IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 2844 Disciplinary Docket No. 3
Petitioner	:	No. 174 DB 2020
v.	:	Attorney Registration No. 202108
	:	(Philadelphia)
DANIEL MICHAEL DIXON,	:	
Respondent	:	

ORDER

PER CURIAM

AND NOW, this 4th day of March, 2022, upon consideration of the Report and Recommendations of the Disciplinary Board, Daniel Michael Dixon is suspended from the Bar of this Commonwealth for a period of one year and one day. Respondent shall comply with all the provisions of Pa.R.D.E. 217 and pay costs to the Disciplinary Board. *See* Pa.R.D.E. 208(g).

A True Copy Nicole Traini
As Of 03/04/2022

Attest: Nicole Traini
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, Petitioner	:	No. 174 DB 2020
v.	:	Attorney Registration No. 202108
DANIEL MICHAEL DIXON, Respondent	:	(Philadelphia)

REPORT AND RECOMMENDATIONS OF
THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

TO THE HONORABLE CHIEF JUSTICE AND JUSTICES
OF THE SUPREME COURT OF PENNSYLVANIA:

Pursuant to Rule 208(d)(2)(iii) of the Pennsylvania Rules of Disciplinary Enforcement, the Disciplinary Board of the Supreme Court of Pennsylvania ("Board") herewith submits its findings and recommendations to your Honorable Court with respect to the above-captioned Petition for Discipline.

I. HISTORY OF PROCEEDINGS

By Petition for Discipline filed on November 10, 2020, Petitioner, Office of Disciplinary Counsel, charged Respondent, Daniel Michael Dixon, with violations of Pennsylvania Rules of Professional Conduct 1.1, 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.4(b), 3.1, 3.3(a)(1), 3.3(a)(3), 4.1(a), 8.4(a), 8.4(b), 8.4(c), and 8.4(d). Respondent accepted service of the Petition for Discipline on November 12, 2020 and failed to file a response. The factual allegations of the Petition are deemed admitted due to Respondent's failure to file an Answer. *See,* Pa.R.D.E. 208(b)(3).

Following a prehearing conference held on January 25, 2021, a District I Hearing Committee ("Committee") conducted a disciplinary hearing on March 2, 2021. Petitioner relied upon the factual allegations of the Petition for Discipline as establishing that Respondent had engaged in misconduct. Petitioner moved into evidence exhibits ODC-1 through ODC-48. After the Committee determined that Petitioner had established a prima facie violation of a charged rule, Petitioner presented the testimony of one witness as evidence on the discipline to be imposed pursuant to Disciplinary Board Rules, § 89.151(a). Respondent appeared pro se and testified on his own behalf. He did not present any witnesses or exhibits on his own behalf.

On April 7, 2021, Petitioner filed a post-hearing brief to the Committee requesting that the Committee conclude that Respondent violated the rules charged in the Petition and recommend to the Board that Respondent be suspended for a period of not less than two years. Respondent did not file a post-hearing brief.

By Report filed on June 28, 2021, the Committee concluded that Petitioner met its burden to prove Respondent's violations of the rules and recommended that he be suspended for a period of not less than two years. On July 19, 2021, Respondent filed a Brief on Exceptions to the Committee's Report and recommendation and requested that the Board consider a one year period of probation to address his misconduct. Respondent requested oral argument before the Board. On July 29, 2021, Petitioner filed a Brief Opposing Exceptions.

A three-member panel of the Board held oral argument on September 22, 2021. The Board adjudicated this matter at the meeting on October 25, 2021.

II. FINDINGS OF FACT

The Board makes the following findings:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Avenue, P.O. Box 62485, Harrisburg, Pennsylvania, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement (hereinafter "Pa.R.D.E."), with the power and duty to investigate all matters involving alleged misconduct of an attorney admitted to practice law in the Commonwealth of Pennsylvania and to prosecute all disciplinary proceedings brought in accordance with the various provisions of said Rules of Disciplinary Enforcement.

2. Respondent is Daniel Michael Dixon, born in 1978 and admitted to practice law in the Commonwealth in 2006. He maintains his office at 6 Dickinson Drive, Suite 115, Chadds Ford, PA 19317, and is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. On November 10, 2020, Petitioner filed a Petition for Discipline against Respondent charging him with multiple violations of the Pennsylvania Rules of Professional Conduct. Respondent accepted service of the Petition on November 12, 2020.

4. Respondent failed to answer the Petition for Discipline and the factual allegations therein are deemed admitted under Pa.R.D.E. 208(b)(3).

5. Beginning on or about June 30, 2016, Respondent was employed as an attorney at Morgan, Lewis & Bockius LLP ("Morgan Lewis") in Philadelphia.

6. On or about November 15, 2016, William Zimmerman, Esquire, a partner at Morgan Lewis, assigned Respondent to handle an appeal of a tax assessment to the Pennsylvania Department of Revenue's Board of Appeals ("BOA") on behalf of CSI International, Inc. ("CSI").

7. The appeal concerned an assessment against CSI of $176,734.81 in sales and use tax.

8. As the attorney assigned to the CSI appeal, Respondent was responsible for keeping track of the deadlines for filings in the case, and for communicating with the client.

9. A taxpayer challenging assessments of sales and use tax must do so through the following process:

a. the taxpayer must file a petition for reassessment with the BOA, which is a unit within the Department of Revenue (72 Pa.C.S. § 9702(a);

b. to challenge the BOA's decision and order, the taxpayer must file a timely petition with the Board of Finance and Revenue ("BF&R"), which is an independent administrative tax tribunal within the Treasury Department (71 P.S. §§ 12, 62; 72 P.S. §§ 9701, 9704);

c. the taxpayer may then file a petition for review of the BF&R's decision to the Commonwealth Court (42 Pa.C.S. § 763(a); Pa.R.A.P. 1571); and

d. the taxpayer may further appeal, as of right, to the Pennsylvania Supreme Court (42 Pa.C.S. § 723(b); Pa.R.A.P. 1101(a)(2)).

10. On December 13, 2016, Respondent filed a petition for reassessment with the BOA on CSI's behalf; the proceeding was captioned In re Petition of CSI International Inc., Docket No. 1629481.

11. In the petition for reassessment, Respondent:

a. identified himself as CSI's representative;

b. included his email address at Morgan Lewis, which was daniel.dixon@morganlewis.com; and

c. requested that any correspondence and any Decision and Order should be sent to him by email.

12. By email dated December 15, 2016, the BOA informed Respondent, inter alia, that:

a. the BOA had received the appeal he filed;

b. the appeal had been assigned to a tax examiner;

c. he could contact the examiner by email;

d. if he had requested a hearing, he would be informed of the hearing date; and

e. "the Board may have up to six months to render a decision in this matter."

13. By email dated December 18, 2016, Respondent forwarded a copy of the BOA's notice to Barry Weiss, Esquire, Executive Vice President, Corporate Affairs and General Counsel at CSI.

14. Mr. Weiss was the individual at CSI to whom Respondent communicated regarding the CSI tax appeal.

15. On May 9, 2017, Respondent represented CSI at a hearing before the BOA.

16. By email dated May 9, 2017, Respondent told Mr. Weiss that:

a. Respondent had appeared at the hearing in CSI's case;

b. Respondent had "convince[d] [the hearing officer] that the $141,362 sales tax should be recomputed by excluding the additional employee pension payments and workers [sic] compensation";

c. the hearing officer's recommendation needed to be approved by a Board Member;

d. if the Board Member agreed, "we should expect to receive a decision by this summer reducing the sales tax to zero";

e. if this occurred, "we'll just need to pay the $23,016 in use tax (plus interest)"; and

f. he would "keep [Mr. Weiss] informed on any additional developments."

17. By Decision and Order dated June 6, 2017, the BOA denied CSI's request for relief.

18. There was a typographical error at the end of the June 6, 2017 Decision and Order, where it stated "ORDERED that Assessment No. **Error! Reference source not found.** be sustained in its entirety." (Emphasis in original).

