

witnesses and two experts for the admission and consideration of mitigation evidence pursuant to *Office of Disciplinary Counsel v. Braun*, 553 A.2d 894 (Pa. 1989).

After consideration of the testimony and evidence presented during the hearing, as well as the briefs submitted by the parties, we find that Respondent violated Rules of Professional Conduct 1.3, 1.4(a)(3), 8.4(c), and 8.4(d) in so far as those rule violations relate to Respondent's abandonment of representation of Mr. Taylor. We further find that Respondent violated Rule of Disciplinary Enforcement 219(d)(1)(v) (providing that an attorney's annual registration form shall set forth "[e]very business operating account maintained or utilized by the attorney in the practice of law during the same time period specified in subparagraph (iii)" of Rule 219).¹ We additionally hold, however, that ODC failed to meet its burden of proving Respondent violated any Rules of Professional Conduct (including Rules 1.5(a), 1.15(b), 1.15(e), 1.15(i), 1.16(d), 8.4(c), or 8.4(d)) regarding ODC's allegations that Respondent mishandled client funds. Finally, we agree with Respondent that he satisfied the standard set forth in *Braun* for mitigation evidence to be considered.

For the reasons set forth below, given the violations of the Rules of Professional Conduct committed by Respondent, as well as considering the *Braun* mitigation evidence submitted in this case, this Hearing Committee recommends that Respondent be suspended from the Bar of this Commonwealth for three months, with the suspension stayed in its entirety for a probationary period of two years, during which Respondent shall maintain a sobriety monitor as provided by Pa. Disciplinary Board Rule 89.293.

¹ As set forth in full below, Respondent has admitted to a violation of Rules 1.3 and 1.4(a)(3) regarding his representation of Mr. Taylor, and R.D.E. 219(d)(1)(v) concerning his annual attorney registration form.

II. STATEMENT OF THE CASE

ODC filed and served the Petition for Discipline on January 20, 2023, related to Respondent's representation of Eric Taylor in PCRA proceedings in 2020 and 2021. Pursuant to a Stipulation to a one-time 20-day extension for Respondent to file his Answer to the Petition, Respondent filed and served his answer on March 3, 2023. By Notice of Prehearing Conference and Hearing dated March 15, 2023, a prehearing conference was scheduled for June 23, 2023, and a disciplinary hearing was scheduled for August 22, 2023. A prehearing conference was held as scheduled and a Prehearing Order was issued by the Hearing Committee assigned to this case.

The disciplinary hearing was held, as scheduled, before a Hearing Committee comprised of Gina Marie Zumpella, Chair, Amy M. Kirkham, Member, and Todd M. Pappasergi, Member. At the hearing, ODC offered the testimony of its Auditor/Investigator, and documentary exhibits ODC 1-20 which were admitted into evidence in its case-in-chief, as well as ODC 21- 23, 27, 29 and 30, which were admitted into evidence in the dispositional phase of the hearing. Due to the unavailability of one of Respondent's expert witnesses, Bruce Wright, M.D., the record remained open, and the deposition of Dr. Wright was taken on September 28, 2023, with Hearing Committee Member Kirkham presiding.

Within the Petition, ODC alleged the following violations of the Rules of Professional Conduct:

1. Rule of Professional Conduct 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.
2. Rule of Professional Conduct 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.

3. Rule of Professional Conduct 1.15(b) - A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded.
4. Rule of Professional Conduct 1.15(e) - Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding the property; provided, however, that the delivery, accounting, and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.
5. Rule of Professional Conduct 1.15(i) - A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in a different manner.
6. Rule of Professional Conduct 1.16(d)- Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense

that has not been earned or incurred. The lawyer may retain papers relating to the client to the extent permitted by other law.

7. Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.
8. Respondent violated Rule of Professional Conduct 8.4(d) - It is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice.
9. Pennsylvania Rule of Disciplinary Enforcement 219(d)(1)(v) - On or before July 1 of each year all attorneys required by this rule to pay an annual fee shall electronically file with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures: (1)The form shall set forth: Every business operating account maintained or utilized by the attorney in the practice of law during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution, location and account number.

Both parties timely (following the granting of extensions) filed their respective briefs to the Hearing Committee, and this matter is now ready for disposition.

III. RULINGS ON ADMISSION OF EVIDENCE

The following evidence was admitted without objection:

ODC Exhibits

1. ODC 1 Petition for Discipline
2. ODC 2 Answer to Petition for Discipline
3. ODC 3 CR-0010212-2014 Docket *Commonwealth v. Eric Taylor*
4. ODC 4 CR-0010212-2014 Verdict *Commonwealth v. Eric Taylor*
5. ODC 5 CR-0010212-2014 Order of Sentence
6. ODC 6 CR-0010212-2014 Post-Sentence Motion
7. ODC 7 Order of Court dated 11/29/16 denying Post Sentence Motion
8. ODC 8 Superior Court Docket 1849 WDA 2016
9. ODC 9 Amended Notice of Appeal to the Superior Court
10. ODC 10 Memorandum Opinion dated September 25, 2018
11. ODC 11 Supreme Court Allocatur Docket Sheet 416 WAL 2018
12. ODC 12 Supreme Court Order dated 3/22/19 denying Petition for Allowance
of Appeal
13. ODC 13 12/30/19 Karsh & Associates Fee Letter to Michelle Kenney
14. ODC 14 \$25,000 Cashier's Check, Karsh IOLTA Deposit Slip, and \$7,500
Cash Out Slip
15. ODC 15 PNC Bank records for Karsh IOLTA 1/1/20 - 6/30/20
16. ODC 16 Text Messages between Kenney and Karsh 4/4/21, 4/19/21, 4/26/21
and 4/30/21
17. ODC 17 Reimbursement Payments from Karsh to Kenney
18. ODC 18 Karsh Attorney Annual Fee Form 2020-2021

