

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1689 Disciplinary Docket No. 3  
Petitioner :  
 : No. 180 DB 2009  
v. :  
 : Attorney Registration No. 28535  
ROBERT BRUCE MANCHESTER, :  
Respondent : (Centre County)

ORDER

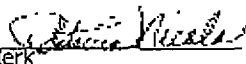
**PER CURIAM:**

AND NOW, this 17<sup>th</sup> day of March, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated December 3, 2010, it is hereby

ORDERED that Robert Bruce Manchester is suspended from the Bar of this Commonwealth for a period of three months and he shall comply with all the provisions of Rule 217, Pa.R.D.E.

It is further ORDERED that respondent shall pay costs to the Disciplinary Board pursuant to Rule 208(g), Pa.R.D.E.

A True Copy Patricia Nicola  
As Of 3/17/2011.

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 180 DB 2009
Petitioner	:	
	:	
v.	:	Attorney Registration No. 28535
	:	
ROBERT BRUCE MANCHESTER	:	
Respondent	:	(Centre County)

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

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

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

I. HISTORY OF PROCEEDINGS

On November 4, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against Robert Bruce Manchester. The Petition charged Respondent with violations of Rules of Professional Conduct 1.5(b), 1.15(a) and (b), and 1.16(d) in one matter and Rules of Professional Conduct 1.1, 1.4(a)(2) and (3), 1.4(b), and 8.4(d) in the second matter. Respondent filed an Answer to Petition on December 1, 2009.

A disciplinary hearing was held on February 24, 2010 before a District III Hearing Committee comprised of Chair Suzanne C. Hixenbaugh, Esquire, and Members Mark J. Powell, Esquire, and Philip H. Spare, Esquire. Respondent appeared pro se.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on June 30, 2010, concluding that Respondent violated Rules of Professional Conduct 1.5 and 1.1, and recommending that Respondent be suspended from the practice of law for a period of three months.

Petitioner filed a Brief on Exceptions on July 20, 2010.

Respondent filed a Brief on Exceptions on August 30, 2001 and requested oral argument.

Oral argument was held on September 29, 2010 before a three-member panel of the Disciplinary Board. Respondent was represented by counsel at the argument.

This matter was adjudicated by the Disciplinary Board at the meeting on October 11, 2010.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, P.O. Box 62485, Harrisburg, PA 17106, is invested, under Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, with the power and the duty to investigate all matters involving professional 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 the aforesaid Rules.

2. Respondent is Robert Bruce Manchester. He was born in 1948 and was admitted to practice law in Pennsylvania in 1978. His registered address is 124 West Bishop St., Bellefonte PA 16823. He is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a history of discipline consisting of an Informal Admonition administered in 2007 for violations of Rules of Professional Conduct 1.1 and 8.4(d) arising out of his failure to file a 1925(b) Statement of Matters Complained of on Appeal in a criminal matter.

**Randal Tucker/ Gary Crockett Matter**

4. In 2004, Randal Tucker was charged in Georgia with criminal offenses relating to alleged injuries to a child.

5. Mr. Tucker's father-in-law, Gary Crockett, a resident of Montana, learned of Respondent's representation of defendants in similar cases in other jurisdictions and contacted Respondent concerning Mr. Tucker's case.

6. Respondent was not admitted to practice law in Georgia but intended to associate with counsel admitted in Georgia.

7. Respondent agreed to become involved in the defense of Mr. Tucker and requested a retainer of \$5,000, which he intended to be non-refundable.

8. Respondent believed that a written fee agreement was sent to Mr. Tucker but has no cover letter or other evidence of transmittal, and no executed fee agreement exists.

9. Mr. Crockett's understanding was if he paid the \$5,000 retainer for Mr. Tucker, and Mr. Tucker decided to retain counsel in Georgia, the retainer would be returned to Mr. Crockett.

10. In or about December 2004, Mr. Crockett paid Respondent \$5,000. The payment was by wire transfer.

11. Respondent had no prior professional relationship with either Mr. Tucker or Mr. Crockett. Respondent believes he sent a fee agreement to Mr. Tucker, but no executed agreement was ever returned to Respondent, and no transmittal letter exists.

12. Respondent did not consider the \$5,000 received from Mr. Crockett to be trust funds and he did not place the funds in his IOLTA account.

13. The week the \$5,000 was received, Respondent was in trial in Washington, D.C., but he felt that a substantial portion of his work that week was devoted to the Tucker case. Most of the actual work was telephone calls, and appears to have been done by Respondent's investigator, Curtis Everhart. No tangible records were generated by Respondent's firm.

