otherwise a copy of this order to show cause and a copy of the order of the other court on which it is based to any litigant for whom the attorney has entered an appearance in any matter pending in this Court. *See* R.A.D.E. 6.6. Any response to this order to show cause must include a certification that the attorney has complied with the requirement that he serve a copy of the order to show cause and a copy of the order of the other court on which it is based to any litigant for whom the attorney has entered an appearance in any matter pending in this Court. This certification must include a list of all the litigants notified and their addresses. A form certification is available on the Court's website at http://www.ca3.uscourts.gov/attorney-discipline-forms.

The Clerk of this Court will forward a certified copy of this order to Robert J. Murphy, Esquire, by email, provided an email address is on file, and by certified mail, return receipt requested, to his last known address on file with the clerk's office. *See* R.A.D.E. 6.4.

This Court's Rules of Attorney Disciplinary Enforcement are available on the Court's website at: www.ca3.uscourts.gov.

For the Court,

/s/ Patricia S. Dodszuweit
Clerk

Dated: February 3, 2020

**ORDER OF THE**
**SUPREME COURT OF PENNSYLVANIA**
**(DECEMBER 19, 2019)**

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,

*Petitioner,*

v.

ROBERT J. MURPHY,

*Respondent.*

No. 2649 Disciplinary Docket No. 3

No. 206 DB 2016

Attorney Registration No. 15555 (Philadelphia)

PER CURIAM

AND NOW, this this 19th day of December, 2019, upon consideration of the Report and Recommendations of the Disciplinary Board, Robert J. Murphy 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 shall pay costs to the Disciplinary Board pursuant to Pa. R. D. E. 208(g).

Attest: /s/ Patricia Nicola
Chief Clerk
Supreme Court of Pennsylvania

# REPORT AND RECOMMENDATIONS OF THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA (SEPTEMBER 3, 2019)

BEFORE THE DISCIPLINARY BOARD OF THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,

*Petitioner,*

v.

ROBERT J. MURPHY,

*Respondent.*

No. 206 DB 2016

Attorney Registration No. 15555 (Philadelphia)

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 Amended Petition for Discipline filed on July 27, 2017, Petitioner, Office of Disciplinary Counsel, charged Respondent, Robert J. Murphy, with violation of Rules of Professional Conduct ("RPC") 3.1, 3.3(a)(1), 8.2(a), 8.4(c), and 8.4(d). The Amended Petition contains one Charge against Respondent, divided into four headings as follows:

A. Respondent's Accusations against the Honorable Patricia Bachman;

B. Respondent's Accusations Against Neil Dombrowski, Esquire;

C. Respondent's Accusations Against the Honorable Joseph Hagan;

D. Further Accusations Against Neil Dombrowski, Esquire before Judge Hagan.

Respondent filed an Answer to Petition on August 11, 2017, wherein he denied the allegations of misconduct

By Order dated July 27, 2018, the Board appointed Special Master Stewart L. Cohen, Esquire to preside over a hearing.[1] On August 2, 2018, the Special Master held a prehearing conference. Subsequently, the parties exchanged exhibits and witness lists. The Special Master conducted a disciplinary hearing on October 22 through October 26, 2018.[2] After both parties had presented their evidence, the Special Master, pursuant

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[1] Procedural events after the filing of the Amended Petition for Discipline up to the appointment of the Special Master are omitted from the history of this matter as unnecessary.

[2] Respondent appeared on his own behalf with his co-counsel, Joseph McHale, Esquire.

to Disciplinary Board Rule 89.151(a), found that the evidence established a prima facie violation of at least one Rule of Professional Conduct by a preponderance of the evidence that was clear and satisfactory. The Special Master then conducted a hearing pursuant to D. Bd. Rule 89.151(b) relating to the type of discipline to be imposed. After the close of the record, the Special Master set the briefing schedule.

Petitioner filed a Brief to the Special Master on December 31, 2018 and requested that the Special Master recommend to the Board that Respondent be disciplined by not less than a suspension of five years.

On February 13, 2019, Respondent filed a motion to stay the proceedings and reopen the record. Respondent filed a Brief to the Special Master on February 14, 2019 and contended that as Petitioner did not sustain its burden to establish violations of the Rules of Professional Conduct, no disciplinary action should be taken.

By Order dated March 12, 2019, the Special Master directed that the record be reopened to allow Respondent to offer Michael Ruggieri, Esquire as an expert witness. On March 29, 2019 and April 2, 2019, subject to Petitioner's objections, the Special Master heard the testimony of Respondent's proposed expert witness. By Order and accompanying Memorandum dated April 10, 2019, the Special Master excluded the expert witness's testimony, finding that such testimony would not help the Special Master to understand the evidence or determine a fact in issue.

On April 25, 2019, the Special Master filed a Report and concluded that Respondent violated the Rules of Professional Conduct as charged in the

Amended Petition for Discipline. The Special Master recommended that Respondent be suspended from the practice of law for a period of five years.

On May 31, 2019, Respondent filed a Brief on Exceptions to the Special Master's Report and requested oral argument before the Board. Respondent requested that the Board dismiss the matter against him.

On June 18, 2019, Petitioner filed a Brief Opposing Respondent's Exceptions and requested oral argument. Petitioner requested that the Board reject Respondent's exceptions, adopt the Special Master's Report, and recommend to the Court that Respondent be disciplined by not less than a suspension of five years.

A three-member Board panel held oral argument on July 12, 2019.

The Board adjudicated this matter at the meeting on July 19, 2019.

## II. Findings of Fact

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, 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 an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent is Robert J. Murphy, born in 1944 and admitted to practice law in the Commonwealth of Pennsylvania in 1969. Respondent maintains his office for the practice of law at 7 Cooperstown Road, P.O. Box 39, Haverford, PA 19041.

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

4. Respondent has no history of professional misconduct in the Commonwealth.

5. Respondent represented claimant Anne Wilson in a workers' compensation proceeding before Workers' Compensation Judge Patricia Bachman, captioned *Wilson v. Honeywell, Inc. (formerly Allied Signal), Travelers Insurance Company, and Commonwealth Department of Labor and Industry,* Bureau Claim No. 3240923 ("the *Wilson* matter"). (N.T. II 160:4-14 (Bachman)).

6. Neil T. Dombrowski, Esquire, represented Honeywell, Inc. ("Honeywell") and Travelers Insurance Company ("Travelers"). (N.T. I 38:6-13 (Dombr.); N.T. II 160:15-17 (Bachman)).

7. Judge Bachman scheduled a hearing in the *Wilson* matter for February 18, 2010. (N.T. 44:18-23; 47:17-48:18 (Dombr.); N.T. II 160:18-22 (Bachman); ODC-14).

8. The hearing was for the parties to present argument on a suspension petition that had been filed by Mr. Dombrowski. (N.T. II 161:12-163:2 (Bachman)). Respondent had also filed a penalty petition of which mention was made at the February 18, 2010 hearing. (N.T. II 165:11-18 (Bachman); ODC-14 at 5:25-6:1).

9. Prior to the hearing, Respondent had requested the court to allow him to serve subpoenas on five witnesses and to take the deposition of Anne Wilson. (N.T. II 166:21-167:3; 168:14-17 (Bachman)).

10. Also prior to the hearing, Mr. Dombrowski had requested that the court require Respondent to provide discovery regarding a third party recovery as to Honeywell, which had asserted a subrogation claim. (N.T. II 172:16-173:8 (Bachman))

11. Approximately one week prior to the scheduled hearing, Judge Bachman ruled on certain outstanding requests in the matter. (N.T. II 171:4-10; 172:2-173:17 (Bachman)).

12. On February 12, 2010, Judge Bachman instructed her secretary, Lana Meehan, to place telephone calls to Respondent and his opposing counsel, Mr. Dombrowski, and to report her rulings to them so that they could adequately prepare for the February 18, 2010 hearing. (N.T. II 175:23-176:19; 177:19-178:20 (Bachman); N.T. I 42:2-18 (Dombr.)). These communications followed Judge Bachman's procedure to have a secretary call the attorneys for all parties to inform them of rulings that she had made, in advance of hearings. (N.T. II 179:14-180:10; 183:6-184:13 (Bachman)). (N.T. II 185:4-17 (Bachman)). No party could gain any procedural or tactical advantage by reason of such communication. These communications by Judge Bachman's secretary were administrative (for the purpose of efficiency and case management) and did not address any substantive matters or the merits of the claim.

13. Ms. Meehan first called Mr. Dombrowski. (N.T. I 43:21-44:4 (Dombr.)). She conveyed to him the fact that Judge Bachman had ruled on the requests

and what the rulings were. (N.T. I 42:2-42:18 (Dombr.); N.T. II 199:21-201:15 (Bachman)). There was no discussion of the merits or of facts of the case. (N.T. I 42:22-43:3 (Dombr.); N.T. III 522:16-24 (by inference) (Bachman)).

14. Ms. Meehan next called Respondent. (R-5 at 2; N.T. I 43:21-44:4 (Dombr.)). She did not reach Respondent (R-5 at 2), but she left a message on his answering machine conveying the same information that she had conveyed to Mr. Dombrowski. (N.T. V 95:2-7; 113:2-115:14 (McHale); N.T. III 125:2-6; 127:22-128:6 (Meehan) (by inference)).

15. After receiving Ms. Meehan's phone call on February 12, 2010, Mr. Dombrowski sent a letter to Judge Bachman the same day, confirming the information that Ms. Meehan had conveyed to him. (ODC-8) Specifically, Mr. Dombrowski stated:

> Please allow this correspondence to confirm telephonic message we received from your chambers from your administrative assistant, Lana, on February 12, 2010. We understand that Claimant's request for reconsideration of Your Honor's former ruling is denied, no subpoenas as requested by Claimant shall be issued, and that Claimant and Claimant's counsel are to comply and supply the requested discovery to the Defendant.
>
> . . . A copy of this correspondence has been served upon Claimant's counsel by regular and certified mail.
>
> ODC-8.

16. Respondent was shown as a carbon copy recipient on the letter, which indicated: "cc: Robert J.

Murphy, Esquire (via regular and certified mail)[.]" (ODC-8).

17. On January 29, 2010, approximately two weeks prior to the foregoing telephone call and confirming letter, Respondent himself sent a similar confirmation letter to Judge Bachman in the *Wilson* matter, stating that "[o]n or about January 26, 2010 Your Honor's secretary advised via phone that Your Honor had sustained the alleged attorney-client privilege objection by Travelers raised on or about January 19, 2010 to the subpoena *duces tecum* previously issued by Your Honor. . . ." (ODC-31 (beginning of letter); ODC-12 at 13:25-14:19). Respondent's January 29, 2010 letter showed Neil T. Dombrowski, Esquire as a carbon copy recipient of the letter. *Id.* at 2. Based upon ODC-31, it is evident that Respondent was familiar with and had previously participated in and followed Judge Bachman's administrative practice.

18. At the February 18, 2010 hearing, Mr. Dombrowski stated that he had received the February 12, 2010 telephone call from Ms. Meehan, as well as the information she had conveyed to him on the call. (ODC-14 at 26:5-24).

19. After Mr. Dombrowski made his statement, argument continued regarding the suspension petition. (ODC-14 at 26:25-32:23).

20. Respondent did not respond, until later in the hearing, to the statements Mr. Dombrowski made on the record about Ms. Meehan's phone call. (ODC-14 at 26:5-32:23; N.T. II 229:3-5; 232:22-233:13 (Bachman)). To put Respondent's recusal request in context, it is important to know that it was made later in the hearing, and that in the interim Mr. Dombrowski

requested that Judge Bachman consider entering a "supersedeas" order which, if granted, would suspend or even eliminate Mrs. Wilson's benefits and the Respondent's ongoing legal fees.