19. ODC 19 CR-10212-2014 Docket, 8/8/22 pro se PCRA, Mot. to Reinstate Appellate Rights

20. ODC 20 Superior Court Docket and filings 438 WDA 2023

21. ODC 21 (Redacted) Federal Tax Lien *IRS v. Karsh* FTL-16-001234

22. ODC 22 (Redacted) *Margaret Epps v. Karsh* AR-16-002958 docket and filings

23. ODC 23 *Manor Building v. Karsh* docket and Praecept for Writ GD-13-014671

24. ODC 27 3/11/22 Report of Sandra A. Davis, L.C.S.W., Ph.D.

25. ODC 29 7/13/22 Sandra A. Davis's Supplemental Report; AA Sponsor Ned Spells, Jr.

26. ODC 30 Pa. Code Chapter 47 State Board of Social Workers... and Professional Counselor Standards

Respondent's Exhibits

27. Respondent's Exhibit (RE) A – Citizens Bank Operating Account of Respondent

28. RE B – Proof of Satisfaction of Judgment in *Epps v. Karsh*

IV. FINDINGS OF FACT

1. Respondent, Ralph David Karsh, was born in 1958. (ODC 1 Bates 2, ODC 2 Bates 21)

2. Respondent was admitted to the Bar of the Courts of the Commonwealth of Pennsylvania on November 26, 1990, and his attorney registration mailing address is 5516 Baywood Street, Unit 3, Pittsburgh, PA 15206. (ODC 1 Bates 2, ODC 2 Bates 21)

3. Respondent has no history of prior discipline.
4. On May 5, 2016, after a jury trial, Eric Taylor was convicted of, among other offenses, Third Degree Murder of an Unborn Child and Criminal Attempt-Murder of the First Degree filed in the Allegheny County Court of Common Pleas at CP-02-CR-0010212-2014. (ODC 1 Bates 2, ODC 2 Bates 21)
5. On August 3, 2016, Mr. Taylor was sentenced to a period of incarceration of 180 to 360 months on the charge of Third Degree Murder of Unborn Child, and 90 to 180 months on the charge of Criminal Attempt Murder of the First Degree, to run consecutively. (ODC 1 Bates 3, ODC 2 Bates 21)
6. On August 12, 2016, Rachael C. Arianna Santoriella filed Post Sentence Motions on behalf of Mr. Taylor. (ODC 1 Bates 3, ODC 2 Bates 21)
7. By Order of Court dated November 29, 2016, Mr. Taylor's Post Sentence Motions were denied. (ODC 1 Bates 3, ODC 2 Bates 21)
8. Ms. Santoriella was counsel for Mr. Taylor in his appeals to both the Superior Court and the Pennsylvania Supreme Court. (ODC 1 Bates 3, ODC 2 Bates 22)
9. On December 9, 2016, a notice of appeal was filed on behalf of Mr. Taylor. (ODC 1 Bates 3, ODC 2 Bates 22)
10. On September 25, 2018, the Superior Court affirmed the Judgment of Sentence. (ODC 1 Bates 3, ODC 2 Bates 22)
11. On October 25, 2018, a Petition for Allowance of Appeal was filed on behalf of Mr. Taylor. (ODC 1 Bates 3, ODC 2 Bates 22)
12. On March 22, 2019, Mr. Taylor's Petition for Allowance of Appeal was denied by the Supreme Court of Pennsylvania. (ODC 1 Bates 4, ODC 2 Bates 22)

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

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

- a. Respondent was willing to represent Mr. Taylor in the matter by investigating and filing a Post-Conviction Relief Act (PCRA) Petition and a "first appeal to Superior Court, to be negotiated depending on circumstances";
- b. His fee for the representation was \$15,000;
- c. "Any additional cases will involve additional fees to be negotiated";
- d. "All fees are non-refundable" and "All fees are considered earned when paid";
- e. "In addition to [Respondent's] fee [Ms. Kenney] was responsible for costs which may include private investigators, ... experts associated with trial, ... and any other necessary expenses"; and
- f. If Mr. Taylor failed to fulfill his responsibilities under the terms of the fee agreement, Respondent would withdraw from representing Mr. Taylor, but it contained no provision for Respondent's obligations to Mr. Taylor or Ms. Kenney if Respondent failed to discharge his duties under the agreement.

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

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

17. On January 27, 2020, Respondent negotiated the \$25,000 check by depositing \$17,500 of the proceeds of the check to his PNC Bank IOLTA ending 7692 and receiving \$7,500 in cash. (ODC 1 Bates 5, ODC 2 Bates 22, ODC 14 Bates 145-147, ODC 15 Bates 150-156)

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

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

19. Of the \$25,000.00 received from Ms. Kenney, Respondent retained \$7,500.00 in cash and deposited the remaining \$17,500.00 into his IOLTA account. (Bates 147, NT 22)

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

21. Thereafter, Respondent did not meet again with Mr. Taylor or keep either Mr. Taylor or Ms. Kenney apprised of the progress of the representation and, ultimately, failed

to file a PCRA petition on behalf of Mr. Taylor. (ODC 1 Bates 7, ODC 2 Bates 23-24; NT 19, 63-64, 68, 74-75)

22. On several occasions between January, 2020 and late April, 2021, Ms. Kenney inquired of Respondent, both by phone calls and text messages, about the status of the PCRA petition and proceedings. (ODC 1 Bates 7, ODC 2 Bates 24; NT 63-64)

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

24. These communications were false.

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

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

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

- a. Ms. Kenney demanded that Respondent refund the \$25,000 that he had received from her because Respondent had not performed the services for which he had been retained;
- b. Ms. Kenney stated that if Respondent did not refund the \$25,000 she would file a disciplinary complaint against him or sue him; and
- c. Respondent requested that Ms. Kenney give him until the end of that week and asked her to speak with him by phone.

