

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 885 Disciplinary Docket No. 3
Petitioner	:	
	:	No. 59 DB 2002
v.	:	
	:	Attorney Registration No. 56131
ROBERT J. MCCORMACK, JR.	:	
Respondent	:	(Lackawanna 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 29, 2002, Office of Disciplinary Counsel, Petitioner, filed a Petition for Discipline against Robert J. McCormack, Jr., Respondent in these proceedings. The Petition charged Respondent with ethical misconduct in eleven separate matters. Two of

the charges involved conversion of client funds and the remaining charges involved various forms of neglect.

A disciplinary hearing was held on September 30, 2002, before Hearing Committee 3.06 comprised of Chair Frances H. Del Duca, Esquire, and Members Elizabeth P. Quigley, Esquire, and Michael W. King, Esquire. Respondent appeared pro se. A Stipulation of facts and law was entered of record. Petitioner introduced eight exhibits and called two witnesses. Respondent testified on his own behalf.

The Hearing Committee filed a Report on May 22, 2003 and recommended that Respondent be suspended from the practice of law for a period of twenty-seven months.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting of July 16, 2003.

II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at Suite 1400, 200 North Third Street, Harrisburg, Pennsylvania 17101, 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 was born in 1957 and was admitted to practice law in the Commonwealth in 1989. Respondent maintains his office at 103 East Drinker Street, Dunmore PA 18512. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has no prior record of discipline.

4. Respondent cooperated fully with Petitioner in the investigation of these matters.

5. At all times material hereto, Respondent maintained a general practice of law.

6. At all times material hereto, Respondent was employed as Lackawanna County's "Omnibus Counsel". As such, he was routinely appointed by the Lackawanna County Court as counsel in connection with *pro se* Post Conviction Relief Act Petitions (hereafter PCRA), as well as in other criminal matters.

7. At the beginning of Respondent's tenure as conflicts counsel in 1992, his caseload was approximately 120 cases. As of June 2002, he had reduced this caseload to 40 cases.

8. By letters dated September 23, 1997 and March 31, 1998, Respondent received notice, from Petitioner, of the duties and obligations imposed upon him by the Rules of Professional Conduct. These letters were sent following Petitioner's receipt of multiple complaints from criminal defendants Respondent was appointed to represent.

9. The Lackawanna County Court was aware of problems with conflicts counsel in PCRA cases prior to Respondent's tenure as conflicts counsel.

10. Throughout the course of Respondent's tenure as conflicts counsel, there were administrative problems including inadequate personnel to adequately compile and maintain accurate information; transcripts from criminal proceedings were frequently not prepared in a timely manner; and communications problems between the court administrator and clerk of court resulted in confusion concerning the status of criminal cases. All of the foregoing contributed to a situation where it was common for action to be delayed and filing deadlines to be missed.

11. Despite repeated instances of requesting and not receiving essential transcripts of proceedings, Respondent never sought a court order compelling production of a transcript.

CHARGE I – WASHENIK MATTER

12. On or about January 20, 1999, Respondent entered his appearance on behalf of Lora Washenik in a medical malpractice action captioned *Lora Washenik, Plaintiff v. Jack Henzes, et al, Defendants*, docketed to 1997-00893 (Lackawanna County).

13. On or about August 1999, Respondent advised Ms. Washenik that retention of an expert witness would be necessary. Ms. Washenik agreed to provide Respondent with \$2,000 to be used to obtain an expert witness.

14. On or about September 2, 1999, Respondent received Ms. Washenik's check in the amount of \$2,000.

15. On September 2, 1999, Respondent cashed Ms. Washenik's check. He deposited \$1,750 of the proceeds into his Fidelity Bank Office Account No. 1170362512. This was his general office account, not his trust account. He thereby improperly commingled these client funds with his own personal funds.

16. Respondent retained the \$250 balance as reimbursement for monies he had already expended in relation to the case; specifically, expenditures to Prestwood Camera in the amount of \$83.10, and Diane Gilbride (Court Reporter) in the amount of \$173.60, totaling \$256.70.

