



The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

Disciplinary Board Procedural Update

2025

Role of the Supreme Court

- Exclusive jurisdiction over the Board
- Appoints ten lawyer and two non-lawyer members to the Board
- Designates Chair and Vice-Chair
- Issues Orders in consideration of Board recommendations and reports
- Amends PA Rules

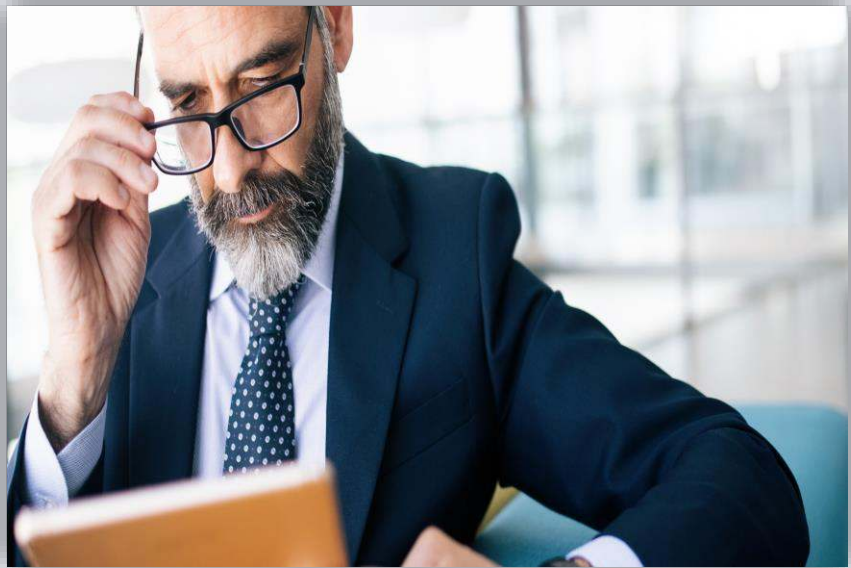


Role of the Disciplinary Board



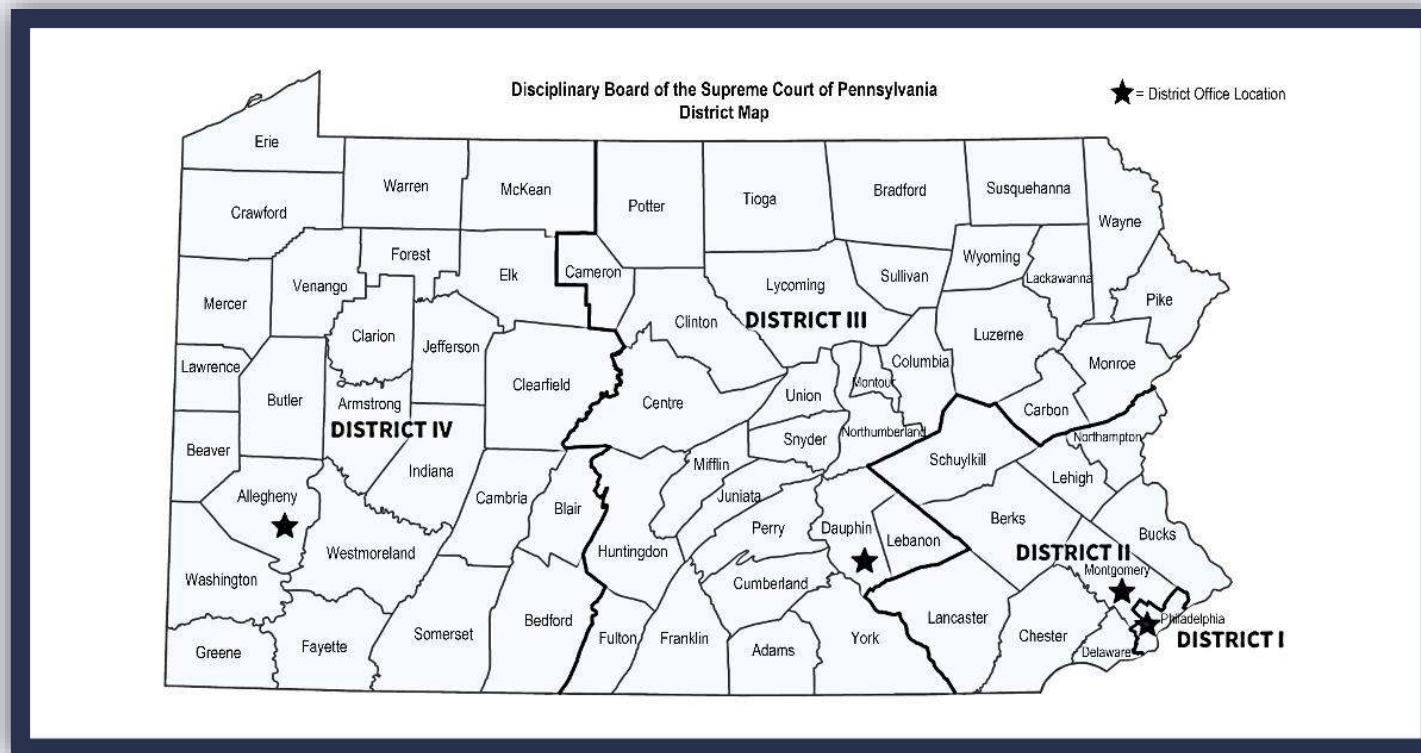
- Ten lawyer Members
- Two nonlawyer Members
- Appointed by the Supreme Court to six-year terms
- Court appoints a Chair and Vice-Chair
- Adjudicate discipline & reinstatement cases
- Oversee Executive Office & ODC

Other Board Duties



- Review matters as three-member panels or as single members
 - Joint petition for consent discipline
 - Form DB-3
 - Probation violation hearing
 - Emergency temporary suspension hearing
 - Petition to dissolve temporary suspension

ODC Districts & Offices




Disciplinary Counsels-in-Charge:

- Ramona M. Mariani, DI
- Harold E. Ciampoli, Jr., DII
- Krista K. Beatty, DIII
- James M. Fox, DIV
- Jana M. Palko, Intake
- Anthony P. Sodroski, Special Projects