19. Despite this error, the June 6, 2017 Decision and Order included the correct assessment number in the caption.

20. The June 6, 2017 Decision and Order informed Respondent that any appeal of the BOA's decision "must be filed on or before **September 5, 2017** with the Board of Finance and Revenue ... ." (Emphasis in original).

21. By email dated June 6, 2017, the BOA sent Respondent a copy of its June 6, 2017 Decision and Order.

22. On or about June 6, 2017, Respondent received the BOA's June 6, 2017 email and the June 6, 2017 Decision and Order.

23. Respondent moved the June 6, 2017 email attaching the Decision and Order to an email folder labeled "IN," where another Morgan Lewis employee later found it.

24. After receiving the BOA's June 6, 2017 Decision and Order, Respondent failed to supply CSI with a copy of the Decision and Order or inform CSI that the BOA had issued it.

25. On July 17, 2017, the BOA issued a corrected Decision and Order; the sole correction was to correct an error by filling in the assessment number at the end of the original June 6, 2017 Decision and Order, which was revised from "ORDERED, that Assessment No. **Error! Reference source not found.** be sustained in its entirety," to state: "ORDERED, that Assessment No. 400000235802 be sustained in its entirety."

26. The BOA's corrected Decision and Order again informed Respondent that any appeal of the BOA decision "must be filed on or before **September 5, 2017** with the Board of Finance and Revenue ... ." (Emphasis in original).

27. By email dated July 17, 2017, the BOA sent Respondent a copy of the corrected Decision and Order.

28. On July 17, 2017, Respondent received the BOA's July 17, 2017 email and the corrected Decision and Order.

29. On July 17, 2017, Respondent reviewed the BOA's corrected Decision and Order.

30. Respondent moved the July 17, 2017 email attaching the Decision and Order to an email folder labeled "IN," where a Morgan Lewis employee later found it.

31. On or about July 17, 2017:

a. Respondent provided his assistant, Kristen Giovanni, with a time sheet on which he indicated that he had spent .3 hours (nearly 20 minutes) reviewing the July 17, 2017 Order; and

b. Ms. Giovanni recorded an entry to the CSI matter in Morgan Lewis's time-entry system, which entry stated that on July 17, 2017, Respondent spent .3 hours to "Review decision."

32. Pursuant to Morgan Lewis's firm policies, Respondent was required to review his time entries by the Tuesday after they were entered.

33. Respondent reviewed his July 17, 2017 time entry to CSI on or before Tuesday, July 25, 2017.

34. After receiving the corrected copy of the BOA's June 6, 2017 Decision and Order, Respondent failed to supply CSI with a copy of the Decision and Order or inform CSI that the BOA had issued it.

35. By email dated August 9, 2017, Mr. Weiss asked Respondent if there was "[a]ny update on when we will get a board decision?"

36. Respondent failed to respond to Mr. Weiss's August 9, 2017 email.

37. Pursuant to 72 Pa.C.S. § 9704(a), as it then provided, Respondent had 90 days from the mailing date of the BOA's Decision and Order, or until September 5, 2017 (Monday, September 4, 2017 was Labor Day), to file an appeal with the BF&R.

38. Having failed to inform Mr. Weiss of the BOA's adverse decision, Respondent failed to protect CSI's rights, in that Respondent failed to file an appeal to the BF&R from the BOA's decision on or before September 5, 2017.

39. According to an affidavit Respondent later executed and filed with the BF&R, which is discussed infra at ¶ 111, on September 8, 2017, Respondent spoke with Albert "Rick" Pooler, an employee of the BOA, and inquired about the appeal.

40. By email dated September 8, 2017, Mr. Pooler sent Respondent an additional copy of the BOA's decision.

41. The copy of the BOA decision Mr. Pooler sent was an additional copy of the corrected Decision and Order sent to Respondent on July 17, 2017.

42. After receiving Mr. Pooler's email and the additional copy of the BOA's Decision and Order, Respondent failed to:

a. supply CSI with a copy of the BOA's Decision and Order;

b. inform CSI that the BOA had issued its Decision and Order on June 6, 2017;

c. inform CSI that the BOA had issued a corrected Decision and Order on July 17, 2017, and explain what corrective action was contained therein; and

d. inform CSI that the deadline to appeal the BOA's Decision and Order had expired.

43. On September 20, 2017, the Department of Revenue ("Department") filed a lien against CSI in the amount of $183,620.58.

44. By email dated October 10, 2017, Mr. Weiss asked Respondent whether Respondent had "[a]ny further news on resolution."

45. Respondent failed to respond to Mr. Weiss's October 10, 2017 email.

46. On or about October 10, 2017, the Department sent CSI notice of the lien it had filed against CSI.

47. Mr. Weiss was informed about the lien on October 12, 2017, by means other than a communication from Respondent - namely, an internal CSI email from a CSI Executive who learned of the lien.

48. By email dated October 12, 2017, at 10:29 a.m., Mr. Weiss:

a. forwarded to Respondent an email he had received regarding the lien;

b. asked Respondent "if we can do anything to challenge this lien and avoid collection"; and

c. noted that he "thought th[e] pa dept of revenue was stayed from taking further action given our appeal."

49. By email dated October 12, 2017, at 11:30 a.m., Respondent told Mr. Weiss that Respondent would "look into this and get [him] an update ... tomorrow."

50. Respondent's October 12, 2017 email was materially misleading, as he failed to inform Mr. Weiss that the BOA had already issued a Decision and Order denying CSI's appeal and that the time to appeal from that Decision and Order had expired.

51. By email dated October 12, 2017, at 2:33 p.m., Mr. Weiss thanked Respondent, and reiterated that CSI was "uncertain how this is even possible give[n] our appeal of the pa tax assessment[.]"

52. Despite Mr. Weiss having reiterated his belief that CSI had an ongoing appeal from the assessment, Respondent failed to inform his client that the BOA had denied CSI's appeal and that no further appeal had been filed.

53. By email dated October 16, 2017, at 11:39 a.m., Mr. Weiss asked Respondent, "What did you find out?"

54. By email dated October 16, 2017, at 12:32 p.m., Respondent told Mr. Weiss that his "call was pushed back until today" and that he would give Mr. Weiss an update "asap."

55. Respondent did not give Mr. Weiss the promised update.

56. By email dated October 19, 2017, Mr. Weiss wrote, "?????," again seeking information from Respondent regarding the lien.

57. In an email to Mr. Weiss on October 20, 2017, at 9:17 a.m., Respondent represented that:

a. he "was finally able to connect" with the Secretary of the BF&R ("Secretary") the previous day;

b. the Secretary was "investigating the issue" and would be getting back to Respondent that day or by Monday; and

c. at the Secretary's suggestion, Respondent was "pulling together some materials ... that [would] help us fast track resolution of the appeal."

58. As of October 2017, and at all other times relevant to this case, the Secretary of the BF&R was Thomas W. Watson, Esquire.

59. By email dated October 20, 2017, at 10:27 a.m., Mr. Weiss asked Respondent what CSI should "do about the lien" in the meantime and noted that the lien "may affect our credit line."

60. By email dated October 20, 2017, at 11:38 a.m., Respondent told Mr. Weiss that:

a. the Secretary was investigating how and why the lien was issued, and would be getting back to him "ASAP" about "procedures to have it removed as we believed it was issued in error and we are still proceeding with the appeal"; and

b. Respondent was going to "fast track the appeal, as resolving it would also eliminate the lien."

61. By email dated October 20, 2017, at 11:41 a.m., Mr. Weiss replied to Respondent by:

a. informing Respondent that the lien would violate covenants in CSI's loan documents;

b. asking whether "the [S]ecretary [had] concede[d] the lien was issued in error and that they would remove it";

c. informing Respondent that CSI was refinancing and that Mr. Weiss was issuing an opinion letter in connection with the transaction; and

d. telling Respondent that Mr. Weiss needed to ensure that the opinion letter was correct.

