

**IN THE SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1651 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 45 DB 2009
v.	:	
	:	Attorney Registration No. 43910
JOHN M. KASABACK,	:	
Respondent	:	(Cambria County)

**ORDER**

**PER CURIAM:**

**AND NOW**, this 6<sup>th</sup> day of December, 2010, upon consideration of the Report and Recommendations of the Disciplinary Board dated September 13, 2010, it is hereby

**ORDERED** that John M. Kasaback is suspended from the practice of law for a period of three months, the suspension is stayed in its entirety and he is placed on probation for a period of one year, subject to the following:

1. Within the first ninety days of the probation, Respondent shall return the \$500.00 in unearned fees to Donald Conrad and the \$300.00 in unearned fees to Barbara DaBella.
2. Prior to the expiration of the probation, Respondent shall complete a minimum of eight credit hours of Continuing Legal Education Courses in the area of law practice management.
3. At least ten days prior to the expiration of the period of probation, Respondent shall provide to the Board his Certificates of Attendance for the courses taken.

4. Respondent shall not commit any violations of the Rules of Professional Conduct in this or any other jurisdiction where he is admitted to practice, shall not commit any criminal violations and shall make quarterly sworn certifications to the Board (with copies to Disciplinary Counsel) that he is in compliance with this condition.

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: December 6, 2010

Attest:

Chief Clerk

Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 45 DB 2009
Petitioner	:	
v.	:	Attorney Registration No. 43910
JOHN M. KASABACK	:	
Respondent	:	(Cambria 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 April 3, 2009, Office of Disciplinary Counsel filed a Petition for Discipline against John M. Kasaback. The Petition charged Respondent with violations of the Rules of Professional Conduct relative to his representation of four clients in separate matters, and his actions in federal court. Respondent filed an Answer to Petition for Discipline on May 21, 2009.

A disciplinary hearing was held on August 17, 2009, before a District IV Hearing Committee comprised of Chair Martin T. Durkin, Jr., Esquire, and Members Laura Cohen, Esquire, and Steven R. Wolf, Esquire. Respondent was represented by David A. Raho, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on April 15, 2010 and concluded that Respondent violated Rules of Professional Conduct 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.5(b), 1.5(d)(2), and 1.16(d). The Committee recommended that Respondent receive a Public Censure and be placed on probation for a period of one year with the conditions that he complete a minimum of eight hours of CLE in the area of law practice management; and that he return \$500 in unearned fees to Donald Conrad and \$300 in unearned fees to Barbara DaBella.

The parties did not take exception to the Report of the Hearing Committee.

This matter was adjudicated by the Disciplinary Board at the meeting on July 17, 2010.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, Office of Disciplinary Counsel, whose principal office is located at Pennsylvania Judicial Center, 601 Commonwealth Avenue, Suite 2700, Harrisburg, Pennsylvania, is invested, pursuant to Pa.R.D.E. 207, with the power and the 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 the aforesaid Rules.

2. Respondent is John M. Kasaback. He was born in 1959 and was admitted to practice law in the Commonwealth of Pennsylvania in 1985. His attorney registration mailing address is 808 N. Caroline St., #2, Ebensburg PA 15931. Respondent is subject to the jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a record of discipline consisting of two Informal Admonitions in 2002 and a Private Reprimand in 2003.

#### **Charge I - Federal Court Cases**

4. The Petition for Discipline sets forth four client matters in Federal Court wherein Respondent entered his appearance. The Petition alleged that Respondent was not admitted to practice law before the United States District Court for the Western District of Pennsylvania.

5. At the August 17, 2009 hearing, Respondent produced an admission certificate and Petitioner stipulated that Respondent had an authentic admission certificate to the United States District Court for the Western District of Pennsylvania.

6. On March 16, 2006, Respondent entered his appearance on behalf of Stacie Bobinets concerning criminal charges filed against her in the United States District Court for the Western District of Pennsylvania. Respondent's representation continued through the conclusion of the matter on April 3, 2007, when Ms. Bobinets was sentenced pursuant to her plea of guilty.

7. In Ms. Bobinets' case, by two Orders dated November 29, 2006, Judge Kim R. Gibson sanctioned Respondent by admonishing him for his failure to appear at an

October 3, 2006 hearing, and for a second failure to appear at a November 13, 2006 hearing, for which Respondent was fined \$350.

8. By Order of November 16, 2007, Judge Gibson prohibited Respondent from entering his appearance on behalf of any party in any matter coming before that Court until further Order of that Court.