17. Respondent never used any portion of Ms. Washenik's \$2,000 to pay for an expert witness' services.

18. By September 22, 1999, less than one month after Respondent deposited Ms. Washenik's funds into his general office account, this account had a deficit balance, and the \$1,750 had been improperly disbursed and converted by Respondent, without his client's knowledge or permission, for purposes unrelated to the case.

19. On or about April 12, 2000, Respondent was served with Defendant's Motion to Compel Discovery. Respondent was simultaneously served with an Order issued in connection with this Motion, directing the production of an expert witness report within 45 days. The Order stated that the failure to produce such a report could result in sanctions, including the exclusion of expert testimony.

20. Respondent failed to respond to this Motion.

21. On or about June 29, 2000, Respondent was served with Defendant's Motion for Sanctions to Preclude Testimony of Plaintiff's Expert Witness.

22. Respondent failed to respond to this Motion.

23. On or about September 20, 2000, all Defendants filed a joint Motion for Summary Judgment, along with a Brief and Praecipe for the Argument List.

24. Respondent failed to respond to this Motion, and failed to file a brief.

25. By letter dated October 20, 2000, the Court Administrator gave Respondent notice that oral argument on the Motion for Summary Judgment would take place on March 8, 2001.

26. Respondent appeared at oral argument on the Motion for Summary Judgment on March 8, 2001. He told the court that he was unable to find an expert to testify on behalf of the Plaintiff. As a result, by Order dated March 8, 2001, Defendant's Motion for Summary Judgment was granted and Ms. Washenik's suit was dismissed with prejudice.

27. Respondent failed to inform Ms. Washenik about any of these filings/proceedings, including her case's final dismissal.

28. In or about late March 2001, Ms. Washenik independently learned her case had been dismissed.

29. She subsequently confronted Respondent about the aforementioned circumstances. He agreed to file an appeal to the Superior Court.

30. On April 9, 2001, Respondent filed a timely Notice of Appeal, docketed to 648-MDA-2001. He did so to protect Ms. Washenik's ability to pursue this matter further with other counsel. However he believed there was no merit to this appeal.

31. Respondent's Superior Court brief was due on July 9, 2001.

32. Respondent failed to file this brief.

33. By Order dated September 24, 2002, the Superior Court dismissed the appeal due to Respondent's failure to file a brief.

34. By check dated September 27, 2001, drawn on Respondent's Fidelity Bank Client Trust Fund Account No. 1169475801, Respondent paid \$2,000 to Ms. Washenik.

35. Respondent utilized personal funds, which he improperly commingled with client funds by depositing them into his trust account, to make this "refund". This was not a return of Ms. Washenik's funds, which Respondent had originally deposited into a different account, and which he subsequently converted, as set forth above.

CHARGE II – LAWSON MATTER

36. Respondent was court-appointed to represent Paul Lawson in connection with PCRA proceedings arising from Lackawanna County criminal charges docketed to 98-CR-775.

37. In late January 2001, Respondent received a check from Attorney Harold Kane, drawn on Attorney Kane's escrow account at Pennstar Bank, payable to Respondent in an amount of \$5,000.

38. This check, dated January 24, 2001, constituted a refund, by Attorney Kane, of fees he had been paid by Mr. Lawson. The money was refunded because of Mr. Lawson's dissatisfaction with Attorney Kane's representation.

39. These monies were forwarded to Respondent, in his capacity as Mr. Lawson's counsel, so that Respondent could forward them to his client, deposit them in his prison account, or otherwise disburse the funds pursuant to Mr. Lawson's instructions.

40. On January 24, 2001, Respondent deposited, or caused to be deposited, the check from Attorney Kane into his Fidelity Bank Office Account No. 1170362512. This account was Respondent's general office account, not his trust account. He thereby improperly commingled these client funds with his own personal funds.

41. Within two days, this account had a deficit balance, and Mr. Lawson's funds had been improperly disbursed and converted, without his knowledge or permission, on various matters unrelated to Mr. Lawson.

42. By letters dated February 2, March 5, and April 8, 2001, Mr. Lawson directed Respondent to deposit the \$5,000 into his prison account.

43. By letter dated April 25, 2001, Respondent informed Mr. Lawson of his belief that prison policy prevented him from depositing the \$5,000 in his prison account.