Role of the Office of Disciplinary Counsel

- Investigate alleged misconduct
- Dispose of all matters
 - Letters of Concern/Education
 - Dismissals for Prosecutorial Discretion
- Prosecute disciplinary proceedings
- Participate in reinstatement hearings
- Petition for review or allowance of appeal

Form Online DB-2
Rev. 04/2024

 **The DISCIPLINARY BOARD**
of the Supreme Court of Pennsylvania

COMPLAINT FORM
PLEASE TYPE OR PRINT ALL RESPONSES

Date: ____/____/____

YOUR CONTACT INFORMATION:

Mr./Mrs./Dr. _____
Name: Ms./Miss/Hon. First: _____ MI: _____ Last: _____ Suffix: _____
Address: Street: _____ City: _____ State: _____ ZIP: _____
Telephone: (____) _____ - _____ Email: _____

Are you an attorney or formerly admitted attorney? YES NO
If YES, in what jurisdiction(s)? _____ Bar Number(s): _____

Are you a judge? YES NO
If YES, of which court and where? _____

ATTORNEY COMPLAINED OF:

Name: First: _____ MI: _____ Last: _____ Suffix: _____
Name of Office/Firm (e.g., the name of the private law firm, business or other entity, Public Defender's Office, District Attorney's Office, or other government office): _____
Office Address: Street: _____ City: _____ State: _____ ZIP: _____
County: _____ Telephone: (____) _____ - _____

LEGAL MATTER:
TYPE OF CASE(S) (check all that apply):

<input type="checkbox"/> Bankruptcy	<input type="checkbox"/> Juvenile (Dependency/Delinquency)	<input type="checkbox"/> Real Estate
<input type="checkbox"/> Corporation/Partnership Law	<input type="checkbox"/> Criminal	<input type="checkbox"/> Family (Divorce/Support/Custody)
<input type="checkbox"/> Estate/Probate/Trusts	<input type="checkbox"/> Social Security	<input type="checkbox"/> Immigration/Naturalization
<input type="checkbox"/> Employment Law	<input type="checkbox"/> Landlord/Tenant	<input type="checkbox"/> Personal Injury
<input type="checkbox"/> Adoption	<input type="checkbox"/> Workers' Compensation	<input type="checkbox"/> Other (specify) _____

Form DB-3

- Complaint is referred to reviewing Hearing Committee Member who submits the decision to ODC within ten days.
- Matter details are found in the form and supporting documents.

Form DB-3
rev. 6/17/12

CONFIDENTIAL

The Disciplinary Board of the Supreme Court of Pennsylvania

REFERRAL OF COMPLAINT TO REVIEWING MEMBER OF HEARING COMMITTEE

ASSIGNMENT TO REVIEWING AUTHORITY

1. TO:

Recommendations Made in Form DB-3

Form DB-3
Analysis and Recommendation

CONFIDENTIAL

- RECOMMENDATION OF DISCIPLINARY COUNSEL -

13. I RECOMMEND THE FOLLOWING DISPOSITION BE MADE OF THIS COMPLAINT:

DISMISS (no violation)

DISMISS WITH EDUCATIONAL LETTER (no violations, precautionary advice indicated)

DISMISS WITH LETTER OF CONCERN (de minimis violation(s) found, or violation(s) found but prosecution or discipline of record not recommended)

INFORMAL ADMONITION

WITH CONDITION(S)

PRIVATE REPRIMAND PUBLIC REPRIMAND

WITH CONDITION(S) WITH CONDITION(S)

WITH PROBATION WITH PROBATION

INITIATE FORMAL CHARGES

REASONS OR COMMENTS: (Note: Specific Rules of Professional Conduct found violated, if any, shall be listed with reasons for such finding; if probation is recommended, specify length, type and conditions. If prior discipline is noted in Section 11 above, discuss the impact, if any, such prior discipline has on your recommendation for the disposition of this matter.)

- Dismissal
- Dismissal with educational letter
- Dismissal with letter of concern
- Informal admonition with or without conditions
- Private or public reprimand with or without conditions and/or probation
- Formal charges

The Form DB-3

CIC and CDC must approve, followed by review of a single HCM.

Ex parte - No respondent review or response

Reviewing HCM may disagree (e.g., increase sanction, decrease, or dismiss).

DC may file an administrative appeal to a Board panel via Form DB-8.

Informal admonition review ends here.
Reprimands are reviewed by three Board Members.
Suspensions/disbarments: P for D and hearing process.

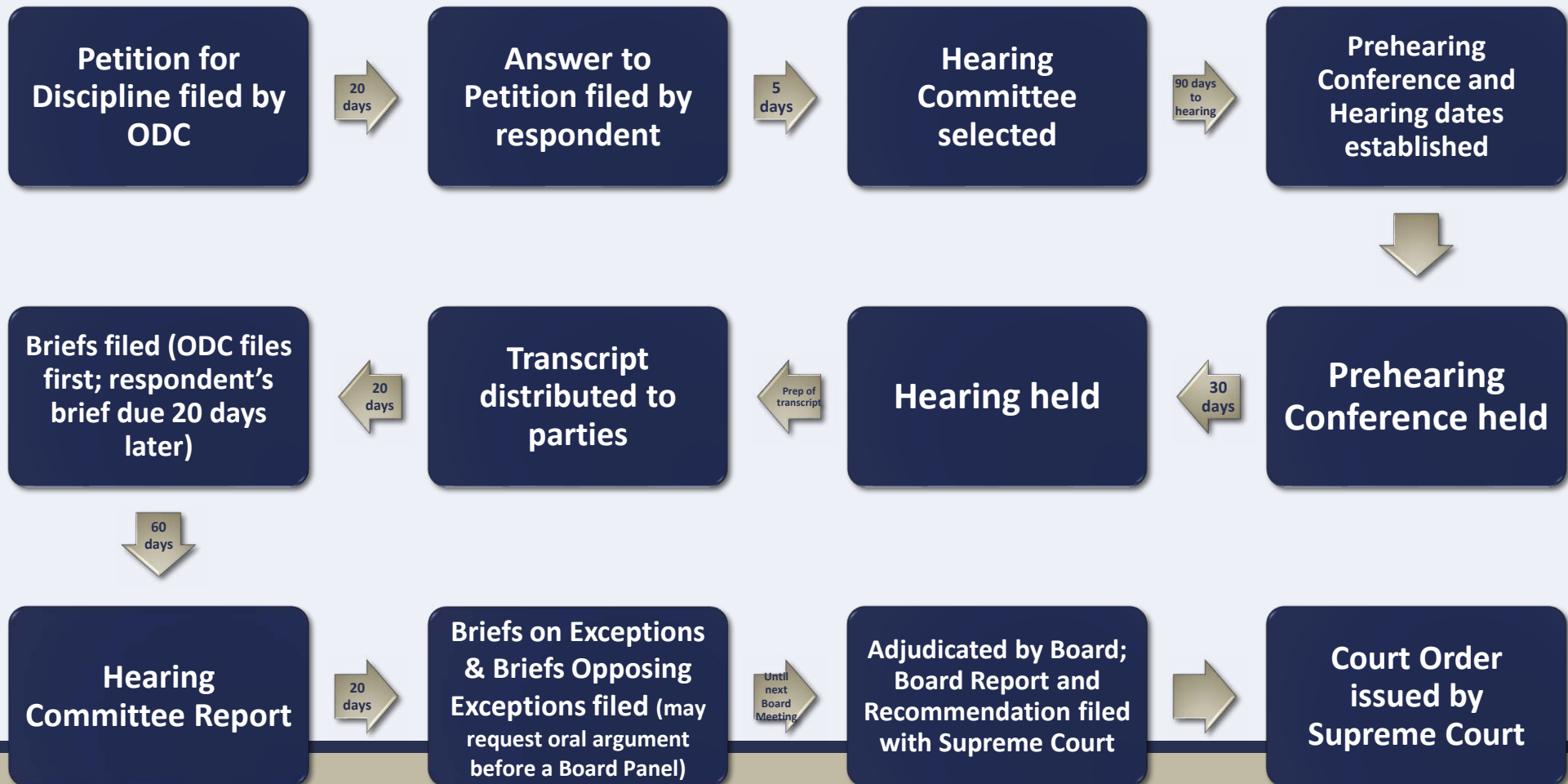
Rules do not provide a standard of proof. ODC practice: sufficient admissible evidence to obtain and sustain a finding of misconduct.

