

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1751 Disciplinary Docket No. 3
Petitioner :
 : No. 68 DB 2010
v. :
 : Attorney Registration No. 88593
EDWARD JAMES McINTYRE, :
Respondent : (Venango County)

ORDER

PER CURIAM:


AND NOW, this 16th day of November, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated June 27, 2011, it is hereby

ORDERED that Edward James McIntyre be subjected to public censure by the Supreme Court and that he be placed on probation for a period of one year subject to the following conditions:

1. Respondent shall take the Bridge the Gap Course through an Accredited PA CLE Bridge the Gap Provider;
2. Respondent shall take eight hours of PA CLE credits in the area of Law Practice Management; and
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.

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 11/16/2011

Attest: 
Chief Clerk
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 68 DB 2010
Petitioner	:	
	:	
v.	:	Attorney Registration No. 88593
	:	
EDWARD JAMES MCINTYRE	:	
Respondent	:	(Venango 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 May 12, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Edward James McIntyre. The Petition charged Respondent with numerous instances of misconduct arising out of the representation of two clients. Respondent filed an Answer to Petition for Discipline on June 4, 2010.

A disciplinary hearing was held on August 18, 2010, before a District IV Hearing Committee comprised of Chair Claire C. Capristo, Esquire, and Members Evan E. Adair, Esquire, and William F. Ward, Esquire. Petitioner offered Exhibits 1 through 42 into

evidence. Petitioner and Respondent jointly offered two Administrative Exhibits. Petitioner called one witness by telephone. Respondent testified on his own behalf. He stipulated as to the factual allegations contained in the Petition for Discipline, and further stipulated that he had committed violations of the Rules of Professional Conduct as set forth in the Petition for Discipline.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on December 28, 2010, concluding that Respondent violated the Rules of Professional Conduct as contained in the Petition and recommending that Respondent be publicly censured by the Supreme Court and placed on probation for a period of one year.

No Briefs on Exception were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on April 13, 2011.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Pennsylvania Judicial Center, Suite 2700, 601 Commonwealth Ave., Harrisburg, Pennsylvania 17106-2485, is invested, pursuant to Rule 207 of the Pennsylvania Rules of Disciplinary Enforcement, 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 Edward James McIntyre. He was born in 1975 and was admitted to practice law in the Commonwealth in 2002. His attorney registration address is Suite 402, 1243 Liberty Street, Franklin (Venango County), PA 16322. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has no history of discipline in Pennsylvania.

Matthew Zupsic Matter

4. A complaint was filed by Foster Timber, Inc. in the Court of Common Pleas of Venango County against husband and wife, Matthew M. Zupsic and Vicki J. Zupsic, who were represented by counsel other than Respondent, resulting in a judgment entered against the Zupsics, in favor of Foster Timber, in November of 2002.

5. Subsequently the Zupsics refinanced the mortgage on their real estate to partially satisfy the judgment, and in May of 2005, Foster Timber served them with interrogatories and discovery requests; the latter were served again in February of 2006.

6. In April of 2006, pursuant to a Motion to Compel filed by Foster Timber, President Judge H. William White of the Court of Common Pleas of Venango County ordered that the Zupsics respond to the discovery requests by May 29, 2006, which was later extended to June 26, 2006, in order for Mr. Zupsic to engage counsel.

7. Respondent was retained by the Zupsics and on or about June 19, 2006, he spoke with Robert Martin, Esquire, counsel for Foster Timber, to advise that he had received the discovery requests and needed additional time. Mr. Martin agreed.

8. On June 21, 2006, Respondent met with Mr. Zupsic and advised him that his services would include responding to the complaint and interrogatories and filing a counterclaim against Foster Timber, for a fee of \$1,000. Mr. Zupsic paid by check.

9. Respondent did not communicate, in writing, the basis or rate of the fee either before or within a reasonable time after he was retained.

10. In early July 2006, Respondent confirmed his representation of the Zupsics with Mr. Martin, who gave Respondent until the end of July to respond to discovery requests.

11. Respondent did not respond by the end of July. Mr. Martin called Respondent on August 4, 2006, and was told by Respondent that the responses would be sent to Mr. Martin by August 11, 2006.

12. Again, Mr. Martin did not receive the responses by the agreed upon time, and by e-mail dated August 15, 2006, Mr. Martin advised Respondent that he would file a Motion to Compel and Motion for Sanctions against the Zupsics.

13. By email dated September 5, 2006, Respondent informed Mr. Martin that he was not able to attach Mr. Zupsic's interrogatory answers by email, but would attempt to do so the next day.

