

**BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA**

OFFICE OF DISCIPLINARY COUNSEL	:	No. 102 DB 2014
Petitioner	:	
	:	
v.	:	Attorney Registration No. 39876
	:	
ANDRE MICHNIAK	:	
Respondent	:	(Philadelphia)

PUBLIC REPRIMAND

Andre Michniak, you stand before the Disciplinary Board, your professional peers and members of the public for the imposition of a Public Reprimand. It is an unpleasant task to publicly reprimand one who has been granted the privilege of membership in the bar of this Commonwealth. Yet as repugnant as this task may be, it has been deemed necessary that you receive this public discipline.

Mr. Michniak, you are being reprimanded for your misconduct in two separate matters, which arose as a result of your failure to provide timely services.

In the Walsh matter, you were retained by Samuel Jay Walsh to represent him in a personal injury matter occurring in Berks County, Pennsylvania. In February of 2009, you initiated a civil action by Writ of Summons against multiple defendants. You failed to file a complaint and as a result, the defendants filed either Notices of Praecipe for Entry of Judgment *Non Pros* or Notice of Default and served you. From November 2009 to February 2010, Judgments of *Non Pros* were entered in the Walsh action for all defendants. You never filed a Petition to Open any of the judgments and you failed to inform your client of the judgments.

Mr. Walsh made multiple and various attempts to contact you regarding the status of his matter, without success. It was not until you were contacted by Office of Disciplinary Counsel that you met with Mr. Walsh. You engaged in a series of misrepresentations to your client, and then to Disciplinary Counsel, regarding the status of the matter. You stated that you would continue to represent Mr. Walsh in his personal injury matter, thereby insinuating that Mr. Walsh's action was still viable although you knew that it was not.

In the second matter, you were retained by Kevin Focht and Olesya Novikova in June of 2011 to represent Ms. Novikova in an immigration matter. Your clients paid you the sum of \$2,650, which represented a retainer of \$2,500 and a consultation fee of \$150. The fee was not earned upon receipt and you failed to deposit the funds in an IOLTA account. You also failed to notify your clients, in writing, that you did not maintain malpractice insurance.

From August 2011 to at least January 30, 2013, your clients made numerous requests to you for the status of the immigration matter, to which they received no response. You were notified on January 31, 2013 that your services were being terminated and your clients' successor counsel requested that you forward the files to him. From January 31, 2013 to July 24, 2013, you failed to provide the files to successor counsel. You did refund the sum of \$3,250 to Mr. Focht and Ms. Novikova.

Your conduct in this matter has 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)(3) and (4) – A lawyer shall keep the client reasonably informed about the status of the matter and shall promptly comply with reasonable requests for information.
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 1.4(c) – A lawyer in private practice shall inform a new client in writing if the lawyer does not have professional liability insurance of at least \$100,000 per occurrence and \$300,000 in the aggregate per year.
5. RPC 1.15(i) – A lawyer shall deposit into a Trust Account legal fees and expenses that have been paid in advance, to be withdrawn by the lawyer only as fees are earned or expenses incurred, unless the client gives informed consent, confirmed in writing, to the handling of fees and expenses in another manner.
6. 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.
7. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.

8. RPC 8.1(a) – A lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact or law.
9. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

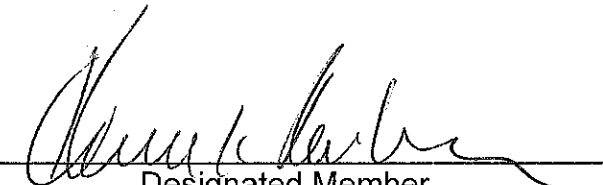
We note that you received professional discipline in the form of an Informal Admonition on April 8, 2011, for misconduct involving lack of diligence and misrepresentation.

In explanation of the instant misconduct, you have divulged that you are experiencing various personal difficulties, you suffer from depression and have reinitiated counseling sessions with a mental health provider. While these difficulties do not excuse your misconduct, it is for these reasons that a term of probation for two years with continued mental health treatment has been imposed as part of the discipline in this matter.

Mr. Michniak, your conduct in this matter is now fully public. This Public Reprimand is a matter of public record.

As you stand before the Board today, we remind you that you have a continuing obligation to abide by the Rules of Professional Conduct and Rules of Disciplinary Enforcement. This Public Reprimand is proof that Pennsylvania lawyers will not be permitted to engage in conduct that falls below professional standards. Be mindful that any future dereliction, including violation of the conditions of your probation, will subject you to disciplinary action.

This Public Reprimand shall be posted on the Disciplinary Board's website at www.padisciplinaryboard.org.



Designated Member
The Disciplinary Board of the
Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Philadelphia, Pennsylvania, on October 14, 2014.

ACKNOWLEDGMENT

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in his presence and in the presence of the designated panel of The Disciplinary Board at 16th Floor, Seven Penn Center, 1635 Market Street, Philadelphia, Pennsylvania, on October 14, 2014.



Andre Michniak