For more about the DB-3, see the CDC Corner newsletter discussion at padisciplinaryboard.org/attorney-news-april-2022.

Prosecution of Formal Charges

- **Petition for Discipline:** Contains Notice to Plead and is personally served on respondent.
- **Answer by Respondent:** Factual allegations not timely answered shall be deemed admitted.
- **Failure to Answer:** No evidence will be admitted regarding the allegations that are deemed admitted due to the failure to answer.

The Disciplinary Process



Who Is a Hearing Committee Member?



A Hearing Committee Member is a member of the Bar of this Commonwealth...

- Who has been appointed by the Disciplinary Board of the Supreme Court of Pennsylvania
- Maintains an office for the practice of law within a disciplinary district

Hearing Committee Terms

- The terms of the Hearing Committee shall be three years, and no Member shall serve for more than two consecutive three-year terms.
- A Hearing Committee Member who has served two consecutive three-year terms may be reappointed after the expiration of one year.



**What does a
Hearing
Committee
Member do?**



Hearing Committee Members Will:

- Review assigned DB-3 and make a recommendation
- Hear and decide argument regarding subpoena powers, various motions, etc.
- Conduct a Prehearing Conference
- Sit on a Hearing Committee Panel for a disciplinary or reinstatement hearing
 - Submit a Hearing Committee Report to the Board that includes a recommendation of disposition to the Board

Three Categories of Hearing Committee Members

Senior	Has served either (i) as a member of the Board or (ii) on at least two Hearing Committees that have conducted at least two hearings into formal charges of misconduct by respondent-attorneys or hearings on Petitions for Reinstatement from discipline by petitioner-attorneys
Experienced	Has served on at least one Hearing Committee that has conducted a hearing into formal charges of misconduct by a respondent-attorney or a hearing on a Petition for Reinstatement from discipline by a petitioner-attorney
New	Is in his or her first year of service and/or has not yet served on a Hearing Committee that has conducted a hearing

Hearing Committee Panels

The Board appoints a Hearing Committee Panel consisting of three Hearing Committee Members (senior, experienced, and new) from the appropriate disciplinary district.



Exceptions

- Under exigent circumstances, the Board has the discretion to appoint a Hearing Committee Member from outside the disciplinary district or require that the matter be transferred to another disciplinary district.
- Reinstatement hearings from retired status, inactive status, or administrative suspension for more than three years are heard by a single senior or experienced hearing committee member.

What Is a Prehearing Conference?

It is a conference that is held on the record in advance of the hearing to discuss:

- The exchange and acceptance of exhibits proposed to be offered into evidence
- The obtaining of admissions or stipulations not in dispute
- The identification and exchange of expert witnesses and reports
- Applications for protective orders
- The identification and limitation on the number of witnesses
- Any other matters that the Chair or Parties find necessary to discuss prior to the hearing

When and Where Is a Prehearing Conference Scheduled?

- The date and time for the Prehearing Conference is scheduled by the Board Prothonotary at the time the members of the Hearing Committee are appointed to the panel.
- All Prehearing Conferences are held virtually using Cisco Webex. The Board's Systems Support Specialist, Teri Stoltenburg, will send out a Webex link via email to all the parties to join the hearing.
- There must be at least thirty days between the date of the Prehearing Conference and the date of the hearing.

Who Participates in a Prehearing Conference?

- Chair of the Hearing Committee Panel (Or a single Senior or Experienced HCM designated in writing by the Chair)
 - *Please note: If you are the new Hearing Committee Member on the panel, you are highly encouraged to attend the Prehearing Conference. Please inform the Board's System Support Specialist, Teri Stoltenburg at Teri.Stoltenburg@pacourts.us that you plan to attend, and she will send you the Webex link to join the Prehearing Conference.*
- Counsel from the Office of Disciplinary Counsel
- Petitioner or Respondent
- Counsel for Petitioner or Respondent
- Special Counsel
- Court Reporter

What to Expect at a Disciplinary Hearing

The **Office of Disciplinary Counsel (ODC)** has the burden of proof and presents a case as to violations of the Rules of Professional Conduct.

The **Respondent** has the opportunity to present a defense.

The **Hearing Committee** deliberates and determines if the evidence establishes a *prima facie* violation of at least one rule.

ODC offers evidence relevant to the type of discipline to be recommended (considering aggravating evidence, if any).