44. Following further communications between Respondent, Mr. Lawson, and Mr. Lawson's sister, Cassandra Pamplin, during May 2001, Respondent forwarded a \$5,000 check, dated May 25, 2001, payable to Cassandra Pamplin, to Ms. Pamplin.

45. This check was drawn on Respondent's Fidelity Bank Trust Account No. 1169475801, not the account into which he had initially deposited Attorney Kane's check. The source of the funds paid out when Respondent's check was presented for payment by Ms. Pamplin is unknown.

CHARGE III – MERCHANT MATTER

46. On November 21, 1997, Respondent and Howard Merchant signed a document entitled "Legal Services Agreement," under the terms of which Respondent was to represent Mr. Merchant in the arbitration of a dispute involving compensation allegedly owed Mr. Merchant by his former employer.

47. Mr. Merchant paid Respondent a \$750.00 retainer on that day.

48. Following his retention, Respondent failed to respond to numerous attempted communications by Mr. Merchant, and by his counsel from the state of Indiana,

where Mr. Merchant resides. Furthermore, Respondent performed no significant work in Mr. Merchant's case.

49. As a result of this non-communication and inactivity, by letter from Mr. Merchant's Indiana counsel dated April 8, 1999, Respondent was discharged.

50. Mr. Merchant proceeded to handle the arbitration *pro se*, via the submission of various documents via mail to the arbitrator. He lost his case, and was compelled to pay costs associated with the arbitration.

CHARGE IV – DODGE MATTER

51. On January 14, 1997, Respondent was appointed to represent John Dodge, following his filing a *pro se* PCRA Petition related to charges docketed to 90-CR-1344, 1377, 1425, and 1426.

52. An evidentiary hearing regarding Mr. Dodge's case was scheduled for October 1997.

53. A hearing never took place. Instead, following an informal discussion involving Respondent, the Commonwealth, and the presiding judge, an agreement was reached as to appropriate relief.

54. Pursuant to this agreement, by Order dated November 7, 1997, Mr. Dodge was granted the right to "file an appeal (to the Superior Court) of the denial of [his] post conviction collateral relief petition *nunc pro tunc*." However, this was not the relief Mr.

Dodge sought, which was permission to take a *nunc pro tunc* direct appeal from his sentencing to the Superior Court.

55. Respondent failed to take corrective action, or to file any appeal.

56. On March 19, 1998, Mr. Dodge filed a *pro se* Motion for Appointment of New Counsel, based upon Respondent's inaction.

57. By *sua sponte* Order dated April 2, 1998, Mr. Dodge was granted the right to file a *nunc pro tunc* direct appeal from a March 1992 Order denying a Motion for Reconsideration of Sentence filed on his behalf. Respondent had thirty days to file this direct appeal.

58. On November 20, 1998, seven months after obtaining permission to file this Superior Court appeal, Respondent finally did so.

59. By Order dated December 2, 1998, Mr. Dodge's appeal was dismissed as untimely by the Superior Court.

60. Respondent failed to communicate any of these circumstances to Mr. Dodge during the period November 1997 to October 1998.

61. Following an off the record discussion between Respondent and the trial court, by *sua sponte* Order dated March 19, 1999, the trial court removed Respondent as counsel and appointed new counsel.

CHARGE V – COLLINS MATTER

62. By Order dated May 21, 1997, Respondent was appointed to represent James Collins, pursuant to a *pro se* Petition For Appointment of Private Counsel filed by Mr. Collins at 93-CR-1226. In this filing, Mr. Collins sought counsel to assist him in pursuing an appeal, which both his trial counsel, as well as the subsequently appointed public defender, had failed to pursue.

63. Between May 1997 and May 1998, Mr. Collins sent a series of letters to Respondent inquiring about various aspects of his case.

64. Respondent answered some of these letters. However, other than obtaining the file from prior counsel in approximately October 1997 and reviewing it, he took no action in Mr. Collins' case.

65. By letter to Lackawanna County President Judge James Walsh dated May, 3, 1998, Mr. Collins informed the court of Respondent's year-long period of inactivity.

66. By letter to Respondent dated May 12, 1998, Judge Walsh requested that Respondent contact Mr. Collins.

67. By letters dated May 27 and 28, 1998, Respondent contacted Mr. Collins. He told Mr. Collins that an evidentiary hearing had been scheduled for June 22, 1998.