21. Prior to the February 18, 2010 hearing, Judge Bachman made a ruling that resulted in the continuing payment of workers compensation benefits to the widow (Anne Wilson) as well as the continuing payment of attorney's fees to Respondent. (N.T. II 232:8-14 (Bachman)). Accordingly, Mr. Dombrowski's request that the Judge consider a "supersedeas" order at the February 18, 2010 hearing threatened serious consequences.

22. At the February 18, 2010 hearing, after Mr. Dombrowski requested that Judge Bachman consider entering a "supersedeas" order with regard to continuing benefits and Respondent's attorney's fees (N.T. II 23.2:22-233:2 (Bachman)), Respondent, for the first time, raised the issue of ex parte communications and requested that Judge Bachman recuse herself (N.T. II 233:3-13 (Bachman) ODC-14 at 32:24-33:6).

23. In support of this recusal request, Respondent stated: "[W]e've learned for the first time today, apparently counsel indicates numerous ex-parte communications with this Court. . . . And therefore, we're going to have to request that the Court has to recuse itself, because he says that he's just had numerous communications with the Court as to various alleged oral orders." (ODC-14 at 32:24-33:6).

24. In response, Judge Bachman stated: "Mr. Murphy, that is out of line. I want you to go back and recheck your telephone and recheck with your secretary. . . . Those were orders that were given to my

secretary, and she relayed both of those orders to both of your offices. Your motion for recusal is denied." (ODC-14 at 33:7-14).

25. On February 18, 2010, following the hearing, Respondent sent a letter to Judge Bachman, via certified mail/return receipt requested and facsimile, reiterating his request that she recuse herself, stating: "[i]n accordance with Mr. Dombrowski's repeated representations at today's hearing that he repeatedly communicated with the court ex parte in the captioned matter, we are constrained to respectfully renew our prior motion that the court recuse itself which the court initially denied at the hearing." (ODC-9). Mr. Dombrowski was copied on the letter via first class U.S. mail. (*Id.*)

26. By letter to Judge Bachman dated March 2, 2010, Respondent reiterated his request that Judge Bachman recuse herself, and also requested that she recuse herself from the hearing to address the recusal motion that she had scheduled to take place on March 23, 2010. (ODC-10) Respondent further demanded that Judge Bachman issue subpoenas to herself, Ms. Meehan, and Mr. Dombrowski. (ODC-10 at 2).

27. A hearing was held in the *Wilson* matter before Judge Bachman on March 23, 2010. (ODC-12) At that hearing, Respondent accused Mr. Dombrowski of having had improper, ex parte communications with Judge Bachman or members of her staff. (ODC-12 at 6, 11, 12, 15-16).

28. In a subsequent letter to Judge Bachman, dated April 1, 2010, Respondent again requested that Judge Bachman recuse herself from the recusal proceedings. (ODC-11 at 1) Respondent asserted, *inter*

*alia*, that "it is undisputed [that] opposing counsel [Mr. Dombrowski] has repeatedly admitted that he has had repeated and numerous ex parte contacts with the court including staff involving the captioned matter pending before the court without notice to claimant or her counsel including but not limited to the hearings on 3/23/10 and 2/18/10 . . . " (ODC-11 at 4). In two additional instances on the same page (p. 4) of the April 1, 2018 letter, Respondent asserted that the court and Mr. Dombrowski had engaged in "admitted unrecorded prohibited ex parte contacts" and "repeated, multiple unrecorded prohibited ex parte contacts." (ODC-11 at 4). Respondent renewed his demand that Judge Bachman issue subpoenas to herself, Ms. Meehan, Mr. Dombrowski, and Garrett Brindle, Esquire of Mr. Dombrowski's firm. (ODC-1 1 at 4-5).

29. In all three of his letters to Judge Bachman, dated February 18, March 2, and April 1, 2010, Respondent reiterated his accusations of improper, ex parte communications on the part of Judge Bachman and Mr. Dombrowski, made at the hearings before Judge Bachman on February 18, 2010 and March 23, 2010. (ODC-9; ODC-10; and ODC-11).

30. Subsequently, Judge Bachman rescheduled the hearing on Respondent's recusal motion for May 4, 2010. (ODC-11).

31. On April 16, 2010, Respondent filed a petition for review in the Commonwealth Court of Pennsylvania naming Judge Bachman as a respondent (among others). (ODC-15). In that petition for review, Respondent repeated his allegations that Judge Bachman had engaged in improper, ex parte communications with defense counsel Mr. Dombrowski, as well as his assertion that Judge Bachman and her staff had admitted

to engaging in improper, ex parte communications. (ODC-15 at 10A-11A; 14A-21A (handwritten numbering)).

32. On April 28, 2010, Respondent filed an Emergency Petition for a stay in the Commonwealth Court, again naming Judge Bachman as a respondent, and reiterating his allegations that Judge Bachman and her staff, including Ms. Meehan, had admitted to engaging in improper, ex parte communications. (ODC-16 at 136A-140A; 142A-145A (handwritten numbering)).

33. On or about September 7, 2010, Mr. Dombrowski, on behalf of Honeywell and Travelers, filed an answer to Respondent's petition for review, denying Respondent's allegations regarding ex parte communications. (ODC-17; ODC-21 at 887A-888A). The answer did not contain a verification, but Mr. Dombrowski subsequently filed a verification, which the court accepted. (N.T. I 354:20-355:1).

34. On September 3, 2010, Thomas P. Howell, Esquire, attorney for the Pennsylvania Department of Labor, representing Judge Bachman, filed an answer to Respondent's petition for review, denying Respondent's allegations of ex parte communications. (ODC-18; ODC-21 at 887A). The answer filed on behalf of Judge Bachman stated, "[i]t is specifically denied that WCJ Bachman has engaged in <u>any</u> prohibited ex parte contacts relating to the proceedings before her." (ODC-18 at 1 ¶ 3(c)). The answer did not contain a verification.

35. On October 1, 2010, Respondent filed preliminary objections to those answers, alleging that the lack of verifications constituted an admission of the Respondent's allegations of judicial misconduct. (ODC-

19 at 702A). In those preliminary objections, despite Judge Bachman's express denial, Respondent asserted that "respondents including WCJ Bachman admitted that she conducted multiple, prohibited ex parte telephone communications with respondent's counsel off the record in the proceedings before WCJ Bachman . . . ." (ODC-19 at 702A-703A (emphasis added)).

36. Despite the denials contained in the answers to the petition for review, on October 18, 2010 Respondent filed in the Commonwealth Court an "Application for Special Equitable Relief and/or Temporary and/or Permanent Stay from the Workers' Compensation Proceedings Pending Before WCJ Bachman Pending Disposition of the Pending Petition for Review in the Nature of Prohibition Pursuant to Pa. R. A. P. 123 and Applicable Law and Appellate Decisions," again asserting that Judge Bachman had admitted the alleged judicial misconduct consisting of ex parte communications between Judge Bachman and opposing counsel, and that Messrs. Dombrowski and Howell had also admitted to the misconduct by failing to include verifications in the original answers. (ODC-21 at 882A-884A; 886A-887 A).

37. Respondent's assertions of improper ex parte communications, referred to in paragraphs 22, 23, 25, 27-29, 31, 32, 35 and 36 above, were frivolous, false and unsupported by the record in the workers' compensation proceeding, and made by Respondent knowing such assertions to be false.

38. At a minimum, Respondent's assertions of improper ex parte communications, referred to in paragraphs 22, 23, 25, 27-29, 31, 32, 35 and 36 above were unsupported by the record in the workers' compensa-

tion proceeding and were made by Respondent with reckless disregard as to their truth or falsity.

39. By Order dated October 20, 2010, on her own motion, Judge Bachman recused herself from the *Wilson* matter. (ODC-23; N.T. II 264:16-19 (Bachman)). Judge Bachman's recusal was unrelated to Respondent Murphy's allegations. Judge Bachman testified at the disciplinary hearing that she became aware that Respondent had sued her in the Commonwealth Court and the Supreme Court and that she therefore had to obtain counsel to represent her. (N.T. II 264: 5-15). Judge Bachman testified that she had done nothing wrong, and there was no basis for recusal on the alleged ground that she had, but that she recused herself after discussing the matter with Judge Hagan, because "I just felt that I could no longer stay on the case when these petitions and these claims were being filed against me in these other jurisdictions." (N.T. II 266:21-267:17).

40. After Judge Bachman recused herself from the *Wilson* matter, the matter was reassigned to Judge Joseph Hagan. (N.T. III 308:19-21 (Hagan)). On November 23, 2010, Judge Hagan held a hearing at which Respondent repeated his false accusations against Judge Bachman and Mr. Dombrowski, stating:

a. "I will subpoena Mr. Dombrowski or have him testify. I'm calling him to the witness stand, so that we can get on the record the fraudulent ex parte communication between Mr. Dombrowski and the Court involving the merits of the case." (ODC-24 at 99:9-14).

b. "Fraud, yes. That's what judicial misconduct is, it's fraudulence." (ODC-24 at 100:1-2).

c. "I said Mr. Dombrowski has conducted himself with Judge Bachman in a fraudulent, unethical, and null and void way involving among other things, ex parte communications, order, hearings, arguments, decisions throughout the whole case, all of which he recounted to Your Honor before." (ODC-24 at 100:6-11).

41. Respondent's assertions contained in the preceding paragraph and subparagraphs, were frivolous, false and unsupported by the record in the *Wilson* matter, and made by Respondent knowing such assertions to be false. At a minimum, Respondent made such assertions with reckless disregard as to their truth or falsity.

42. Also at the November 23, 2010 hearing before Judge Hagan, Respondent moved to recuse Judge Hagan, asserting that Judge Hagan was tainted by having reviewed the record which contained Respondent's allegations of ethical misconduct against Judge Bachman and Mr. Dombrowski. (ODC-24 at 100:14-16).

43. On December 20, 2010, Respondent filed a petition for review in the Commonwealth Court. (ODC-25). In that Petition, Respondent referred to his client, Anne Wilson's, "pending motion to recuse Workers' Compensation Judge (WCJ) Joseph Hagan based on extensive unlawful, prohibited, and unethical judicial misconduct . . . ." ODC-25 at 4. Further, Respondent asserted in the Petition that "[a]t all times material hereto, WCJ Bachman engaged In extensive, admitted, improper and unethical judicial misconduct against petitioners including but not limited to her bias, prejudice, unfairness, personal interest, extensive off the record prohibited ex parte communications with Travelers and Honeywell and their representatives

without notice to petitioners involving the merits of the pending Workers' Compensation proceedings before her, improprieties and the appearance of impropriety throughout the entire foregoing consolidated Workers' Compensation proceedings pending before her involving petitioners' pending penalty petition and Travelers' and Honeywell's purported second 319 subrogation petition to modify or suspend widow's final Workers' Compensation award . . . ." (ODC-25 at 20 (emphasis added)).

44. Respondent reiterated in the Petition that Judge Bachman had engaged in extensive, prohibited, admitted, manifest bias, prejudice, unfairness, personal interest, extensive off the record prohibited ex parte communications with Travelers and Honeywell and their representatives without notice to petitioners involving the merits of the foregoing pending Workers' Compensation proceedings before her . . . ." (ODC-25 at 21, ¶ 39 (emphasis added)).

45. In the same petition for review, Respondent again asserted that "Respondents, WCJ Bachman and Travelers and Honeywell, did not file any timely, verified answers to the allegations in petition for review in the nature of prohibition, and further admitted that respondents, WCJ Bachman and Travelers and Honeywell, engaged in extensive, prohibited, unethical and unlawful judicial misconduct . . . ." (ODC-25 at 22, ¶ 42 (emphasis added)).