The **Respondent** offers evidence relevant to the type of discipline to be recommended (considering mitigating evidence, if any).

The **Special Counsel** or the **Chair of the Panel** will inform the parties of the briefing schedule.

At the Hearing

Aggravating Evidence	Mitigating Evidence
Prior discipline	Lack of prior discipline
Lack of remorse	Remorse
Lack of cooperation	Cooperation
Publicity of misconduct	Acknowledgement of wrongdoing
Public position of respondent	Reimbursement
Failure to reimburse	<i>Braun</i> via expert report
Lack of credibility	Rehabilitation (drugs or alcohol)

Please see the Aggravating and Mitigating Factors Guide behind Tab 9 in the Hearing Committee Training Binder.

Types of Discipline

Private Discipline: The public is *not* entitled to know that the attorney engaged in misconduct.

- **Informal admonition:** The attorney must appear before the Chief Disciplinary Counsel to be admonished for misconduct but is allowed to continue practicing law.
- **Private reprimand:** The attorney must appear before the Disciplinary Board to be reprimanded for misconduct but is allowed to continue practicing law.

Types of Discipline

Public Discipline - The public is entitled to know that discipline was imposed.

- **Public Reprimand:** The attorney must appear before the Disciplinary Board to be reprimanded for misconduct but is permitted to continue practicing law.
- **Public Censure:** The attorney must appear before the Supreme Court of Pennsylvania to be censured for misconduct but is permitted to continue practicing law.
- **Probation:** Probation can be ordered for a specified period of time or until further order of the Board or the Supreme Court. Conditions that the Board or the Supreme Court deem appropriate may be imposed. Probation can accompany a private reprimand, public reprimand, or stayed suspension.

Types of Discipline

Public Discipline - The public is entitled to know that discipline was imposed.

- **Suspension:** An attorney's license may be suspended for up to and including five years. The attorney is prohibited from practicing law for a specified period of time, the length of which will depend on the nature of the misconduct. If an attorney is suspended for more than one year, he or she must petition for reinstatement to the bar and prove fitness to resume the practice of law.

Types of Discipline

Public Discipline - The public is entitled to know that discipline was imposed.

- **Disbarment:** A disbarred attorney is prohibited from practicing law for at least five years and must petition for reinstatement to the bar and prove fitness to resume the practice of law. When reinstatement is sought by a disbarred attorney, the threshold question is whether the magnitude of the breach of trust would permit the resumption of practice without a detrimental effect on the integrity and standing of the bar or the administration of justice or be subversive of the public interest. *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872 (Pa. 1986).

**What happens
after the Hearing
Committee files
the report?**



Briefs on Exceptions and Briefs Opposing Exceptions

- Briefs on Exceptions
 - Twenty days from service of Committee Report
- Briefs opposing Exceptions
 - Twenty days from the filing of Briefs on Exceptions



Oral Argument before the Board

Parties may request argument before a three-member Board panel



Board Adjudication

- Board meets quarterly
- Chair assigns each adjudication matter to one member
- Member reviews the record
 - Presents case to full Board
 - Makes recommendation
 - Not bound by Hearing Committee recommendation
- Board votes



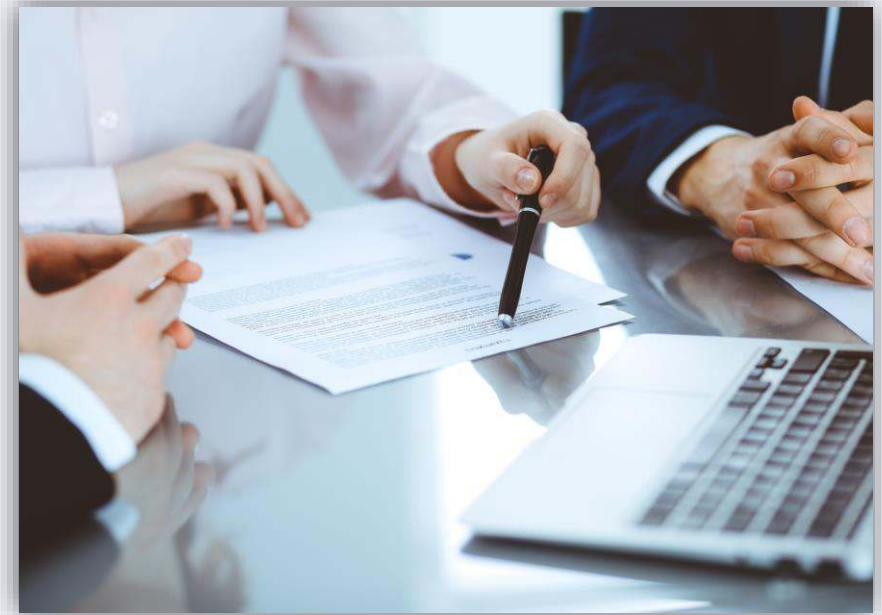
Board Determination

- Board issues order and opinion: no automatic review by the Court
 - Public Reprimand
 - Private Reprimand
 - Informal Admonition
 - Dismissal
- Parties may petition for allowance of appeal to the Court from determination



Board Report and Recommendation filed with the Supreme Court

- Disbarment
- Suspension
- Probation
- Public Censure
- Reinstatement from disbarment or suspension of more than one year



Supreme Court Review



- A *de novo* review of the Board report and recommendation is conducted.
- If disbarment is recommended, the respondent has an automatic right to request oral argument before the Court.
- Parties may seek review of the Board's recommendation by petition for review.

Standard of Review

“Our Court conducts de novo review of all attorney disciplinary matters; however, ‘the findings of the Hearing Committee and the Board are guidelines for judging the credibility of witnesses and should be given substantial deference.’”

Office of Disciplinary Counsel v. Pozonsky, 177 A.3d 830, 838 (Pa. 2018). [qtd. *Office of Disciplinary Counsel v. Cappuccio*, 48 A.3d 1231, 1236 (Pa. 2012)]. See also, *Office of Disciplinary Counsel v. Altman*, 228 A.3d 508 (Pa. 2020).