(ODC 1 Bates 8, ODC 2 Bates 24)

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

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

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

29. Among others, between April 26, 2021 and April 30, 2021, the following text messages were exchanged:

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

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

30. On May 4, 2021:

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

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

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

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

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

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

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

33. Respondent returned the file to Ms. Kenney in June, 2021; further, he fully refunded the \$25,000.00 fee as follows:

<u>DATE</u>	<u>AMOUNT</u>
05/05/21	\$2,000
06/03/21	2,000
07/01/21	2,000
07/29/21	2,000
08/31/21	2,000
10/04/21	1,000
10/06/21	1,000
11/01/21	1,000
11/03/21	500

11/06/21	500
12/03/21	1,000
12/13/21	500
12/17/21	500
01/04/22	1,000
01/25/22	1,000
02/01/22	1,000
02/23/22	1,000
03/17/22	500
04/04/22	1,000
06/10/22	1,000
<u>06/10/22</u>	<u>2,500</u>
TOTAL	\$25,000

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

34. On Respondent's 2020-2021 PA Attorney's Annual Fee Form, he did not list a business/operating account maintained or used by him in his law practice, as required by PA Rule of Disciplinary Procedure 219(d)(1)(v). (ODC 1 Bates 13, ODC 2 Bates 25)

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

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

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

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

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

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

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

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

(ODC 19 Bates 287-288)

42. By letter dated July 19, 2023, the Court of Common Pleas informed the Superior Court that, upon review of the record, the Court determined that the filing was Mr. Taylor's first PCRA Petition and, therefore, he was entitled to court-appointed counsel. The

Court further stated that by its Order of the same date, the Court appointed Thomas N. Farrell, Esq. to represent Mr. Taylor in his PCRA matter. (ODC 19 Bates 289-290)

43. Respondent presented credible, character witness testimony as follows:

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

b. Attorney Mark Flaherty: Attorney Flaherty has been practicing since 1986 and is in the alcoholic beverage industry where he has worked since 1983. (NT 113-114) Attorney Flaherty testified that he is a recovering alcoholic, sober for 32 years and very active in Lawyers Concerned for Lawyers, including being its President for 12 years. (NT 115-125) Attorney Flaherty has known Respondent since undergraduate school and became reacquainted with Respondent when Mr. Flaherty was first getting sober. Mr. Flaherty has hosted the Thursday meeting of impaired lawyers in Pittsburgh for years, which made him become involved in Lawyers Concern for Lawyers as well as the Lawyers Assistance Committee of the Pennsylvania Bar Association. (NT 117-118). Mr. Flaherty testified that he received a call from Respondent in the spring of 2021 when he was informed of Respondent's current disciplinary problems and concerns about getting back into sobriety. (NT 118-119). Mr. Flaherty directed that Respondent not drink, go to meetings, get a sponsor, get a home group, and show up at the Thursday meetings. (NT 120) Respondent complied with those directions and further obtained a sobriety monitor. Attorney Flaherty described Respondent as becoming "more open minded" and showing humility by willing to ask for help and admitting his mistakes. (NT 123-124) Attorney Flaherty further testified Respondent had an excellent reputation for honesty and trustworthiness. Attorney Flaherty also assured the Hearing Committee that Respondent was remorseful for his actions, noting that part of the twelve-step process in AA is to make amends which is more than just saying you are sorry but to "fix what you broke". (NT 125-127)

c. Attorney Bruce Garsia: Attorney Garsia testified that he had known Respondent since Respondent began working for him during law school. By the time he met Respondent, Attorney Garsia was already sober and has been sober since March of 1982. At some point in time, Attorney Garsia

learned that Respondent had started to use. Since 2021, Respondent returned to meetings not only in the lawyers' meetings on Thursdays but also meetings they shared in the Shadyside area. To Mr. Garsia's knowledge and concern, Respondent is clean and sober and had a good prognosis. (NT 129-131) Attorney Garsia also testified that Respondent was an excellent attorney and "one he would call if he had a problem." (NT 131)

d. Barry Zwibel: Mr. Zwibel credibly testified that he had been in recovery for 50 years and remains active in the recovery community. (NT 133) Mr. Zwibel first met Respondent in 1986 when Respondent first entered recovery. Respondent went on to get married and move forward with his professional life. (NT 134) Mr. Zwibel testified that Respondent backed off recovery after many years and went through a series of setbacks leading to his lack of sobriety. (NT 135) Mr. Zwibel testified that it was the disciplinary process in this case that seemed to reflect the "bottom" of Respondent's fall. In recovery, the bottom is when an addict or alcoholic decides that recovery is the only avenue. It was suggested that Mr. Zwibel become Respondent's sponsor which he agreed to do and remains Respondent's sponsor as of the time of the hearing. (NT 136) Mr. Zwibel testified that since May of 2021, Respondent had been sober and they continued to see each other weekly in a group at Ritters Diner (NT 136) and also a discussion group in Shadyside on Wednesdays (NT 136-137). Mr. Zwibel and Respondent share a home group in Fox Chapel and a separate AA meeting where they study "the big book". (NT 137) Mr. Zwibel explained that Respondent was instrumental in getting an AA group back together following Covid. Mr. Zwibel credibly testified that Respondent's situation is rare because it is hard to "come back" because it is humbling to have to do so. Mr. Zwibel testified that Respondent had a good chance of continued recovery. Mr. Zwibel knew Respondent at both times of his recoveries and said at this time he is more humble and he is well aware of what he could lose if he does not remain clean and sober. (NT 138-139) Mr. Zwibel was aware that the disciplinary proceeding involved money which was allegedly supposed to be put in escrow and that which Respondent had spent.

