

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL,	:	No. 1759 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 78 DB 2010
v.	:	
	:	Attorney Registration No. 58783
MARK D. LANCASTER,	:	
Respondent	:	(Allegheny County)

**ORDER**

PER CURIAM:

AND NOW, this 22<sup>nd</sup> day of November, 2011, upon consideration of the Report and Recommendations of the Disciplinary Board dated July 29, 2011, it is hereby

ORDERED that Mark D. Lancaster is suspended from the Bar of this Commonwealth for a period of one year and one day 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 11/22/2011

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 78 DB 2010
Petitioner	:	
	:	
v.	:	Attorney Registration No. 58783
	:	
MARK D. LANCASTER	:	
Respondent	:	(Allegheny 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 25, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Mark D. Lancaster. The Petition charged Respondent with violations of Rules of Professional Conduct 1.3 and 8.4(d) arising out of his representation of three criminal defendants before the United States Third Circuit Court of Appeals. Respondent did not file an Answer to Petition and the allegations against him are deemed admitted pursuant to Pa.R.D.E. 208(b)(3).

A disciplinary hearing was held on September 17, 2010 before a District IV Hearing Committee comprised of Chair William D. Phillips, Esquire, and Members Richard P. Kidwell, Esquire, and Robert G. Dwyer, Esquire. Petitioner submitted into evidence Exhibits 1 through 22. Respondent appeared pro se. He did not present any witnesses or submit any documents into evidence.

Following the submission of a brief by Petitioner, the Hearing Committee filed a Report on December 17, 2010, concluding that Respondent violated the Rules of Professional Conduct as contained in the Petition for Discipline, and recommending that he be suspended for one year and one day, with two years of probation after reinstatement.

On January 14, 2011, Gary B. Zimmerman, Esquire, entered his appearance as counsel for Respondent. On that same date, Respondent submitted a request for extension to file a brief. The Hearing Committee Chair granted an extension until February 17, 2011.

Respondent did not file a Brief on Exceptions and Mr. Zimmerman withdrew his appearance on February 25, 2011.

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 Avenue, P.O. Box 62485, 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 Mark D. Lancaster. He was born in 1957 and was admitted to practice law in the Commonwealth in 1990. His attorney registration mailing address is 445 Ft. Pitt Boulevard, Suite 100, Pittsburgh PA 15219. Respondent is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court of Pennsylvania.

3. Respondent has a record of prior discipline consisting of an Informal Admonition administered on October 6, 2005 for violations of Rules of Professional Conduct 1.3 and 1.4(a) and (b) relating to three client matters. In two cases, Respondent failed to file appellate briefs in his clients' criminal cases. In the third case, he failed to respond to the client's request for information about the status of the cases and failed to notify the client of the dismissal of the appeal by the Superior Court.

#### **Irvin Matter**

4. On July 31, 2006, Eric Irvin filed a notice of appeal in regard to a criminal matter with the Third Circuit Court of Appeals.

5. On August 10, 2006, Respondent entered his appearance on behalf of Mr. Irvin and filed an Information Statement in the appeal.

6. On September 20, 2006, a briefing notice was issued indicating that Mr. Irvin's brief and appendix was due on October 20, 2006.

7. Respondent did not file a brief and appendix on behalf of Mr. Irvin by October 20, 2006.

8. By Order of the Clerk dated November 28, 2006, Respondent was directed to show cause in writing on or before December 8, 2006, why he had failed to file Mr. Irvin's brief and appendix.

9. All Orders sent by the Court were directed to Respondent at his office address of Fort Pitt Commons Building, Suite 100, 445 Fort Pitt Boulevard, Pittsburgh PA 15219.

10. Respondent did not comply with the Order dated November 28, 2006.

11. On October 3, 2007, Mr. Irvin filed a CJA Form 23, Financial Affidavit which was treated as a Motion for Appointment of Counsel under the provisions of the Criminal Justice Act.