Reinstatement Hearings from Suspension of More Than One Year or Disbarment

**Petition for
Reinstatement**

**Reinstatement
Questionnaire**

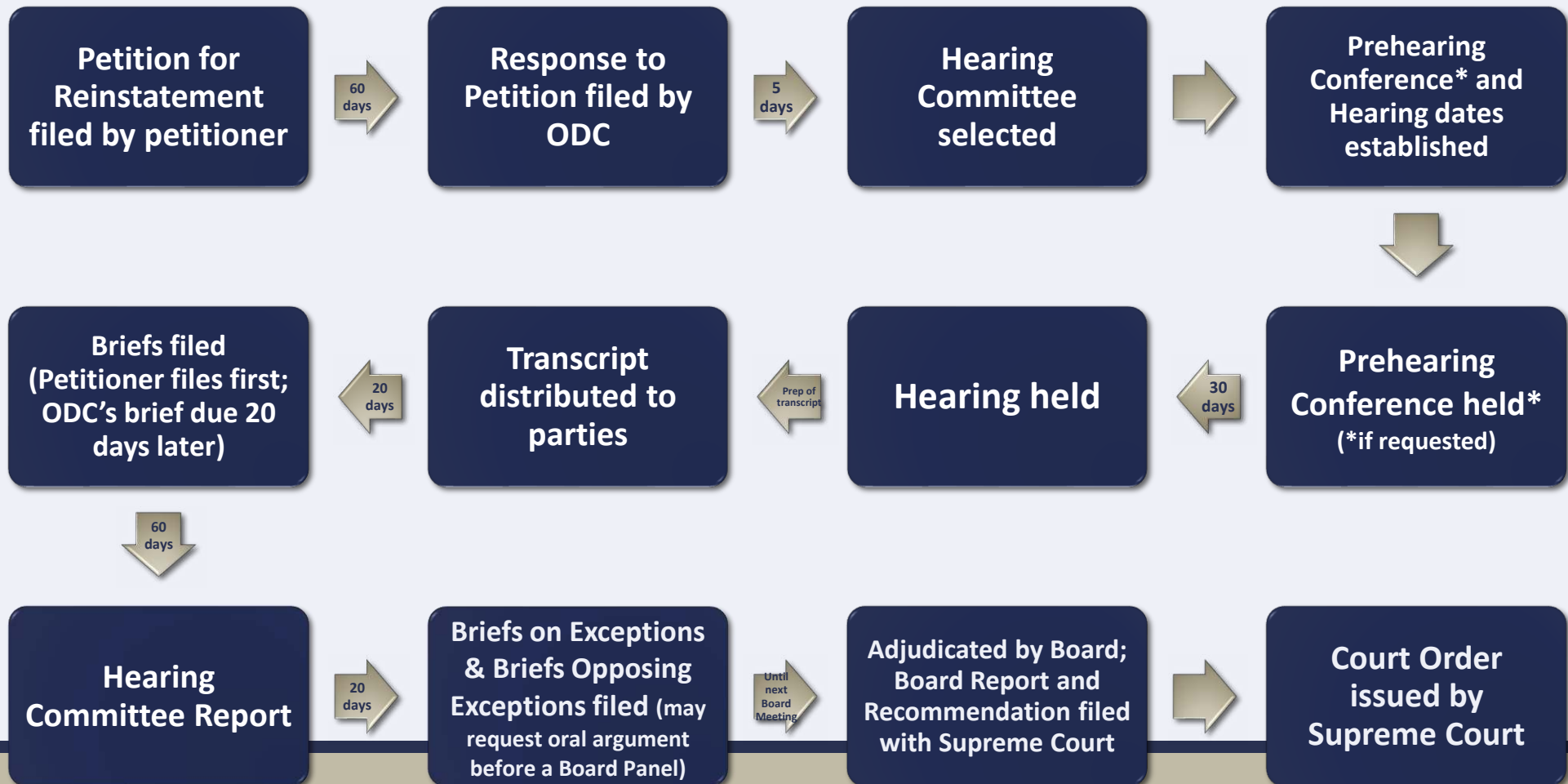
**Authorization &
release forms**

Filing fees

**Thirty-six hours of
PA CLE courses
within past twelve
months**

ODC will file a response to the Petition within sixty days.

The Reinstatement Process



Petitioner's Burden from Suspension of a Year and a Day or Longer

Petitioner's burden at the hearing is to demonstrate by clear and convincing evidence that such person has the **moral qualifications, competency, and learning in the law** required for admission to practice law in this Commonwealth and that the resumption of the practice of law within the Commonwealth by such person will be neither detrimental to the **integrity and standing of the bar** or the **administration of justice** nor **subversive of the public interest**.

Pa.R.D.E. 218(c)(3).

Petitioner's Burden from Disbarment

It is important to remember that when the petitioner-attorney is seeking reinstatement from disbarment, *Office of Disciplinary Counsel v. Keller*, 506 A.2d 872 (Pa. 1986) applies.

- Misconduct was not so egregious as to preclude consideration for reinstatement.
- A sufficient period of time has passed since the misconduct, during which petitioner has engaged in rehabilitation.

Rehabilitative Efforts

The Board reviews the record as a whole and closely examines petitioner's period of removal from practice for evidence of rehabilitation.

- Make victims whole/efforts at restitution
- Seek professional help/complete treatment programs
- Community service/charitable works
- Maintain steady employment whether legal (paralegal) or nonlegal
- Address personal financial issues
- Accept responsibility
- Express remorse
- Character witness testimony



The
DISCIPLINARY BOARD
of the Supreme Court of Pennsylvania

Disciplinary & Reinstatement Cases

Aggravation

Abuse of license
and status as a
lawyer

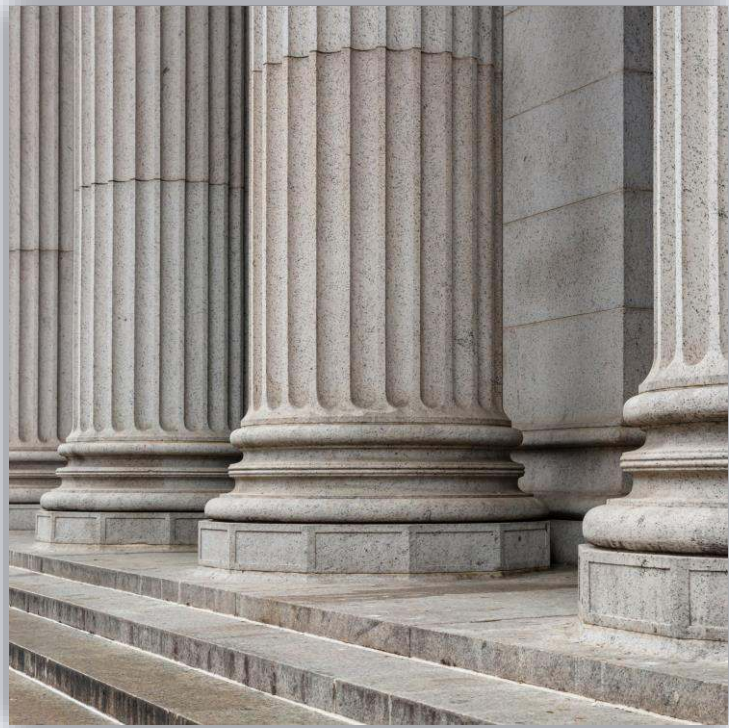


Aggravation

ODC v. Lynch, 70 DB 2020 (2022)