e. Attorney Alan E. Lewis: Mr. Lewis credibly testified as to his relationship with Respondent over a period of 50 years, beginning in high school. Since college, Respondent and Mr. Lewis maintained contact, including their families vacationing together and Respondent inspiring Mr. Lewis to go to law school at night in Brooklyn. (NT 143) Attorney Lewis had a career in entertainment, ending up as an in-house attorney in the Walt Disney Corporation. (NT 143-144) At some point in time, Mr. Lewis learned that Respondent was dealing with difficulties after Covid and that he became difficult to get a hold of. (NT 144-145) Since then, Mr. Lewis has learned of Respondent's recovery, starting to go to meetings again and the relationship with the disciplinary problems. (NT 145) Attorney Lewis testified that he felt that there was no malicious intent on the part of the Respondent to take a client's money but he simply lacked the mental capacity at that point to do the

work. (NT 146) Mr. Lewis testified that he felt that Respondent was very sorry for what had happened and that his full restitution showed Mr. Lewis that Respondent was remorseful, meaning that Respondent was not just concerned for his license but for the people involved. (NT 148-149)

f. Attorney Ned Spells: Attorney Ned Spells is a judicial law clerk, the current President of Pennsylvania Lawyers Concerned for Lawyers and has been sober since July of 2006. Attorney Spells was introduced to Respondent by Mark Flaherty in August of 2021 because Respondent was interested in starting a pre-order sobriety monitoring program. Since August, 2021, Attorney Spells and Respondent speak regularly, attend meetings together, and have become friends involved in recovery. (NT 152) Mr. Spells assured the Committee that Respondent was going to meetings and Attorney Spells keeps a list of meetings which they attend together which he then gives to Mr. Flaherty. (NT 154) Respondent has talked with Mr. Spells about his disciplinary problems. Mr. Spells is aware of the PCRA Petition matter and that there was a dispute as to how the monies in excess of the retainer was to be handled. (NT 154) Mr. Spells indicated that Respondent expressed remorse over the client's situation. He testified that Respondent regrets that there was a "misunderstanding" over the funds. (NT 155) Mr. Spells testified that if a monitor would be required after the disciplinary proceeding, he would be more than willing to continue as Respondent's sobriety monitor.

g. Mr. Mark Collins: Mr. Collins is a social friend of Respondent. Their families have grown up together in the North Hills of Pittsburgh. They had both attended Pitt as undergrads although they were not in the same year. (NT 156-157) Mr. Collins was aware of Respondent's first sobriety efforts before he went to law school and he stayed in touch with Respondent during his long period of sobriety. When Respondent "fell off the wagon" in more recent years, he had difficulty originally getting hold of Respondent but then Respondent began coming out of his addiction with a dramatic change. (NT 159) Respondent has further showed more remorse and accountability with this round of recovery. (NT 159) Over the past two years, Mr. Collins has seen Respondent regularly for Pitt basketball games. Mr. Collins acknowledged Respondent has remained clean and sober. Respondent constantly talks about going to meetings. He sees Respondent as being more relaxed and more accountable in big and small things. (NT 160) Mr. Collins understood the disciplinary matters involved client funds, Respondent was to do something which he did not do and the client, when she asked for the money back, did not receive it all at the same time.

h. Reverend William J. Geisler: Dr. Geisler is an ordained Catholic priest, currently serving in the Episcopal faith and has been active in the recovery movement in Pittsburgh for many years. (NT 163) Rev. Geisler knew Respondent from his early recovery days over 35 years ago. Rev. Geisler described Respondent as very active, helping Father Geisler set up a new clinic, now named the Pittsburgh Recovery Center, which is still in business.

(NT 166) Father Geisler recently asked Respondent to be on the Board of a new facility which he is operating in Carrick and Respondent has agreed to do so. (NT 165-166) Father Geisler was aware that Respondent "fell off the wagon" after a long period of sobriety but that he has returned to recovery. (NT 166-167)

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

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

a. Dr. Sandra Davis: Dr. Davis was called as an expert witness in the field of clinical psychology. Dr. Davis testified as to her educational background and professional experience leading up to her work in private practice, half of which is in drug and alcohol recovery. (NT 87-90) Dr. Davis was accepted as an expert in the field of clinical social work without objection by ODC. (NT 90) Dr. Davis testified as to her treatment of Respondent between May of 2021 and September of 2022. Dr. Davis received a complete history from Respondent as to his history of sobriety, relapse, and renewed sobriety beginning in May of 2021. Dr. Davis felt Respondent was sufficiently recovered from his comorbidities that he was able to be discharged from care. (NT 95) Her final diagnosis was alcohol dependence, chemical dependence and unspecified depression, all in remission. Dr. Davis testified as to her understanding of the complaint filed by Ms. Kenney with the Disciplinary Board and the nature of the charges against Respondent. (NT 91-92) Dr. Davis testified within a reasonable degree of professional certainty that there was a causal relationship between the diagnosed morbidities involving addiction and depression and Respondent's disciplinary problems.