62. By email dated October 20, 2017, at 12:02 p.m., Respondent told Mr. Weiss that the Secretary was "going to touch base with the appropriate folks at the Department, make sure he had all the facts, and get back to [Respondent]," but that "in principle, [Respondent] believe[d] the answer [was] yes."

63. In the email, Respondent further told Mr. Weiss that he could "attest" that:

a. the "Department of Revenue errantly issued a lien against ... [CSI]";

b. Respondent had "contacted the appropriate officials" and "we/they are actively working to have the lien removed";

c. the lien directly related to an "active controversy for which CSI still ha[d] appeal rights";

d. since CSI still had appeal rights, "the lien should not have been issued"; and

e. Respondent expected "the lien w[ould] be removed and the appeal resolved within the next 30 to 45 days."

64. By email dated October 20, 2017, at 12:27 p.m., Mr. Weiss told Respondent that the lien had already been reported to Dun & Bradstreet, and that he believed "THEY NEED[ED] TO MOVE FASTER THAN 30-45 DAYS!!"; Mr. Weiss also suggested that it might be necessary for CSI to sue to remove the lien or file for a temporary restraining order to prevent its enforcement.

65. By email dated October 20, 2017, at 12:45 p.m., Respondent told Mr. Weiss that Respondent would try to take care of the issue by October 23 or 24, 2017, stressing that Respondent would "explain the urgency" and "call in some favors."

66. Respondent's October 20, 2017 emails to Mr. Weiss were materially false and misleading, in that Respondent knew, but failed to disclose, that:

a. the BOA had denied CSI's appeal in its June 6, 2017 Decision and Order;

b. CSI's time to appeal the BOA's Decision and Order had already expired;

c. the lien against CSI was not "errantly issued";

d. CSI had no "active controversy" for which it had appeal rights;

e. Respondent could not "call in some favors" to have the lien withdrawn; and

f. Respondent had no basis for expecting that the lien would be removed within 30 to 45 days.

67. By email dated October 30, 2017, at 11:43 a.m., Mr. Weiss asked Respondent if he had "ANY UPDATE" regarding the lien.

68. By email dated October 30, 2017, at 4:09 p.m., Respondent:

a. sent Mr. Weiss a proposed "Board of Finance and Revenue Request for Compromise" ("Request for Compromise");

b. told Mr. Weiss that "if/when accepts [sic] [the Request for Compromise] should immediately have the effect of removing the lien";

c. asked Mr. Weiss to sign the Request for Compromise if it "look[ed] OK," and to return it to Respondent; and

d. told Mr. Weiss he would then submit the Request for Compromise and "speak with Revenue again about this tomorrow."

69. Following some revisions, Mr. Weiss signed the Request for Compromise and, by email dated October 31, 2017, at 1:49 p.m., forwarded the signature page to Respondent, and asked "how long it [would] take to get this approved and through."

70. By email dated October 31, 2017, at 4:45 p.m., Respondent informed Mr. Weiss that he would "get it out today and send you copies for your records tomorrow."

71. Respondent failed to file the Request for Compromise on October 31, 2017.

72. By email dated November 1, 2017, Mr. Weiss asked Respondent if he had filed the Request for Compromise, and requested that Respondent "send over copies."

73. By email dated November 6, 2017, at 2:09 p.m., Respondent:

a. sent Mr. Weiss a copy of the signed Request for Compromise, which had not yet been filed; and

b. "[a]pologi[zed] if [it] [was] a duplicate," claiming he had been "having some trouble with [his] emails bouncing back from last week and this weekend."

74. By email dated November 6, 2017, at 2:19 p.m., Mr. Weiss told Respondent he had not received the Request for Compromise.

75. On November 7, 2017:

a. Respondent filed by email an untimely petition to the BF&R challenging the BOA's June 6, 2017 Decision and Order;

b. attached a copy of Mr. Pooler's September 8, 2017 email sending him a copy of the BOA's Decision and Order; and

c. baldly asserted that "the mailing date on the Board of Appeals Decision and Order should be September 8, 2017."

76. Respondent attached the Request for Compromise to his untimely petition filed with the BF&R.

77. Respondent did not inform CSI that he had filed the petition to the BF&R.

78. Respondent's assertion in his November 7, 2017 email that the "mailing date" for the Decision and Order "should be September 8, 2017," was

false and/or frivolous, as he knew he had received the Decision and Order by email on June 6, 2017 and, again, on July 17, 2017.

79. By email dated November 21, 2017, at 3:05 p.m., Mr. Weiss asked Respondent for an "update" on the case, stressing that he wanted to "resolve [it] asap[,] as it is on our [Dun & Bradstreet] report ... ."

80. By email dated November 21, 2017, at 5:21 p.m., Respondent told Mr. Weiss that he would follow up on the case the next day and "check back in with you."

81. By email dated November 27, 2017, Mr. Weiss asked Respondent if there was "[a]ny update?"

82. By email dated November 29, 2017, Respondent told Mr. Weiss that he had "a call scheduled for tomorrow for another issue," but that he "should be able to get some answers and update on where we are in the process then."

83. By email dated December 1, 2017, Mr. Weiss again asked Respondent if he had "[a]ny update?"

84. By email dated December 4, 2017, Respondent told Mr. Weiss that:

a. he had "talked with Revenue";

b. he was "hoping to have the settlement reviewed and submitted for approval by the middle of the month (that's what I was told by the lawyer working on the case)"; and

c. "[t]his would act to remove the lien."

85. Respondent's December 4, 2017 email was false, as the attorney for the Department of Revenue, Robert Kolb, Esquire, had not told Respondent that the "settlement" would be "submitted for approval by the middle of the month."

86. By email dated December 11, 2017, sent to Respondent with a copy to Mr. Watson, Secretary of the BF&R, Mr. Kolb:

a. acknowledged receipt of the Request for Compromise;

b. stated that "[t]he Department of Revenue is not interested in compromising this matter"; and

c. stated that "[t]he Department requests that the Board of Finance and Revenue issue a decision on merits of the petition."

87. Respondent failed to inform Mr. Weiss that the Department had rejected his Request for Compromise.

88. Instead, by email dated December 12, 2017, Respondent told Mr. Weiss that there was "a lawyer assigned" to the case, and that Respondent was "trying to accelerate discussions with him this week."

89. By email dated December 21, 2017, at 8:02 a.m., with a copy to Mr. Kolb, Mr. Watson:

a. told Respondent that Mr. Watson had "noticed that you have requested a compromise for this appeal";

b. told Respondent that "the Department's attorney is Robert Kolb, who [Mr. Watson] ha[d] copied on this email";

c. instructed Respondent to "contact [Mr. Kolb] to see if a compromise can be reached";

d. told Respondent he had "noticed that the appeal was filed late with this Board," as it was "due on or before September 5, 2017, but was not filed until November 7, 2017"; and

e. requested that Respondent respond to "this email regarding the late filing issue," as it "may affect the compromise process."

90. Mr. Kolb responded immediately; by email dated December 21, 2017, at 8:05 a.m., Mr. Kolb again informed Mr. Watson and Respondent that:

"[t]he Department [was] not interested in compromising [the] matter" and that the Department "request[ed] that the Board render a decision on the merits."

91. Respondent failed to provide the explanation for his late filing that Mr. Watson had requested.

92. Respondent failed to inform Mr. Weiss that the Department had again rejected the Request for Compromise.

93. Instead, by email dated December 21, 2017, at 1:16 p.m., Respondent told Mr. Weiss he was "[h]aving another call with Tom tomorrow," and would "revert back with an update as soon as I do."

94. Respondent's time entries for the CSI case do not reflect a call with anyone about the case on December 22, 2017.

95. By email dated January 2, 2018, Mr. Weiss again asked Respondent if he had "[a]ny update?"

96. Respondent failed to respond to the email.

97. By email dated January 15, 2018, at 6:46 p.m., Mr. Weiss again stressed to Respondent the need to resolve the case, writing, "Where do we stand? I need to get this resolved - what is the delay?"