“Respondent’s abuse of his license and status as a lawyer in an attempt to have [his victim] enter into a legal contract for sexual acts, his threats to have her deported and his threats to use his professional contacts as a weapon against her are nothing short of despicable and aggravate the seriousness of this matter.”

Aggravation



Holding judicial
or other office
of public trust

Aggravation

***ODC v. Cappuccio*, 48 A.3d 1231 (Pa. 2012)**

“[T]he fact that a lawyer holds a public office or serves in a public capacity . . . may properly be viewed as aggravating the misconduct . . . this aggravation arising from public status is strong where the public position is that of prosecutor and the misconduct involves criminal actions, and it is particularly strong where, as here, the conduct involved crimes against individuals (minors, in this case). We realize that many attorneys hold positions of trust with respect to individual clients. But, that trust is not the same as the broader public trust reposed in judges, prosecutors and the like. Indeed, the facts of this case bear out the consequences that may arise when a position of public trust is involved. The evidence reveals that Respondent gained access to his minor victims . . . because of his respected and trusted position as a Deputy District Attorney (as well as his position as a church youth group leader).”

Aggravation

Failure to participate in the
disciplinary process

Aggravation

ODC v. Mort, 110 DB 2015 (2016)

Respondent was suspended for one year and one day after failing to appear for an informal admonition. Respondent failed to answer the petition for discipline or appear at the prehearing conference and the disciplinary hearing. “Respondent has exhibited a lack of respect for his professional duties and for the disciplinary process in general. He has made no effort to confront and address his discipline issues and has provided no evidence that he values his privilege to practice law. He has eschewed any meaningful opportunity for early dialogue with Office of Disciplinary Counsel to remedy the underlying misconduct, and he has forfeited his chance to accept responsibility and express remorse.”

Aggravation

Participation that re-enforces lack of fitness

Failure to appreciate obligation to cooperate

Violation of probation

Lack of credibility

Aggravation

Lack of remorse; failure to
accept responsibility

Aggravation

ODC v. Altman, 228 A.3d 508 (Pa. 2020)

Respondent was disbarred based on inter alia, his violation of RPC 1.8(j) prohibiting a lawyer from having a sexual relationship with a client that does not pre-date the attorney-client relationship and conflicts of interest and other misconduct arising out of his financial dealings with the client. At the disciplinary hearing, Altman testified that the client-victim had “initiated the sexual relationship and that he was in a ‘weakened state’ and ‘not strong enough to resist’”. He testified further that the experience had taught him that he couldn’t put himself in a position where he is “alone with a female”. The Court noted, “Both the Hearing Committee and the Board found that Altman’s testimony that he took responsibility and expressed remorse for his actions were not credible.” Altman “downplayed the seriousness of his misconduct by emphasizing that he did not threaten or coerce” his client. His focus was on what his misconduct had done to his life “rather than how negatively it impacted his client”.

Aggravation

Prior discipline



Aggravation

Three recent cases reiterated the significance of prior discipline as an aggravating factor:

ODC v. Hobson, 154 DB 2019 and 31 DB 2020 (2022)

Respondent's history of discipline is the predominant aggravating factor.

ODC v. Allen, 190 DB 2020 (2022)

Respondent's prior misconduct was similar, and his prior private discipline was recent. Prior discipline had "no appreciable beneficial impact".

ODC v. Ross, 189 DB 2020 (2022)

Although Respondent's prior discipline could not be viewed as a warning or deterrent, it was relevant.

Aggravation

Failure to make or delayed
restitution

Aggravation

ODC v. Agresti, 68 DB 2020 (2021)

Respondent was suspended for three years for financial misconduct including not maintaining a trust account resulting in his misappropriation of approximately \$46,000. According to the Board, Respondent's misconduct was aggravated by his refusal to refund \$5,000 of an admittedly unearned fee until after ODC commenced its investigation. Furthermore, he did not make full restitution until after the Client Security Fund paid the client's claim. "The . . . delayed payment weighs against [Respondent's] claims that he has accepted responsibility and shown remorse."

Aggravation

Failure to report a criminal conviction

Retaining an employee in a position of trust . . .

Reinstatement

Disbarment vs. Five-Year Suspension

Similarities:

Both disbarred attorneys and attorneys suspended for more than one year “have the burden of demonstrating by clear and convincing evidence that such person has the moral qualifications, competency and learning in law required for admission to practice in this Commonwealth and that [their] resumption of the practice of law...will be neither detrimental to the integrity and standing of the bar or the administration of justice nor subversive of the public interest.” Pa.R.D.E. 218(c)(3).

Reinstatement

Disbarment vs. Five-Year Suspension

Differences:

Except in cases of reciprocal disbarment, a disbarred respondent “may not apply for reinstatement until the expiration of at least five years from the effective date of the disbarment...” Pa.R.D.E. 218(b).

In contrast, a suspended respondent may file a petition for reinstatement “nine months prior to the expiration of the term of suspension...” D. Bd. Rules §89.272(c).

When a disbarred respondent seeks reinstatement, “the threshold inquiry articulated in Office of Disciplinary Counsel v. Keller, 509 Pa. 573, 579, 506 A.2d 872 (1986) and its progeny applies.” Pa.R.D.E. 218(c)(3), Note.