14. Mr. Tucker decided to retain counsel in Georgia and so advised Respondent and requested that the retainer of \$5,000 be returned to Mr. Crockett.

15. On January 13, 2006, Mr. Crockett contacted Respondent's office. Respondent's staff left a message memorandum for Respondent's son, Brian Manchester, Esquire, referencing the call with the notation "looking for his refund for Randy Tucker case." Brian Manchester gave the message memorandum to Respondent with the additional notation of "Dad is this guy from Georgia[?] What are we to do?"

16. In response to Mr. Crockett's January 13, 2006 request for the refund of the retainer, Respondent spoke to Mr. Crockett and told him that Respondent would have his accountant determine if any fees or costs had been incurred and that Respondent would then return the balance to Mr. Crockett.

17. Mr. Crockett confirmed his telephone conversation with Respondent by an email of March 31, 2006, for which he had a delivery confirmation.

18. Subsequent to March 2006, Respondent did not respond to Mr. Crockett's attempts to communicate with Respondent regarding the return of his funds, or otherwise communicate with Mr. Crockett, until February 2010.

19. Mr. Crockett retained counsel who, by letter of October 19, 2007, to Respondent, requested a return of the \$5,000.

20. Respondent did not respond to the October 19, 2007 letter.

21. As a result of Mr. Crockett filing a complaint, Disciplinary Counsel spoke to Respondent by telephone on January 28, 2008.

22. In the conversation on January 28, 2008, Respondent acknowledged that he needed to account to Mr. Crockett for the \$5,000 and return the unearned portion.

23. Respondent informed Disciplinary Counsel that Respondent would account to Mr. Crockett and return unearned fees by the end of February 2008.

24. Respondent did not refund the unearned portion of the retainer by the end of February 2008.

25. At the disciplinary hearing, Respondent acknowledged that he could have addressed the fee issue in a more timely manner, but did not as he felt the \$5,000 was understood to be nonrefundable.

26. There is no evidence to support Respondent's interpretation of the \$5,000 as nonrefundable.

27. On July 2, 2008, Disciplinary Counsel contacted Respondent's office and left a message regarding Respondent's failure to communicate with Mr. Crockett, and asking Respondent to return the call.

28. Respondent made no immediate response to Disciplinary Counsel's call of July 2, 2008.

29. Respondent made no response to the DB-7 letter of inquiry regarding the Crockett complaint.

30. On February 22, 2010, two days prior to the hearing on this matter, Respondent contacted Mr. Crockett. Respondent offered to return \$2,500 of the \$5,000 retainer and an agreement was reached to settle the matter for the return of \$3,000 to Mr. Crockett.

31. By check of February 26, 2010, Respondent returned to Mr. Crockett \$3,000 of the \$5,000 paid in December 2004.

32. Respondent never accounted to Mr. Crockett for the \$5,000 retainer.

#### **Gaylend Young Matter**

33. Respondent represented Gaylend Young in the Court of Common Pleas of Centre County on charges of involuntary deviate sexual intercourse, indecent assault, indecent exposure and corruption of minors. Mr. Young was convicted and sentenced to not less than seven years and one month and not more than 15 years imprisonment.

34. On June 1, 2005, Respondent caused a Notice of Appeal IFP to be filed in the Superior Court.

35. On March 8, 2006, the trial court record was filed in the Superior Court.

36. On April 12, 2006, Respondent filed his first Application for Extension of Time to File Brief in the Superior Court; the Court extended the time to May 17, 2006.

37. On May 15, 2006, Respondent filed a second Application for Extension of Time to File Brief in the Superior Court; the Court extended the time to June 16, 2006.

38. On June 16, 2006, Respondent filed the Appellant's Brief.

39. As to the brief he filed for Mr. Young, Respondent stated "...the character and quality of my brief, it's despicable, period." (N.T. 16). At the time of filing the brief, Respondent was preparing for a capital murder case, but as to the brief, he testified "I thought that I had briefed it, and I had briefed it, I thought efficiently but summarily, but obviously, I didn't." (N.T. 23)

40. On November 2, 2006, the Superior Court filed a Memorandum and Order dismissing the appeal "due to substantial defects in the brief and appellant's failure to provide us with the complete record for review" and noted that "[w]e find that the defects contained in appellant's brief are substantial and impede meaningful review."