12. By Order dated October 4, 2007, Third Circuit Judge Michael Chagares found that it appeared Respondent did not respond in writing to the Order of Clerk to Show Cause dated November 28, 2006 why he should not be subject to sanctions, and if Respondent did not file an appropriate written response to the Order on or before October 15, 2007, an Order would be entered directing him to personally appear before the Court in Philadelphia on a day to be designated.

13. On October 15, 2007, Respondent filed a response to the Order of the Clerk to Show Cause.

14. By Order dated November 1, 2007, the Clerk of Courts directed that Respondent file and serve the brief and appendix, along with a motion for leave to file out of time, within seven days of date of the Order.

15. Respondent did not comply with the Order dated November 1, 2007.

**Ashby Matter**

16. On July 23, 2007, William B. Ashby filed a Notice of Appeal in regard to a criminal matter with the Third Circuit Court of Appeals.

17. On August 17, 2007, Respondent entered his appearance on behalf of William B. Ashby and filed an Information Statement in the appeal.

18. On September 25, 2007, a briefing notice was issued indicating that Mr. Ashby's brief and appendix was due on October 25, 2007.

19. All Orders sent by the Court were directed to Respondent at his office address of Fort Pitt Commons Building, Suite 100, 445 Fort Pitt Boulevard, Pittsburgh PA 15219.

20. On October 25, 2007, Respondent filed a motion on behalf of his client for an extension of time to file brief and appendix until November 25, 2007.

21. By Clerk's Order dated October 31, 2007, it was ordered that Respondent file and serve Mr. Ashby's brief and appendix on or before November 26, 2007.

22. On December 14, 2007, Respondent filed a hard copy brief and appendix on behalf of Mr. Ashby, with the e-brief being received on December 13, 2007.

23. On December 28, 2007, Respondent was notified by telephone by the Third Circuit Court of the need to file a statement of related cases and proceedings, motion to file brief and appendix out of time, and to accept brief in noncompliant font size and addendum to appendix containing the judgment in Mr. Ashby's case.

24. Respondent did not comply with the Court's directive.

25. By Clerk's Order dated February 19, 2008, it was noted that:

(a) Respondent had failed to file Mr. Ashby's brief and appendix within the extended deadline as set forth in the Clerk's Order of October 31, 2007;

(b) Respondent had failed to file the brief in the correct font size and failed to include a statement of related cases as required; and,

(c) Respondent did not include a copy of the judgment in the appendix.

26. The Clerk's Order of February 19, 2008 further ordered that Respondent file a motion for leave to file the brief and appendix out of time, a motion for leave to file the brief in noncompliant font, a letter addressing the statement of related cases and four copies of an addendum containing a copy of the judgment, all within ten days of date of the Order, or an Order to Show Cause would be issued.

27. Respondent did not comply with the Order dated February 19, 2008.

28. On March 12, 2008, an Order was Issued directing Respondent to show cause in writing on or before March 26, 2008, why Mr. Ashby should not be subject to sanctions for the delay in the prosecution of the appeal, including dismissal of the appeal because Respondent had failed to respond to the Clerk's Order dated February 19, 2008.

29. On May 19, 2008, Mr. Ashby filed, pro se, a Motion for Appointment of Counsel and Motion for Leave to File Brief and Appendix Out Of Time.

30. On July 24, 2008, the United States Government, Appellee, filed a Motion to Dismiss in Mr. Ashby's case.

**Davis Matter**

31. On December 20, 2007, Arthur Lee Davis filed a Notice of Appeal in regard to a criminal matter with the Third Circuit Court of Appeals and Respondent was appointed CJA counsel to represent him.

32. On January 19, 2008, Respondent entered his appearance on behalf of Mr. Davis and filed an Information Statement in the appeal.

33. On January 22, 2008, a briefing notice was issued which indicated that Mr. Davis' brief and appendix was due on February 21, 2008.

34. On February 21, 2008, Respondent filed a hard copy of an Anders Brief with Volume I of Appendix attached on behalf of his client.