68. There is no indication on the docket this hearing ever took place.

69. However, by *sua sponte* Court Order dated June 22, 1998, Mr. Collins was granted the right to file a direct appeal to the Superior Court *nunc pro tunc*.

70. On July 14, 1998, Respondent filed a Superior Court Notice of Appeal. He advised Mr. Collins of this filing.

71. By letter dated August 28, 1998, Respondent was notified by the Superior Court Prothonotary that Appellant's brief was due on September 29, 1998.

72. On September 24, 1998, Mr. Collins filed a *pro se* Motion for Termination of Court-Appointed Counsel and Appointment of New Counsel with the Superior Court, based upon Respondent's failures to communicate with him, and Respondent's failure to consult with Mr. Collins about the contents of his brief.

73. Respondent failed to file Appellant's brief.

74. By Superior Court Order dated October 14, 1998, Mr. Collins' case was remanded to the trial court to determine the merits of Mr. Collin's Motion as it appeared Respondent had "failed to file a brief in a timely fashion on the reinstated direct appeal."

75. By Court Order dated November 19, 1998, the trial court removed Respondent as counsel and appointed yet another attorney to represent Mr. Collins.

CHARGE VI – CAMPFIELD MATTER

76. On August 25, 1998, Respondent was court-appointed, as trial counsel, to represent Frederick Campfield in connection with criminal homicide and related charges, docketed to 97-CR-1256.

77. On June 12, 2000, a joint trial commenced. Mr. Campfield was tried with co-defendant Darrell Kimbrough, who was represented by other counsel.

78. The trial concluded on July 7, 2000, at which time the jury returned verdicts of guilty against Mr. Campfield and his co-defendant.

79. On September 27, 2000, Lackawanna County Judge Carmen D. Minora sentenced Mr. Campfield to life in prison plus thirty-four (34) years.

80. By letters dated October 6, 2000, Respondent requested a full set of transcripts from the attending court reporters. He then filed a Notice of Appeal to the Superior Court on Mr. Campfield's behalf, docketed to 1982 MDA 2000, on October 18, 2000.

81. Respondent was directed to file a brief to the Superior Court on or before January 22, 2001.

82. On January 25, 2001, Respondent filed an Application for Extension of Time to File Brief. The basis of this request was the alleged unavailability of transcripts.

83. The Superior Court granted this untimely Application on January 29, 2001. Respondent was directed to file Appellant's brief on or before February 21, 2001.

84. On March 5, 2001, Respondent filed a second Application for Extension of Time to File Brief. Again, the basis for this request was the alleged unavailability of transcripts.

85. The Superior Court granted this untimely Application on March 12, 2001. Respondent was directed to file Appellant's brief on or before April 2, 2001.

86. On April 12, 2001, Respondent filed a third Application for Extension of Time to File Brief. Again, the basis for this request was the alleged unavailability of transcripts.

87. The Superior Court granted this untimely request on May 1, 2001. Respondent was directed to file Appellant's brief on or before May 15, 2001. The Order granting this third extension went on to state, "a further extension will not be granted unless Appellant advises this court by May 10, 2001 which transcripts are missing from the record and necessary to prepare Appellant's brief."

88. By letter to the Superior Court Prothonotary dated May 7, 2001, and received by the Superior Court Prothonotary on May 8, 2001, Respondent indicated the missing transcript involved proceedings on June 19, 2000. Respondent went on to state that he had discussed the missing transcript with the court reporter, and had been assured the transcript would be prepared and filed no later than May 28, 2001.

89. On May 8, 2001, Respondent filed a fourth Application for Extension of Time to File Brief. This application made no reference to Respondent's May 7th letter to the Prothonotary and failed to specify which transcript was missing.

90. By Order dated May 24, 2001, Respondent's fourth request for an Extension of Time was denied. However, this Order did not dismiss Mr. Campfield's appeal.

91. Seven days later, on May 31, 2001, the transcript of proceedings from June 19, 2000, was finally lodged by the court reporter with the Lackawanna County Clerk of Court. This transcript was subsequently forwarded to the Superior Court, where it was filed as part of the record of June 4, 2001.