(NT 95-96) Dr. Davis believed that factors involving depression, isolation and family pressures were what caused Respondent to stop attending meetings in the first place. (NT 96) Dr. Davis felt that Respondent's judgment at that point was greatly impaired and that decisions made were inappropriate. (NT 96) Dr. Davis clearly opines that the addiction led to the misconduct.

b. Testimony of Dr. Bruce Wright: Dr. Wright was qualified as an expert witness in the field of psychiatry and forensic psychiatry without ODC objection. (Depa. 1-24) Dr. Wright testified that his forensic examination of Respondent consisted of two virtual conversations in which he obtained, in his view, adequate history as to Respondent's medical and psychiatric history, history of substance abuse, and current psychiatric condition. Dr. Wright found the Respondent cooperative and candid. (Depa. 12-13) Dr. Wright then traced the Respondent's history of substance abuse going back to age 13, through his original bout with addiction prior to law school which occurred when he became clean and sober at around the age of 28. (Depa. 14) Dr. Wright related that Respondent told him of abstinence and sobriety for approximately 25 years before he relapsed. (Depa. 15) Between his initial relapse around the start of the pandemic in 2020, Respondent significantly increased his use of substances, most significantly OxyContin. Dr. Wright described the Respondent as depressed with a passive death wish by the time of the incident in question. (Depa. 16) Respondent told Dr. Wright that it was the filing of the Disciplinary Complaint that got him to begin sobriety efforts. He told Dr. Wright of his work with Lawyers Concerned for Lawyers, attending AA meetings, and his clinical therapy with Dr. Davis. Dr. Wright testified that based on his examination, he believed Respondent was suffering from opioid use disorder, unspecified stimulant related disorder, unspecified alcohol related disorder, unspecified depression, and history of unspecified anxiety disorder. He then testified that within a reasonable degree of medical psychiatric certainty, he believed there was a direct causal relationship between the misconduct and Respondent's diagnosed psychiatric disorders. (Depa. 21-22) Dr. Wright went on to explain the workings of substance abuse and the ability of an individual to function on a daily basis. He believed that the substance abuse became a disorder and affected responsibility to function. To his knowledge, Respondent had not engaged in this type of conduct before. Dr. Wright believed that if Respondent continued to stay abstinent, his prognosis good and the risk of recidivism was negligible. (Depa. 21-22) Dr. Wright believed that but for the substance abuse disorder, Respondent would not have engaged in the misconduct presented. (Depa. 22) Dr. Wright further explained that individuals suffering from mental illness have an impaired ability to function day to day and substance abuse disorders and depression are recognized as psychiatric illnesses. Dr. Wright believed that Respondent's decision to stop therapy was reasonable as was his decision not to take anti-depressant medication. (Depa. 38-40)

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

46. Respondent currently has a landlord-tenant judgment and federal tax liens filed against him. (NT 181-83)

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

48. Respondent credibly testified to showing remorse for his actions. (NT 188)

49. Respondent had an over two-decade period of sobriety beginning in law school and through the raising of his family. (NT 191-93)

50. His relapse lasted for several years prior to the instant Petition for Discipline "saving his life." (NT 192-94)

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

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

53. All witnesses testified credibly.

V. CONCLUSIONS OF LAW

1. Through the conduct related above, and solely in regard to Respondent's handling of Mr. Taylor's PCRA, ODC has met its burden of proving that Respondent violated the following Rules of Professional Conduct:

a. Rule of Professional Conduct 1.3 - A lawyer shall act with reasonable diligence and promptness in representing a client.

b. Rule of Professional Conduct 1.4(a)(3) - A lawyer shall keep the client reasonably informed about the status of the matter.

c. Rule of Professional Conduct 8.4(c) - It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

d. Respondent violated Rule of Professional Conduct 8.4(d) - It is professional misconduct for a lawyer to engage in conduct prejudicial to the administration of justice.

2. ODC has also proven met its burden of proving that Respondent violated Pennsylvania Rule of Disciplinary Enforcement 219(d)(1)(v) - On or before July 1 of each year all attorneys required by this rule to pay an annual fee shall electronically file with the Attorney Registration Office an electronically endorsed form prescribed by the Attorney Registration Office in accordance with the following procedures: (1)The form shall set forth: Every business operating account maintained or utilized by the attorney in the practice of law during the same time period specified in subparagraph (iii). For each account, the attorney shall provide the name of the financial institution, location and account number .

3. Regarding any allegations or alleged violations of the Rules of Professional Conduct regarding the \$25,000.00 fee paid by Ms. Kenney to Respondent, ODC has not met its burden of proof that a violation of any Rule of Professional Conduct occurred.

4. Respondent satisfied his burden of proving by clear and convincing evidence that mitigation evidence pursuant to *Braun* should be taken into consideration for the recommended disposition.

VI. DISCUSSION

The allegations of misconduct against Respondent may be categorized into three distinct actions: (1) that Respondent failed to properly represent Mr. Taylor during his PCRA proceedings; and (2) that Respondent charged an excessive fee and/or mishandled the fee provided by Ms. Kenney for Respondent's representation of Mr. Taylor; and (3) that

Respondent failed to comply with Pa.R.D.E. 219 concerning his 2020-21 annual registration form. Regarding these alleged violations, ODC bears the burden of proving by clear and satisfactory evidence that Respondent violated the rules charged in the Petition for Discipline. *ODC v. John T. Grisby, III*, 425 A.2d 730, 732 (Pa. 1981). With this standard in mind, we discuss each alleged violation in turn.

A. Allegations of Misconduct

1. Respondent's Representation of Mr. Taylor

Respondent admits violations of Rules 1.3 (acting with due diligence in representing a client) and 1.4(a)(3) (keeping a client reasonably informed about the status of a matter) concerning his representation of Mr. Taylor in the PCRA proceedings. Respondent argues, however, that his misconduct did not constitute dishonest, fraudulent, or deceitful conduct pursuant to Pa.R.P.C. 8.4(c) or was prejudicial to the administration of justice pursuant to Pa.R.P.C. 8.4(d). We disagree and find that ODC has met its burden regarding all four alleged rule violations.

