

IN THE SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 1782 Disciplinary Docket No. 3  
Petitioner :  
 : No. 195 DB 2010  
v. :  
 : Attorney Registration No. 62182  
ANDREW M. McANENEY, :  
Respondent : (Philadelphia)

ORDER

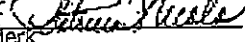
PER CURIAM:

AND NOW, this 1<sup>st</sup> day of March, 2012, upon consideration of the Report and Recommendations of the Disciplinary Board dated October 4, 2011, it is hereby

ORDERED that Andrew M. McAneney is disbarred from the Bar of this Commonwealth 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 3/1/2012

Attest:   
Chief Clerk  
Supreme Court of Pennsylvania

BEFORE THE DISCIPLINARY BOARD OF THE  
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 195 DB 2010
Petitioner	:	
	:	
v.	:	Attorney Registration No. 62182
	:	
ANDREW M. McANENEY	:	
Respondent	:	(Philadelphia)

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 September 30, 2010, Office of Disciplinary Counsel filed a Petition for Discipline against Andrew M. McAneney. The Petition charged Respondent with professional misconduct in four separate matters. Respondent did not file an Answer.

A disciplinary hearing was held on January 25, 2011, before a District I Hearing Committee comprised of Chair David Senoff, Esquire, and Members Daniel J. Ryan, Jr., Esquire, and Sophia Lee, Esquire. Petitioner introduced 42 documentary

exhibits and presented two witnesses. After having received proper notice of the date, time and place of the hearing, Respondent did not appear.

Following the submission of a brief filed by Petitioner, the Hearing Committee filed a Report on May 27, 2011, concluding that Respondent violated the Rules of Professional Conduct and Rules of Disciplinary Enforcement as charged in the Petition, and recommending that Respondent be disbarred.

No Briefs on Exceptions were filed by the parties.

This matter was adjudicated by the Disciplinary Board at the meeting on July 23, 2011.

## II. FINDINGS OF FACT

The Board makes the following findings of fact:

1. Petitioner, whose principal office is located at 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 Rules.
2. Respondent is Andrew M. McAneney. He was born in 1966 and was admitted to practice law in Pennsylvania in 1991. His registered address is 3524 Cottman Ave., Philadelphia, PA 19149. Respondent is subject to the disciplinary jurisdiction of the Supreme Court.
3. Respondent has no record of prior discipline in Pennsylvania.

**Edward P. McArdle Matter**

4. In 2004, Edward P. McArdle, an arborist, owned a small business known as "Teddy's Tree Service," which he operated out of his home at 239 Red Bridge Road, Kintnersville PA 18930.

5. In or about September 2004, Mr. McArdle's residence sustained storm damage.

6. By a contingent fee agreement dated September 12, 2005, Mr. McArdle engaged Respondent to pursue a claim against Peerless Insurance Company to recover the proceeds of Mr. McArdle's insurance policy on account of the storm damage.

7. On or about September 16, 2005, Respondent entered his appearance and filed a summons on Mr. McArdle's behalf against Peerless in the Bucks County Court of Common Pleas.

8. On or about November 10, 2005, Mr. McArdle terminated Respondent's representation because Respondent did not communicate with Mr. McArdle.

9. By letter to Mr. McArdle dated November 10, 2005, Respondent acknowledged that Mr. McArdle had terminated the representation and requested that Mr. McArdle forward a check for \$254.50 to reimburse him for outstanding costs.

10. At the time of the termination of the representation, Mr. McArdle did not engage substitute counsel.

11. Respondent was required, but failed, to seek leave of court to withdraw his appearance from the Peerless lawsuit in accordance with the procedures set forth in Pennsylvania Rules of Civil Procedure 1012(b)(1), (c) and (d)(1), which require that an attorney who has entered his appearance seek leave of court to withdraw his appearance

unless another attorney has entered or is simultaneously entering his appearance for the party.

12. Following Respondent's termination, Peerless declined to negotiate with Mr. McArdle concerning settlement of his claim because the docket in the Peerless lawsuit reflected that Respondent had not withdrawn his entry of appearance.