46. In the December 20, 2010 petition for review, Respondent asserted that Judge Hagan had engaged in unlawful and prohibited judicial misconduct in numerous respects in the *Wilson* matter, including that Judge Hagan:

a. failed to avoid the appearance of impropriety (ODC-25 at 27, ¶ (a));

b. failed to perform his duties impartially (*id.*, ¶ (b));

c. admittedly engaged in extensive off the record ex-parte contacts and communications without notice concerning the merits of the Workers' Compensation proceedings, including extensive admitted prohibited ex parte contacts and communications with the Office of Adjudication, and its staff, WCJ Bachman and her representatives including her counsel, Thomas Howell, Esquire and respondents, Travelers Casualty and Surety Company and Honeywell, Inc. and their counsel, and petitioner's son-in-law, Donald J. Crichton, involving her incapacity to appear and testify in the proceedings due to her severe illnesses and emergency hospitalization on November 23, 2010 (*id.* ¶ (d)) (emphasis added);

d. "engaged in ex parte communications among WCJ Hagan and the Office of Adjudication and WCJ Bachman and her counsel, and petitioner's son-in-law . . . ." (*id.* ¶ (e));

e. "improperly and unlawfully identified and placed into the record . . . records including correspondence from WCJ Bachman's counsel, Thomas Howell, and WCJ Bachman's alleged untimely and unverified purported answer to petitioners' petition for review in the nature of prohibition at No. 385 MD 2010 which records, inter alia, admittedly were

never part of the certified record transferred to him . . . ." (*id.* at 28 ¶ (e) (carryover));

f. "improperly and unlawfully removed extensive unspecified portions of the certified record . . . and gave them to respondents, Travelers' and Honeywell's counsel" (*id.* at 28 ¶ (f));

g. "reviewed, advised and reiterated that he would rely entirely on and be bound by the tainted, biased, and prejudicial record of the entire proceedings created, engineered and entered as a result of WCJ Bachman's manifest bias, prejudice and judicial misconduct against petitioners . . . ." (*id.* ¶ (g));

h. "delivered an off the record ex parte communication to respondents' counsel via undated letter advising that he vacated WCJ Bachman's prior order indefinitely suspending petitioners'/claimant's pending penalty petition and he would no longer continue the indefinite suspension of the penalty petition. . . ." (*id.* at 29 ¶ (h));

i. "has ordered petitioners and respondents, Travelers and Honeywell, to file proposed findings of fact and briefs . . . based on the void, biased, prejudicial, and unfair entire record of the proceedings engineered, created and entered by WCJ Bachman as a result of her admitted manifest bias, prejudice and judicial misconduct against petitioners; . . . ." (*id.* at 30 ¶ (j));

j. engaged in prohibited off the record ex parte communications with counsel for Travelers and Honeywell (*id.* at 31 ¶ (l)); and

k. committed "extensive judicial misconduct, bias, prejudice, improprieties, appearance of impropriety, personal interest and extensive prohibited ex parte contacts and communications with the Office of Adjudication, and its staff, WCJ Bachman and her representatives including her counsel, Thomas Howell, Esquire and respondents, Travelers Casualty and Surety Company and Honeywell, Inc. and their counsel, and petitioners' family including her son-in-law via telephone on November 23, 2010 involving petitioners' emergency hospitalization precluding her from testifying until her discharge from the hospital." (*Id.* at 32 ¶ (p)).

47. On February 7, 2011, Respondent filed a brief in the Supreme Court of Pennsylvania at No. 70 MAP 2010, in support of his appeal from the final order of the Commonwealth Court (that dismissed Respondent's request for a writ of prohibition) entered October 26, 2010. (ODC-22). In that brief, Respondent:

a. asserted, as a factual predicate for his Statement of the Question Involved, that the "administrative tribunal admitted judicial misconduct including presiding over, conducting and entering manifestly unfair, biased and prejudicial proceedings, record, rulings, orders, hearings, and adjudications based on a biased record thereof[.]" (ODC-22 at 6) (emphasis added).

b. asserted that Respondent filed a petition for review, including a supplemental application requesting recusal of Judge Bachman from the workers' compensation proceedings pending before her, "to prevent irreparable prejudice . . . resulting from WCJ Bachman's admitted bias, prejudice, improprieties, and, at a minimum, appearance of impropriety against appellant throughout the compensation proceedings pending before her." (ODC-22 at 16).

c. asserted that "[a]ppellees [which included Judge Bachman] deliberately failed to file any timely, verified answers and admitted WCJ Bachman's judicial misconduct including, at a minimum, appearance of impropriety against appellant throughout the compensation proceedings." (ODC-22 at 16).

d. asserted, as a factual averment in his Argument heading, that the "administrative tribunal admitted judicial misconduct including presiding over, conducting and entering manifestly unfair, biased and prejudicial proceedings, record, rulings, orders, hearings, and adjudications based on a biased record thereof[.]" (ODC-22 at 18).

48. On November 14, 2011, Respondent filed in the Supreme Court, in *Anne Wilson v. Sandi Vito, et al.*, 51 EAP 2011, Appellant's Brief Sur Appeal from the Final Order by the Commonwealth Court Entered June 14, 2011 at 935 MD 2010 etc. (ODC-26). In that brief, Respondent:

a. as a factual predicate for his statement of the first question involved, stated "Where amended petition for review raises substantial doubt as to tribunal's admitted impropriety and/or appearance of impropriety . . . ." (ODC-26 at 10) (emphasis added);

b. stated that "WCJ Patricia Bachman presided over and engaged in extensive, admitted and/or presumed unethical judicial misconduct against Anne Wilson including improprieties and, at a minimum, the appearance of impropriety throughout the entire foregoing consolidated Workers' Compensation proceedings assigned to her at Bureau Claim No. 3240923 . . . ." (ODC-26 at 24); and

c. "WCJ Hagan also engaged in extensive, unethical judicial misconduct and improprieties and, at a minimum, appearance of impropriety including extensive off the record ex parte communications without notice concerning the merits of the pending consolidated compensation proceedings before him." (ODC-26 at 25).

49. Respondent's assertions contained in paragraphs 42, 43, 44, 45, 46(a) through (k), 47(a) through (d) and in paragraph 48(a) through (c) above were frivolous, false and unsupported by the record in the *Wilson* matter, and were made by Respondent knowing such assertions to be false or with reckless disregard as to their truth or falsity.

50. Judge Bachman credibly testified at the disciplinary hearing on October 23, 2018 and expressly denied: ever having any prohibited ex parte communi-

cations with Mr. Dombrowski in connection with the *Wilson* matter; having any prohibited ex parte communications with any of the parties in the *Wilson* matter; having any ex parte communications with any officers or employees of Honeywell, Allied Signal, or Travelers Insurance Company; and discussing the merits of the case, ex parte, with any of the attorneys involved in the *Wilson* matter, including Respondent and Mr. Dombrowski. (N.T. II 285:16-286:3; 286:5-10; 286:12-18; 286:20-287:4). Further, when read Respondent's statement from ODC-15 that "WCJ Bachman and her staff had engaged in extensive off-the-record ex parte contact and communications without notice and hearing concerning the foregoing Worker's Compensation proceeding pending before her," and when asked by Petitioner "Did that happen?" Judge Bachman responded "No." (N.T. II 287:8-22).

51. Judge Hagan credibly testified at the disciplinary hearing on October 23, 2018 and expressly denied any judicial misconduct or appearance of impropriety, expressly denied having had any prohibited ex parte communications as asserted by Respondent, and stated that there was no truth to Respondent's assertions of judicial misconduct, impropriety, appearance of impropriety, or prohibited ex parte communications. (N.T. III 265:14-24; 266:2-15; 273:5-275:11; 275:13-276:3; 276:5-18; 276:19-277:17; 277:19-278:7; 278:10-24; 279:1-280:1; 280:3-23; 282:23-283:4; 284:14-285:8; 285:12-286:1; 289:21-290:2; 290:7-22; 291:2-13; 291:15-292:17; 293:5-295:2).

52. Mr. Dombrowski credibly testified at the disciplinary hearing on October 22, 2018 and expressly denied: ever having any ex parte communications with Judge Bachman in the *Wilson* case and ever having

any ex parte communications with Judge Hagan in the *Wilson* case. (N.T. I 209:24-210:8; 210:10-13; 241:13-15). ("I never had an ex parte communication with Judge Bachman in the time that I've been on earth."). Further Mr. Dombrowski testified that he has no knowledge of Judge Bachman or Judge Hagan ever admitting to having engaged in improper ex parte communications with any of the parties. (N.T. I 211:17-212:4). In addition, Mr. Dombrowski reviewed numerous documents in the *Wilson* case and consulted with Travelers' officers and employees to get information as to what the correct response would be. (N.T. I 214:4-215:1). Through his investigation, Mr. Dombrowski learned that there was never any ex parte communications between Judges Bachman and Hagan and any Travelers' employees, and that there was no contact with respect to Judge Hagan or Judge Bachman as Respondent had alleged. (N.T. I 215: 14-216:22).

53. Respondent presented no evidence to support his assertions that Judge Bachman or Judge Hagan engaged in judicial misconduct, committed any impropriety or appearance of impropriety, or engaged in any improper ex parte communications in connection with the *Wilson* matter.

54. Respondent presented no evidence that Mr. Dombrowski engaged in any improper ex parte communications in connection with the *Wilson* matter.

55. Ms. Meehan credibly testified at the hearing on October 24, 2018. Respondent presented no evidence that Ms. Meehan engaged in any improper ex parte communications in connection with the *Wilson* matter.

56. The evidentiary record of the disciplinary hearing on October 22 through 26, 2018, establishes

that Respondent's assertions that Judge Bachman, Judge Hagan, Mr. Dombrowski, and Ms. Meehan had engaged in improper ex parte communications in the *Wilson* matter were frivolous, false, and were made knowingly or with reckless disregard as to the truth or falsity of such assertions.

57. Respondent, who did not testify, presented no direct evidence of his subjective state of mind, or actual belief. There is no evidence that Respondent actually believed that either Judge Bachman or Judge Hagan had engaged in any misconduct or were biased, or that Respondent had a non-frivolous basis in law or fact to move for their recusal.

58. There is no evidence that Respondent had an objectively reasonable belief that what any of his allegations were true and supported after a reasonably diligent inquiry.

59. After both sides had rested their cases, the Special Master determined that ODC had proven a prima facie case of at least one violation of the rules. (*See* N.T. V 297:20-22; 298:12-19; *see* D. Bd. Rule § 89.151(a)). Following this determination, the matter proceeded to a hearing under D. Bd. Rule § 89.151(b) (addressing factors relevant to the appropriate measure of discipline) (the "151(b) hearing").

60. During the 151(b) hearing, Petitioner offered numerous items of documentary evidence, which were admitted into evidence. (*See* ODC-36 through ODC-48).

61. During the final portion of the 151(b) hearing, Respondent was sworn and responded to the Special Master's questions. (N.T. V 350:17-362:2).

62. The Special Master gave Respondent an opportunity to acknowledge and express remorse for his conduct that gave rise to the charges against him, or to at least demonstrate that he recognized he should have conducted himself differently with respect to his many assertions of unethical conduct, including alleged improper, ex parte communications, and admissions of improper, ex parte, communications on the part of Judge Bachman and Judge Hagan and Mr. Dombrowski. (N.T. V 328:19-337:16). Respondent did not express remorse. (*See* N.T. V 325:15-337:14).

63. Respondent offered the following explanation:

> [W]hat I was trying to set forth, perhaps inarticulately, is the underlying event of the conversation was admitted, and the question of its legal effect or efficacy, whether it's improper, was set forth in that document because it was admitted to have occurred. And when you seek a writ of prohibition, by definition, you assert that it is improper because of the reasons I've argued . . . .
>
> (N.T. V 345:14-346:3).

64. In another instance, when questioned about his assertion as alleged in the Petition for Discipline that Judge Bachman and her staff had admitted to having engaged in improper ex parte communications, Respondent testified:

> I would love not to have done it that way, if that would assist the Master, but what I'm trying to explain to the Master is they admitted the event.

> The question of whether it's improper, and my allegation was that it was improper, and, therefore, in order to seek a writ of prohibition, you must allege that it is improper.
>
> (N.T. V 337:3-14).