Following his retention by Ms. Kinney to be Mr. Taylor's attorney for the PCRA proceedings, Respondent initially satisfied his obligations: he reviewed the file and drove to SCI-Huntingdon to meet with Mr. Taylor for several hours. From there, however, Respondent admittedly did nothing further to progress the proceedings, culminating with the absolute failure to file a PCRA petition for Mr. Taylor.²

² Evidence produced during the disciplinary hearing also showed that Respondent believed there to be no reasonable basis to file a PCRA petition. If that were the case, Respondent should have filed a *Turner/Finley* no-merit letter with the PCRA court, which Respondent also failed to do. See *Commonwealth v. Hawkins*, 279 A.3d 1267, n.2 (Pa. Super. 2022) ("Counsel must file a Turner / Finley no-merit letter, and that letter must detail counsel's diligent review of the case, list the issue the appellant wishes to be reviewed, explain why that issue lacks merit, and request permission to withdraw.").

Compounding Respondent's misconduct, however, was his dishonesty in communications with Ms. Kenney in the following weeks. On several occasions between January, 2020 and late April, 2021, Ms. Kenney inquired of Respondent, both by phone calls and text messages, about the status of the PCRA petition and proceedings. (FF 21) Respondent responded to those communications by telling Ms. Kenney that he was working on the case and asking her to be patient. We find those statements to be untrue as corroborated by the facts that (1) no further action was ever taken on Mr. Taylor's case by Respondent; and (2) Respondent's later admissions to Ms. Kenney that she was due a refund of the fees paid and that he would "not claim to be right" should Ms. Kenney sue him. (FF 22-27).

Respondent argues that ODC has not met its burden of proof in regard to a Rule 8.4(c) violation because Rule 8.4(c) contained a *scienter* requirement: that ODC was required to prove that Respondent "knowingly" committed an act constituting dishonesty, fraud, deceit, or misrepresentation. However, Respondent admitted during his testimony that he knew there was no merit to the PCRA proceedings and yet did not take any action ("I felt really bad and didn't have the heart to tell this woman that I couldn't help her -- help her nephew." NT 55; see also NT 75-76 (wherein Respondent discusses how he knew there was no merit to the PCRA proceedings and did not inform Mr. Taylor or Ms. Kenney of the same)). These admissions, coupled with the weight of the evidence in total, clearly show that Respondent misrepresented to Ms. Kenney the status of Mr. Taylor's case between January of 2020 and April of 2021.

The failure of Respondent to pursue properly Mr. Taylor's PCRA petition, compounded by this deceit to Ms. Kenney concerning the status of the case, then further

led to a prejudice in the administration of justice as (1) Mr. Taylor's statutory period to have a PCRA petition timely filed ran out during (and because of) Respondent's misconduct; and (2) Mr. Taylor was forced to file a *pro se* PCRA petition, which wasted judicial resources through the trial court's denial of the same, Mr. Taylor's appeal, and the Superior Court's review and remand for the appointment of counsel to represent Mr. Taylor. In other words, what could (and perhaps should) have been resolved through a simple *Turner / Finley* no-merit letter has instead now progressed extensively through the Common Pleas and Superior Courts unnecessarily.

Respondent would have this Committee find that no prejudice to the administration of justice occurred because Mr. Taylor eventually received what he retained Respondent to do: the filing of a PCRA petition and a PCRA hearing in the Court of Common Pleas. However, the facts that – (1) Mr. Taylor had to file an untimely, *pro se* PCRA petition; (2) the trial court had to review and deny that petition; (3) Mr. Taylor had to then file a *pro se* Superior Court appeal; (4) the Superior Court then had to review and, outside of its normal procedures, vacate and remand the trial court's denial because of the confusion regarding the serial nature of the PCRA petition; and (5) the trial court having to take back jurisdiction of the PCRA matter and assign court-appointed counsel – all because Respondent failed to proceed properly on the PCRA in the first instance, lead us to conclude easily that the administration of justice was prejudiced by Respondent's (in)actions.

2. Respondent's Fee for Mr. Taylor's PCRA Proceedings

ODC's allegations of misconduct regarding Respondent's fee for Mr. Taylor's PCRA Proceedings can be broken down into three distinct categories: (1) that the fee was excessive; (2) that Respondent improperly allocated fees to himself from his IOLTA

account, causing it to be out of balance; and (3) that Respondent should have refunded the fee and returned the file to Mr. Taylor / Ms. Kenney in a more timely manner.

In regard to the fee being excessive (whether said fee was \$15,000 or \$25,000), ODC only states that the fee was excessive because of Respondent's failure to proceed on the PCRA matter. ODC Brief at 28. However, and as rightfully pointed out by Respondent, ODC's argument misses the mark. Rule 1.5(a) prohibits an attorney "collecting" an excessive fee. Instantly, Respondent did not collect any of the \$25,000 given to him for the Taylor PCRA proceedings; instead, he refunded the entirety of the fee without any intervention by a court, the IOLTA Board, or the Pennsylvania Disciplinary Board. Further, we have no doubt that, at least when Respondent initially retained and deposited the \$25,000, he had all intent to pursue the PCRA proceedings appropriately. To that end, ODC has provided no evidence that, for a PCRA proceeding related to criminal homicide convictions, a \$15,000 or \$25,000 non-refundable, flat fee would be violative of Rule 1.5(a).