13. On numerous occasions between November 2005 and January 2008, Mr. McArdle attempted to contact Respondent by telephone and letter to his office address to request that Respondent withdraw his appearance.

14. When Mr. McArdle left messages for Respondent, he told Respondent that he wanted him to withdraw his appearance, but Respondent would not do it.

15. Respondent received the communications from Mr. McArdle requesting that Respondent withdraw from the matter, but Respondent failed to respond and to withdraw his appearance.

16. As a result of his unsuccessful efforts to communicate with Respondent, Mr. McArdle determined to represent himself.

17. Administrative Order No. 29 of the Bucks County Court of Common Pleas Local Rules provides that, in all pending civil matters, where there has been no activity reported on the docket for a period of two years, the court administrator shall give written notice unless a certification of active status is filed before the termination.

18. As reflected on the Peerless docket, since there had been no activity in the lawsuit for two years from the filing of the summons on September 16, 2005, on or about November 16, 2007, the Office of the Prothonotary of Bucks County sent a Termination Notice to Respondent pursuant to Administrative Order No. 29, informing

Respondent that the Peerless lawsuit would be dismissed unless a certification of active status was filed within 30 days.

19. Respondent received the Notice pursuant to the Order.

20. Respondent failed to inform Mr. McArdle that he had received the Notice and/or to take any action to ensure that the Peerless lawsuit was not dismissed.

21. On or about January 3, 2008, Mr. McArdle filed a complaint with Petitioner.

22. Among other things, Mr. McArdle told Petitioner that since the summons was filed in 2005, nothing had happened and that Respondent refused to withdraw his appearance.

23. By letter dated January 10, 2008, addressed to Respondent's registered address, Disciplinary Counsel informed Respondent that Mr. McArdle had filed a complaint and had been attempting to contact him for some time about a matter that Mr. McArdle believed was urgent, and requested that Respondent telephone Mr. McArdle as well as Disciplinary Counsel concerning the subject of the complaint.

24. Respondent received Disciplinary Counsel's letter.

25. In response to the above letter, Respondent failed to contact either Disciplinary Counsel or Mr. McArdle.

26. On or before January 18, 2008, Mr. McArdle discovered that a Termination Notice had been issued for the Peerless lawsuit.

27. On January 18, 2008, Mr. McArdle filed a letter with the Office of Prothonotary of Bucks County requesting that the lawsuit be activated, and paid a fee of \$8.00.

28. On February 6, 2008, Disciplinary Counsel called Respondent's home telephone number and left a message for him to return the call.

29. On February 13, 2008, Disciplinary Counsel left a message at Respondent's home telephone number stating the nature of Mr. McArdle's complaint and requested that Respondent call Disciplinary Counsel by March 13, 2008.

30. In response to Disciplinary Counsel's calls of February 6 and February 13, 2008, Respondent failed to contact ODC or Mr. McArdle, and failed also to withdraw his appearance on behalf of Mr. McArdle.

31. On February 29, 2008, Disciplinary Counsel sent Respondent a DB-7 Request for Statement of Respondent's Position (DB-7), setting forth the substance of Mr. McArdle's complaint regarding Respondent's failure to communicate and to withdraw his appearance.

32. Respondent received the DB-7 by facsimile on February 29, 2008, and by certified mail on or about March 6, 2008.

33. Following receipt of the DB-7, Respondent failed to communicate with Mr. McArdle concerning Mr. McArdle's request that he withdraw his appearance.

34. On or about February 29, 2008, Mr. McArdle filed a pro se "Petition to Withdraw Appearance of Andrew McAneney, Esquire" and the Court issued a Rule to Show Cause for Respondent to show cause why Mr. McArdle's Petition should not be granted.

35. The Petition to Withdraw and Rule were served on Respondent on or about February 29, 2008, but Respondent failed to answer the Petition or to withdraw his appearance, and Mr. McArdle's pro se appearance was entered.

**Michael J. Dinnell Matter**

36. On August 17, 1994, Respondent's father, John J. McAneney, Sr., executed a Will in which he appointed Respondent Trustee of a Testamentary Trust.