### **Charge II – Conrad Matter**

9. On September 6, 2005, Respondent was retained by Donald W. Conrad to pursue having his nephew, Michael Depto, placed on house arrest instead of incarceration at the Cambria County Jail.

10. As part of the verbal agreement, Respondent was to be paid \$1000 by Mr. Conrad and he was to return \$500 to Mr. Conrad if the Court decided that Mr. Depto was not eligible for house arrest.

11. The amount of Respondent's fee was contingent on his success in pursuing house arrest for Mr. Depto.

12. On September 6, 2005, Mr. Conrad paid Respondent \$1,000 for his services.

13. On December 6, 2005, Respondent filed in the Court of Common Pleas of Cambria County a Petition for House Arrest on behalf of Mr. Depto.

14. By Order dated December 12, 2005, the Petition for House Arrest was denied.

15. Mr. Depto subsequently advised Respondent that he did not want work release and instructed Respondent to have his sentence modified so that he could be

transferred to State Prison because Mr. Depto believed that he could enroll in certain programs which may have allowed him to be released earlier than his minimum sentence.

16. As part of his representation of Mr. Depto, Respondent filed a Petition for work release, attended a hearing and made arrangements for his client to be transferred to a State Correctional Facility.

17. Neither Mr. Conrad nor Mr. Depto has heard from Respondent since late 2005.

18. Respondent did not return any portion of the \$1,000 paid by Mr. Conrad, despite Mr. Conrad's request that he do so.

### **Charge III – Paris Matter**

19. On December 27, 2007, Respondent was retained to represent Angel Paris, Jr., at which time Respondent was paid \$500 for his services by Mrs. Paris, Angel's mother.

20. Respondent believed that he was retained solely for the purpose of handling the detainer and extradition of Mr. Paris to New Jersey.

21. Although Respondent had never represented Mr. Paris, he did not communicate to him, or to anyone on his behalf, in writing, the nature of the matters to be handled or the basis or rate of the fee which he was charging for his services, either before he was retained or within a reasonable time after commencing the representation.

22. The scope of the representation was not made clear to Mr. Paris.

23. Mr. Paris would testify that Respondent was retained to appear on his behalf at a hearing pursuant to a Petition which Mr. Paris had filed pursuant to the Post Conviction Relief Act (PCRA).

24. Respondent did not believe that he was retained by Mr. Paris or his mother to represent Mr. Paris at a hearing on a PCRA.

25. Respondent represented Mr. Paris at an extradition hearing on January 29, 2008.

26. Respondent met with his client the morning prior to the extradition hearing.

27. At the time of the hearing on January 29, 2008, Mr. Paris waived extradition consistent with what he desired to do.

28. By Order dated January 8, 2008, the Court scheduled a hearing on a PCRA for Mr. Paris for January 24, 2008. This hearing was later rescheduled for February 8, 2008.

29. Respondent did not appear at the February 8, 2008 hearing on the PCRA as he was not aware that Mr. Paris had filed a PCRA. Respondent was under the belief that he was only representing Mr. Paris at the extradition hearing.

30. Mrs. Paris requested the return of her \$500 due to Respondent's failure to appear at the PCRA hearing.

31. Respondent has not returned the \$500 to Mrs. Paris.

32. Respondent stated he would not have charged \$500 to handle both an extradition and a PCRA.

#### **Charge IV – Todaro Matter**

33. On January 17, 2008, Respondent was court appointed to represent Joseph Todaro in a PCRA Petition which Mr. Todaro had filed in the Court of Common Pleas of Cambria County.



34. A hearing on the PCRA was scheduled for February 13, 2008, and then continued to February 15, 2008.

35. Respondent appeared at the February 15, 2008 hearing. The PCRA Petition was denied.

36. Despite Mr. Todaro's requests, Respondent did not file an appeal of the denial of the PCRA Petition.

37. Respondent was only required to represent Mr. Todaro on the adjudication of his PCRA Petition in the Common Pleas Court, and not on appeal of the denial of that Petition.

38. On February 28, 2008, Mr. Todaro filed a pro se Notice of Appeal concerning the denial of his PCRA Petition.

39. Despite repeated requests by Mr. Todaro, Respondent did not communicate with him concerning the denial of his PCRA Petition.

40. Respondent did not explain to Mr. Todaro the scope of his representation.

41. New counsel was appointed to represent Mr. Todaro on January 28, 2009, 11 months after the denial of his PCRA Petition.

#### **Charge V – DaBella Matter**

42. On November 2, 2006, in the Court of Common Pleas of Cambria County, a temporary Protection From Abuse (PFA) Order was entered against Kimberly DaBella pursuant to a Petition which had been filed against her on behalf of her minor daughter.