14. There was no further communication between Respondent and Mr. Martin until September 22, 2006, when Respondent emailed Mr. Martin to state that he would email him at a later date to set up a time to meet regarding the interrogatories.

15. By email dated November 1, 2006, citing Foster Timber's request for a status update, Mr. Martin proposed November 10, 2006 as a deadline. Respondent suggested November 17 and Mr. Martin agreed.

16. Mr. Zupsic began to press Respondent for movement on his matter and by e-mail of November 29, 2006, sent his answers to the interrogatories. Respondent did not send them to Mr. Martin.

17. On January 24, 2007, Foster Timber filed a Second Motion to Compel seeking a response to discovery requests of May 31, 2005. A hearing on the motion was scheduled for February 27, 2007. Respondent was served by US mail.

18. Respondent informed his client of the receipt of the Motion to Compel and represented to Mr. Zupsic that he had already sent the interrogatories to Mr. Martin, which in fact had not occurred.

19. At the February 27, 2007 hearing before Judge White, Respondent acknowledged responsibility for most for the delay in the discovery responses.

20. The Court entered an Order on February 27, 2007, finding that the interrogatories had not been answered, required documents were not attached and the Zupsics were not in compliance, but allowed the Zupsics 30 more days to complete the answers and at the request of Mr. Martin, temporarily deferred the imposition of sanctions.

21. By email dated March 27, 2007, Respondent forwarded a memorandum regarding the answers to interrogatories for Mr. Zupsic's approval and within a week, Mr. Zupsic telephoned Respondent agreeing to the contents of the memorandum.

22. By email dated April 10, 2007, Mr. Zupsic advised Respondent that his credit report reflected the Foster Timber judgment as unsatisfied and he wanted the issue resolved by April 16, 2007.

23. On May 8, 2007, Mr. Martin filed the third Motion to Compel and Second Motion for Sanctions and Writ of Attachment in Civil Contempt with a hearing scheduled for June 13, 2007. Respondent did not inform Mr. Zupsic of these filings against him.

24. On June 13, 2007, after a hearing attended by Respondent, the Court entered an Order granting the Motion to Compel and Motion for Sanctions, directing the

Zupsics to pay within 30 days the sum of \$3,272 to Mr. Martin as reimbursement for attorney's fees and ordered that the Zupsics had 30 days to provide full and complete answers to the interrogatories, and upon failure to do so, the Court would prohibit the Zupsics from defending Foster Timber's claim for lost profits and that after 30 days, the Court would enter a default judgment consistent with the June 13, 2007 Order.

25. Respondent did not comply with the Order of Court; did not inform Mr. Zupsic of the Order; and did not reply to a status request telephone call from Mr. Zupsic.

26. On or about July 27, 2007, Mr. Martin filed a Motion for Default Judgment and Statement of Applicable Authorities against the Zupsics with a hearing date of October 10, 2007.

27. Respondent emailed Mr. Zupsic on July 30, 2007, inquiring whether Mr. Zupsic had received Respondent's emails regarding the hearing before Judge White in mid-June.

28. In an email exchange of August 14, 2007, Mr. Zupsic asked Respondent to provide a status update and Respondent stated that the status of the interrogatories was currently unclear, a hearing had been scheduled for October, and he planned to meet soon with Mr. Martin.

29. By email exchange dated October 8, 2007, Mr. Zupsic asked Respondent if he could attend the October 10 hearing, asked for answers to his previous questions, and asked why Respondent was not demanding information of Foster Timber similar to what Mr. Zupsic had been required to provide. Respondent replied that the hearing was an argument and in most cases clients did not need to attend.

30. The hearing on the Motion for Default Judgment and Statement of Applicable Authorities was held on October 10, 2007, with Respondent participating by

telephone. The Court entered an Order directing the Prothonotary to enter judgment in favor of Foster Timber and against the Zupsics for a total award of \$48,224.90, which included \$3,272 in attorney fees and \$114 in court costs. Respondent learned of the Order shortly after it was issued.

31. The Court issued a Memorandum dated October 10, 2007, which was faxed to Respondent the following day, in part suggesting "to counsel for defendant that he file a Petition to Open or Strike", that the Court "would give that more favorable consideration the sooner {the Petition was} filed rather than later" but would not consider such a Motion if it were filed more than 30 days after the Order date.

32. Respondent did not advise Mr. Zupsic about the entry of judgment or the remedy suggested by the Court and did not file the recommended petition on behalf of the Zupsics.

33. In January 2008, Mr. Zupsic offered for sale his real property located in Indiana Township, Pennsylvania and by email exchange dated January 2, 2008 inquired of Respondent about the status of the matter to which Respondent apologized for the delay and stated that a response would be sent to Mr. Martin within the week.