92. Nevertheless, Respondent failed to take any further action to pursue Mr. Campfield's appeal. Specifically, Respondent failed to request reconsideration of the Superior Court's May 24, 2001 Order, or to request permission to file Complainant's brief *nunc pro tunc*.

93. By Order dated July 9, 2001, the Superior Court dismissed Complainant's appeal, based upon Respondent's failure to file the brief.

94. At no time did Respondent seek an order from the Lackawanna County Court directing the prompt transcription of this record, so as to assure availability of transcripts in connection with Complainant's direct appeal.

CHARGE VII – KUKAITIS MATTER

95. On January 30, 1996, Respondent was appointed to represent Jermone Kukaitis, following his filing of a *pro se* PCRA Petition in connection with charges docketed to 92-CR-1930 and 93-CR-334, 396 and 418.

96. Respondent failed to undertake any action on Mr. Kukaitis' behalf.

97. Between December 1996 and October 1997, Mr. Kukaitis sent Respondent seven letters concerning the status of his PCRA Petition. Respondent did not respond to these letters.

98. On May 12, 1998, Mr. Kukaitis filed a *pro se* Motion for Ineffectiveness of Counsel, based upon Respondent's inactivity.

99. The filing of this Motion is not reflected on any Criminal Case Docket related to Mr. Kukaitis' cases.

100. However, Lackawanna County Court Administrator, William Murray, scheduled an evidentiary hearing in connection with this Motion for June 4, rescheduled it until July 15, and rescheduled it again until September 16, 1998.

101. There is no docket entry indicating whether this hearing actually took place.

102. Respondent was removed as Mr. Kukaitis' counsel by Order dated September 16, 1998, which Order is not docketed.

CHARGE VII – RIFFERT MATTER

103. On January 27, 1993, Respondent was appointed to represent Darlene Riffert in connection with her *pro se* PCRA Petition filed on May 17, 1989, related to charges docketed to 87-CR-263. Respondent was the third attorney appointed in connection with this 1993 PCRA Petition.

104. Respondent took no action in connection with this 1993 PCRA Petition.

105. By Order dated July 16, 1997, Respondent was appointed Ms. Riffert's counsel again, this time in connection with a *pro se* PCRA Petition filed by Ms. Riffert in January 1997. The Commonwealth answered this Petition, and served a copy of this answer on Respondent, by first class mail, under cover of a letter from Assistant District Attorney Carl Lynott dated July 31, 1997.

106. Ms. Riffert filed a *pro se* Amended PCRA Petition on November 25, 1998.

107. In December 1998, the presiding judge sent Respondent a copy of this Amended PCRA Petition.

108. During the seventeen month period from his appointment in July 1997 until this amended PCRA was sent to Respondent by the Court, there was no action taken by Respondent in this matter.

109. By letter dated March 23, 1999 to William Murray, Lackawanna County Court Administrator, Respondent requested the scheduling of an evidentiary hearing.

110. On or about May 1999, Ms. Riffert was given permission to file a *nunc pro tunc* Petition for Allowance of Appeal to the Supreme Court. Such a Petition was subsequently filed, and denied.

CHARGE IX – ROBINSON MATTER

111. On July 26, 1996, Respondent was appointed to represent Ronald Robinson, following his filing of a *pro se* PCRA Petition docketed to 93-CR-1234 and 1251.

112. By letter dated December 99, 1996, Respondent advised Mr. Robinson that his trial counsel, the Lackawanna Public Defender, did not have transcripts from Mr. Robinson's court appearances. Respondent stated that he was in the process of obtaining the necessary transcripts elsewhere.

113. A full set of transcripts had been filed in the Lackawanna County Clerk of Court's office in early 1995.

114. Respondent was prohibited, by Lackawanna County policy, from copying these transcripts. This policy required that the transcripts be obtained either by court order, or by request directed to the attending, or chief, court reporter.

115. Responded requested a copy of the transcripts from Jennifer Guidi, Lackawanna County Chief Court Reporter, at the latest by letter dated October 22, 1997.

116. Respondent received the transcripts in February 1999, some thirty-one months after his appointment, and some sixteen months after his October 1997 request.