98. By email dated January 17, 2018, at 9:18 a.m., Respondent told Mr. Weiss that he would "be in touch later th[at] afternoon" and that "[w]e should be able to have a resolution by end of month."

99. Respondent's January 17, 2018 email was materially misleading, as he had no basis for his assertion that CSI's case "should be" resolved by the end of the month, where (a) the Department had twice rejected the possibility of a

compromise, (b) the matter was not yet scheduled for a hearing before the BF&R, and (c) the appeal Respondent had filed was untimely.

100. By email dated January 17, 2018, at 9:19 a.m., Mr. Weiss responded by again asking Respondent, "What is the delay?"

101. By email dated January 18, 2018, at 8:26 a.m., Mr. Watson:

a. told Respondent that, "[a]s the Department [was] not interested in pursuing a compromise, the Board [would] soon consider the CSI matter, as early as the February hearings";

b. noted again that "the appeal was filed late with this Board"; and

c. asked Respondent to "[w]ithin the next 7 days, please respond to this email regarding the late filing issue."

102. Respondent failed to provide the requested response within seven days.

103. By email dated January 18, 2018, at 12:47 p.m., Respondent replied to Mr. Weiss's inquiry regarding the "delay" by telling him, inter alia, that:

a. "it's just a matter of scheduling and the formal 'process'";

b. he "believe[d] the last monthly meeting that would have been able to approve anything was cancelled"; and

c. that "[t]here's nothing else we need to do."

104. Respondent's January 18, 2018 email was materially false and misleading as:

a. there was nothing to "approve," since the Department had already twice rejected CSI's Request for Compromise; and

b. far from having "nothing else we need to do," CSI needed to provide an explanation for its untimely filing of an appeal—an untimely filing Respondent had not even disclosed to his client.

105. By email dated February 13, 2018, at 10:30 a.m., Respondent asked Mr. Watson whether Respondent could provide "an affidavit from [his] assistant attesting to the fact that we never received the decision, that we requested the decision multiple times from Mr. Pooler, only to finally receive the decision after the decision [sic] deadline."

106. Respondent's February 13, 2018 email to Mr. Watson was materially false and misleading, as he knew he had received the BOA's Decision and Order before the deadline to appeal to the BF&R.

107. By email dated February 13, 2018, at 10:33 a.m., Mr. Watson told Respondent, inter alia, that "[t]he Board [would] accept the information and affidavit" and that the matter would "be decided in April."

108. By email dated February 14, 2018, Mr. Weiss again asked Respondent for an "update," noting that, "It's been almost a month since [the] last progress report."

109. By email dated February 15, 2018, Respondent told Mr. Weiss, *inter alia*, that "[w]e are scheduled for the next meeting to have our compromise approved."

110. Respondent's February 15, 2018 email was materially false, as he knew there was no "compromise" to be approved; to the contrary, Mr. Kolb had informed Respondent on December 11 and 21, 2017, that the Department had no interest in a compromise in CSI's case.

111. By email dated March 2, 2018, Mr. Watson asked Respondent whether he had "submitted the affidavit," and noted that "[i]t is still the Board's decision regarding jurisdiction."

112. By notice dated March 8, 2018, the BF&R advised Respondent, inter alia, that a hearing in the CSI case was scheduled for April 3, 2018.

113. On March 13, 2018, Respondent signed a sworn affidavit in which he attested that:

a. on or about July 25, 2017, he had asked his administrative assistant, Kristen Giovanni, if they had "received via U.S. mail or otherwise, a decision from the [BOA]" for the CSI tax assessment appeal;

b. at that time, he and Ms. Giovanni had "searched both our electronic and paper files and could not locate a decision";

c. approximately two weeks later, Respondent "[a]gain ... searched our files, both electronic and paper, and could not locate a copy of the decision";

d. on or about August 15, 2017, Respondent asked that "Ms. Giovanni contact the [BOA] via telephone to inquire about the status of the appeal and request a copy of the decision if one had been issued";

e. on or about August 25, 2017, Respondent "again asked Ms. Giovanni to contact the [BOA] via telephone to inquire about the status of the appeal";

f. on "August 29, 2018 [sic]," Ms. Giovanni informed Respondent that "Rick Pooler" had contacted her and instructed her that Respondent would need to contact the BOA directly about the status of the appeal;

g. on or about August 30, 2017, Respondent contacted the BOA and left a voicemail message for Mr. Pooler, explaining that he had not yet received a decision;

h. on or about September 5, 2017, Respondent again contacted the BOA to inquire about the decision;

i. on September 8, 2017, Respondent spoke with Mr. Pooler and Pooler forwarded to Respondent the BOA's Decision and Order; and

j. Respondent again searched "our electronic and paper file and confirmed that September 8, 2017 was the first time [he] had seen or received the [Decision and Order] in any medium."

114. Respondent also wrote an affidavit for Ms. Giovanni to sign.

115. On March 13, 2018, Ms. Giovanni signed the sworn affidavit Respondent had written for her, in which she attested, inter alia, that:

a. on or about July 25, 2017, at Respondent's request, she "searched our electronic and paper files and could not locate a decision" from the BOA regarding CSI's appeal;

b. approximately two weeks later, again at Respondent's request, she had "searched our files, both electronic and paper, and could not locate a copy of the decision";

c. on or about August 15, 2017, at Respondent's direction, she contacted the BOA by telephone and left a voicemail message for Mr. Pooler inquiring about the BOA appeal and requesting a copy of the decision if one had been issued, but received no response;

d. on or about August 25, 2017, she again contacted the BOA by telephone to inquire about the status of the appeal;

e. on August 28, 2017, she received a voicemail message from Mr. Pooler instructing that Respondent would need to contact Mr. Pooler directly; and

f. on "August 29, 2018 [sic]," she informed Respondent that he would need to contact the BOA directly to inquire about the status of the appeal.

116. At the time Ms. Giovanni signed the affidavit:

a. she relied on Respondent's representations regarding the dates set forth in the affidavit;

b. she had checked Morgan Lewis's paper files and electronic files for the BOA decision, but had not checked Respondent's emails;

c. she had previously informed Respondent that she would never look at his email account unless he specifically asked her to do so; and

d. Respondent had not asked her to check his email account for the BOA decision.

117. On March 13, 2018, Respondent submitted the two sworn affidavits to the BF&R.

118. Respondent's affidavit and the affidavit he prepared for Ms. Giovanni were false and misleading, in that at the time he prepared and filed them, Respondent knew he had received copies of the BOA's Decision and Order by email on June 6, 2017, and on July 17, 2017.

119. Respondent failed to serve copies of the affidavits on the Department, as required by 61 Pa. Code § 703.6(a), which provides: "A party shall serve the other party with each submission."

120. Respondent failed to inform Mr. Weiss that he had filed the affidavits.

121. By email dated March 15, 2018, Mr. Weiss, inter alia, asked Respondent to "provide an update of where we are with this matter."

122. Also on March 15, 2018, Mr. Watson sent an email to Mr. Kolb, with a copy to Respondent:

a. attaching copies of the affidavits Respondent had submitted to the BF&R;

b. noting that, as Mr. Kolb "may be aware, the appeal in this case was filed with this Board beyond the 90-day time limit";

c. noting that Respondent had "asserted that he did not receive the decision";

d. informing Mr. Kolb that Mr. Watson would upload the affidavits to "RAPS" [the Revenue Appeal Processing System];

e. informing Mr. Kolb that "[t]he Board ha[d] asked [Mr. Watson] to contact [Mr. Kolb] regarding how the decision was sent to [CSI]"; and

f. requesting that Mr. Kolb "respond within the next 10 days, as the appeal is listed on the April Calendar."