35. On March 19, 2008, Respondent was contacted by telephone by the Third Circuit Court regarding amended service and a motion to withdraw pursuant to Anders. A response was due in three days.

36. By Clerks' Order dated April 8, 2008, Respondent was directed to:

(a) immediately serve copies of the Anders brief, appendix and motion to withdraw as counsel;

(b) file an amended certification of service for the brief and appendix, and include service; and

(c) file and serve the motion to withdraw as counsel within ten days of date of Order or a Rule to Show Cause would be issued.

37. Respondent did not comply with the Order dated April 8, 2008.

38. By Clerk's Order dated April 29, 2008, Respondent was directed, among other things, to show cause in writing on or before May 13, 2008, why he had failed to comply with the procedures for Anders briefs.



39. Respondent did not comply with the Order dated April 29, 2008.

40. As a result of Respondent's actions in the Ashby and Davis matters, by Order of September 19, 2008, Judge Chagares directed Respondent to personally appear in court in Pittsburgh on September 29, 2008, for not responding in writing to the orders of the Clerk to show cause dated March 12, 2008 and April 29, 2008

41. As a result of Respondent's actions in the Irvin matter, by Order of September 22, 2008, Judge Chagares ordered that Respondent personally appear in court in Pittsburgh on September 29, 2008, and failure to appear would result in the issuance of a bench warrant for Respondent's arrest.

42. On September 29, 2008, a hearing was held in Pittsburgh, at which Respondent appeared.

43. By Order dated October 1, 2008, Judge Chagares ordered that:

(a) a monetary sanction in the amount of \$600 shall be imposed on Respondent for his failure to meet his professional obligations, to be paid on or before October 14, 2008;

(b) Based on representations made by Respondent in open court, that the briefs and appendices in the Irvin, Ashby and Davis cases be filed on or before October 14, 2008;

(c) Based on representations made by Respondent in open court, that the Clerk's orders dated February 19, 2008 and April 8, 2008, be complied with on or before October 14, 2008; and

(d) the Court's show cause order would be discharged upon receipt of

(i) the monetary fine; and

(ii) full briefing compliance.

44. Respondent did not comply with the Order dated October 1, 2008.

45. By Order dated December 1, 2008, Judge Chagares ordered that Respondent personally appear in court in Philadelphia on January 6, 2009.

46. On January 6, 2009, Respondent appeared at a hearing before Judge Chagares. Respondent paid the \$600 monetary sanction ordered on October 1, 2008.

47. By Order dated January 6, 2009, Judge Chagares ordered that :

(a) an additional monetary sanction in the amount of \$800 shall be imposed on Respondent for his failure to meet his professional obligations, to be paid on or before January 13, 2009;

(b) briefs and appendices in the Irvin, Ashby and Davis cases be filed on or before January 13, 2009;

(c) Respondent fully comply with the Clerk's order of February 19, 2008 and April 8, 2008 on or before January 13, 2009; and

(d) the Court's show cause order will be discharged only upon receipt of:

(i) the \$800 additional monetary fine; and

(ii) full briefing compliance.

48. Respondent did not comply with the Order dated January 6, 2009.

49. By Clerk's Order dated May 5, 2009, Respondent was relieved of his representation in the appeals of Irvin, Ashby and Davis, as well as in a fourth matter known as Olinsky.

50. By Order dated May 5, 2009, Judge Chagares directed that the matter of Respondent's conduct be referred to the Standing Committee on Attorney Discipline for the United States Court of Appeals for the Third Circuit.