65. Respondent's explanations as set forth in the preceding two paragraphs are disingenuous because Respondent did not merely allege that Judge Bachman had admitted the occurrence of the phone call between Ms. Meehan and Mr. Dombrowski. Respondent clearly alleged, numerous times, in the *Wilson* matter as well as in filings in the Commonwealth Court and the Supreme Court that Judge Bachman and Judge Hagan and Mr. Dombrowski had admitted to the fact of engaging in improper, ex parte communications about the merits of the case.

66. Respondent knew he had no basis in fact or law for making the accusations he made and that doing so was ethically improper, in that Respondent has admitted that he alleged the impropriety not because it was true but because such an allegation was required to seek a writ of prohibition. In other words, he made these baseless allegations in order to pursue litigation that has been a persistent disruption to the courts and disciplinary system.

67. Rather than demonstrating any remorse or recognition that his assertions of unethical conduct on the part of Judge Bachman and Judge Hagan and Mr. Dombrowski were reckless, Respondent told the Special Master that he (Respondent) was in the process of preparing a new federal complaint against Disciplinary Counsel Gottsch and Office of Disciplinary Counsel

(in addition to the complaint he previously filed against them). (N.T. V 367:23-369:7).

68. By his conduct and words at the disciplinary hearing, Respondent failed to acknowledge that there was anything wrong with making the allegations of ethical impropriety against Judges Bachman and Hagan and Mr. Dombrowski.

**Aggravating Factors**

69. Respondent did not accept responsibility for his misconduct.

70. Respondent failed to show any remorse.

71. Respondent lacked credibility as an advocate.

72. Respondent displayed poor advocacy.

73. Respondent's conduct during these disciplinary proceedings evidenced a lack of respect for the disciplinary system.

74. Throughout the *Wilson* matter and these proceedings, Respondent aggressively resisted proper authority and attempted to create a perception of a conspiracy against him, and in so doing made repeated false statements and reckless aspersions against anyone who disagreed or admonished his behavior.

75. Respondent procured a misleading statement from a witness, Lana Meehan. (R-5).

a. Respondent subpoenaed Ms. Meehan to appear in Petitioner's Philadelphia office for a prior proceeding in this matter on October 16, 2017. N.T. III 98:2-8 (Meehan)). Following the proceeding, at which Ms. Meehan appeared but was not called to testify, she agreed to go to Mr. McHale's office in Phila-

delphia with Respondent and Mr. McHale. (N.T. III 98:21-24; 99:7-100:17 (Meehan)). Disciplinary Counsel was not present at this meeting.

b. At Mr. McHale's office, Respondent and Mr. McHale discussed with Ms. Meehan Judge Bachman's procedure for transmitting orders, and the phone calls that Ms. Meehan made to Mr. Dombrowski and Respondent on February 12, 2010, upon instructions from Judge Bachman. (N.T. V 94:24-95:6; 99:16-100:7; 113:2-114:18 (McHale)). At that meeting, Ms. Meehan told Mr. McHale and Respondent that when she called Respondent she did not reach him but she left a message on his answering machine conveying the same information that she had conveyed to Mr. Dombrowski on her phone call to him.[3] (N.T. V 114:11-118:10).

c. Respondent then procured a handwritten statement from Ms. Meehan, which she wrote at Respondent's request, as Respondent told her what to write. (N.T. III 101:13-103:3; 107:1-10 (Meehan)). The statement provided that "[p]ursuant to J. Bachman's instructions I called Mr. Dombrowski and only told him that respondent's request for reconsideration was denied." (R-5 at 2). The statement further stated that "I was unable to reach respondent Mr. Murphy to leave this message." (*Id.*)

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[3] Mr. McHale took the stand as a witness for Respondent and testified regarding this meeting and the information surrounding the handwritten statement of Ms. Meehan.

d. The handwritten statement omitted the fact that Ms. Meehan had left a message on Respondent's answering machine (as Mr. McHale testified Ms. Meehan had told him and Respondent). Through this omission, Respondent procured from Ms. Meehan a statement that was misleading, because it implied that Ms. Meehan never conveyed the information to Respondent, when in fact she conveyed the information to him by leaving a message on his answering machine.

76. In his May 31, 2019 Brief on Exceptions filed with the Board, Respondent described the Special Master's Report as "tainted, prejudicial, biased" and falsely and without support attacked the tribunal by claiming the Master "conducted manifestly biased and prejudicial proceedings including conducting prohibited ex parte proceedings and communications with ODC . . ." Respondent's Brief on Exceptions at 6, 16.

77. In his May 31, 2019 Brief on Exceptions filed with the Board, Respondent falsely and without support accused Petitioner of "egregious, continual, intentional prosecutorial misconduct . . ." Respondent's Brief on Exceptions at 6.

## III. Conclusions of Law

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

1. 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 that is not

frivolous, which includes a good faith argument for an extension, modification or reversal of existing law;

2. 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;

3. RPC 8.2(a)—A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer or of a candidate for election or appointment to judicial or legal office;

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

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

## IV. Discussion

This matter is before the Board following the issuance of the Special Master's Report and Recommendation, Respondent's exceptions to the Report and Petitioner's exceptions opposing Respondent's exceptions, and oral argument. Respondent is charged with violating RPC 3.1 (bringing or defending a proceeding or asserting or controverting an issue therein without a good faith basic); RPC 3.3(a)(1) (making a false statement of material fact to a tribunal or failing to correct such a false statement); RPC 8.2(a) (knowingly or recklessly making a false statement concerning the integrity of a judge or adjudicatory officer); RPC 8.4(c)

(engaging in conduct involving dishonesty, fraud, deceit or misrepresentation); and RPC 8.4(d) (engaging in conduct that is prejudicial to the administration of justice). Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. *Office of Disciplinary Counsel v. John Grigsby*, 425 A.2d 730, 732 (Pa. 1981). Based on the evidentiary record, and for the reasons stated herein, we conclude that Petitioner met its burden and we recommend that Respondent be suspended from the practice of law for a period of five years.

This matter arose out of proceedings in a workers' compensation matter, *Wilson v. Honeywell, Inc. (formerly Allied Signal)*, Bureau Claim No. 3240923, in which Respondent represented the claimant. In that matter, Respondent repeatedly made false allegations that two Workers' Compensation Judges, Patricia Bachman and Joseph Hagan, and Respondent's opposing counsel, Neil Dombrowski, Esquire had engaged in improper ex parte communications and in fact had admitted to having done so. Respondent's allegations were based principally on a telephone call that Judge Bachman's secretary, Lana Meehan, had placed to Mr. Dombrowski and Respondent on February 12, 2010 to report the fact that Judge Bachman had issued certain rulings in the *Wilson* matter. The calls were made at Judge Bachman's behest, pursuant to her standard protocol, to assure that the parties would be adequately prepared for an upcoming hearing scheduled for February 18, 2010.

On February 12, 2010, Ms. Meehan reached Mr. Dombrowski on the telephone and reported the fact of Judge Bachman's ruling to him. There was no other discussion between the two. Ms. Meehan then placed

a call to Respondent, but was unable to personally speak with him, so left a message on Respondent's answering machine conveying the identical information that she had conveyed to Mr. Dombrowski.

The same day Mr. Dombrowski received the call from Ms. Meehan, Mr. Dombrowski sent a letter to Judge Bachman confirming the information that Ms. Meehan had conveyed to him on the telephone. Mr. Dombrowski copied Respondent on that letter and sent it to Respondent by regular and certified mail. At the hearing before Judge Bachman on February 18, 2010, Mr. Dombrowski reiterated on the record the fact of Ms. Meehan's telephone call to him and the information she had conveyed to him.

Respondent made his initial allegations of improper ex parte communications by Judge Bachman and Mr. Dombrowski when, at the February 18, 2010 hearing, Respondent orally moved for the recusal of Judge Bachman. Respondent's recusal request came later in the hearing, following Mr. Dombrowski's request that Judge Bachman consider entering a "supersedeas" order which, if granted would suspend or even eliminate Respondent's client's benefits and Respondent's ongoing legal fees.[4] Respondent later made repeated allegations of unethical, improper judicial conduct against Judge Bachman and Judge Hagan

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[4] The Special Master perceptively deduced that Respondent's motive for making his false statements was to "rid himself of Judge Bachman when it became apparent to him that she intended to make rulings adverse to his client's case and his own financial interests." Special Master Report at 29. For the purposes of the Board's discussion, we need not determine Respondent's motives in order to determine whether his conduct violated the Rules in question.

and allegations of improper, fraudulent conduct against Mr. Dombrowski in filings in the *Wilson* matter and in the Commonwealth Court and the Supreme Court.

The Special Master, considering these facts, issued a well-reasoned Report and concluded that Respondent committed ethical misconduct that warranted a suspension of his license to practice law for a period of five years. Respondent filed exceptions to the Report and recommendation, insisting that he has committed no ethical misconduct and the charges against him should be dismissed. Having considered the parties' arguments, we conclude that Respondent's exceptions are without substance. Respondent offers a distorted and incorrect version of the evidence that is unsupported by the actual record, relies on Respondent's personal view of the witnesses' credibility, and is dependent on the excluded testimony of the "expert" witness Respondent proffered.

As a preliminary matter, we find that ex parte communications from a court to counsel are proper in certain circumstances. The Pennsylvania Code of Judicial Conduct Rule 2.9 permits judges to engage in ex parte communications for administrative purposes provided that they do not deal with substantive matters or issues on the merits, where the judge reasonably believes the communications will not result in one party gaining a procedural or tactical advantage, and where there is adequate notice to both sides. Without deciding whether the subject communications were "ex parte," we conclude that the calls made by Ms. Meehan were not prohibited under the Code of Judicial Conduct, as there is no evidence of record that the subject calls included a discussion of the merits of the case or any fact in issue.

The record established that Respondent had no basis to believe or suspect that Ms. Meehan discussed the merits or a fact in issue with Mr. Dombrowski, and had no reason to believe or suspect that Judge Bachman ever discussed the merits or a fact in issue with Mr. Dombrowski. Nevertheless, Respondent used this anodyne communication from Ms. Meehan to Mr. Dombrowski to initiate a full-throated attack on the tribunal and his opposing counsel by asserting repeatedly that Judge Bachman and Mr. Dombrowski, and subsequently Judge Hagan, had improper ex parte communications about the merits of the case and had admitted that they had repeated prohibited ex parte communications about the merits of the case.

Respondent's statements were false, and Respondent knew they were false; at a minimum, Respondent made the statements with reckless disregard as to their truth or falsity. Respondent made the assertions and repeated them many times, having no evidence that his assertions were true. What is clear is that when Respondent first made the assertions at the February 18, 2010 hearing, the most he could have known was that Ms. Meehan had informed Mr. Dombrowski on the telephone of the fact of Judge Bachman's ruling on certain motions.

Petitioner's direct evidence in the form of Respondent's own writings and the testimony of Judges Bachman and Hagan and of Mr. Dombrowski, established that Respondent violated the Rules of Professional Conduct.

Judge Bachman credibly testified at the hearing and expressly denied: ever having any prohibited ex parte communications with Mr. Dombrowski in connection with the Wilson matter; having any prohibited

ex parte communications with any of the parties in the *Wilson* matter; having any ex parte communications with any officer or employee of Honeywell, Allied Signal or Travelers Insurance Company; and discussing the merits of the case, ex parte, with any of the attorneys involved in the *Wilson* matter, including Respondent and Mr. Dombrowski. N.T. II 285-287. When asked whether she and her staff had engaged in extensive off-the-record ex parte contact and communications without notice and hearing concerning the *Wilson* proceeding, Judge Bachman credibly testified that it did not happen. N.T. II 287.

Judge Hagan credibly testified and expressly denied any judicial misconduct or appearance of impropriety and expressly denied having had any prohibited ex parte communications as asserted by Respondent. Judge Hagan testified that there was no truth to Respondent's assertions of judicial misconduct, impropriety, appearance of impropriety, or prohibited *ex parte* communications. N.T. III 265-266, 273-275, 275-2777; 277-278; 279-280; 282-283; 284-285; 285-286; 289-290; 291-292; 293-295.