41. The Superior Court noted the following deficiencies in the brief Respondent filed for Mr. Young:

a. the brief "does not include the 'scope of review' and his 'standard of review' is inadequate," and referenced Pa.R.A.P. 2111;



b. the brief does not “specify the order or determination sought to be reviewed; rather he refers this court to locate the order ‘infra,’” and referenced Pa.R.A.P. 2115;

c. “appellant’s ‘statement of the case’ does not include a chronology or narrative of the facts; it merely sets forth a brief recantation of the procedural history.” and referenced Pa.R.A.P. 2117;

d. “the ‘summary of argument’ section is a mere repetition of his issues on appeal.” and referenced Pa.R.A.P. 2118;

e. in the argument section of the brief, “we discovered that he did not divide the argument into two parts to correspond with the two issues he presents.” and referenced Pa.R.A.P. 2119(a); and

f. “More importantly, appellant’s argument on appeal is wholly inadequate. Appellant does no more than cut and paste portions of a transcript, with inadequate citation, and sections of the Pennsylvania Rules of Evidence into the brief. The argument section is completely devoid of a synopsis of the evidence or any meaningful analysis of the issues presented.”

42. On March 22, 2007, Respondent met with Mr. Young at the prison and advised him of the dismissal of his appeal, but did not give him a copy of the Memorandum and Order filed on November 2, 2006.

43. When Respondent met with Mr. Young in March 2007, Respondent suggested to him that a Post Conviction Relief Act petition might be an appropriate way to have the appeal reinstated.

44. Mr. Young believed that Respondent was continuing to represent him in efforts to get the appeal reinstated.

45. In November 2007, Mr. Young secured a copy of the November 2, 2006 Memorandum and Order. This was done through his own efforts.

46. In November 2007, Mr. Young filed a pro se PCRA that included an assertion that Respondent had been ineffective as his counsel.

47. By Order of June 25, 2008, the Court of Common Pleas of Centre County granted Mr. Young's request for PCRA relief.

48. The Order reinstated Mr. Young's direct appeal rights as a result of Respondent's ineffective assistance as his appellate counsel.

49. Respondent offered his own testimony at the disciplinary hearing that he has had some medical problems through the years, including internal bleeding, which occurred during the time period of Petitioner's inquiry into the Tucker/Crockett matter.

50. Respondent offered into evidence as RE-3 a copy of a letter to Respondent from Dr. Irphan Gaslightwala, in which the doctor states that "Mr. Manchester had a medical condition which may have affected his ability to function at work during the period beginning August 2006 to September 2009."

### III. CONCLUSIONS OF LAW

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

As to Charge I:

1. RPC 1.5(b) - When the lawyer has not regularly represented the client the basis or rate of the fee shall be communicated to the client, in writing, before or within a reasonable time after commencing the representation.

2. RPC 1.15(a) - A lawyer shall hold property of clients or third persons that is in a lawyer's possession in connection with a client-lawyer relationship separate from the lawyer's own property. Such property shall be identified and appropriately safeguarded. Complete records of the receipt, maintenance and disposition of such property shall be presented for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

3. RPC 1.15(b) - Upon receiving property of a client or third person in connection with a client-lawyer relationship, a lawyer shall promptly notify the client or third person. 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 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 such property.

4. RPC 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.

As to Charge II:

1. RPC 1.1 - 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 1.4(a)(2) and (3) - A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished; and a lawyer shall keep the client reasonably informed about the status of the matter.

3. RPC 1.4(b) - A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

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

#### IV. DISCUSSION

This matter is before the Board for consideration of a Petition for Discipline filed against Respondent charging him with misconduct relative to two separate client matters. Following a recommendation by the Hearing Committee that a suspension of three months be imposed, the parties each took exceptions to the Report. Oral argument was held before a Board panel.

The essence of Petitioner's exceptions is that the Committee failed to conclude, based on the record before it, that Respondent violated all of the Rules of Professional Conduct as contained in the Petition for Discipline. Petitioner has no objection to the recommendation made by the Committee.

Respondent contends that his misconduct does not warrant a suspension of any length, and that a private reprimand, or at most a public censure, is warranted in this matter.

The Board's review of the record reveals the following. Charge I involves Respondent's acceptance of a retainer of \$5,000 from Gary Crockett for representation of Mr. Crockett's son-in-law, Randal Tucker, on criminal charges in Georgia. This occurred in December 2004. The record demonstrates that Mr. Crockett's understanding of the retainer was that it would be accounted for and any unutilized portion returned if Mr. Turner decided to retain local counsel in Georgia. Shortly after the retainer was paid to Respondent, Mr. Tucker retained local counsel and requested that the \$5,000 be returned to Mr. Crockett. Respondent felt that the retainer was non-refundable. There is no evidence of record to support Respondent's position that the retainer was non-refundable. No fee agreement exists, and there is no clear evidence, such as a transmittal letter, that one was sent to the client.