51. By Order of May 26, 2009, of the Standing Committee, it was found that :

(a) The Court referred Respondent, an attorney admitted to the Court's bar on May 31, 1991, to the Standing Committee on May 5, 2009 pursuant to Rule 4.2, Third Circuit Rules of Attorney Disciplinary Enforcement, for consideration of whether the Court should impose disciplinary sanctions against Respondent;

(b) It was ordered that Respondent show cause why he should not be subject to disciplinary action as a result of alleged violations of Rule 2.3 and 2.4;

(c) Despite numerous contacts by the Clerk's Office, Respondent had failed to comply with any of the directives listed in the Court's Order, with the exception of payment of the initial \$600 monetary sanction;

(d) Judge Chagares ordered that the matter of Respondent's conduct be referred to the Standing Committee;

(e) After consideration of the matters set forth in Judge Chagares' Order of May 5, 2009, the Committee directed Respondent to file a written response within 30 days of the date of the order showing cause why he should not be subject to disciplinary sanctions;

(f) During that 30 day period, Respondent was also directed to file a declaration form in accordance with Rule 7.3; and,

(g) If disciplinary action was contested, further proceedings would be in accordance with Rule 10.

52. By cover letter dated May 26, 2009, sent by certified mail to Respondent, the Office of the Clerk for the Third Circuit sent Respondent a copy of the May 26, 2009 Order of the Standing Committee on Attorney Discipline and a copy of the Third Circuit Rules of Attorney Disciplinary Enforcement, and the declaration form Respondent was required to file with the Clerk in accordance with Rule 7.3.

53. By Order dated August 4, 2009 of the Standing Committee, the Honorable Morton I. Greenberg found and ordered that:

(a) Respondent did not respond to the order to show cause thus the matter was uncontested;

(b) after due consideration the Committee publicly reprimanded Respondent and ordered that he be removed from the Court's CJA panel of attorneys and in the event that Respondent be appointed as a CJA attorney in a District Court alternative counsel should be appointed for any appeal which may be taken in any such case; and,

(c) Respondent was not relieved from the duty of filing a notice of appeal to the Court in any such case, to the same extent as if the order had not been entered.

54. Respondent testified at the disciplinary hearing on September 17, 2010.

55. Respondent is a sole practitioner handling almost exclusively criminal defense work, but he is not an experienced appellate attorney and did not have the resources to successfully file his appeals in the above matters.

56. Respondent acknowledged that his conduct was a violation of the Rules of Professional Conduct.

57. Respondent expressed some remorse for his actions at the time of the hearing, but did not recognize the full extent and seriousness of his misconduct.

### 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 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 charges of professional misconduct filed against Respondent in a Petition for Discipline. Respondent failed to answer the Petition; thus, all factual allegations contained therein are deemed admitted. Pa.R.D.E. 208(b)(3).

Petitioner bears the burden of proving Respondent's misconduct by a preponderance of the evidence that is clear and satisfactory. Office of Disciplinary Counsel v. Surrick, 749 A.2d 441 (Pa. 2000). Petitioner has met its burden. The allegations contained in the Petition for Discipline and Respondent's testimony at the hearing clearly support the conclusion that Respondent violated Rules of Professional Conduct 1.3 and 8.4 (c) in each of three cases.

The instant matter involves Respondent's representation of three separate criminal defendants in the United States Court of Appeals for the Third Circuit for the time period commencing August 2006 and continuing until Respondent was removed from the representations by the Court in May 2009. Respondent's handling of the three federal criminal appellate cases was severely lacking. He failed to file briefs, he failed to respond to Court directives and orders, and he was monetarily sanctioned by the Court for his failure to meet his professional obligations.

Respondent was afforded every opportunity by the Court in each of these cases to remedy and rectify his conduct and to handle each case in a diligent manner. Instead, Respondent ignored the Court's directives in all three matters. This resulted in Respondent's removal from representation in the cases, and the referral of his conduct to the Standing Committee on Attorney Discipline for review and sanction. Respondent also handled his own disciplinary matter before the federal court in the same way he handled his representation of the criminal defendants. When a Rule to Show Cause was issued to Respondent by the Standing Committee on Attorney Discipline, Respondent did not respond to same. He was publicly reprimanded by the Court and removed from the Third Circuit Court of Appeals CJA Panel of Attorneys.