Mr. Dombrowski credibly testified at the hearing and expressly denied ever having any ex parte communications with Judge Bachman in the *Wilson* matter and ever having any ex parte communications with Judge Hagan in the *Wilson* case. N.T. I 209-210, 214. Further, Mr. Dombrowski testified that he had no knowledge of Judge Bachman or Judge Hagan ever admitting to having engaged in improper ex parte communications with any of the parties. N.T. I 211-212. In addition, Mr. Dombrowski reviewed numerous documents in the *Wilson* matter and consulted with Travelers' officers and employees to get information

as to what the correct response would be. N.T. I 214-215. Through his investigation, Mr. Dombrowski learned that there were never any ex parte communications between Judges Bachman and Hagan and any Travelers' employees, and that there was no contact with respect to Judge Hagan or Judge Bachman as Respondent had alleged. N.T. I 215-216.

Upon this record, Petitioner proved that Respondent did not have a good faith, reasonable basis for asserting that Judge Bachman and Judge Hagan or Mr. Dombrowski had engaged in improper ex parte communications, or any other misconduct. Respondent's assertions violated RPC 3.1 and RPC 3.3(a)(1), as his false assertions were of material facts and all of the false assertions were made to tribunals.

Petitioner proved that Respondent violated RPC 8.2(a), as he knowingly or with reckless disregard made statements concerning the qualifications or integrity of Judge Bachman and Judge Hagan. In the context of false and inflammatory statements against judges, the Supreme Court of Pennsylvania set forth standards for finding a rule violation in *Office of Disciplinary Counsel v. Neil Werner Price*, 732 A.2d 599 (Pa. 1999). As the Court held therein, Petitioner must initially establish that Respondent made false allegations in a court pleading. The direct, credible testimony of Judge Bachman and Judge Hagan and Mr. Dombrowski, provided sufficient evidence to establish that Respondent's allegations in court pleadings were false. Once Petitioner met its burden of establishing the falsity of the allegations, the burden shifted to Respondent to establish that his "allegations are true or that he had an objective reasonable belief that the allegations were true, based upon a reasonably diligent

inquiry." *Price*, 732 A.2d at 604. A determination of misconduct hinges upon whether Respondent acted knowingly or recklessly, or with the support of a reasonable factual basis. "Knowingly . . . denotes actual knowledge of the fact in question. A person's knowledge may be inferred from circumstances." RPC 1.0(f). Recklessness is shown by the "deliberate closing of one's eyes to the facts that one had a duty to see or stating as fact things of which one was ignorant." *Office of Disciplinary Counsel v. Anonymous Attorney A*, 714 A.2d 402, 407 (Pa. 1998).

The evidence Respondent presented through his two witnesses and documents, failed utterly to establish that the accusations Respondent made were true or that he had an objective, reasonable belief that they were true. Respondent did not testify on his own behalf and did not put any evidence in the record of his subjective belief at the time he made his assertions. The record demonstrates that when the burden shifted to Respondent, he did not carry it.

Relatedly, Respondent's false accusations against Judge Bachman and Judge Hagan and Mr. Dombrowski violated RPC 8.4(c). In *Anonymous Attorney A*, the Court held that the mental culpability required to establish a violation of RPC 8.4(c) is made out upon a showing that a misrepresentation was made knowingly or with reckless ignorance of the truth or falsity thereof. *Anonymous Attorney A*, 714 A.2d at 406. The Court further explicated this standard in *Office of Disciplinary Counsel v. Robert Surrick*, 749 A.2d 441 (Pa. 2000), wherein it held that, similar to the standard set forth in *Price* to establish a violation of RPC 8.2(a), Petitioner may meet its burden of proving RPC 8.4(c) by establishing that an attorney

put forth false allegations, thus shifting the burden to the attorney to show an objective reasonable basis for the allegations, or that they were premised upon a reasonably diligent inquiry. *Surrick*, 749 A.2d at 444. Herein, and as discussed above, Petitioner met its burden to establish that Respondent put forth false allegations; however, Respondent did not meet his burden to show that the allegations were true or that following a reasonably diligent inquiry, he had formed an objective belief that the allegations were true.

Respondent's repeated, false assertions against judges and opposing counsel undermined the integrity of the tribunals, eroded the public's confidence in the courts, and prejudiced the administration of justice, in violation of RPC 8.4(d) . . .

Having concluded that Respondent violated the Rules of Professional Conduct, we turn to the appropriate discipline to address his misconduct. In looking at the general considerations governing the imposition of final discipline, it is well-established that each case must be decided individually on its own unique facts and circumstances. *Office of Disciplinary Counsel v. Robert Lucarini*, 472 A.2d 186 (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*, 472 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). The Board is mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts, and

deter unethical conduct. *Office of Disciplinary Counsel v. Akim Czmus*, 889 A.2d 117 (Pa. 2005).

In recommending an appropriate sanction, the Board must consider the attendant aggravating or mitigating factors. The record before us reveals numerous weighty aggravating factors, which increase the severity of Respondent's conduct.

**Failure to Accept Responsibility and Demonstrate Remorse**

Respondent failed to acknowledge that there was anything wrong with making the allegations of ethical impropriety against Judge Bachman and Judge Hagan and Mr. Dombrowski, and indeed, by his conduct and words at the disciplinary hearing, demonstrated only that he will not be deterred from alleging whatever he thinks is necessary to obtain the relief he desires, even if by doing so he violates the Rules of Professional Conduct. Respondent failed to accept responsibility and failed to demonstrate remorse. It is well-established that a respondent's impenitent attitude constitutes an aggravating factor. *Office of Disciplinary Counsel v. John Kelvin Conner*, No. 29 DB 2018 (D. Bd. Apt. 4/2/2019) (S. Ct. Order 6/20/2019) (citing *Office of Disciplinary Counsel v. Thomas Allen Crawford, Jr.*, 160 DB 2014 (D. Bd. Apt. 9/13/2017) (S. Ct. Order 1 1/4/2017). Respondent refused to acknowledge that his actions were improper and that he committed wrongdoing, and remained unchastened throughout these proceedings.

**Resisting Proper Authority**

Respondent resisted proper authority and attempted to create a perception of a conspiracy against him, and in so doing made repeated false assertions

and cast aspersions against anyone who disagreed or admonished his behavior. During the pendency of this disciplinary matter, he utilized a scorched earth strategy of seeking recusal of anyone he deemed an obstacle to accomplishing what he desired and anyone who opposed him, not unlike his strategy in the matters that underpin this disciplinary proceeding. Respondent sought the recusal/disqualification of Chief Disciplinary Counsel Paul J. Killion, Disciplinary Counsel Michael Gottsch, the Special Master, and various Disciplinary Board members.

Respondent railed against the disciplinary system at every opportunity, and most egregiously, continued his pattern of making false allegations by accusing the Special Master and Office of Disciplinary Counsel of improper conduct and impugning the veracity of the tribunal before which he appeared. *See*, Respondent's Brief on Exceptions at 6, "The Master conducted manifestly biased and prejudicial proceedings including conducting prohibited ex parte proceedings and communications with [Petitioner] over respondent's objections throughout the proceedings . . . " Respondent accused Petitioner of impropriety, asserting that Petitioner engaged in "egregious, continual, intentional prosecutorial misconduct . . ." *Id.* In yet another example of his inflammatory rhetoric, Respondent falsely asserted that "ODC and Cohen specifically admit that Bachman, Dombrowski and Hagan engaged in cumulative ex parte communications involving Bachman, Hagan and Dombrowski. . . ." Respondent's Brief on Exceptions at 32 (emphasis added).

Respondent's conduct for the duration of these proceedings demonstrated a thorough and complete lack of respect for the disciplinary system, disciplinary

counsel, and the Special Master, as characterized by Respondent's arguing incessantly with the Special Master, *see, e.g.*, N.T. IV 324-325; 391-392; N.T. IV 377-379, accusing the Special Master several times during the hearing (often in a raised tone of voice, as noted by the Master in his Report, p. 41) of bias or even extreme or egregious bias against him, *see, e.g.*, N.T. I 316; N.T. III 547-548; N.T. V 31, and accusing Chief Disciplinary Counsel Killion and "anyone" involved in this matter of. obstruction of justice, violation of constitutional rights, and suppression of evidence. Prehearing Conference August 2, 2018, N.T. 7.

**Poor Advocacy**

Respondent exhibited poor advocacy throughout the hearing. He demonstrated a failure to adequately prepare, as he did not have exhibits and copies ready for use and had difficulty finding exhibits. Respondent ignored instructions from the Special Master to concisely state objections, *see e.g.*, N.T. I 45-46; 87; 148-149; 208-209; N.T. II 174-175; 215-216; 276-277. Respondent made representations that the Special Master determined lacked credibility. For example, Respondent mischaracterized witness testimony as part of his objections and questions. *See, e.g.* N.T. II 192; 358; 407-408; N.T. III 524-525; N.T. IV 298-299; 359. Respondent subjected Petitioner's witnesses to extraordinarily lengthy cross-examinations, employing incessant argumentativeness and constantly attempting to interject his own version of facts by his questions regarding matters that were never established as facts. Respondent's pleadings are verbose and confusing, forcing the Special Master and this Board to parse through his prose in order to attempt to understand Respondent's position. For example, in Respondent's

Brief on Exceptions, one single paragraph ran for thirteen pages and was composed of lengthy run-on sentences. *See*, Respondent's Brief on Exceptions at 1-13.

**Misleading Statement**

Respondent procured a misleading statement from a witness, Lana Meehan. Respondent subpoenaed Ms. Meehan to appear at Petitioner's office for a prior proceeding in this matter on October 16, 2017. Following the proceeding, at which Ms. Meehan appeared but was not called to testify, she agreed to go to Attorney McHale's office with Respondent and Attorney McHale. Petitioner was not present at this meeting. Ms. Meehan testified at the disciplinary hearing that Respondent procured a handwritten statement, which she worded at Respondent's request, which statement omitted the fact that Ms. Meehan had left a message on Respondent's answering machine. Through this omission, Respondent procured a statement that was misleading, because it implied that Ms. Meehan had never conveyed the information to Respondent, when in fact she had conveyed the information to him by leaving a message on Respondent's answering machine. Respondent's act in procuring the misleading statement aggravates his misconduct and shows that he was aware that his false assertions against Judge Bachman and Mr. Dombrowski violated the Rules of Professional Conduct.

**Similar Conduct in Third Circuit**

Respondent has been chastised previously by the United States Court of Appeals for the Third Circuit for conduct similar to that with which he is charged in this matter-attributing to his opponent supposed "ad-

missions" that were never made. Specifically, the Third Circuit rebuked Respondent for his continuous misuse of the term "admittedly" "to described what [Respondent] sees as his own appropriate conduct and [others'] missteps, as well as what he asserts are its legal and factual concessions. This style has enhanced our difficulty understanding these confusing matters for [Respondent's opponent] frequently is not admitting what Murphy suggests it admits." ODC-36 at 6 n.4. Despite the Third Circuit's foregoing admonition to Respondent in 2006, Respondent recklessly and falsely alleged, in the *Wilson* matter and in filings with the Commonwealth Court and the Supreme Court, that Judge Bachman and Judge Hagan and Mr. Dombrowski had admitted matters that in fact they had not admitted.

**Federal Lawsuit**

Respondent attempted to derail this disciplinary proceeding by filing suit in federal court in the Eastern District of Pennsylvania, naming as defendants the Disciplinary Board, Chief Disciplinary Counsel Killion, Disciplinary Counsel Gottsch, and other disciplinary officials. ODC-43.