123. By email dated March 16, 2018, at 1:23 p.m., with a copy to Respondent, Mr. Kolb asked Mr. Watson if "the affidavits attached to your e-mail

[were] provided to the Department [of Revenue] prior to you sending me an email yesterday?"

124. By email dated March 16, 2018, at 1:36 p.m., with a copy to Respondent, Mr. Watson told Mr. Kolb that "to [Mr. Watson's] knowledge the affidavits were not previously provided to the Department," noting that "the email [Mr. Watson] received on Tuesday [March 13, 2018] contained only [Mr. Watson's] email address."

125. By email dated March 19, 2018, at 4:12 p.m., Respondent replied to Mr. Weiss's March 15, 2018 request for an "update," but failed to disclose that he was pursuing an untimely appeal from an adverse ruling by the BOA; instead, he merely told Mr. Weiss, "We'll be attending the meeting I mentioned in a few weeks."

126. By email dated March 19, 2018, at 4:33 p.m., Mr. Weiss asked Respondent to "resend me the specifics on the meeting you reference."

127. Respondent failed to respond to Mr. Weiss's March 19, 2018 email.

128. By email dated March 23, 2018, directed to Mr. Watson, with a copy to Respondent, Mr. Kolb filed with the BF&R a letter brief addressing the untimely filing of Respondent's petition to the BF&R.

129. In his March 23, 2018 letter brief, Mr. Kolb:

a. argued that the BF&R should not consider the affidavits Respondent submitted because Respondent had (i) failed to file the affidavits within 60 days after filing his petition, as required by 61 Pa. Code § 703.8(a), (ii) failed to file the affidavits within 7 days after Mr. Watson's January 18, 2018 email, as Mr. Watson had requested, and (iii) failed to serve the affidavits on the Department, as required by 61 Pa. Code § 703.6(a);

b. attached copies of the emails the BOA had sent to Respondent on June 6, 2017 and July 17, 2017, in which the BOA had provided Respondent with copies of its Decision and Order; and

c. argued that, under the "mailbox rule," Respondent's assertion that he did not receive the Decision and Order was insufficient to rebut the presumption that he received the emailed copies the BOA had sent to him.

130. By email dated April 2, 2018, at 11:05 a.m., Respondent requested that the BF&R grant him a one-month continuance of the hearing on the appeal, noting that he was "currently investigating the validity of the Department's claims [in Mr. Kolb's letter brief]" and "require[d] additional time to properly address and confirm or dispute them."

131. By email dated April 2, 2018, at 12:11 p.m., the BF&R informed Respondent that his request for a continuance had been approved.

132. By Order dated April 4, 2018, the BF&R granted the requested continuance.

133. On May 8, 2018, Respondent appeared on CSI's behalf before the BF&R and again claimed that Respondent had not received the BOA Decision and Order until after the deadline to appeal to the BF&R had expired.

134. By email dated May 8, 2018, at 12:43 p.m., Mr. Weiss asked Respondent for "the latest update," stressing that "we need to get this resolved."

135. By email dated May 9, 2018, at 6:19 p.m., Respondent told Mr. Weiss that:

a. he had "talked with the Revenue officials" and would "have written confirmation that our sales tax liability was reduced (barring something unforeseen, of course)";

b. the "confirmation should come in the form of a Board of Finance and Revenue 'Decision'"; and

c. he hoped to "have the 'Decision' next week."

136. Respondent's May 9, 2018 email was false and misleading as Respondent failed to disclose that:

a. just the day before, he had appeared at a hearing before the BF&R;

b. the hearing concerned an appeal from an adverse BOA decision;

c. the appeal from the adverse BOA decision was untimely; and

d. the possibility of losing the untimely appeal was not "something unforeseen."

137. By Order dated May 9, 2018, the BF&R dismissed CSI's petition for lack of jurisdiction.

138. The BF&R mailed the dismissal Order to Respondent on May 15, 2018.

139. Respondent received the dismissal Order.

140. By email dated May 25, 2018, Mr. Weiss again asked Respondent if there was "[a]ny update?"

141. Respondent failed to reply to Mr. Weiss's May 25, 2018 email.

142. By email dated June 7, 2018, Mr. Weiss asked Respondent if he had any update about CSI's case, noting that he "need[ed] to get some feedback from [Respondent]" and that "this is very frustrating."

143. By email dated June 11, 2018, at 10:34 a.m., Respondent told Mr. Weiss that:

a. "[t]he Board of Finance and Revenue threw us a curveball";

b. the "meeting/hearing" went well and "we expected to receive full relief";

c. the "documentation we received denied relief on a purported prejudicial defect, that had been dealt with and dispatched as a mistake on the Department's side"; and

d. he would like to speak with Mr. Weiss about "our options to get the relief to which we're entitled as quickly as possible."

144. Respondent's June 11, 2018 email was false, since he knew from, inter alia, Mr. Watson's emails (on December 21, 2017, January 18, 2018, and March 2, 2018) and Mr. Kolb's March 23, 2018 filing, that the jurisdictional deficiency upon which the BF&R based its ruling was not an unforeseen "curveball" and had not been "dealt with and dispatched as a mistake on the Department's side."

145. On June 11, 2018, Respondent and Justin Cupples, Esquire (another Morgan Lewis attorney), had a telephone conversation with Mr. Weiss, during which call Mr. Weiss learned what had occurred with respect to CSI's case.

146. After speaking with Respondent and Mr. Cupples, Mr. Weiss contacted Mr. Zimmerman regarding Respondent's handling of CSI's appeal, and suggested that the firm contact its malpractice carrier.

147. On June 12, 2018, Michèle Coffey, Esquire, General Counsel of Morgan Lewis, commenced an internal investigation at Morgan Lewis regarding Respondent's handling of CSI's appeal.

148. As part of her inquiry, Ms. Coffey requested that Respondent provide, among other things, the email address for the likely sender of the BOA's Decision and Order; Respondent failed to respond to Ms. Coffey's initial request.

149. By email dated June 12, 2018, at 3:29 p.m., Ms. Coffey reminded Respondent that she still "need[ed] the emails from [Respondent] that would reflect the sender address."

150. By email dated June 13, 2018, at 9:23 a.m., Respondent supplied Ms. Coffey with an incorrect email address.

151. On June 13, 2018, Respondent forwarded to Ms. Coffey copies of the emails that the BOA had sent to him with the Decision and Order on June 6, 2017 and July 17, 2017.

152. Also on June 13, 2018, Ms. Coffey asked Jacqui Eberhardt, a Morgan Lewis employee, to search Respondent's email account at the firm for the BOA's Decision and Order.

153. On June 13, 2018, Ms. Eberhardt found in Respondent's email account copies of (a) the June 6, 2017 email from the BOA with the original Decision and Order, and (b) the July 17, 2017 email with the corrected BOA Decision and Order.

154. Ms. Eberhardt found the emails in a folder captioned, "IN," in Respondent's email mailbox, which was a receptacle for all mail sent to him.

155. On June 15, 2018, Ms. Coffey terminated Respondent's employment with Morgan Lewis.

156. After Respondent was terminated, Mr. Cupples took over the representation of the CSI case.

157. Mr. Cupples was similarly able to find the BOA's June 6, 2017 and July 17, 2017 emails in Respondent's email account.

158. On June 19, 2018, Mr. Cupples filed with the Commonwealth Court a Petition for Review of the BF&R's Order dismissing CSI's appeal.

159. An attorney from the Pennsylvania Attorney General's Office, which handled the case before the Commonwealth Court, informed Mr. Cupples that it intended to challenge the Commonwealth Court's jurisdiction based upon CSI's failure to timely appeal the BOA ruling to the BF&R.

160. By a Stipulation for Judgment, filed January 23, 2019, CSI settled the action against it, agreeing to the entry of a judgment in the amount of $189,726.46.