117. At no time during this lengthy period of delay in obtaining transcripts did Respondent petition the court for an order compelling their prompt production.

118. Between October 1997 and February 1999, Respondent failed to respond to at least two letters from Mr. Robinson requesting information on his case's status, and otherwise failed to communicate with Mr. Robinson.

119. Subsequent to Respondent's receipt of the transcripts, he contacted Mr. Robinson.

120. A PCRA evidentiary hearing was held in June 1999. The court dismissed Mr. Robinson's PCRA petition.

CHARGE X – HUGGINS MATTER

121. On September 9, 1997, Respondent was appointed to represent Linze Lee Huggins in connection with a *pro se* Notice of Appeal *Nunc Pro Tunc*, docketed to 95-CR-1799. This request for relief was based upon trial counsel's failure to take a direct appeal to the Superior Court.

122. Respondent obtained Mr. Huggins' file from prior counsel and requested transcripts from the court reporter, in writing, in January 1998. Respondent took no further action in Mr. Huggins' case until in approximately late November 1998, at which time he requested a hearing in connection with Mr. Huggins' *pro se* filings even though he had not yet received the transcripts.

123. On January 25, 1999, approximately sixteen months after Respondent's appointment, an evidentiary hearing was finally held in connection with Mr. Huggins' *pro se* filings, which Respondent never amended or supplemented. This hearing is not reflected on the docket; however, a transcript of the hearing is filed with the Clerk of Court. This hearing proceeded even though Respondent had still not received the transcripts he requested in January 1998, which proved to be unnecessary. He subsequently obtained these transcripts around April 1999.

124. By Court Order dated February 5, 1999, Mr. Huggins was granted the right to file a Superior Court appeal *nunc pro tunc*.

125. A Superior Court appeal was timely filed by Respondent, briefed, and subsequently denied.

CHARGE XI – WALKER MATTER

126. On April 23, 1998, Respondent was appointed to represent David Walker in connection with his second *pro se* PCRA petition related to charges docketed to 88-CR-426. Mr. Walker's first PCRA Petition had been dismissed in the early 1990's. Respondent had represented Mr. Walker in connection with his first PCRA.

127. By letter to Common Pleas Judge O'Malley dated April 30, 1998, Respondent requested permission to withdraw as Mr. Walker's counsel because Mr. Walker's second PCRA Petition contained allegations that Respondent had ineffectively represented him in connection with his first PCRA Petition.

128. Respondent did not formally request withdrawal via Petition, and thus was never given permission to withdraw by the trial court.

129. Respondent took no action in Mr. Walker's case.

130. Respondent advised Mr. Walker on more than one occasion that he believed Mr. Walker's second PCRA Petition to be meritless.

131. By Order dated September 4, 1998, Mr. Walker's PCRA Petition was dismissed by the trial court without a hearing.

III. CONCLUSIONS OF LAW

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

1. RPC 1.1 – A lawyer shall provide competent representation to a client.
2. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
3. RPC 1.4(a) – A lawyer shall keep a client informed about the status of a matter and promptly comply with reasonable requests for information.
4. RPC 1.4(b) – A lawyer shall explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation.
5. 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 representation separate from the lawyer's own property.
6. RPC 1.15(b) – Upon receiving funds or other property in which a client or third person has an interest, a lawyer shall promptly notify the client or third person. A lawyer shall promptly deliver to the client or third person any funds or other 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.

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

8. 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 upon a Petition for Discipline charging Respondent with multiple violations of the Rules of Professional Conduct based on allegations of conversion of client funds and neglect of client matters. Respondent fully cooperated with an extensive investigation by Petitioner and the parties entered into a comprehensive Stipulation, in which all relevant facts as to all eleven charges are recited and as to which violations of numerous provisions of the Rules of Professional Conduct are admitted by Respondent. Accordingly, as Respondent has admitted his misconduct and the concomitant rule violations, the Board must determine the proper degree of discipline to address such misconduct.