**Mitigating Factor**

Respondent is seventy-five years of age and has practiced law for nearly five decades without incident. It is well-established that a lack of prior discipline may serve to mitigate a respondent's misconduct. *Office of Disciplinary Counsel v. Philip A. Valentino*, 730 A.2d 479, 483 (Pa. 1999). We recognize this mitigating factor, but afford it little weight when considering the totality of the circumstances, due to the serious nature of Respondent's misconduct and the weighty

aggravating factors, which include his pattern of behavior throughout the instant proceedings.

While there is no *per* se discipline in Pennsylvania, *see generally Lucarini*, 472 A.2d at 189-91, our review of Pennsylvania disciplinary cases reveals that suspension from the practice of law is the appropriate sanction where, as here, an attorney's pattern of persistently filing pleadings containing false allegations against jurists and opposing counsel tarnishes the reputation of the courts and the legal profession.

The Court has disciplined attorneys for making false assertions against jurists and others. In the matter of *Office of Disciplinary Counsel v. Eugene Andrew Wrona*, No. 123 DB 2004 (D. Bd. Rpt. 3/31/2006) (S. Ct. Order 6/29/2006), the Court disbarred Wrona, who had no prior history of discipline, for violating RPCs 3.3(a)(1), 8.2(b), 8.4(a), 8.4(c) and 8.4(d). Wrona made false accusations that Lehigh County Common Pleas Judge Alan M. Black altered court audiotapes, that the court monitor "may have perjured herself," and that "Judge Black ha[d] knowledge that her testimony was false and did nothing to correct the record." D. Bd. Apt. at 7. Wrona further asserted that "criminal misconduct is taking place with the knowledge, or at least a conscious 'look the other way,' of officers of the court," and that "Judge Black is aware that the audiotapes do not contain a complete and accurate record of the proceedings." *Id.* In a motion to disqualify Judge Black, Wrona asserted that Judge Black had engaged in "subornation of perjury" and in "criminal misconduct." D. Bd. Rpt. at 8. Wrona's accusations were contained in multiple letters, pleadings, court filings, affidavits and internet postings. All of

his assertions against Judge Black were false. The Board concluded:

> [T]his Respondent is truly unfit to practice law. He exhibited no awareness of his responsibilities and obligations to the court. He was prepared to fight his case in any way possible, including making false and injurious accusations against a judge in a persistent manner through a number of years and to a variety of audiences. This "zealous" representation goes far beyond that contemplated by the ethical rules governing this profession. Respondent has not demonstrated that he possesses the qualities and character necessary to practice law in this Commonwealth. Despite his own opinion of his actions, the record is clear that Respondent did not serve his client well. It is the Board's opinion that the general public is well-served to have Respondent removed from the roll of active attorneys.

*Id.* at 21-22.

In five matters, the Court imposed suspensions for five years on attorneys who made false allegations against jurists. In *Price*, the respondent filed three court documents that contained false allegations against two district justices and an assistant district attorney. Price accused the district justices of conspiracy, "official oppression," "coercion over various law enforcement or political officials," abuse of office, "prosecutorial bias to ingratiate [one District Justice] with disciplinary and other authorities," and sexual harassment of several constituents. The Board found that Price's assertions were either knowingly or recklessly made, and found that Price had violated RPCs

3.1, 3.3(a)(1), 8.2(b), 8.4(c), and 8.4(d)—the same rules at issue in the instant matter. The Board recommended that Price be suspended for a period of one year and one day. Upon review, the Court suspended Price for a period of five years.

The Court noted that Price had presented no evidence establishing a factual basis to support his allegations, and that his "suspicions" did not give rise to an objective, reasonable belief that his allegations were true. *Price*, 732 A.2d at 604. The Court explained why greater discipline than the one year and one day suspension recommended by the Board was warranted:

> In determining the appropriate discipline to be imposed, . . . [w]e note that even at this stage of the proceeding, Respondent denies that he engaged in any wrongdoing and submits that he should not be subject to any form of discipline. This indicates that Respondent has no understanding of the potential damage he may have caused to the victims' reputations and to the functioning of our legal system, which is based upon good faith representations to the court. Moreover, the false accusations against District Justice Farra and District Justice Berkheimer included attacks upon their performance of official duties. Such scandalous accusations erode the public confidence in the judicial system in general and in these District Justices in particular.

*Id.* at 606-607. Notably, three justices dissented for disbarment.

In *Surrick*, the respondent accused Common Pleas Court Judge Harry J. Bradley and Superior Court Judge Peter Paul Olszewski, of wrongdoing. Surrick alleged that Judge Bradley "fixed" a verdict in a civil matter in the Delaware County Court of Common Pleas, and Judge Olszewski issued orders and decisions against the respondent in order to gain favor with the Supreme Court. Both judges emphatically denied Surrick's accusations. Surrick was charged with, *inter alia*, violating RPC 8.4(c). The Court held that the objective, reasonable-lawyer standard set forth in *Price* also applied to violations of RPC 8.4(c), as "a subjective approach would permit lawyers to defend the most wanton and scurrilous attacks upon innocent third parties by stating that they personally believed it was true." *Surrick*, 749 A.2d at 445. The Court rejected the Board's recommendation of a public censure because "[a]lthough we have concluded that respondent acted recklessly rather than intentionally in this matter, the impact upon Judge Bradley, Judge Olszewski and the judicial system as a whole is the same." *Id.* at 449. In determining that Surrick be suspended for five years, the Court adopted a rationale that applies with equal force here:

> An accusation of judicial impropriety is not a matter to be taken frivolously. An attorney bringing such an accusation has an obligation to obtain some minimal factual support before leveling charges that carry explosive repercussions. When an attorney makes an accusation of judicial impropriety without first undertaking a reasonable investigation of the truth of that accusation, he injures the public, which depends upon the unbiased

> integrity of the judiciary, the profession itself, whose coin of the realm is their ability to rely upon the honesty of each other in their daily endeavors, and the courts, who must retain the respect of the public and the profession in order to function as the arbiter of justice. "Truth is the cornerstone of the judicial system; a license to practice law requires allegiance and fidelity to the truth." When a lawyer holds the truth to be of so little value that it can be recklessly disregarded when his temper and personal paranoia dictate, that lawyer should not be permitted to represent the public before the courts of this Commonwealth.

*Id.* (citations omitted).[5]

In *Office of Disciplinary Counsel v. Donald A. Bailey*, No. 11 DB 2011 (D. Bd. Rpt. 5/1/2013) (S. Ct. Order 10/2/2013), the Court imposed a five-year suspension on Bailey for professional misconduct arising

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[5] *See also Office of Disciplinary Counsel v. Joseph R. Reisinger*, No. 44 DB 2015 (D. Bd. Rpt. 8/15/2016) (S. Ct. Order 3/31/2017) (Respondent disbarred for, *inter alia*, alleging that two judges intentionally conspired with Respondent's opposing parties, alleging that "Judge Brown is obviously not fit to continue to serve as a jurist in any courtroom in this Commonwealth," initiating a lawsuit against Judge Michael T. Vough titled "Complaint for Permanent Injunction Because of Judicial Corruption and Commission of Criminal Acts," and alleging in the complaint that Judge Vough's decisions in Respondent's matters had no legal basis and therefore constituted "criminal" acts. The Board determined that Respondent had violated RPCs 8.2(b), 8.4(c) and 8.4(d) when he "repeatedly and consistently misstated and misrepresented the actions of jurists and court personnel as improper, unwarranted and illegal." D. Bd. Apt. at 23).

from a series of false allegations against members of the federal judiciary in a motion for rehearing *en banc*.

The Board noted:

> Respondent attempted to create the perception of a far-ranging judicial conspiracy based on his subjective interpretation of events. As the Hearing Committee aptly noted, "We are led to conclude that it is Respondent who has in fact 'personalized' these outcomes and has chosen to vilify those jurists who find against him or admonish his failure to abide by rules governing advocacy." (Hearing Report, p. 44-45). Further, "The evidence reveals not a conspiracy against Respondent, but an aggressive resistance on Respondent's part to accept the proper authority of the court and to cast aspersions on anyone in a position of authority who disagrees or admonishes his behavior."[1]. . . .
>
> [1] As documented in the Hearing Committee Report, the record of this disciplinary proceeding reflects a similar course of behavior by Respondent in response to rulings made by the Hearing Committee Chair and Board Chair.
>
> [ * * * ]
>
> The Board recognizes that the guiding principles of our disciplinary system are protection of the public from attorneys who are unfit or unable to represent clients within the bounds of ethical conduct; and to preserve public respect for our judiciary by protecting it from unwarranted and inappropriate

> attacks. Should Respondent ever seek to practice law again in the future he would be required to prove his fitness to do so by clear and convincing evidence. As such, the recommended sanction would carry out the goals of both protecting the public by removing Respondent from the practice of law, and signaling the profession's intolerance for unwarranted and baseless assaults on the judiciary.

D. Bd. Apt. at 15, 18.

In *Office of Disciplinary Counsel v. William Z. Warren*, No. 151 DB 2007 (D. Bd. Apt. 8/1 5/2008) (S. Ct. Order 2/2/2009), the Court suspended Warren for five years for falsely accusing a judge of unethical conduct and criminal activity in a motion to recuse and repeating the assertions on appeal to the Superior Court. Warren asserted that the judge's judicial opinion constituted an admission that the judge had violated the defendant's constitutional rights.

In *Office of Disciplinary Counsel v. Daniel C. Barrish*, No. 130 DB 2004 (D. Bd. Apt. 12/6/2005) (S. Ct. Order 3/15/2006), the Court suspended Barrish for five years for making false allegations against two judges in pleadings to the Supreme Court and in an article published over the internet. Barrish accused the judges of case fixing, dishonesty, filing false case reporting forms, filing false financial records, and taking bribes. The Board noted that Barrish showed no remorse and continued to make accusations against the judges at his disciplinary hearing. The Board found that Respondent did not recognize "the deleterious effects on the legal system of making unfounded accusations against judicial officers." D. Bd. Apt. p. 20.

The Court imposed lesser discipline in *Office of Disciplinary Counsel v. Dora R. Garcia a/k/a Dora R. Palmieri*, No. 182 DB 2006 (S. Ct. Order 10/25/2007) (consent discipline). Therein, Garcia received a fifteen-month suspension on consent for making false accusations about the integrity and qualifications of five judges, including a workers' compensation judge. Garcia had no record of discipline and admitted that "her conduct represented a serious departure from what is acceptable and what will be tolerated by the bench and Bar of the Commonwealth." (Joint Petition for Consent Discipline, ¶ 77) *Garcia* is readily distinguishable from Respondent Murphy's matter because Garcia "admit[ed] and fully appreciate[d] the seriousness of her past conduct." *Id.* ¶ 75.[6]

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[6] Examples of cases involving false accusations against judges that did not result in a suspension are *Office of Disciplinary Counsel v. David Foster Gould, III*, No. 160 DB 2016 (D. Bd. Opinion 6/24/2018) (public reprimand imposed tor attorney's violation of RPC 8.2(a); respondent accused a Common Pleas Court judge of being "biased" and pre-disposed to rule in favor of the opposing party because the opposing party was a municipal authority; the litigation in question involved respondent's personal matter, wherein he lost his objectivity and professionalism); *Office of Disciplinary Counsel v. Gregory Gerard Stagliano*, No. 66 DB 2011 (D. Bd. Order 7/27/2012) (public reprimand imposed on respondent for an outburst at a hearing where he lost his temper and made false allegations against two Court of Common Pleas Judges; respondent consented to the discipline, admitted that his allegations were made recklessly and lacked evidentiary support, and expressed regret and remorse for his allegations against the judges); *Office of Disciplinary Counsel v. Robert Alton Wilson*, No. 150 DB 2007 (D. Bd. Rpt. 10/22/2008) (S. Ct. Order 2/2/2009) (The respondent received a public censure for filing a reply brief in which he falsely alleged that a judge's decision was politically motivated; respondent had previously received a private reprimand; respondent admitted during his testimony at his disciplinary

The decisional law establishes a baseline of a lengthy suspension to address Respondent's egregious misconduct. Upon this record, we recommend that Respondent be suspended for five years, in line with the discipline imposed in *Price*, *Surrick*, *Bailey*, *Warren,* and *Barrish*. Of the matters discussed above, *Wrona* is the only case that resulted in disbarment; the Board therein noted that Wrona's misconduct involved the "very first court case handled on [Wrona's] own" and further noted that Wrona had no "steady, competent legal work to help mitigate the severity of his misconduct" and was "truly unfit" to practice law. *Wrona* D. Bd. Apt. at 21. While there is no doubt that Respondent's conduct renders him unfit to practice law, the weight of the case law goes against disbarment.