161. As a result of Respondent's actions, Morgan Lewis:

a. paid $189,726.46 to CSI to make it whole for the cost of the settlement;

b. wrote off $19,291.65 in fees associated with Respondent's work on the CSI matter; and

c. expended approximately $54,150.00 in unbillable time in investigating Respondent's conduct, resolving the CSI tax matter, and identifying and rectifying any additional misconduct.

162. Petitioner presented the testimony of Ms. Coffey to demonstrate aggravating factors.

163. Ms. Coffey testified that after receiving a call from Morgan Lewis partner William Zimmerman, Esquire, informing her that CSI had complained about Respondent's representation, Ms. Coffey initiated an investigation into the complaint. N.T. 29-30.

164. The objective of the investigation was "to figure out what happened" and how to protect CSI's interest. N.T. 30-33, 34, 35.

165. During her internal investigation, Ms. Coffey had the opportunity to speak with Respondent. She testified that he claimed that he had not received the

BOA's first two emails attaching its Decision and Order and he believed the appeal he filed to the BF&R was timely. N.T. 29, 31-32.

166. Ms. Coffey testified that although Respondent promptly responded to her initial inquiries, he thereafter offered "almost no cooperation." N.T. 34.

167. Ms. Coffey made a number of requests for information so that she could help Respondent put together the best case for an appeal and testified that Respondent "quickly flipped to me the draft of that appeal, but didn't give me any of the other four, five or six pieces of information that I asked for." *Id.*

168. Ms. Coffey testified that she had to obtain "a good amount" of the information that she requested either herself or from one of Respondent's colleagues. N.T. 36-37.

169. As part of Ms. Coffey's investigation, she asked Respondent to verify his claim that he had not received the BOA's June 6, 2017 and July 17, 2017 emails. N.T. 36.

170. After Ms. Coffey informed Respondent that Morgan Lewis's IT group was searching for the June 6, 2017 and July 17, 2017 emails, Ms. Coffey testified that he located them "within minutes." She further testified that a member of the IT group was similarly able to quickly find the emails in Respondent's mailbox. N.T. 38-43; ODC-39; ODC-40; ODC-41.

171. Ms. Coffey also learned that on July 17, 2017, Respondent had billed time for receiving the BOA's decision. N.T. 43-44.

172. Ms. Coffey testified that when she confronted Respondent with the evidence that he had, in fact, received the BOA's emails, he did not respond with any remorse. She testified that his response was more "an inability to explain and

an acknowledgement of an inability to explain why what [Ms. Coffey] was seeking was not consistent with the facts as he had laid them out." N.T. 44-45.

173. Ms. Coffey's testimony was credible.

174. Respondent testified on his own behalf.

175. Respondent expressed remorse for his misconduct and described his actions as dishonest, inappropriate and a mistake. N.T. 57, 58, 60, 62.

176. At the time, Respondent thought that what happened was a problem that could be resolved, but now understands that such was "clearly not the case." N.T. 67-68.

177. Respondent testified that, "[t]he issue with CSI, I – I couldn't get over the anxiety of losing my job because of that mistake, so I tried to fix it. And rather than fix it, I made things worse by ultimately being dishonest. And for that, I have no excuse." N.T. 62.

178. As to his cooperation with Ms. Coffey's investigation, Respondent testified that he was in shock and realized that his behavior and conduct with regard to CSI was inappropriate. He believes he was responsive to Ms. Coffey's requests. N.T. 57.

179. Respondent testified to personal issues that he experienced during the time frame in question.

180. In 2013, Respondent separated from his wife, which caused him to seek medical treatment. Respondent testified that he was diagnosed with severe depression, anxiety and adult onset ADHD, for which he was prescribed medication. N.T. 60.

181. Respondent admitted that over the course of the next years after being diagnosed he was "pretty spotty" with his treatment and was absent in his personal life. N.T. 60.

182. Respondent testified that when he accepted the position at Morgan Lewis in 2016, he was "in no way prepared" to handle the position. He testified that he "oversold" his ability to be a practice group leader in the state and local tax area and was not prepared to come into the firm and build a team. N.T. 60, 66.

183. In hindsight, Respondent believes he should have taken some time before he accepted the position at Morgan Lewis to address his mental health, but at the time thought that his mental health issues were a weakness he could "power through." He recognizes now that his issues were not a problem he could handle on his own. N.T. 60-61.

184. After his termination from Morgan Lewis, Respondent was unemployed for approximately one year. Currently, Respondent is working at a small law firm with two partners performing transactional work, an atmosphere he believes better suits his needs than a large firm. N.T. 62.

185. Respondent testified that he has improved himself professionally and mentally since the time of his misconduct and is a more competent practitioner. N.T. 62-63, 69.

186. Since 2018, Respondent has been actively involved in therapy and has adjusted his medication, which he takes as prescribed. Respondent has also reconciled with his wife. He believes that he is a more competent practitioner. N.T. 69.

187. Respondent's testimony was credible.

III. CONCLUSIONS OF LAW

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

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

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

3. RPC 1.4(a)(2), which states that a lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished;

4. RPC 1.4(a)(3), which states that a lawyer shall keep the client reasonably informed about the status of the matter;

5. RPC 1.4(a)(4), which states that a lawyer shall promptly comply with reasonable requests for information;

6. RPC 1.4(b), which states that a lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation;

7. RPC 3.1, which states that a lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein, unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law. A lawyer for the defendant in a criminal proceeding, or the respondent in a proceeding that could result in incarceration, may nevertheless so defend the proceeding as to require that every element of the case be established;

8. RPC 3.3(a)(1), which states that a lawyer shall not knowingly make a false statement of material fact or law to a tribunal or fail to correct a false statement of material fact or law previously made to the tribunal by the lawyer;

9. RPC 3.3(a)(3), which states that a lawyer shall not knowingly offer evidence that the lawyer knows to be false. If a lawyer, the lawyer's client, or a witness called by the lawyer, has offered material evidence before a tribunal or in an ancillary proceeding conducted pursuant to a tribunal's adjudicative authority, such as a deposition, and the lawyer comes to know of its falsity, the lawyer shall take reasonable remedial measures, including, if necessary, disclosure to the tribunal. A lawyer may refuse to offer evidence, other than the testimony of a defendant in a criminal matter, that the lawyer reasonably believes is false;

10. RPC 4.1(a), which states that in the course of representing a client a lawyer shall not knowingly make a false statement of material fact or law to a third person;

11. RPC 8.4(a), which states that it is professional misconduct for a lawyer to violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

12. RPC 8.4(b), which states that it is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

13. RPC 8.4(c), which states that it is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation; and

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

IV. DISCUSSION

Here, the Board considers the allegations against Respondent that he committed professional misconduct by neglecting to file an appeal on behalf of a client, engaging in multiple misrepresentations to conceal the neglect, and filing two false affidavits with the BF&R. Petitioner bears the burden of proving ethical misconduct by a preponderance of clear and satisfactory evidence. ***Office of Disciplinary Counsel v. John T. Grigsby, III***, 425 A.2d 730, 732 (Pa. 1981). Respondent accepted service of the Petition for Discipline; however, he failed to respond. Factual allegations in the Petition are deemed admitted if an answer is not timely filed, pursuant to Pa.R.D.E. 208(b)(3). Furthermore, at the disciplinary hearing Respondent admitted that he engaged in misconduct. The factual allegations, Petitioner's exhibits, and Respondent's testimony support the conclusion that Respondent violated the rules as charged in the Petition for Discipline. Upon our review, we conclude that Petitioner met its burden of proving that Respondent violated the Pennsylvania Rules of Professional Conduct.

The record established that Respondent represented CSI in an appeal of a tax assessment to the Pennsylvania Department of Revenue's BOA. On June 6, 2017, the BOA issued a Decision and Order rejecting CSI's request for relief. Respondent received a copy of the Decision and Order by email on June 6, 2017 and then received an additional emailed copy (containing an immaterial correction) on July 17, 2017. Respondent reviewed the Decision and Order and billed for that time. Afterwards, Respondent failed to notify his client of the ruling and later failed to timely appeal to the BF&R by September 5, 2017. Respondent similarly failed to disclose the BOA's ruling to CSI after receiving a third copy of the Decision and Order on September 8, 2017, which was after the time to appeal had passed.