There are two categories of misconduct involved in this matter. In the more serious charges, Respondent converted client funds in two matters. In Charge I, the Washenik matter, Respondent received \$2,000 from his client with the understanding that

the funds would be used to obtain an expert witness. After properly retaining \$250 as reimbursement for costs previously incurred, Respondent deposited the remaining \$1,750 in his general office account rather than his trust account. Within three weeks, the general office account had a deficit balance and the client's funds had been improperly disbursed and converted by Respondent.

In Charge II, the Lawson matter, Respondent was appointed by the Court to represent a client in a PCRA proceeding. Respondent received a check for \$5,000 drawn on the escrow account of the client's prior attorney, constituting a refund of fees paid in respect of the client's dissatisfaction with that representation. The funds were sent to Respondent and were to be forwarded to the client. These funds were deposited into Respondent's general office account. These funds were then disbursed and converted for some other use. Some time later, the client directed Respondent to place the funds into his prison account. Respondent informed the client that he could not do this. It was later agreed that the funds would be paid over to the sister of the client, which Respondent did.

The other misconduct admitted to by Respondent was various acts of neglect committed by him in his representation of clients. In the above Washenik matter, not only did Respondent convert client funds but he failed to respond to motions filed in his client's case. Respondent never did obtain an expert witness. The client's suit was dismissed with prejudice, which fact Respondent failed to inform his client. Respondent agreed to file an appeal, but then never filed a brief and so the appeal was dismissed. In Charge III, the

Merchant matter, Respondent accepted a \$750 retainer to represent a client and failed to take any action whatsoever on the matter. In other matters, the majority of which were PCRA petitions, Respondent failed to file briefs or respond to client communications with him.

The Board can find no circumstances of record which mitigate the two instances of conversion. Respondent knew the purpose of the monies given to him and failed to place the money in the proper account. Instead, he deposited the monies in his general office account and depleted the account, thereby converting his clients' funds. As to the neglect cases, mitigation was presented by Petitioner, which went so far as to call the Lackawanna County Clerk of Judicial Records to testify as to the significant problems and inadequacies of the administrative structure of that Court's system for processing PCRA petitions. While the evidence shows that there certainly existed extensive and troubling systemic problems in Lackawanna County, this does not excuse or lessen Respondent's culpability. In many of the situations, Respondent chose not to take action, such as procure a court order compelling a late transcript. He simply let the matters remain in a state of limbo, to the detriment of his clients.

The Hearing Committee determined, after careful consideration of the nature of the misconduct, that a suspension for a period of twenty-seven months was appropriate. The Committee first determined that for the two acts of conversion a one year suspension was appropriate. Next, a six month suspension was proper to address the neglect that

occurred in Charges I and III. Finally, the Committee recommended an additional nine month suspension for the neglect that occurred in the remaining charges. This totals twenty-seven months and is within the acceptable range of discipline for misconduct of this type. See In re Anonymous Nos. 79 DB 95 and 159 DB 95, No. 373 Disciplinary Docket No. 3 (Pa. May 12, 1997) (suspension of one year and one day for lawyer who commingled client funds with his own in three instances and made misrepresentations in two of those instances); In re Anonymous No. 142 DB 1999, No. 667 Disciplinary Docket No. 3 (Pa. May 8, 2001) (attorney received a suspension of one year and one day after he engaged in neglect in three client matters and made misrepresentations concerning the neglect); In re Anonymous No. 132 DB 88, 7 Pa. D. & C. 4th 331 (1990) (two year suspension for an attorney who converted client funds for a period of sixteen months).

In the instant matter, Respondent not only knowingly converted client funds, but he also engaged in nine instances of client neglect. This warrants a lengthy period of suspension. The Committee has thoughtfully considered the facts and crafted an appropriate discipline. The Board is persuaded by the Committee's recommendation and in turn recommends to the Court that Respondent be suspended for a period of twenty-seven months.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Robert J. McCormack, Jr., be Suspended from the practice of law for a period of twenty-seven 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: _____
Robert C. Saidis, Member

Date: October 31, 2003

Board Member Brown dissented and would recommend a four year suspension.

PER CURIAM:

AND NOW, this 18th day of February, 2004, upon consideration of the Report and Recommendations of the Disciplinary Board dated October 31, 2003, it is hereby

ORDERED that Robert J. McCormack, Jr., be and he is suspended from the Bar of this Commonwealth for a period of three years, 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.