Reinstatement

In *Keller*, the Court explained that the distinction between suspension and disbarment is “more than a quantitative one.” The “qualitative difference between these two sanctions” rests in the “materially different” entitlement to reinstatement. “In the case of **suspension**, the withdrawal of the privilege to practice is for **a specific period of time**. After the expiration of that period a suspended attorney can resume the practice of law upon a demonstration of his or her fitness to practice. In contrast, where **disbarment** has been imposed, **the length of the withdrawal** of the privilege to practice **has not been previously determined**. In disbarment the only expression as to the length of the withdrawal of the license to practice is that it must extend for a period of at least five years.” The Court further explained that “[i]n **the case of disbarment there is no basis for an expectation by the disbarred attorney of the right to resume practice** at some point in the future.”

Reinstatement

Keller and its progeny make clear that the initial threshold inquiry in reinstatements from disbarment is “whether [petitioner] has demonstrated that his breach of trust is not so egregious that it precludes...even considering his petition for reinstatement.” *In the Matter of Lawrence D. Greenberg*, 794 A.2d 434 (Pa. 2000).

Reinstatement

“[I]n only one case has the Supreme Court held that this magnitude of the breach of trust was so egregious that reinstatement was forever barred. See, *In the Matter of Romaine Phillips*, 801 A.2d 1208 (Pa. 2001). Phillips was involved in a conspiracy with a Common Pleas judge to commit bribery and fix cases, and thus knowingly engaged in acts to subvert the truth-determining process.” *In the Matter of Michael Radbill*, 113 DB 2004 (2015) Bd. Rpt. at p. 13.

Reinstatement

Once petitioner establishes that his misconduct “was not so great that he can never be reinstated to the bar,” attention turns to whether “allowing petitioner to resume the practice of law **at this time** would have a detrimental effect upon the integrity and standing of the bar and on the administration of justice and would subvert the public interest.” See, *Greenberg* supra, at, (emphasis added) (citing *In the Matter of Jerome J. Verlin*, 731 A.2d 600, 602 (Pa. 1999)).

Reinstatement

In *Greenberg*, and *In the Matter of William James Perrone*, 899 A.2d 1108 (Pa. 2006) eight years was an insufficient amount of time to permit reinstatement. In *Verlin*, however, eight years was sufficient.

Reinstatement

In addition to the issue of how much time has passed, petitioner must also establish that during the period of disbarment, he has engaged in a quantitative period of qualitative rehabilitation. See, *Verlin* supra at p. 5 (“Verlin has demonstrated a steadfast commitment to rehabilitating himself during his disbarment.”)

Reinstatement

In two recent cases, the petitioners satisfied the threshold inquiry, the time requirement and the qualitative rehabilitation requirement. One was reinstated, see *In the Matter of Sandra Couch Collins*, Nos. 141 DB 1996 and 37 DB 1998 (2022), while one was not, see *In the Matter of James Daniel Harrison*, No. 54 DB 2000 (2020). The Board found that Collins had established that she was competent and learned in the law. Harrison had not satisfied his burden on that issue. (“The sum total of Petitioner’s legal experience in Pennsylvania is his volunteer work at the Innocence Project for approximately five days shortly before the reinstatement hearing...there is no evidence that Petitioner is knowledgeable in Pennsylvania law and is ready to practice under the rules and procedures of this jurisdiction. Petitioner admitted that his unstable living situation and the precarious finances may impede his ability to practice law.” Bd. Rpt. at p. 14.)

In three recent cases, one from disbarment and two from suspension, reinstatement was denied, in part, because the petitioner failed to “demonstrate good faith efforts to satisfy debts related to the underlying misconduct.” In the Matter of *Michael Andrew Rabel*, No. 33 DB 2015 (2023) Bd. Rpt. at p. 20. (citing to *In the Matter of Jay Marc Berger*, No. 159 DB 2008 (2022) and *In the Matter of Brian Joseph Smith*, No. 236 DB 2018 (2022)).

Reinstatement

Practice Tips

- **Look for:**
 - Candor;
 - Remorse;
 - Rehabilitation.
- **Look at:** The Reinstatement Questionnaire
- **Ask:** Has the petitioner gotten his/her house in order?
- **Remember:** *Actions speak louder than words.*

Reinstatement

In the Matter of Michael Andrew Rabel, 33 DB 2015 (2023)

Reinstatement from five-year suspension on consent denied.

Reinstatement

The Reinstatement process:

Not a mere formality;

A searching inquiry;

focused on the nature and extent of rehabilitative efforts; and

degree of success in the rehabilitative process

Reinstatement

Prior reinstatement cases establish that:

- A petitioner lacks competence when he engages in a pattern of inaccuracies pertaining to the Reinstatement Questionnaire and fails to credibly explain the omissions and deficiencies; but
- A petitioner's credible explanation of inaccuracies can remedy concerns as to competency.

Reinstatement

The Board's next area of concern centers on Petitioner's failure to reimburse former clients and satisfy civil judgments and obligations.

“When a lawyer harms his clients by taking monies and failing to refund unearned fees, the reimbursement of those funds becomes a matter of vital importance to the Board and the Court.”

Petitioner made no efforts to reimburse clients listed in the Joint Petition for Discipline on Consent who had not filed claims with the Client Security Fund.

Petitioner made no efforts to pay sanctions against him entered as a direct consequence of his misconduct in WA, OH, and PA.

Reinstatement

Full satisfaction of debts is not a prerequisite to reinstatement, but successful petitioners establish good faith efforts to address their debits, establishing rehabilitative intent.

Precedent establishes that a petitioner's stated intention to repay is not sufficient absent evidence of any attempt to make reimbursement or to formulate a repayment plan that might succeed at some later date to discharge his financial obligations.

Based on the totality of the circumstances on this record, we recommend that the Petition for Reinstatement be denied.

Reinstatement

See also:

In the Matter of Brian Joseph Smith, 236 DB 2018 (2022)

Reinstatement denied from a one year and one day suspension on consent; and

In the Matter of Jay Marc Berger, 159 DB 2008 (2022)

Reinstatement denied from disbarment on consent.

Reinstatement

Pa.R.D.E. 218

- Certain reinstatements require a petition and Supreme Court Order – Pa.R.D.E. 218(a).
- Pa.R.D.E. 218 (c) sets forth the procedure for petitioning for reinstatement from suspension for more than one year or disbarment.
- Pa.R.D.E. 218 (b) and the Note after Pa.R.D.E. 218 (c)(3) set forth additional provisions in reinstatements from disbarment.
- In reinstatements from suspension for more than one year or disbarment, a hearing **must** be held at which petitioner has to meet the appropriate burden.
- Restitution to the Client Security Fund for uncovered disbursements “in full, plus 10% per annum interest” is a condition for reinstatement. Pa.R.D.E. 531.