Further, Respondent showed disregard and inattention to the instant disciplinary matter. Respondent did not answer the Petition for Discipline and did not participate in the prehearing conference. He appeared at his disciplinary hearing, but did not offer any witnesses or exhibits, but for his own testimony. At the end of the hearing, Respondent attempted to have the Hearing Committee keep the record open so he could bring in witnesses and exhibits, but the Committee correctly precluded Respondent from doing so. Respondent was specifically informed by the Hearing Committee of his right to

submit a brief to the Committee following the hearing. Timetables were discussed and Respondent voiced his understanding of the importance of filing a brief. Still, he failed to file a brief with the Committee.

Respondent received an Informal Admonition in 2005 for his violation of Rules of Professional Conduct 1.3 and 1.4(a) and (b) in his representation of three criminal defendants in state court. Respondent failed to file appellate briefs on behalf of two clients and failed to adequately communicate with the third client regarding his appeal. This private discipline appears to have had no impact on Respondent. He began his representation in the Irvin case in August 2006, some nine months after receiving the Informal Admonition, yet continued to repeat the same misconduct.

The Hearing Committee has recommended a suspension for one year and one day, followed by a two year period of probation after reinstatement.<sup>1</sup> In determining the sanction to be imposed, precedent must be examined to measure Respondent's conduct against other similar misconduct. In re Anonymous No. 56 DB 1994, 28 Pa. D. & C. 4<sup>th</sup> 398 (1995). Any aggravating and mitigating factors presented must also be considered in assessing discipline. In re Anonymous No. 35 DB 1988, 8 Pa. D. & C. 4<sup>th</sup> 344 (1990).

There are many prior cases concerning lawyers who have engaged in neglect and violated Rules of Professional Conduct 1.3 and 8.4(d). The sanctions imposed have been dependent on the unique circumstances of the cases, and have ranged from private discipline where there is no history of discipline, to suspension in cases where the attorney had previous contact with the disciplinary system. In re Anonymous No. 32 DB 1990, 11

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<sup>1</sup> The Pennsylvania Rules of Disciplinary Enforcement do not allow for a period of probation following reinstatement to the bar. Pa.R.D.E. 204(a).

Pa. D. & C. 4<sup>th</sup> 372 (1991). Public censure has been imposed in cases involving neglect of more than one criminal appellate matter, along with a history of private discipline. Office of Disciplinary Counsel v. Edward C. Meehan, Jr. No. 26 DB 2006. No. 117 Disciplinary Docket No. 3 (Pa. Sep. 18, 2006), Office of Disciplinary Counsel v. Joseph A. Canuso, No. 176 DB 2007, No. 1378 Disciplinary Docket No. 3 (Pa. July 29, 2008).

A suspension of one year and one day was imposed on the attorney in Office of Disciplinary Counsel v Michael G. Bowen, 73 Pa. D. & C. 4<sup>th</sup> 335 (2004), wherein Mr. Bowen neglected six client cases and had a history of private discipline for similar misconduct.

At first blush, the facts of this matter are similar to those matters that resulted in public censure. However, Respondent not only failed to file briefs for his clients and properly handle their appellate matters, he failed to respond to the Court's directives, was monetarily sanctioned, and ultimately received discipline in the federal court. In addition, Respondent did not apply his experience from federal court to better handle his proceedings in the instant disciplinary matter, but continued to mishandle his own case before the Hearing Committee, thus raising further grave concern as to his fitness to practice law.

In sum, the Board is not persuaded that the best result in this matter is a sanction that allows Respondent to continue his practice of law. For the protection of the public, a suspension is necessary. This will afford Respondent an opportunity to examine his law practice and put in place systems and personnel to better manage his practice.

The Board recommends that Respondent be suspended for a period of one year and one day.



V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Mark D. Lancaster, be Suspended from the practice of law for a period of one year and one day.

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:   
Gerald Lawrence, Board Member

Date: July 29, 2011

Board Member Jefferies did not participate in the adjudication.