34. By email exchange dated March 17, 2008, Mr. Zupsic informed Respondent that he had learned of the judgment against him and wanted an explanation, to which Respondent replied that he would contact Mr. Martin for an update.

35. On or about April 1, 2008, Mr. Zupsic discovered that a lien had been placed on his Indiana Township real property on behalf of Foster Timber. Mr. Zupsic contacted Kenneth Yarsky, II, Esquire, to represent him in the real estate transfer that eventually took place on September 3, 2009.

36. By email exchange on April 4, 2008, Mr. Zupsic inquired as to the status of the answers to the interrogatories and in reply, Respondent informed Mr. Zupsic that he was trying to get to the courthouse to "sort out" the judgment to prevent delaying Mr. Zupsic's scheduled closing, and he would be in contact as soon as he was able.

37. By email dated June 17, 2008, Mr. Zupsic asked Respondent about the lien and requested a return telephone call, but instead Respondent emailed Mr. Zupsic and stated that he would attempt to contact Mr. Martin.

38. In response to a July 1, 2008 email from Mr. Zupsic stating that the closing was being delayed, Respondent again put off answering Mr. Zupsic and said he would be in touch.

39. By email to Respondent dated July 9, 2008, Mr. Zupsic inquired as to the status of the answers to interrogatories, to which Respondent stated that he was waiting to hear from Mr. Martin.

40. Shortly thereafter, Mr. Zupsic contacted Attorney Yarsky to prepare the answers to interrogatories.

41. On or about July 23, 2008, Attorney Yarsky forwarded Mr. Zupsic's answers to the interrogatories to Mr. Martin.

42. On September 29, 2010, Respondent made restitution to Mr. Zupsic in the amount of \$3,272, covering the imposition of attorney's fees entered against Mr. Zupsic.

Laura Elliott (Hart) Matter

43. On September 17, 2008, Laura Elliott (Hart) met with Respondent at his office to discuss his representation of her in a domestic relations matter and during the course of the appointment she advised Respondent that she wanted to file for divorce,

wanted to leave the marital residence and wanted the divorce complaint filed on the day she vacated the marital residence.

44. Respondent agreed to represent Ms. Hart, informing her that he would require a retainer of \$1,500 to do so, though he later called and advised that he would require a retainer of \$2,000.

45. Although Respondent had not previously represented Ms. Hart, he did not communicate to her in writing the basis or rate of his fee either before or within a reasonable time after commencing the representation.

46. Ms. Hart met with Respondent on September 19, 2008, presenting him with a check for \$2,000. She advised him to send any documents to her mother's address, authorized him to speak with her mother regarding the representation, and signed documents relating to the divorce complaint and equitable distribution.

47. Since the \$2,000 was provided for future services and costs, they were entrusted funds required to be deposited by Respondent into his IOLTA account or similar account for entrusted funds. However, on September 19, 2008, Respondent deposited the funds in his general office account, which was not a segregated account.

48. Ms. Hart contacted Respondent to advise him that her husband was leaving the marital residence on October 30, 2008, and she wanted the complaint served. Respondent told Ms. Hart that he would have a constable serve the complaint in divorce on Mr. Elliott, but failed to do so.

49. Ms. Hart telephoned Respondent's office on November 4, 5, 6, 7, 11, 12 and 13, each time leaving a message. Respondent never again communicated with Ms. Hart.

50. By letter dated November 13, 2008, sent certified mail, return receipt requested, which was signed for by Respondent, Ms. Hart wrote to Respondent advising him that she no longer wished him to represent her and requested the return of the balance of the retainer and her file.

51. Ms. Hart retained the services of another lawyer, who filed the divorce complaint.

52. Respondent did not refund to Ms. Hart the sum of \$1,437.50, representing the unearned portion of the fee and advanced costs she paid to him, until April 13, 2009, after Ms. Hart filed a claim with the Pennsylvania Lawyers Fund for Client Security.

53. Respondent admitted the violations of the Rules of Professional Conduct as set forth in the Petition for Discipline.

54. Respondent has accepted responsibility for mistakes he made with regard to his representation of Mr. Zupsic and Ms. Hart.

55. Respondent expressed sincere remorse.

56. Respondent expressed his intention to improve his office procedures and law practice.

III. CONCLUSIONS OF LAW

By his conduct 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 1.15(a) (for conduct prior to September 20, 2008) – 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 preserved for a period of five years after termination of the client-lawyer relationship or after distribution or disposition of the property, whichever is later.