Second, and in what can be characterized as the crux of ODC's contentions regarding Respondent's misconduct with the fee for the Taylor matter, we consider whether Respondent misappropriated and/or improperly comingled \$10,000 of the \$25,000 given to him by Ms. Kenney. As stated above, Respondent quoted a \$15,000 "non-refundable" flat fee in the fee agreement letter to Ms. Kenney for the Taylor matter; however, Ms. Kenney paid Respondent \$25,000 with no explanation. ODC argues, "Respondent did not obtain the informed consent of Mr. Taylor or Ms. Kenney, confirmed in writing, to expend any portion of the excess \$10,000 from the \$25,000 check [...]. Consequently, the \$10,000 portion of the \$25,000 check proceeds constituted an entrustment of \$10,000 from Ms. Kenney to Respondent on behalf of Mr. Taylor." ODC Brief at 25. Taking, then, its

argument to the next level, ODC contends that because the “extra” \$10,000 constituted trust funds, Respondent’s periodic disbursements of the extra \$10,000 from his IOLTA account to him personally constituted an improper distribution of unearned fees and misappropriation of trust funds.

Other than a bald citation to Rule 1.15 by ODC for its assertion that Respondent was required to split the \$25,000 check into the \$15,000 and \$10,000 portions, ODC fails to cite to any specific provision of the Rules of Professional Conduct or Pennsylvania jurisprudence that mandates the same. Even more salient, neither Mr. Taylor nor Ms. Kenney testified during the disciplinary hearing as to their intent regarding paying Respondent \$25,000 instead of the quoted \$15,000. While ODC cites Respondent’s belief that the extra \$10,000 was a bonus of some kind as “self-serving,” statement ODC Brief at 27, respectfully, the burden of proof rests on ODC to prove why the extra \$10,000 should be considered trust funds in the first instance. In our view, especially in light of there being no testimony regarding Ms. Kenney’s intent surrounding the extra \$10,000, ODC has failed to meet this burden.³

Finally, ODC contends that Respondent violated Rule 1.16(d) by not returning the client file to Mr. Taylor / Ms. Kenney promptly when requested, and further by not refunding the \$25,000 fee immediately upon the termination of representation. First, in regard to the file, conflicting evidence was presented at the disciplinary hearing about how quickly Respondent returned the file to Ms. Kenney upon request. According to Respondent, it was within “two days” of the request, whereas ODC’s investigator/auditor stated that the file was returned in June of 2021, several weeks after the initial request. Either way, we find

³ Given that we find that ODC has failed to prove that the \$10,000 constituted trust funds, we need not examine the specific withdrawals that allegedly brought Respondent’s IOLTA account out of balance.

neither circumstance to be a violation of the requirement that an attorney “take steps to the extent reasonably practicable” to return the file.

Concerning the return of the full \$25,000 fee, while we agree that Respondent did not pay the fee back immediately upon request, again, the rule requires “to the extent reasonably practicable.” Respondent was upfront about his inability to pay back the fee immediately, and worked on a payment schedule with Ms. Kenney to eventually pay back the entirety of the \$25,000. Moreover, Respondent did so prior to the filing of the Petition for Discipline and without the necessity of any other court intervention. Without more, we find that ODC has not met its burden of proving a violation of Rule 1.16.

3. Violation of Pa. Rule of Disciplinary Enforcement 219(d)(1)(v)

ODC alleged, and Respondent admitted to, failing to disclose or list his operating account information on his 2020-21 annual attorney registration form in violation of Pa.R.D.E. 219(d)(1)(v). The failure to provide this mandatory information was proven by the admission of ODC Exhibit 18 (Respondent’s form for 2020-21) and Respondent’s Exhibit A, which proved the existence of an operating account. This documentary evidence satisfies ODC’s burden in regard to this allegation.

B. Recommended Discipline

Having determined that ODC met its burden of proving that Respondent violated Rules of Professional Conduct 1.3, 1.4(a)(3), 8.4(c), and 8.4, as well as Rule of Disciplinary Enforcement 219(d)(1)(v), we next turn to the appropriate measure of recommended discipline. To that end, we find the complete abandonment of the representation of Mr. Taylor to be extremely troublesome and worthy of a significant level of discipline. However, we further find that, pursuant to *Braun*, Respondent’s violations of the above cited rules

were caused, at least in part, by his ongoing addiction to drugs and alcohol. Accordingly, for the reasons that follow, we recommend that Petitioner be suspended for a period of three months, with the suspension stayed in its entirety for a probationary period of two years, during which Respondent shall maintain a sobriety monitor as provided by Pa. Disciplinary Board Rule 89.293.

In determining the appropriate level of discipline, we note that the primary purpose of the lawyer disciplinary system is to protect the public from unfit lawyers and to maintain the integrity of the legal system. *ODC v. Keller*, 506 A.2d 872 (Pa. 1986). This Hearing Committee has the duty to weigh the totality of the circumstances of the given case and to apply discipline consistently with other matters. *ODC v. Lucarini*, 472 A.2d 186 (Pa. 1983). However, when properly raised, we may consider whether a psychiatric infirmity may be considered as a mitigating factor in a disciplinary proceeding if the respondent attorney has established by clear and convincing evidence that the disorder “was a causal factor in producing the several elements of professional misconduct.” *ODC v. Braun*, 553 A.2d 894, 895 (Pa. 1989).

In advocating for a period of suspension of one year and one day, ODC cites to several cases in which the respondent attorneys: (1) failed to properly communicate with their clients or prosecute matters; (2) misappropriated significant IOLTA-designated or trust funds; and (3) failed to establish mitigation pursuant to *Braun*. Unfortunately, ODC provides no advocacy or analogous cases to a situation similar to that presented here: where the main finding of misconduct revolves around client abandonment.