A suspension for five years is appropriate, as the public interest warrants removing Respondent from active practice because he has been unwilling to conform his conduct to the Rules of Professional Conduct. Respondent has exhibited an extreme degree of unprofessionalism and neither appreciates nor apparently is concerned with, the impact of his conduct on the profession. Respondent exhibited no awareness of the potential damage he may have inflicted on the reputations of those he accused of improprieties, and on the legal system itself. Respondent has persistently and consistently abused the tribunals before which he appeared and displayed a conspicuous lack of remorse for his behavior.

## V. Recommendation

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hearing that he should not have used the language he used and stated that he did not intend to malign the judge).

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Robert J. Murphy, be Suspended for a period of five 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,

DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: /s/ John F. Cordisco
Member

Date: 9/3/19
Board Chair Trevelise recused

# RELEVANT CONSTITUTIONAL PROVISIONS, STATUTES AND JUDICIAL RULES

## CONSTITUTIONAL PROVISIONS

### U.S. Const. amend. I

**Religious and political freedom.**

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

### U.S. Const. amend. V

**Criminal Actions—Provisions Concerning—Due Process of Law and Just Compensation Clauses.**

"No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a grand jury, except in cases arising in the land or naval forces, or in the militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

### U.S. Const. amend. VI

In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an

impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

**U.S. Const. amend. XIV, § 1**

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

## STATUTORY PROVISIONS

**34 PA. Code § 131.24—Recusal of Judge**

(a) The judge may recuse himself on the judge's own motion.

(b) A party may file a motion for recusal, which shall be addressed to the judge to whom the proceeding has been assigned. The judge will conduct an evidentiary hearing and issue a decision within 15 days following receipt of the evidentiary hearing transcript and post-hearing submissions of the parties. The decision will be interlocutory, unless the judge certifies the record for immediate appeal to the Board.

**77 P.S. § 2504—Code of Ethics; Removal of Workers' Compensation Judges**

(a) A workers' compensation judge shall conform to the following code of ethics:

(1) Avoid impropriety and the appearance of impropriety in all activities.

(2) Perform duties impartially and diligently.

(3) Avoid ex parte communications in any contested, on-the-record matter pending before the department.

(4) Abstain from expressing publicly, except in administrative disposition or adjudication, personal views on the merits of an adjudication pending before the department and require similar abstention on the part of department personnel subject to the workers' compensation judge's direction and control.

(5) Require staff and personnel subject to the workers' compensation judge's direction and control to observe the standards of fidelity and diligence that apply to a workers' compensation judge.

(6) Initiate appropriate disciplinary measures against department personnel subject to the workers' compensation judge's direction and control for unethical conduct.

(7) Disqualify himself from proceedings in which impartiality may be reasonably questioned.

(8) Keep informed about the personal and fiduciary interests of himself and his immediate family.

(9) Regulate outside activities to minimize the risk of conflict with official duties. A workers' compensation judge may speak, write or lecture, and reimbursed expenses, honorariums, royalties or other money received in connection therewith shall be disclosed annually. A disclosure statement shall be filed with the secretary and the State Ethics Commission and shall be open to inspection by the public during the normal business hours of the department and the commission during the tenure of the workers' compensation judge.

(10) Refrain from direct or indirect solicitation of funds for political, educational, religious, charitable, fraternal or civic purposes: Provided, however, that a workers' compensation judge may be an officer, a director or a trustee of such organizations.

(11) Refrain from financial or business dealings which would tend to reflect adversely on impartiality. A workers' compensation judge may hold and manage investments which are not incompatible with the duties of office.

(12) Conform to additional requirements as the secretary may prescribe.

(13) Uphold the integrity and independence of the workers' compensation system.

(b) Any workers' compensation judge who violates the provisions of clause (a) shall be removed from office in accordance with the provisions of the act of August 5, 1941 (P.L. 752, No. 286), known as the "Civil Service Act."

## JUDICIAL RULES

### 2010 Pennsylvania Judicial Canon 3

(a)(4) Judges should accord to all persons who are legally interested in a proceeding, or their lawyers, full right to be heard according to law, and, except as authorized by law, must not consider ex parte communications concerning a pending proceeding.

### Pennsylvania Disciplinary Board Rules and Procedures § 85.10. Stale Matters

(a) *General rule.* The 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, except as provided in subsection (b).

(b) *Exceptions.*

(1) The four year limitation in subsection (a) shall not apply in cases involving theft or misappropriation, conviction of a crime or a knowing act of concealment.

### 2014 Pa. Code of Judicial Conduct

### 42 Pa. C.S.A. Code of Judicial Conduct; 44 Pa. Bull. 455 Vol. 44 Number 4 Jan. 25, 2014

And now, this 8th day of January 2014, it is ordered pursuant to Article V, Section 10 of the Constitution of Pennsylvania that the existing provisions of the **Code of Judicial Conduct** are rescinded effective July 1, 2014, and new Canons 1 through 4 of

the **Code of Judicial Conduct** of 2014 and the corresponding rules are adopted in the following form . . . This order shall be processed in accordance with Pa.R.J.A. 103(b), and the **Code of Judicial Conduct** of 2014 shall be effective on July 1, 2014. A person to whom the **Code of Judicial Conduct** of 2014 becomes applicable shall comply with all provisions of that Code by July 1, 2014 except for Rules 3.4, 3.7, 3.8 and 3.11; such persons shall comply with Rules 3.4, 3.7, 3.8 and 3.11 as soon as reasonably possible and shall do so in any event by July 1, 2015.

**Application**

1. the provisions of this Code shall apply to all judges as defined in paragraph 2 *infra*.

2. A judge within the meaning of this Code is any one of the following judicial officers who perform judicial functions, whether or not a lawyer: all Supreme Court Justices; all Superior Court Judges; all Commonwealth Court Judges; all Common Pleas Court Judges; all judges of the Philadelphia Municipal Court, except for Traffic Division; and all senior judges as set forth in 3 *infra*.

3. All senior judges, active or eligible for recall to judicial service, shall comply with the provisions of this Code; provided however, a senior judge may accept extra-judicial appointments which are otherwise prohibited by Rule 3.4 (Appointments to Governmental Positions and Other Organizations); and incident to such appointments a senior judge is not required to comply with Rule 3.2 (Appearances Before Governmental Bodies and Consultation with Government Officials). However, during the period of such extra-

judicial appointment the senior judge shall refrain from judicial service.

4. Canon 4 (governing political and campaign activities) applies to all judicial candidates.

5. This Code shall not apply to magisterial district judges and judges of the Philadelphia Municipal Court, Traffic Division.

**Pa. Code Judicial Conduct 2.9**

***Ex Parte* Communications**

(A) A judge shall not initiate, permit, or consider ex parte communications, or consider other communications made to the judge outside the presence of the parties or their lawyers, concerning a pending or Impending matter, except as follows:

(1) When circumstances require it, *ex parte* communication for scheduling, administrative, or emergency purposes, which does not address substantive matters, is permitted, provided:

(a) the judge reasonably believes that no party will gain a procedural, substantive, or tactical advantage as a result of the ex parte communication; and

(b) the judge makes provision promptly to notify all other parties of the substance of the ex parte communication, and gives the parties an opportunity to respond.

**Pa. RPC 3.1—**
**Meritorious Claims and Contentions**

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.

EXPLANATORY COMMENT

1 The advocate has a duty to use legal procedure for the fullest benefit of the client's cause, but also a duty not to abuse legal procedure. The law, both procedural and substantive, establishes the limits within which an advocate may proceed. However, the law is not always clear and never is static. Accordingly, in determining the proper scope of advocacy, account must be taken of the law's ambiguities and potential for change.

2 The filing of an action or defense or similar action taken for a client is not frivolous merely because the facts have not first been fully substantiated or because the lawyer expects to develop vital evidence only by discovery.

**Pa. RPC 3.3—Candor Toward the Tribunal**

(a) A lawyer shall not knowingly:

(1) 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;

(2) fail to disclose to the tribunal legal authority in the controlling jurisdiction known to the

lawyer to be directly adverse to the position of the client and not disclosed by opposing counsel; or

(3) 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. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false.

(b) A lawyer who represents a client in an adjudicative proceeding and who knows that a person intends to engage, is engaging or has engaged in criminal or fraudulent conduct related to the proceeding shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal.

(c) The duties stated in paragraphs (a) and (b) continue to the conclusion of the proceeding, and apply even if compliance requires disclosure of information otherwise protected by Rule 1.6.

(d) In an ex parte proceeding, a lawyer shall inform the tribunal of all material facts known to the lawyer that will enable the tribunal to make an informed decision, whether or not the facts are adverse.

EXPLANATORY COMMENT

1 This Rule governs the conduct of a lawyer who is representing a client in the proceedings of a tribunal. *See* Rule 1.0(m) for the definition of "tribunal." It also applies when the lawyer is representing a client in an ancillary proceeding conducted pursuant to the tribunal's adjudicative authority, such as a deposition. Thus, for example, paragraph (a)(3) requires a lawyer to take reasonable remedial measures if the lawyer comes to know that a client who is testifying in a deposition has offered evidence that is false.

2. This Rule sets forth the special duties of lawyers as officers of the court to avoid conduct that undermines the integrity of the adjudicative process. A lawyer acting as an advocate in an adjudicative proceeding has an obligation to present the client's case with persuasive force. Performance of that duty while maintaining confidences of the client, however, is qualified by the advocate's duty of candor to the tribunal. Consequently, although a lawyer in an adversary proceeding is not required to present an impartial exposition of the law or to vouch for the evidence submitted in a cause, the lawyer must not allow the tribunal to be misled by false statements of law or fact or evidence that the lawyer knows to be false.

REPRESENTATIONS BY A LAWYER

3. An advocate is responsible for pleadings and other documents prepared for litigation, but is usually not required to have personal knowledge of matters asserted therein, for litigation documents ordinarily present assertions by the client, or by someone on the client's behalf, and not assertions by the lawyer. Compare Rule 3.1. However, an assertion purporting

to be on the lawyer's own knowledge, as in an affidavit by the lawyer or in a statement in open court, may properly be made only when the lawyer knows the assertion is true or believes it to be true on the basis of a reasonably diligent inquiry. There are circumstances where failure to make a disclosure is the equivalent of an affirmative misrepresentation. . . .

**Pa. RPC 8.2—Statements Concerning Judges and Other Adjudicatory Officers**

(a) A lawyer shall not make a statement that the lawyer knows to be false or with reckless disregard as to its truth or falsity concerning the qualifications or integrity of a judge, adjudicatory officer or public legal officer, or of a candidate for election or appointment to judicial or legal office.

(b) A lawyer who is a candidate for judicial office shall comply with the applicable provisions of the Code of Judicial Conduct and/or the Rules Governing Standards of Conduct for Magisterial District Judges, as applicable.

EXPLANATORY COMMENT

1. Assessments by lawyers are relied on in evaluating the professional or personal fitness of persons being considered for election or appointment to judicial office and to public legal offices, such as attorney general, prosecuting attorney and public defender. Expressing honest and candid opinions on such matters contributes to improving the administration of . . .

**Pa. RPC 8.4—Misconduct**

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law; or

(f) knowingly assist a judge or judicial officer in conduct that is a violation of applicable rules of judicial conduct or other law.