37. By Codicil dated July 22, 2003, the testator bequeathed the residue of his estate equally to Respondent, Respondent's brother, John J. McAneney, Jr., Esquire, and Respondent's half-brother, Michael J. Dinnell.

38. The Codicil further provided that Mr. Dinnell's share would be held by Respondent, as Trustee, in trust for Mr. Dinnell, and that Mr. Dinnell could withdraw one-third of the value of the trust principal when he attained the age of 25, which date was March 10, 2009.

39. In May 2007, Mr. Dinnell discussed with Respondent that money would be due to him from the trust on his twenty-fifth birthday.

40. In the fall of 2008, Mr. Dinnell began calling Respondent on a regular basis to try to speak to him about the trust funds, but Respondent failed to respond.

41. Approximately three months after Mr. Dinnell's twenty-fifth birthday, on June 8, 2009, Mr. Dinnell wrote a certified letter to Respondent, addressed to his office, stating that he had attempted to contact Respondent about the trust since the fall of 2008, with no response.

42. Mr. Dinnell's letter was returned to sender as unclaimed and unable to be forwarded.

43. On or about June 29, 2009, Respondent was aware that Mr. Dinnell had written to him, but Respondent failed to claim the letter, and left no forwarding address where the letter could be delivered.

44. In September 2009, Mr. Dinnell filed a complaint with Petitioner concerning Respondent's failure to communicate with him about the status of the trust



funds and Respondent's failure to communicate with Mr. Dinnell's mother, Georgina Dinnell, about the status of a pending accident claim that Respondent was pursuing on behalf of Ms. Dinnell.

45. On February 5, 2010, Disciplinary Counsel telephoned Respondent concerning Mr. Dinnell's complaint, during which call Disciplinary Counsel requested that Respondent send the money to Mr. Dinnell and that Respondent send Disciplinary Counsel a copy of a bank statement reflecting that the trust funds were currently on deposit.

46. By letter dated February 5, 2010, Disciplinary Counsel confirmed the substance of the above telephone conversation in writing, including the request for a bank statement.

47. By letter of February 12, 2010, Respondent sent Disciplinary Counsel his letter to Mr. Dinnell of the same date, and a copy of a certified check payable to Mr. Dinnell in the amount of approximately \$12,106.72, but Respondent failed to send the requested bank statement.

48. At some point in time, Respondent informed Mr. Dinnell that he had spent Mr. Dinnell's trust funds.

49. In August 2007, Respondent held Mr. Dinnell's funds in trust in an account at Beneficial Savings Bank, as reflected in bank records produced by Beneficial pursuant to a subpoena for records from the period June 1, 2004 to date.

50. In evidence at the hearing was an accurate spreadsheet of the activity in the Beneficial Account for the period covered by the subpoena. (ODC -16)

51. From September 30, 2008 through September 30, 2009, there were a number of withdrawals from the Beneficial Account.

52. The balance in the Beneficial Account as of September 30, 2009, was \$346.35.

53. From at least September 30, 2008 to September 30, 2009, Respondent misappropriated to his own use not less than \$11,760.37 of Mr. Dinnell's trust funds since, of the \$12,106.72 paid to Mr. Dinnell, only \$346.35 was held in trust for that period.

54. Respondent paid Mr. Dinnell in February 2010, in part, from two checks for \$6,000 each, deposited in the Beneficial Account on October 28, 2009, and November 13, 2009, which checks were drawn on the checking account of Respondent's mother, Mary P. McAneney, resulting in an ending balance on November 30, 2009 of \$12,345.28.

55. Subsequent to the deposit of his mother's checks, from December 23, 2009 to February 2, 2010, Respondent withdrew a total of \$2,850, but made a \$3,500 deposit of unknown origin on February 9, 2010, bringing the balance in the account to \$12,113.72, from which he paid Mr. Dinnell by certified check on February 12, 2010.

56. Respondent failed to fulfill Disciplinary Counsel's February 5, 2010 request for a bank statement evidencing that the funds had been kept on deposit.