7. RPC 1.15(b) – (for conduct on or after September 20, 2008) – A lawyer shall hold all Rule 1.15 Funds and property separate from the lawyer’s own property. Such property shall be identified and appropriately safeguarded.

8. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client’s interest, 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.

9. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

10. 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 Disciplinary Board for consideration of the Petition for Discipline filed against Respondent charging him with violations of the Rules of Professional Conduct in two separate client matters.

Respondent stipulated to all factual allegations contained in the Petition for Discipline and to the authenticity and admissibility of all of Petitioner's exhibits. Respondent has admitted that he violated the Rules of Professional Conduct as set forth in the Petition for Discipline. His testimony at the hearing demonstrates that he has accepted responsibility for his actions. The Board must now recommend the appropriate discipline to address Respondent's professional misconduct. We recognize that disciplinary sanctions are designed to protect the public from unfit attorneys and to bolster public confidence in the judicial system. Office of Disciplinary Counsel v. Christie, 639 A.2d 782 (Pa. 1994).

In the matter now before the Board, Respondent failed to fulfill his obligations to either Mr. Zupsic or Ms. Hart. Respondent was paid by both of these clients but did not do the work he was retained to do. Although Respondent eventually returned to Ms. Hart the unearned portion of the fee that she paid to him, Respondent's neglect caused Mr.

Zupsic to be assessed attorney's fees and court costs. Subsequent to the disciplinary hearing, Respondent paid the attorney's fees to Mr. Zupsic.

In the Zupsic matter, the record clearly demonstrates that Respondent was provided with multiple opportunities by opposing counsel to provide the requested discovery information. The court also demonstrated patience with Respondent and was supportive in efforts to remedy the situation, going so far as to provide Respondent with specific advice as to how to proceed. Respondent's client demonstrated tolerance of Respondent's excuses and misrepresentations, all of which exacerbated the delay in addressing Mr. Zupsic's matter. Despite these many opportunities, Respondent failed to take action to move the case forward.

Ms. Hart relied upon Respondent to file a divorce complaint but he failed to do so. Respondent did not deposit entrusted funds into a trust account as required, failed to communicate with Ms. Hart and failed to refund unearned fees until she filed a claim with the Pennsylvania Lawyers Fund for Client Security.

Respondent testified on his own behalf. He fully accepted responsibility for his actions and cooperated with Petitioner throughout the course of the disciplinary proceedings. His expressions of remorse and contrition are sincere. Respondent began practicing law in 2003 and became a solo practitioner in 2004. At the time he was retained by Mr. Zupsic and Ms. Hart, he was a relatively inexperienced practitioner with no record of prior discipline. Respondent demonstrated recognition of what went wrong with the Zupsic and Hart cases, and has made efforts to improve the management of his law office in order to avoid the problems he encountered with those matters.

In the recent matter of Office of Disciplinary Counsel v. Marc D. Colazzo, No. 85 DB 2008, 1400 Disciplinary Docket No, 3 (Pa. Aug. 13, 2010), Mr. Colazzo

misrepresented to his clients that he obtained a settlement which was \$5,000 above the amount that he been offered. He continued this misrepresentation for a period of ten months. Mr. Colazzo told his clients that he had been in front of an arbitration panel to obtain additional money and that he settled the claim for \$12,500. Mr. Colazzo later apologized to his clients, the case was resolved to their satisfaction, and Mr. Colazzo showed sincere remorse for his action. He cooperated with Office of Disciplinary Counsel and showed recognition of the impact of his actions. The Supreme Court imposed a Public Censure on Mr. Colazzo.

The record supports a finding that Respondent is still fit to practice law and would not be a danger to the public. The Board is persuaded that a public censure is appropriate discipline, as it will allow Respondent to continue practicing law. As an added safeguard, the Board further recommends that Respondent take the Bridge the Gap course and a course in Law Office Management to ensure that he thoroughly understands both his ethical duties and his office management responsibilities.

V. RECOMMENDATION

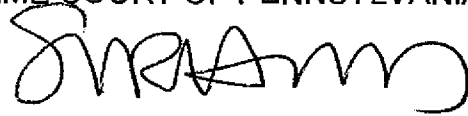
The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Edward James McIntyre, be subjected to a Public Censure by the Supreme Court, and that he be placed on Probation for a period of one year subject to the following conditions:

1. Take the Bridge the Gap Course through an Accredited PA CLE Bridge the Gap Provider;
2. Take eight (8) hours of PA CLE credits in the area of Law Practice Management; and
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.

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: 

Stephan K. Todd, Board Member

Date: 6/27/2011

Board Member Jefferies did not participate in the adjudication.