For a period of approximately one year after receiving the BOA's Decision and Order, Respondent on multiple occasions failed to reply to his client's inquiries about the status of its case. When Respondent did reply, he made misrepresentations to his client, which included giving purported updates failing to advise that the BOA had issued an adverse ruling, that Respondent had failed to timely appeal to the BF&R, and that he had then filed an untimely appeal. Further, Respondent misrepresented to CSI that a lien the Department of Revenue had filed against CSI had been wrongly issued, when Respondent knew that it was imposed due to his failure to appeal from an adverse ruling. Finally, Respondent claimed to his client that a proposed compromise he had offered to the Department of Revenue would soon be approved, even after the Department's attorney had twice told him that the Department had no interest in compromising CSI's claim.

Rather than acknowledge his neglect and the fact that he had failed to timely appeal the Decision and Order, Respondent claimed to the BF&R that he had not received

the BOA's decision until after the time to appeal had expired. As support for this claim, Respondent submitted to the BF&R two false and misleading affidavits, one of which he executed himself and the other of which he prepared for his assistant.

Respondent's conduct violated the ethical rules charged in the Petition for Discipline. His neglect to file a timely appeal violated his obligation to provide competent representation under RPC 1.1. Respondent's communication deficiencies, which included multiple failures to respond to CSI's requests for updates, failure to supply his client with updated information and keep CSI reasonably informed about the status of its matter, and failure to explain the matter to the extent reasonably necessary to permit CSI to make informed decisions, violated RPC 1.4(a)(4), 1.4(a)(2), 1.4(a)(3) and 1.4(b).

Respondent's attempt to remedy his neglect resulted in his violation of RPC 3.1, 3.3(a)(1), 3.3(a)(3), and 4.1(a), as he presented a factually baseless claim to the BF&R that his appeal was timely, despite knowing that was not true, and he knowingly made false statements and provided false affidavits to the BF&R.

Finally, Respondent violated RPC 8.4(a) when he secured an affidavit from his assistant falsely suggesting that Respondent had not timely received a copy of the BOA's Decision and Order; RPC 8.4(b) by executing his false affidavit; RPC 8.4(c) by making misrepresentations; and RPC 8.4(d) by prejudicing the administration of justice through the provision of false information to the BF&R.

Having concluded that Respondent violated the ethical rules charged in the Petition for Discipline, we turn to the appropriate sanction to address his serious misconduct. Our review of this matter follows the filing of the Committee's Report, wherein it recommended a suspension of at least two years; Respondent's exceptions to the Committee's Report, wherein he requested that the Board recommend a period of

probation; Petitioner's exceptions opposing Respondent's recommended discipline and in support of a suspension of at least two years; and oral argument before a Board panel.

In looking at the general considerations governing the imposition of final discipline, it is well-established that each case must be decided individually on its own unique facts and circumstances. ***Office of Disciplinary Counsel v. Robert Lucarini***, 472 A.2d 186 (Pa. 1983). In order to "strive for consistency so that similar misconduct is not punished in radically different ways," ***Office of Disciplinary Counsel v. Anthony Cappuccio***, 48 A.3d 1231, 1238 (Pa. 2012) (quoting ***Lucarini***, 472 A.2d at 190), the Board is guided by precedent for the purpose of measuring "the respondent's conduct against other similar transgressions." ***In re Anonymous (Linda Gertrude Roback)***, 28 Pa. D. & C. 4th 398, 406 (1995). The Board is mindful when adjudicating each case that the primary purpose of the lawyer discipline system in Pennsylvania is to protect the public, preserve the integrity of the courts, and deter unethical conduct. ***Office of Disciplinary Counsel v. Akim Czmus,*** 889 A.2d 1197 (Pa. 2005). In recommending an appropriate sanction, the Board must consider the attendant aggravating or mitigating factors. ***In re Anonymous (Melvin V. Richardson)***, 8 Pa. D. & C. 4th 344, 355 (1990).

Respondent has practiced law in Pennsylvania since 2006 and has no record of prior discipline, a mitigating factor. In further mitigation, 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, but explained that he was so anxious about losing his job at Morgan Lewis that he tried to fix his failure to timely appeal the Decision and Order and made things worse by his dishonesty. Respondent's credible testimony revealed that in 2013, he began experiencing personal struggles related to his marriage and his mental health which prompted him to see a

doctor, who diagnosed him with severe depression, anxiety and adult onset ADHD. Although he was prescribed medication, Respondent admitted that he was not diligent with his treatment and was "absent" in his personal life. As to his professional life, Respondent candidly testified that he was not prepared to take on his position at Morgan Lewis in 2016 and should have taken time to address his mental health, but unfortunately viewed his mental health issues as a weakness that he could handle on his own.

Respondent credibly testified that he has worked to address these underlying personal issues and has improved himself both personally and professionally. Respondent takes medication regularly, is active in therapy, and has reconciled with his wife. Moreover, Respondent has evaluated the type of law practice that best suits his needs and has obtained employment at a small law firm handling transactional work. Respondent believes that currently, he is a more professional and competent legal practitioner.

We find that the testimony related to Respondent's mental health does not meet the mitigation standard required by ***Office of Disciplinary Counsel v. Seymour Braun***, 553 A.2d 894 (Pa. 1989), that a respondent-attorney must prove by clear and convincing evidence that a psychiatric disorder caused the underlying misconduct. Here, Respondent did not put forth the expert evidence necessary to make this determination. However, in considering appropriate discipline to address Respondent's misconduct, we give weight to Respondent's testimony concerning his personal struggles as it established his efforts to remediate problems he identified as hindering his ability to competently practice law.

In determining the appropriate discipline, the Board reviewed matters where attorneys engaged in neglect, made misrepresentations to clients and third parties,

and fabricated and provided false documentation either to clients and third parties or tribunals to conceal the neglect. Generally, such misconduct warrants suspension from the practice of law. *See*, ***Office of Disciplinary Counsel v. Peter Richard Henninger, Jr.***, No. 43 DB 2021 (S. Ct. Order 9/7/2021) (on consent) (Henninger neglected a client's matter, resulting in the dismissal of the lawsuit, Henninger failed to inform his client of the dismissal of her matter and instead engaged in a serious of deceptions that led the client to believe the matter had settled, culminating in Henninger withdrawing $25,000 from his personal checking account, depositing the personal funds into his IOLTA, and presenting his client with a check as the purported settlement; Henninger lied to Office of Disciplinary Counsel and provided falsified financial records to support his dishonest statements; in mitigation, Henninger expressed remorse and had no prior record of discipline; the Court granted the Joint Petition in Support of Discipline on Consent and suspended Henninger for two years); ***Office of Disciplinary Counsel v. Bret Alison Beynon***, No. 25 DB 2021 (S. Ct. Order 4/9/2021) (on consent) (Beynon neglected a client's criminal matter by failing to file an appellate brief and failing to notify the client that the Superior Court had dismissed the appeal; engaged in a course of repeated misrepresentations to the client that she was pursuing other avenues for his release; fabricated three Petitions for Allowance of Appeal to the Middle District, Release Orders, and Appearance Bonds and provide them to the client in order to further her deception; in mitigation, Beynon had no prior discipline and expressed remorse; the Court granted the Joint Petition in Support of Discipline on Consent and suspended Beynon for one year and one day); ***Office of Disciplinary Counsel v. Jamie Ray-Leonetti***, No. 182 DB 2017 (S. Ct. Order 3/19/2018)(on consent) (the Court granted the Joint Petition in Support of Discipline on Consent and suspended Ray-Leonetti for one year and one day based on Ray-Leonetti's

neglect and repeated misrepresentations to clients and third parties about a case; Ray-Leonetti failed to file a complaint in a lawsuit, misrepresented to her clients that an arbitration hearing was postponed, failed to appear with her clients at the arbitration, misrepresented to her clients that the lawsuit had settled, eventually admitted that the lawsuit had not settled, but still failed to advise that the lawsuit had in fact been dismissed, sent emails to third parties containing misrepresentations; in aggravation, Ray-Leonetti had a prior private reprimand with probation for one year for similar misconduct; in mitigation, Ray-Leonetti expressed remorse, cooperated with disciplinary authorities, and demonstrated ***Braun*** evidence).