57. At a subpoena return on June 8, 2010, Respondent, who did not appear but was reached by telephone and sworn, testified that he had "misappropriated about \$12,000" of "Michael's" money for personal expenses and had done so by making cash withdrawals.

#### **Failure to Respond to Subpoena**

58. By DB-7 dated March 10, 2010, Petitioner informed Respondent of allegations by Mr. Dinnell that Respondent failed to turn over Mr. Dinnell's trust funds, and

included a request for documents consisting of bank records and records of the receipt and disposition of Mr. Dinnell's funds.

59. Respondent received the DB-7, but did not respond to the allegations or the document request.

60. On May 12, 2010, Petitioner obtained a subpoena from the Supreme Court directed to Respondent, returnable on May 25, 2010, for Respondent's records pertaining to the matter involving Mr. Dinnell's funds.

61. The subpoena, which was sent to Respondent's registered office address by certified Mail, was returned to Petitioner as unclaimed and unable to be forwarded.

62. On May 24, 2010, Disciplinary Counsel sent Respondent a copy of the subpoena via electronic mail and, by agreement of Respondent and Disciplinary Counsel, the subpoena return was scheduled for June 1, 2010.

63. In a telephone conversation on May 24, 2010, Respondent told Disciplinary Counsel that he had used Mr. Dinnell's trust funds "as [his] own." (ODC-22)

64. On June 1, 2010, Respondent appeared at ODC's office and produced three one-page documents representing bank statements for November 30, 2008, June 30, 2009, and November 30, 2009 for the Beneficial Account, which account was, in part, the subject of the subpoena.

65. Respondent's production of documents did not fully comply with the subpoena, as the subpoena called for, among other things, complete records of the receipt and disposition of the trust funds.

66. Disciplinary Counsel continued the subpoena return until June 8, 2010 at 9:30 a.m., for Respondent to produce the remaining documents responsive to the subpoena, and confirmed the date with Respondent.

67. On June 8, 2010, Respondent sent an e-mail to Disciplinary Counsel at 9:05 a.m., stating in part, that when Respondent went to his office that morning to retrieve the subpoenaed documents, he learned that he had been “locked out” of the office by the landlord, would attempt to reach the landlord to gain access, and “hop[ed] to be able to see [Disciplinary Counsel] Friday morning [i.e., June 11, 2010].” (ODC-26)

68. Disciplinary Counsel responded to Respondent’s e-mail by return e-mail stating that Respondent’s non-compliance with the subpoena and failure to appear at Petitioner’s office were not acceptable.

69. Later that same morning, on June 8, 2010, at the appointed time for the subpoena return, Disciplinary Counsel telephoned Respondent and had him placed under oath over the telephone.

70. During the subpoena return, Respondent stated that he was trying to contact the landlord and that, if he reached him, he would request permission to enter and obtain the records, informing the landlord that the records were under subpoena.

71. Following the subpoena return, Disciplinary Counsel placed a call to Respondent’s landlord, who stated that he would allow Respondent to enter the office that morning to obtain records.

72. Following the subpoena return, Respondent failed to contact Disciplinary Counsel concerning the records and/or to produce the records sought by the subpoena.

73. On or about June 12, 2010, Disciplinary Counsel left a message on Respondent's telephone stating that he should return the call by June 14, 2010 and confirmed the message in a letter to Respondent dated June 15, 2010.

74. Respondent failed to contact Disciplinary Counsel and/or comply with the subpoena.

**Georgina Dinnell Matter**

75. In 2007, Georgina Dinnell engaged Respondent to represent her in a claim for personal injury and an underinsured motorist claim arising out of an automobile accident.

76. By Order dated March 18, 2008, effective April 17, 2008, the Supreme Court transferred Respondent to inactive status for failure to comply with Continuing Legal Education requirements, and Respondent was notified of the Order and of his obligation to comply with Pa.R.D.E. 217.

77. Respondent failed to notify Ms. Dinnell of his transfer to inactive status and his consequent inability to act as an attorney after the effective date of the transfer to inactive status, and to advise Ms. Dinnell to seek legal advice elsewhere, as required by Pa.R.D.E. 217(a).