Respondent ignored numerous inquiries from Mr. Crockett about an accounting of the \$5,000 and returning any unearned portion, even after agreeing to do so in January 2006. In October 2007, Respondent ignored an inquiry from an attorney on behalf of Mr. Crockett. In January 2008, Respondent advised Disciplinary Counsel that he would account to Mr. Crockett, but he did not. Respondent finally contacted Mr. Crockett in

February 2010, two days prior to the disciplinary hearing, and the matter was settled by the return of \$3,000 to Mr. Crockett. Respondent's four year delay in returning Mr. Crockett's funds was inexcusable. These facts support the conclusion that Respondent violated Rules of Professional Conduct 1.5(b), 1.15(a) and (b), and 1.16(d).

Charge II involved Respondent's representation of Gaylend Young in a criminal matter. The record demonstrates that Respondent was found to have been ineffective in his representation of Mr. Young in a Superior Court appeal and failed to timely and properly advise Mr. Young that the appeal had been dismissed, and that remedies were available. These facts support the conclusion that Respondent violated Rules of Professional Conduct 1.1, 1.4(a)(2 and (3), 1.4(b), and 8.4(d).

Respondent has a record of prior discipline consisting of an Informal Admonition administered in 2007 for failing to properly pursue an appeal to the Superior Court. This prior discipline is considered an aggravating factor. As to mitigating factors, Petitioner agrees that Respondent showed cooperation by entering into a Joint Stipulation.

Respondent testified on his own behalf as to his poor physical health and serious medical problems he experienced about the time of his representation of Mr. Young, and during some of the period of time when he failed to account to Mr. Crockett. He introduced a letter from his doctor which simply states that Respondent had a medical condition which may have affected his ability to function at work during the period beginning August 2006 to September 2009. Petitioner did not object to the admission of this letter, but contends that the letter is insufficient to make any causal connection between any medical problems and Respondent's conduct in the Crockett and Young matters. The Board agrees with this position and concludes that while Petitioner's

problems were unfortunate, his testimony and the letter from the doctor do not establish mitigation under Office of Disciplinary Counsel v. Braun, 553 A.2d 894 (Pa. 1989)

The imposition of appropriate attorney discipline must assure the public that the disciplinary system is aware of the seriousness of a breach of trust by an attorney. Office of Disciplinary Counsel v. Keller, 506 A.2d 872 (Pa. 1986). A suspension for a period of three months has been recommended by the Hearing Committee. The Committee cited to prior cases containing similar facts in support of its recommendation. The discipline in these cases ranges from public censure to suspension for a period of six months.

In the matter of Office of Disciplinary Counsel v. Chisholm, 87 DB 2007 (Pa. March 20, 2008), Mr. Chisholm failed to file briefs in two criminal appeals and failed to properly communicate. There was no record of discipline. The Supreme Court directed a Public Censure. See also Office of Disciplinary Counsel v. Meehan, No. 26 DB 2006 (Pa. Oct. 18, 2006) (failing to file Notices of Appeal in two criminal matters resulted in a Public Censure).

In Office of Disciplinary Counsel v. Lee, 65 DB 2005 (Pa. Dec. 14, 2006), Mr. Lee was suspended for six months after he failed to return funds that were not subject to the initial fee agreement regarding nonrefundable retainers, and he failed to properly represent his client, including failure to communicate. Mr. Lee had a record of two Private Reprimands and one Informal Admonition.

Respondent accepts that some form of discipline must be imposed, but objects to the suspension of three months and asserts that lesser discipline, such as a private reprimand, is appropriate.

Considering the facts of the Instant matter, the range of discipline found in the underlying cases, and the arguments put forth by the parties, the Board concludes that a suspension of three months is appropriate. It appears that the Court is taking a close look at matters involving misconduct of attorneys who represent clients in criminal appeals, and in two such matters cited above, imposed Public Censure. The Young case in the instant matter may well result in public discipline, standing alone. Compounded by Respondent's misconduct in the Crockett matter, the Board is persuaded that a short suspension will serve to protect the public and the integrity of the judicial system.



V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Robert Bruce Manchester, be Suspended from the practice of law for a period of three months.

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:   
Albert Monjjan, Board Member

Date: December 3, 2010

Board Member Baer did not participate in the adjudication.