43. Pursuant to the temporary PFA Order, Ms. DaBella was not to have contact with her daughter.

44. By Order dated November 9, 2006, the Court ordered, inter alia, that its November 2, 2006 Order would remain in full force and effect for three years.

45. Ms. DaBella was unrepresented at the time of the entry of the above Orders, but subsequently retained Attorney Timothy Burns to represent her.

46. By Order dated January 3, 2007, the November 9, 2006 Order was modified to be in effect for 120 days, but would not automatically terminate.

47. No further action was taken to modify the January 3, 2007 Order.

48. On January 28, 2008, Respondent was retained by Barbara DaBella, Ms. DaBella's mother, to represent Ms. DaBella in an attempt to have the January 3, 2007 Order modified or vacated.

49. On January 28, 2008, Barbara DaBella paid Respondent \$300 in cash, which left a balance of \$200 on the \$500 fee that Respondent stated he would charge to represent Ms. DaBella.

50. Respondent provided Barbara DaBella with a receipt for her \$300 payment.

51. Respondent's only written communication to Barbara DaBella or to his client concerning his fee was the receipt of \$300. No fee agreement was ever provided to the client.

52. Respondent had never before represented Ms. DaBella.

53. Respondent took no action of record on behalf of his client, and the PFA Order is still in effect.

54. Despite several telephone calls and emails to Respondent by Barbara DaBella and Ms. DaBella concerning the matter, Respondent did not communicate with them again.

55. Respondent did not earn the \$300 paid to him and has not returned any monies to Barbara DaBella.

56. Respondent testified on his own behalf at the disciplinary hearing on August 17, 2009.

57. He acknowledged that he did not respond in many instances to client communications and he could have avoided any potential misunderstanding in many of these matters if he had responded.

58. Respondent acknowledged his lack of diligence in following up with clients and doing written fee agreements. He recognized the need to keep his clients better informed as to the status of their matters.

59. Respondent's acknowledgement of responsibility and expression of remorse were sincere.

60. Financial gain was not behind Respondent's actions as set forth above.

61. Respondent is currently separated from his second wife, who was his secretary. Respondent experienced some emotional difficulties as a result of the separation but is taking Lexapro, which has helped him.

62. Respondent has taken steps to become more diligent in his practice. Although he does not have a secretary, he has found a person to do his typing. He plans to get an answering service for his telephone calls.

63. Respondent's practice concentrates on criminal defense and does not require the same amount of paperwork as a civil practice. He receives three to six court appointments per month and has a multiple county practice.

64. Respondent's counsel in this matter made a personal statement to the effect that Respondent has the respect of the judges in Cambria County and he continues to consistently receive court appointments.

### III. CONCLUSIONS OF LAW

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

1. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.

2. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.

3. RPC 1.4(a)(3) – A lawyer shall keep the client reasonably informed about the status of the matter.

4. RPC 1.4(a)(4) – A lawyer shall promptly comply with reasonable requests for information.

5. RPC 1.5(b) – When a 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.

6. RPC 1.5(d)(2) – A lawyer shall not enter into an arrangement for, charge or collect a contingent fee for representing a defendant in a criminal matter.

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

8. Respondent did not violate RPC 5.5(a), 8.4(c) or 8.4(d).

#### IV. DISCUSSION

This matter is before the Board for consideration of the charges filed against Respondent alleging his misconduct in four client matters and his representation of clients before a tribunal to which he was not admitted. Respondent’s admissions as contained in the Joint Stipulations of Fact, the sworn testimony adduced at the hearing, and the exhibits of record support the conclusion that Respondent violated Rules of Professional Conduct 1.3, 1.4(a)(2), 1.4(a)(3), 1.4(a)(4), 1.5(b), 1.5(d)(2), and 1.16(d).

With respect to the matter of the federal court cases in which Respondent was charged with violating Rules of Professional Conduct 5.5(a) and 8.4(c), these allegations were resolved in favor of Respondent after Respondent produced his record of admission to practice before the United States District Court for the Western District of Pennsylvania.

Respondent was charged with violation of RPC 8.4(d) by failing to appear on two occasions for a hearing in a federal criminal case on behalf of his client Stacie Bobinets. The federal court admonished Respondent and fined him \$350. The Committee

determined that the evidence against Respondent did not warrant a conclusion that he violated 8.4(d). Despite Respondent's admission that he missed one hearing and was late for the other, he subsequently negotiated a guilty plea on behalf of the client and she was thereafter sentenced by the Court. He did not prejudice the administration of justice by his actions.