78. Within ten days after the effective date of his transfer to inactive status, Respondent failed to file with the Disciplinary Board a Verified Statement of Compliance, as required by Pa.R.D.E. 217(e).

79. As of the date of the hearing on January 25, 2011, Respondent had not filed a Statement of Compliance with respect to his transfer to inactive status in April 2008.

80. Respondent was reinstated to active status on August 12, 2008.

81. By letter dated September 16, 2008, Respondent wrote to Ms. Dinnell, stating as follows:

a. he was enclosing a Joint Tortfeasor Release in the matter of Dinnell v. Steich;

b. she should return the signed Release to Respondent in the envelope provided;

c. the amount recovered “represents the total third party liability limits available in this matter”;

d. “[w]e will still pursue the Under-Insured Motorists benefits claims as well”; and

e. Respondent would “be in touch within the next week to obtain the best times for [Ms. Dinnell’s] recorded statement for [her pending] matter.” (ODC-30)

82. By letter dated October 7, 2008, Respondent sent Ms. Dinnell the settlement check, instructed her to endorse and return the check, confirmed that he would send her the settlement proceeds, and requested that she give him possible dates for her sworn statement to be taken in the under-insured motorist case.

83. On or about October 10, 2008, Ms. Dinnell endorsed the check, which was in the amount of \$15,000, and returned the check to Respondent’s office.

84. Respondent deposited the settlement check in his PNC Account, which was titled “Andrew M. McAneney, Esq., Attorney Trust Account”, on October 20, 2008.

85. In October 2008, Respondent held Ms. Dinnell's funds in trust in the PNC Account, as reflected in bank records produced by PNC pursuant to a subpoena for records of the account from the period October 1, 2008 to November 30, 2009.

86. In evidence at the Hearing, was an accurate spreadsheet of the activity in the PNC Account for the period covered by the subpoena, which showed that beginning on October 28, 2008, eight days after Respondent deposited the settlement check, he made numerous withdrawals of the money in the PNC Account, until the PNC Account had a negative balance on September 29, 2009. (ODC-34)

87. Upon receiving the settlement funds, Respondent failed to promptly deliver to Ms. Dinnell that portion of the proceeds she was entitled to receive.

88. Between October 10, 2008, and May 21, 2009, Ms. Dinnell called Respondent's office on numerous occasions to obtain her portion of the settlement proceeds.

89. Between October 10, 2008 and May 21, 2009, Respondent failed to send Ms. Dinnell the settlement proceeds with a distribution sheet, arrange for her sworn statement in the underinsured motorist case, and provide the status of the underinsured motorist claim.

90. Respondent received a letter from Ms. Dinnell dated May 21, 2009, in which she stated that, in the eight months since she had heard from Respondent, she had repeatedly attempted to call his office, his cell phone and home phone had been disconnected, Respondent was not answering calls, he was not returning voicemails, and she wanted her settlement money.

91. After receiving the letter, Respondent failed to promptly provide Ms. Dinnell with that portion of the settlement proceeds to which she was entitled.

92. On September 1, 2009, Ms. Dinnell filed a complaint with Petitioner in which she stated that she endorsed the settlement check and sent it to Respondent on October 10, 2008, she had called Respondent's office numerous times without response, and she had not received her money.

93. By letter dated October 23, 2009, Respondent sent Ms. Dinnell a check in the amount of \$4,946.25, representing her purported share of the settlement proceeds, and a distribution sheet.

94. As of the date of the subpoena return, June 8, 2010, at which Respondent testified by telephone, Ms. Dinnell's underinsured motorist claim was pending.

95. As of the date the Petition for Discipline was filed, Respondent had failed to contact Ms. Dinnell about the status of her claim.

96. On October 1, 2008, the PNC Account balance was \$22.08.

97. Soon after Ms. Dinnell's settlement check was deposited in the PNC Account on October 20, 2008, Respondent commenced making withdrawals of cash and used it for personal expenses, such as rent, auto repair, and school tuition.

98. From the date of deposit of Ms. Dinnell's check on October 20, 2008, to the date of distribution to her on October 23, 2009, at all times the PNC Account had a balance below \$15,000, with a low balance of \$-104.07 on October 1, 2009.