Focusing on misconduct involving falsities to a tribunal, our review of case precedent revealed a range of discipline. The Court imposed a public censure in several matters where the respondent misrepresented information to the tribunal. In the matter of ***Office of Disciplinary Counsel v. Blair Harry Hindman***, No. 122 DB 2013 (D. Bd. Rpt. 12/8/2014) (S. Ct. Order 2/10/2015), Hindman offered evidence to a Court of Common Pleas judge that he knew to be false and made misrepresentations to the court. After considering several mitigating factors, the Board recommended to the Supreme Court that Hindman receive a public censure and the Court adopted that recommendation. The Court imposed a public censure on an attorney who "repeatedly crossed the line of permissible advocacy by advancing baseless claims, seeking unwarranted legal remedies, and misrepresenting both the facts and the law before two tribunals." ***Office of Disciplinary Counsel v. Donald Saunders Litman***, 168 DB 2009 (D. Bd. Rpt. 3/6/2012) (S. Ct. Order 7/12/2012). In that matter, Litman expressed remorse, demonstrated evidence of his good character, and had no prior record of discipline. In ***In re Anonymous (Donald B. Hoyt)***, 41 Pa D. & C. 4th 38 (1998), the Court imposed a public

censure on Hoyt, who made false statements to a trial judge to conceal that he was consulting with a third party and being paid his client fees and litigation costs by that third party. In mitigation, Hoyt had no record of discipline.

The Court suspended a respondent for nine months for her misrepresentation to a judge concerning her reason for failing to appear at a hearing. ***Office of Disciplinary Counsel v. Rubina Arora Wadhwa***, No. 99 DB 2005 (D. Bd. Rpt. 5/22/2007) (S. Ct. Order 8/30/2007). Therein, the Board found that Wadhwa's single misrepresentation was made during a period of "anxiety, stress, and illness," which circumstances the Board treated as a mitigating factor. The Board also weighed in mitigation Wadhwa's character evidence and evidence of charitable works, while in aggravation, considered Wadhwa's prior discipline.

Under more egregious circumstances, the Court has imposed suspension for more than one year. In ***Office of Disciplinary Counsel v. Cary Bartlow Hall***, No. 80 DB 2006 (S. Ct. Order 12/14/2006) (on consent), Hall failed to file a timely unemployment compensation appeal, submitted a back-dated facsimile and letter of appeal, falsely advised opposing counsel that the appeal had been timely filed, and testified falsely at the administrative hearing regarding the timeliness of the appeal. In mitigation, Respondent had no prior discipline, cooperated with the disciplinary authorities, apologized for his actions, experienced marital difficulties at the time of the misconduct, and was engaged in community activities. The Court granted the Joint Petition in Support of Discipline on Consent for an 18-month period of suspension. Similar to ***Hall*** is the matter of ***Office of Disciplinary Counsel v. Itzchak E. Kornfeld***, No. 177 DB 2007 (S. Ct. Order 6/24/2009) (on consent). Therein, Kornfeld failed to file a timely appeal to an administrative agency and subsequently engaged in an extended course of misconduct

in an effort to conceal his neglect. Kornfeld presented false evidence in the form of an altered Certificate of Mailing and a backdated letter to support his claim that he had timely appealed. Kornfeld also offered false testimony before the administrative agency, claiming he had timely filed an appeal on his client's behalf, and made similar claims in a brief to that tribunal. By way of mitigation, Kornfeld had no record of prior discipline, cooperated with the disciplinary investigation, and demonstrated remorse. The Court granted the Joint Petition in Support of Discipline on Consent and suspended Kornfeld for a period of two years, retroactive to July 8, 2008.

In ***Office of Disciplinary Counsel v. Craig B. Sokolow***, No. 83 DB 2018 (D. Bd. Rpt. 9/4/2019) (S. Ct. Order 12/11/2019), numerous aggravating factors warranted a two year suspension where Sokolow made misrepresentations to a tribunal and to disciplinary authorities. The Board considered in aggravation that Sokolow had a history of discipline consisting of disbarment and an informal admonition based on a false statement. In further aggravation, the Board found that Sokolow's testimony was not credible, he failed to demonstrate remorse, and was unable to admit he did anything wrong.

Upon review, we conclude that the facts and circumstances of the instant matter are more serious and justify more severe discipline than the public censures imposed in ***Hindman***, ***Litman***, and ***Hoyt***, as Respondent not only provided the false affidavits to the BF&R, but neglected his client's matter and made numerous misrepresentations to his client and others in order to camouflage his neglect. As well, Respondent's misconduct was more serious than what occurred in ***Wadhwa***, as he neglected his client's matter, provided two false affidavits and engaged in multiple

instances of misrepresentation to his client over nearly a one year period, in contrast to Wadhwa's single misrepresentation to the court.

The instant matter is analogous to those matters that have resulted in suspension for more than one year. The suspensions imposed in the ***Henninger***, ***Beynon***, and ***Ray-Leonetti*** matters support a suspension requiring a reinstatement proceeding where a respondent fails to file a lawsuit or take an appeal in a client matter and engages in a stream of deceptive behaviors to camouflage the professional dereliction. Like those respondents, the instant Respondent failed to timely appeal a decision and spent nearly a year covering up his inaction by multiple misrepresentations to his client and third parties. However, unlike the respondent in ***Henninger***, Respondent did not lie or provide false information to disciplinary authorities.

Similar to the respondents in ***Hall***, ***Kornfeld***, and ***Sokolow***, Respondent acted dishonestly when he provided false affidavits to the BF&R in an effort to conceal his failure to file the timely appeal on behalf of CSI. However, Respondent did not testify falsely under oath to a tribunal, as did the respondents in ***Hall*** and ***Kornfeld***. As opposed to the respondent in ***Sokolow***, the instant Respondent does not have a prior record of discipline, demonstrated acceptance of responsibility and remorse, and demonstrated remedial measures to address underlying circumstances that impacted his performance as an attorney.

Based upon the applicable precedent and giving due consideration to the aggravating and mitigating circumstances, the Board concludes that a one year and one day suspension is a sufficient quantum of discipline and within the range of appropriate sanctions to address Respondent's misconduct. In our view, a suspension of more than one year and one day is not warranted, as the matters where the Court imposed more

than a one year and one day suspension may be distinguished by more egregious misconduct and weightier aggravating factors than in the present matter. Here, Respondent expressed remorse and acceptance of responsibility, has no prior record of discipline, and experienced personal difficulties which he has addressed in his efforts to be a more competent and professional lawyer. Nevertheless, we do we not agree with Respondent's position that his conduct warrants a probationary period. As demonstrated by the case precedent, probation is not consistent nor appropriate in matters involving neglect, misrepresentation, and the knowing presentation of false affidavits to a tribunal. Respondent's serious misconduct requires his removal from the practice of law and a reinstatement process to determine his fitness to resume practice at a future date. Imposition of this discipline will ensure that the integrity of the courts is preserved while protecting the public and deterring future misconduct of a similar nature.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Daniel Michael Dixon, be Suspended for One Year and One Day from the practice of law in this Commonwealth.

It is further recommended that the expenses incurred in the investigation and prosecution of this matter are to be paid by the Respondent.

Respectfully submitted,

THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

By: David S. Senoff
David S. Senoff, Member

Date: 12/8/2021