**3rd Cir. LAR, App. II, Rule 1, 28 U.S.C.A.**

**Rule 1. Definitions**

**Currentness**

1. "The Court" means the United States Court of Appeals for the Third Circuit.

2. "Another Court" means any court of the United States, the District of Columbia, or any state, territory, or commonwealth of the United States.

3. "Serious Crime" includes all felonies as well as any lesser crime involving false swearing, misrepre-

sentation, fraud, willful failure to file income tax returns, deceit, bribery, extortion, misappropriation, theft, or an attempt or a conspiracy or solicitation of another to commit such a lesser crime.

4. "Standing Committee" means this Court's Standing Committee on Attorney Discipline.

5. "Reciprocal Discipline" means discipline imposed as a result of another court's suspension or disbarment of an attorney.

**3rd Cir. LAR, App. II, Rule 2, 28 U.S.C.A.**

**Rule 2. Grounds for Discipline**

**Currentness**

1. A member of the bar of this Court may be disciplined by this Court as a result of the following misconduct:

   (a) conviction in another court of a serious crime;

   (b) discipline, including disbarment or suspension, by another court, whether or not with the attorney's consent, or the resignation from the bar of another court while an investigation into allegations of misconduct is pending;

   (c) conduct with respect to this Court which violates the Federal Rules of Appellate Procedure, the Rules or Internal Operating Procedures of this Court, or orders or other instructions of the Court;

   (d) conduct that violates the Rules of conduct of any court of the United States, the District

of Columbia, or any state, territory, or commonwealth of the United States to which the respondent is subject; or

(e) any other conduct unbecoming a member of the bar of this Court.

2. Administrative suspension or its equivalent by another court, including, but not limited to, suspension for failure to pay annual fees or to complete continuing legal education requirements, is not grounds for disciplinary action or similar administrative action in this Court, but may be grounds for marking an attorney inactive on the rolls of this Court.

**3rd Cir. LAR, App. II, Rule 3, 28 U.S.C.A.**

**Rule 3. Disciplinary Sanctions; Assessments Under 28 U.S.C. § 1927 and Fed. R. App. P. 38**

**Currentness**

1. Discipline may consist of disbarment, suspension from practice before this Court, monetary sanction, removal from the roster of attorneys eligible for appointment as Court-appointed counsel, reprimand, or any other sanction that the Court or a panel thereof may deem appropriate.

2. Disbarment is the presumed discipline for conviction of a serious crime. Disbarment is also the presumed discipline when an attorney has resigned from the bar of another court while an investigation into allegations of misconduct is pending.

3. Except as provided in Rule 2.2, the identical discipline imposed by another court is presumed appropriate for discipline imposed by this Court

as a result of that other court's suspension or disbarment of an attorney.

4. A monetary sanction imposed on disciplinary grounds is the personal responsibility of the attorney disciplined, and may not be reimbursed by a client directly or indirectly. Notice to that effect will be sent to the client by the Clerk whenever a monetary sanction is imposed.

5. Assessments of damages, costs, expenses, or attorneys' fees under 28 U.S.C. § 1927 or Fed. R. App. P.38 are not disciplinary sanctions within the meaning of these Rules such that proceedings with respect thereto are not governed by these Rules unless the panel gives notice under Rule 4.

**3rd Cir. LAR, App. II, Rule 6, 28 U.S.C.A.**

**Rule 6. Initiation of Disciplinary Proceedings**

**Currentness**

**1. Reciprocal Discipline.**

When an active member of the bar of this Court is suspended or disbarred by another court for misconduct, or has resigned from the bar of another court during the pendency of a misconduct investigation, the Clerk of this Court will issue an order for the attorney to show cause why this Court should not impose upon the attorney an order disbarring or suspending the attorney, as the case may be, subject to terms or conditions comparable to those set forth by the other court. This provision requiring the Clerk to issue an order to show cause, however, does not apply in circumstances in which this Court already has

initiated disciplinary proceedings against the attorney for the same conduct underlying the suspension, disbarment, or resignation in the other court either as an original disciplinary proceeding in this Court or as a reciprocal proceeding to a proceeding in another court.

**2. Original Discipline.**

(a) Upon receipt of a certified copy of a judgment or other court record demonstrating that a member, whether active or inactive, of the bar of this Court has been convicted of a serious crime, unless a proceeding has been instituted as provided in Rule 6.1, the Clerk will issue an order to show cause why the Court should not impose upon the attorney the presumed discipline described in Rule 3.2.

(b) When the Standing Committee determines that cause may exist for the suspension or disbarment of an attorney pursuant to Rule 2, one of its members or the Clerk will issue an order to show cause why such discipline should not be imposed by this Court.

3. When a disciplinary proceeding is already pending in this Court, upon notification of a separate basis for discipline, the Clerk of this Court rather than issuing an order to show cause will refer the matter to the Standing Committee for it to take such action, if any, as it deems appropriate, including the initiation of another disciplinary proceeding in this Court by a direction to the Clerk to issue an order to the attorney to show cause

why this Court should not impose discipline on the attorney.

4. The Clerk will send an order to show cause issued pursuant to this Rule by email and certified mail or the equivalent to the attorney's address on file with the Clerk's Office. In reciprocal discipline cases, the Clerk will include a copy of the order of the other court on which the order to show cause is based. The mailing of an order to the attorney's address on file is deemed proper service.

5. An order to show cause issued pursuant to this Rule will require the attorney to respond within 30 days. The Clerk, however, may shorten the response period if the Clerk deems it advisable to do so by reason of the urgency of the disposition of the matter involving the attorney or if the Standing Committee or its Chair directs the Clerk to do so. The Chair of the Committee or the Clerk may for good cause shown grant a written request for an extension of time received within 25 days of the date of the show cause order.

6. An order to show cause issued pursuant to this Rule will provide that the attorney, upon receipt of the order, must serve forthwith by mail or otherwise a copy of the order to show cause and a copy of the order of the other court on which it is based to any litigant for whom the attorney has entered an appearance in any matter pending in this Court. If an attorney later enters an appearance in this Court on behalf of a litigant during the pendency of a disciplinary action, the attorney must provide a copy of the order to show cause to the litigant.

7. Once an order to show cause has been issued pursuant to paragraph (1), (2) or (3) of this Rule, the Standing Committee may decline to accept a resignation, or a request to assume inactive status, from the lawyer and continue the proceeding in accordance with these Rules.

**3rd Cir. LAR, App. II, Rule 8, 28 U.S.C.A.**

**Rule 8. Response to an Order to Show Cause**

**Currentness**

1. Any response to an order to show cause issued under Rule 6 must be filed within 30 days of the date of the order. The response may:

   (a) object to the entry of an order in this Court imposing the same discipline as imposed in the other court on the grounds that the attorney has been misidentified;

   (b) object to the entry of an order in this Court imposing the same discipline as imposed in the other court on the grounds that the discipline imposed by the other court is administrative in nature;

   (c) contest the imposition of the same discipline as imposed in the other court on the grounds: that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject; or that the

imposition of the same discipline by this Court would result in grave injustice;

(d) present evidence in mitigation with respect to the discipline imposed by the other court; or

(e) contest the imposition of original discipline by this Court.

2. An attorney responding to an order to show cause must include a certification that the attorney has complied with the requirement in Rule 6.6 that he or she serve a copy of the order to show cause and a copy of the order of the other court on which it is based to any litigant for whom the attorney has entered an appearance in any matter pending in this Court. This certification must include a list of all the litigants so notified and their addresses. An attorney must file an amended list if he or she enters an appearance during the pendency of a disciplinary action.

**3rd Cir. LAR, App. II, Rule 10, 28 U.S.C.A.**

**Rule 10. Contested Proceedings**

**Currentness**

1. If the response to an order to show cause contests the imposition of discipline in this Court, the matter will be treated as a contested proceeding unless the response does not contest the entry of an order in this Court imposing the same discipline as imposed in the other court, in which event the matter is treated as an uncontested proceeding under Rule 9.

2. In a proceeding under Rule 6.1 (reciprocal discipline) the Standing Committee may grant an attorney's timely request to be heard in person in defense or in mitigation. To be timely, a request for a hearing must be made in a timely filed response to an order to show cause. Generally, a hearing is not necessary if the ground for objection is misidentification or if the discipline imposed by the other court is administrative in nature.

3. Except for discipline imposed because of a criminal conviction, a hearing will be held in proceedings under Rule 6.2 (original discipline) if requested in the answer to the order to show cause.

4. The attorney will be given at least 30 days notice of the time, date, and place of the hearing. Prior to the hearing, the attorney will be afforded the opportunity to inspect any documents which the Standing Committee has obtained in its investigation that are relevant to the imposition of the proposed discipline. A member of the bar of this Court to whom an order to show cause is issued pursuant to Rule 6 has the right to have counsel at all stages of the proceeding.

5. The Standing Committee may compel by subpoena the attendance of witnesses, including the attorney whose conduct is the subject of the proceeding, and the production of pertinent documents. If a hearing is held, the Standing Committee will compel by subpoena the attendance of any witness and the production of any document reasonably designated by the attorney as relevant to his or her defense.

6. At the hearing, the Standing Committee will enter upon the record the order to show cause, the response, and such evidence as it considers relevant to the issues posed for resolution. The attorney will be afforded the opportunity to cross-examine any witnesses called by the Standing Committee and to introduce evidence in defense or mitigation. The hearing will be transcribed.

7. The Standing Committee may take judicial notice of the record developed in disciplinary or criminal proceedings held by another court on a similar matter.

8. A certified copy of a judgment of conviction of any crime is conclusive evidence of the commission of that crime in any disciplinary proceeding instituted against an attorney based upon the conviction. If the conviction is subsequently reversed or vacated, any discipline imposed on the basis thereof will be promptly reviewed by the Standing Committee and the Court upon submission of a certified copy of the relevant mandate.

9. A certified copy of a judgment or order demonstrating that a member of the bar of this Court has been disbarred or suspended by another court is accepted as establishing that the conduct for which the discipline was imposed in fact occurred and that the discipline imposed was appropriate, unless it appears:[1]

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[1] Standards set forth in *Selling v. Radford*, 243 U.S. 46,51 (1917).

(a) that the procedure was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process;

(b) that there was such an infirmity of proof establishing the misconduct as to give rise to the clear conviction that this Court could not, consistent with its duty, accept as final the conclusion on that subject;

(c) that the imposition of the same discipline by this Court would result in grave injustice; or

(d) that the misconduct established is deemed by this Court to warrant substantially different discipline.

**3rd Cir. LAR, App. II, Rule 11, 28 U.S.C.A.**

**Rule 11. Disposition**

**Currentness**

1. If an attorney's response to an order to show cause does not specifically request to be heard in person, the Standing Committee will prepare a record consisting of the order to show cause, the response, the relevant documents, and a summary of the other relevant information obtained by the Standing Committee in its investigation. If the record so prepared contains any information not reflected in the order to show cause and the response, the attorney will be afforded the opportunity to inspect the record and to file an additional response within 10 days of the date of the notice of his or her opportunity to inspect.

2. If the Chair or the Clerk determines that the attorney has been misidentified, the case will be

closed. If the Standing Committee determines that the discipline imposed by the other court is the equivalent of an administrative action such that no reciprocal discipline should be imposed or that reciprocal discipline is not appropriate, the Committee may in its discretion proceed as in part 3 of this Rule or direct the Clerk to close the case.

3. Based on the record created pursuant to Rule 10.6 or Rule 11.1, the Standing Committee will prepare a Report and Recommendation setting forth its findings of fact and recommending whether, and if so what, discipline should be imposed. A copy of the Report and Recommendation will be promptly sent to the attorney who will be afforded the opportunity to file exceptions within 21 days. The Report and Recommendation, any exceptions thereto, and the record will be submitted to the active members of the Court who will make a final decision by a majority vote based solely on those documents.

Additional material from this filing is available in the Clerk's Office.