99. On October 23, 2009, Respondent deposited a check for \$7,500 into the PNC Account, which check was drawn on the account of Respondent's mother, bringing the balance in the PNC Account to \$7,395.93, and enabling him to pay Ms. Dinnell.

100. From the period on or about October 20, 2008 to October 29, 2009, Respondent misappropriated Ms. Dinnell's settlement funds for his own use.



101. During Respondent's testimony at the subpoena return on June 8, 2010, Respondent stated that, with respect to Ms. Dinnell's settlement funds, the money was on deposit in the PNC Account between October 2008 and October 2009, he wrote the check and didn't mail it," he "[didn't] believe" he used Ms. Dinnell's money, he didn't "have a recollection of it," it was "possible" that he used Ms. Dinnell's money, and "maybe" he used Ms. Dinnell's money. (ODC-18 at 10-11)

102. Respondent's statements on the record concerning whether he converted Ms. Dinnell's settlement monies were false and misleading, because he did convert her money from the settlement, using the deposit from Mary P. McAneney to pay Ms. Dinnell.

103. By Order of the Supreme Court dated November 18, 2010, effective December 18, 2010, Respondent was Administratively Suspended and he has failed to file a Statement of Compliance.

104. Respondent received the Petition for Discipline by personal service on October 8, 2010.

105. Respondent failed to file an Answer to the Petition.

106. On November 22, 2010, Respondent received the notice of prehearing conference and hearing sent by the Office of the Secretary of the Disciplinary Board.

107. By letter dated December 2, 2010, Disciplinary Counsel sent to Respondent Petitioner's exhibits and draft joint stipulations, and informed Respondent that the prehearing conference would be held on December 14, 2010 at 10 a.m. at the District I office.

108. Respondent had actual notice of the prehearing conference and the hearing.

109. Respondent failed to appear at the prehearing conference and at the hearing.

110. Respondent offered no explanation for his misconduct nor has he expressed any remorse.

### III. CONCLUSIONS OF LAW

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

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

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

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

4. 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.

5. RPC 1.15(b) - 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.

6. RPC 1.15(c) - Complete records of the receipt, maintenance and disposition of Rules 1.15 Funds and property shall be preserved for a period of five years after the termination of the client-lawyer or Fiduciary relationship or after distribution or disposition of the property, whichever is later.

7. RPC 1.15(e) - Except as stated in this Rule or otherwise permitted by law or by agreement with the client or third person, a lawyer shall promptly deliver to the client or third person any property, including but not limited to Rule 1.15 Funds, 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 the property; provided, however, that the delivery, accounting and disclosure of Fiduciary Funds or property shall continue to be governed by the law, procedure and rules governing the requirements of Fiduciary administration, confidentiality, notice and accounting applicable to the Fiduciary entrustment.

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. The lawyer may retain papers relating to the client to the extent permitted by other law.

9. RPC 8.1(a) - A lawyer in connection with a disciplinary matter shall not knowingly make a false statement of material fact.

10. RPC 8.1(b) - A lawyer in connection with a disciplinary matter shall not fail to disclose a fact necessary to correct a misapprehension known by the person to have arisen in the matter, or knowingly fail to respond to a lawful demand for information from an admissions or disciplinary authority, except that this Rule does not require disclosure of information otherwise protected by Rule 1.6.

11. RPC 8.4(b) - It is professional misconduct for a lawyer to commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects.

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

13. RPC 8.4(d) - It is professional misconduct for a lawyer to engage in conduct that is prejudicial to the administration of justice.