Discipline

Office of Disciplinary Counsel v. Erik Benjamin Cherdak, No. 50 DB 2021 (2022) (Disbarment)

Respondent was disbarred for:

- Engaging in an extensive scheme to defraud a client in connection with his work as a patent attorney and registered patent agent;
- Perjury;
- Submission of false documents to a court; and
- Failing to respond to ODC's investigation.

Discipline

Due to the facts of this case, the respondent violated the RPCs of four different states. See RPC 8.5(b)(1) and (b)(2):

- Although licensed in PA, Respondent's office was in Maryland;
- His client was incorporated and located in Connecticut;
- His client sued him in federal court in Virginia; and
- In the federal court litigation in Virginia, the District Court Judge found that Respondent had lied to a United States Magistrate Judge in proceedings in Massachusetts.

Discipline

The many weighty aggravating factors the Board cited included:

- Falsified emails Respondent entered into evidence in a proceeding before the Office of Enrollment and Discipline in the USPTO.
- Respondent played fast and loose with his financial obligations, to the detriment of others, including disobeying an order of the bankruptcy court in his personal bankruptcy.
- Respondent failed to recognize his wrongdoing, accept responsibility and show remorse.
- Respondent's conduct during the disciplinary hearing, including arguing with the Hearing Committee and attempting to intimidate the Committee by reminding them he was making a record for appeal.
- By incompetently representing himself, Respondent provided no insight into why he engaged in reprehensible misconduct and no assurance that he would refrain from similar misconduct in the future.

Mitigation

Braun



Mitigation

***ODC v. Braun*, 553 A. 2d 894 (Pa. 1989)**

A respondent is entitled to mitigation if he establishes that a psychiatric condition, such as an addiction or mental illness, was a causal factor in his misconduct.

Mitigation

ODC v. Pozonsky, 177 A.3d 830 (Pa. 2018)

“Our Court has never held that lay opinions alone are sufficient to establish that an addiction or mental illness was the cause of an attorney’s misconduct. Indeed, recent decisions of our Court have emphasized the critical role of expert testimony in establishing such a causal link.” The “Court has never endorsed the novel conclusion that letters from an attorney’s personal friends or other attorneys who are untrained in the fields of psychiatry, psychology, or substance abuse treatment are in and of themselves, sufficient to meet the ***Braun*** standard.”

Mitigation

ODC v. Eddy, 143 DB 2019 (2021)

Eddy's longstanding psychiatric problems included major depression, anxiety, OCD, and substance abuse. "Dr. Wright's testimony was credible, established a causal link between Respondent's mental disorders and his misconduct and was not refuted by any evidence to the contrary." (Respondent, who over a two-year period misappropriated approximately \$74,000 from his IOLTA by emptying it and reducing the balance to virtually nothing on three occasions, was suspended for three years retroactive to the date of his temporary suspension.) The Board acknowledged that "misappropriation of entrusted funds is a serious offense and absent mitigating circumstances, the Court has imposed disbarment to address the egregious breach of trust occasioned by such misconduct."

Mitigation



Acceptance of
responsibility;
admission of
misconduct

Mitigation

ODC v. Dixon, 174 DB 2020 (2022)

According to the Board, “Respondent credibly acknowledged that his conduct was dishonest and violated the ethical rules, for which he expressed genuine contrition. Respondent did not try to excuse his actions” and “credibly testified that he is working to address his personal issues”.

Mitigation

Cooperation

Lack of prior discipline

Character testimony

Restitution

Mitigation

ODC v. Mengine, 66 DB 2017 (2019)

Respondent was suspended for two years, with fifteen months stayed and nine months served for financial misconduct that spanned nearly two years and thirteen client matters. The “weighty and meaningful mitigation” included: Respondent ceasing his misconduct and making clients and third parties whole before ODC’s involvement, Respondent’s admission of misconduct, his expression of remorse, his lack of prior record, his community involvement, and “significant” character testimony.

Mitigation

Change in office
procedure



Mitigation

ODC v. Silver, 56 DB 2003 (2005)

Respondent received a six-month suspension followed by twelve months of probation for failing to hold client funds inviolate. In mitigation, he was credited with having “changed his office procedures to conform with the requirements” of the RPCs. “These are positive steps and show Respondent’s interest in avoiding ethical problems in the future.”

Discipline

Office of Disciplinary Counsel v. Charles C. Shainberg, 2915 DD3, No. 41 DB 2022 (S. Ct. Order 10/13/2022)

- Suspension for one year on consent
- Failure to follow client's directions in underlying matter, non-consensual sexual touching, and repeated aggressive advances
- **Mitigation:** No history of discipline for forty-seven years; agreement to consent discipline to keep victim anonymous
- **Respondent violated:** RPC 1.2(a), RPC 1.7(a)(2), RPC 1.8(j), and RPC 8.4(a)

Discipline

Office of Disciplinary Counsel v. Demetrius William Fannick, No. 137 DB 2022 (D. Bd. Order 10/11/2022)

- Respondent agreed to a public reprimand on consent.
- Attorney failed to file appeal and failed to communicate with client.
- **Mitigation:** Aiding successor counsel in reinstating appeal, returned fees, and accepted responsibility
- **Respondent violated:** RPC 1.1, RPC 1.3, RPC 1.4(a)(3), RPC 1.4(a)(4), and RPC 3.2

Discipline

Office of Disciplinary Counsel v. Alan Kane, 2934 DD3, No. 77 DB 2021 (S. Ct. Order 3/8/2023)

- The Supreme Court of Pennsylvania suspended Respondent for a period of one year and one day for prioritizing his fee over client interests. The Disciplinary Board found that Respondent only was entitled to fees in the amount of one third of the settlement and that he acted in his own interest of renegotiating the fee agreement and seeking more money than the original agreement allowed.
- **Aggravation:** Failure to accept responsibility or acknowledge wrongdoing.
- **Respondent violated:** RPC 1.2(a), RPC 1.4(b), RPC 1.6(a), RPC 1.6(d), RPC 1.6(e), RPC 1.7(a)(2), RPC 1.16(d), RPC 3.1, RPC 8.4(a), and RPC 8.4(c).

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