For his part, Respondent cites to a single case that is somewhat analogous, *ODC v. Bills*, 108 DB 2022, in which the respondent attorney, who had a prior record of an informal

admonition and a public reprimand for similar misconduct, failed to communicate appropriately with a criminal client concerning the status of his representation, and further failed to list a bank account on his 2020-2021 attorney registration form. However, the misconduct in *Bills* never rose to the level of client abandonment; to the contrary, the respondent attorney in *Bills* took action on his client's part without informing his client and without the client's permission or consent. The Disciplinary Board publicly reprimanded the respondent attorney for this misconduct.

Our own review of salient disciplinary actions reveals three cases that are more on point with the instant matter. In *ODC v. Jamie Ray-Leonetti*, 182 DB 2017, Order (S. Ct. Mar. 19, 2018), the respondent attorney was suspended for one year and one day for neglecting a client matter (leading to the matter's ultimate dismissal in court) and misrepresenting the status of the case to the client. The respondent attorney had a prior record of discipline as an aggravating factor.

In *ODC v. Brian Oliver Williams*, 38 DB 2022, Order (S. Ct. Apr. 19, 2022), the respondent attorney was also suspended for one year and one day on consent for his negligence in handling ten client matters over the course of seven months. Similar to this case, Williams' misconduct included his failure to provide competent representation, communicate with the client, and file timely pleadings.

In *ODC v. James Harry Turner*, 144 DB 2021, Order (S. Ct. Apr. 13, 2022), the respondent attorney was suspended for two years on consent for failing to communicate with multiple clients and file timely pleadings. Mr. Turner had also received prior discipline for similar misconduct, which was an aggravating factor.

Finally, in *ODC v. Corey James Adamson*, 87 DB 2022, Order (S. Ct. Dec. 7, 2022), the respondent attorney was suspended on consent for a period of one year and one day for his abandonment of, and misrepresentation regarding, five different matters over the course of two years. Similar to this case, Adamson represented to his clients that he was working on matters, when in fact he had not been.

Instantly, not only did Respondent completely abandon his representation of Mr. Taylor, but that abandonment caused Mr. Taylor to lose (at least at the time) his PCRA petition rights, which further caused Mr. Taylor to file *pro se* petitions and appeals in both the Court of Common Pleas and Superior Court. These *pro se* petitions in turn caused confusion, a strain on judicial resources, and a complete prejudice in the administration of justice. Moreover, Respondent was dishonest and misrepresented to Ms. Kenney regarding the status of the PCRA petition's filing (or lack thereof).

Abandonment of a client is a serious matter; lying about it and causing the wheels of justice to slow makes such abandonment even more serious. Standing on their own, these violations would warrant a significant measure of discipline, similar to the cases cited above.

However, here, we agree with Respondent that the alcohol and drug addictions that had become a driving force in his life for the years leading up to his misconduct in this matter were, indeed, a causal factor in the misconduct itself. Respondent's expert witnesses both testified, to a reasonable degree of certainty, that a causal relationship existed between Respondent's diagnosed depression and addictive disorders and his abandonment of Mr. Taylor's representation and subsequent actions. Indeed, Dr. Davis specifically opined that Respondent's conditions caused him to make inappropriate

professional decisions. (NT 96) Dr. Wright similarly testified that but for Respondent's disorders, the misconduct likely would not have occurred. (Depa. 22) Additionally, all of Respondent's character witnesses similarly testified that a marked and negative change in Respondent's behaviors occurred that matches his period of relapse from sobriety. Finally, all of Respondent's witnesses, both expert and lay, clearly and credibly testified that when sober, Respondent is a more than capable attorney, a good friend and father, and a well-established member of his community.

We further note, and with much import, that ODC provided no evidence or testimony to counter the *Braun* mitigation evidence presented by Respondent. Similarly, ODC's cross-examinations of all of these witnesses did not lessen their credibility to this Committee. We therefore find the *Braun* evidence to be substantial and unrebutted.

After reviewing all of the above-stated circumstances in this case, including the severity of the misconduct involved but also the mitigating factors clearly present, this Committee finds that a period of suspension of three months is appropriate, but that the suspension be stayed for two years of probation with a sobriety monitor. The testimony adduced during the disciplinary hearing very clearly showed that, but for Respondent's relapse into drugs and alcohol, the disciplinary violations that have been alleged here would not have occurred. Even more telling, however, is what has occurred after Respondent has regained sobriety: no further violations of the Rules have occurred, his crippling depression has subsided, and he appears to be on his way to being a successful and respected member of this Bar.

Nevertheless, his period of sobriety at this point has been short. While Respondent states that the Petition for Discipline "saved his life", the Petition was only filed a little over a

year ago in January of 2023. In our respectful view, continued guidance by a sobriety monitor under the programs established by the Supreme Court and the Disciplinary Board will help ensure that Respondent stays sober and practices within the Rules by which all members of the Bar must abide. Further, the period of probation will permit Respondent to continue practicing law without interruption, while protecting the public from any further misconduct.

VII. RECOMMENDATION

The Hearing Committee recommends that Respondent be suspended from the Bar of the Commonwealth for a period of three months, with the suspension stayed in its entirety for a probationary period of two years, during which Respondent shall have a sobriety monitor as provided by Pa. Disciplinary Board Rule 89.293.

Respectfully submitted,

/s/ Gina Marie Zumpella
Gina Marie Zumpella, Esq., Chair

/s/ Amy M. Kirkham
Amy M. Kirkham, Esq., Member

/s/ Todd M. Pappasergi
Todd M. Pappasergi, Esq., Member

Date February 26, 2024