It is clear from the record that from September of 2005 to approximately March of 2008, Respondent engaged in a pattern of misconduct. In the Conrad matter, Respondent failed to respond to inquiries by or on behalf of his client, Mr. Depto, and failed to promptly reply to reasonable requests for information concerning the matter, in violation of RPC 1.4(a)(4). By entering a fee agreement to represent his client for which the fee was contingent upon obtaining house arrest for Mr. Depto, Respondent violated 1.5(d)(2). Respondent failed to refund the \$500 portion of the fee which was unearned, thus violating RPC 1.16(d).

In the Paris matter, Respondent failed to communicate with Mr. Paris or to anyone on his behalf, as to the basis or rate of the fee which he was charging for his representation on the detainer/extradition matter, in violation of 1.5(b). This failure on Respondent's behalf exacerbated the confusion as to the exact nature of Respondent's representation. Respondent believed he was representing Mr. Paris solely on the extradition, while Mr. Paris and his mother were under the impression that Respondent was handling a PCRA Petition as well.

With respect to the Todaro matter, Respondent failed to respond to his client's requests for information concerning his legal matter, including his failure to advise

Mr. Todaro that he would need separate appellate counsel. Respondent violated RPCs 1.3, 1.4(a)(2), 1.4(a)(3) and (a)(4).

Finally, in the DaBella matter, Respondent failed to take any action whatsoever on behalf of his client, Kimberly DaBella, to modify or vacate a PFA Order. He failed to keep his client reasonably informed of the status of her matter, failed to respond to communications from his client, failed to communicate the basis or rate of his fee in writing, and as a result, he violated RPCs 1.3, 1.4(a)(3), 1.4(a)(4), and 1.5(b). Respondent further failed to refund to his client's mother the unearned fee of \$300, in violation of RPC 1.16(d).

There is no question that discipline of a public nature is warranted. The crux of Respondent's misconduct is neglect, lack of communication, failure to communicate a fee agreement in writing, and failure to return unearned fees. In one instance, Respondent represented a client in a criminal case on a contingent fee basis. Respondent's conduct in each separate instance may be viewed as relatively minor. There are no allegations of dishonesty. However, taken together, there is cause for concern. Additionally, Respondent has a history of discipline involving conduct that is substantially similar to the misconduct in the instant matter. This prior discipline was imposed in 2002 and 2003. It is apparent that Respondent's prior discipline did not have the intended remedial effect. It is therefore critical that the recommendation offered by the Board in the instant matter be fashioned so as to stem the flow of misconduct and protect future clients.

Respondent has accepted responsibility for his actions and has pinpointed the weak areas in his practice that need attention. He explained that he has had marital difficulties but is doing better and is able to concentrate on his practice. Respondent's practice is primarily in criminal defense and he continues to receive court appointments.

David Raho, Respondent's counsel in this matter, offered a personal statement to the effect that Respondent maintains the respect of the judges in Cambria County.

The Hearing Committee has recommended a public censure followed by a one-year period of probation with conditions. This recommendation permits Respondent to continue his legal practice. While the Board is in agreement that Respondent should have the opportunity to continue practicing law, due to his remorse and his understanding of the actions he must take to avoid misconduct in the future, we are not in favor of a public censure. A short suspension sends a better message to Respondent that his actions will not be tolerated.

The Board recommends a suspension of three months, stayed in its entirety, and a one year period of probation. The following conditions apply: Respondent must complete eight credit hours of Continuing Legal Education in the area of law practice management; Respondent must return \$500 in unearned fees to Mr. Donald Conrad and \$300 in unearned fees to Mrs. Barbara DaBella.



V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, John M. Kasaback, be Suspended from the practice of law for a period of three months, that the Suspension be stayed in its entirety and that he be placed on Probation for a period of one year, subject to the following:

1. Within the first 90 days of the Probation, Respondent shall return the \$500.00 in unearned fees to Donald Conrad and the \$300.00 in unearned fees to Barbara DaBella.
2. Prior to the expiration of the Probation, Respondent shall complete a minimum of eight (8.00) credit hours of Continuing Legal Education Courses in the area of law practice management.
3. At least ten (10) days prior to the expiration of the period of Probation, provide to the Board his Certificates of Attendance for the courses taken.
4. Respondent shall not commit any violations of the Rules of Professional Conduct in this or any other jurisdiction where he is admitted to practice, must not commit any criminal violations, and must make quarterly sworn certifications to the Board (with copies to Disciplinary Counsel) that he is in compliance with this condition.

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: 

Stewart L. Cohen, Board Member

Date: September 13, 2010