14. Pa.R.D.E. 203(b)(3) - Willful violation of any other provision of the Enforcement Rules shall be grounds for discipline, via:

a. Pa.R.D.E. 221(e) - An attorney shall maintain the following books and records for each Trust Account and for any other account in which Rule 1.15 Funds are held: (1) all transaction records provided to the attorney by the Financial Institution, such as periodic statements, cancelled checks in whatever form, deposited items and records of electronic transactions; and (2) check register or separately maintained ledger, which shall include the payee, date and amount of each check, withdrawal and transfer, the payor, date and amount of each deposit, and the matter involved for each transaction;

b. Pa.R.D.E. 221(f) - The records required by this rule may be maintained in electronic or hard copy form. If records are kept only in electronic form, then such records shall be backed up at least monthly on a separate electronic storage device; and

c. Pa.R.D.E. 221(g) - Records required by this rule may be subject to subpoena and must be produced in connection with an investigation or hearing pursuant to these rules.

15. Pa.R.D.E. 217(a) - A formerly admitted attorney shall promptly notify, or cause to be notified, by registered or certified mail, return receipt requested, all clients being represented in pending matters, other than litigation or administrative proceedings, of the disbarment, suspension or administrative suspension or transfer to inactive status and the consequent inability of the formerly admitted attorney to act as an attorney after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status and shall advise said clients to seek legal advice elsewhere.

16. Pa.R.D.E. 217(e) - Within ten days after the effective date of the disbarment, suspension, administrative suspension or transfer to inactive status order, the formerly admitted attorney shall file with the Board a verified statement showing: (1) that the provisions of the order and rules have been fully complied with; and (2) all other state, federal and administrative jurisdictions to which such person is admitted to practice. Such statement shall also set forth the residence or other address of the formerly admitted attorney where communications to such person may thereafter be directed.

#### IV. DISCUSSION

This matter is before the Disciplinary Board for consideration of the charges of professional misconduct filed against Respondent. No Answer was filed in response to the charges, nor did Respondent participate in the prehearing conference or appear at the disciplinary hearing.

Petitioner bears the burden of proving by a preponderance of the evidence that is clear and satisfactory, that Respondent committed ethical misconduct. Office of Disciplinary Counsel v. Grigsby, 425 A.2d 730 (Pa. 1981). Petitioner introduced 42 documentary exhibits and presented two witnesses, Edward P. McArdle and Michael J. Dinnell. Review of the record fully supports the conclusion that Respondent violated each and every Rule of Professional Conduct and Rule of Disciplinary Enforcement charged in the Petition for Discipline, and therefore committed serious professional misconduct. The remaining issue for the Board to determine is the appropriate discipline to address Respondent's misconduct.

While in control of entrusted funds belonging to his client, Georgina Dinnell, and a beneficiary, Michael Dinnell, Respondent converted those funds to his own use. Petitioner introduced a spreadsheet of the IOLTA account in which Respondent deposited Ms. Dinnell's settlement monies. The spreadsheet reflected that, shortly after deposit of the funds in October 2008, Respondent began to make repeated withdrawals until, by October 2009, the funds were completely dissipated.

Similarly, following deposit of Mr. Dinnell's trust funds at Beneficial Bank, several withdrawals were made between September 2008 and September 2009, bringing the account balance to a level far short of the monies due to Mr. Dinnell.

During the commission of the misappropriation, Respondent concealed his behavior. Ms. Dinnell made repeated attempts between October 2008 and October 2009 to contact Respondent about her funds, both at his office and at his home. Respondent was non-communicative. Over the course of that year, Respondent used Ms. Dinnell's funds and then replenished the funds with a deposit from his mother. In October 2009, he sent a check to Ms. Dinnell representing her share of the settlement proceeds. While under oath

at a subpoena return in 2010, Respondent gave false testimony that he wrote a check to Ms. Dinnell but "didn't mail it," and that he "[didn't] believe" he used her money.

Mr. Dinnell also tried unsuccessfully to communicate with Respondent in order to obtain his trust funds, which Mr. Dinnell was entitled to receive on the occasion of his 25<sup>th</sup> birthday on March 25, 2009. Respondent did not return Mr. Dinnell's telephone messages, and a certified letter was returned as unclaimed. Mr. Dinnell was compelled to file a disciplinary complaint against Respondent in order to obtain his monies, which he eventually received from Respondent in February of 2010 after Respondent replenished his bank account in part with checks drawn on his mother's checking account.

In connection with Mr. Dinnell and Ms. Dinnell's matters, a subpoena was issued which directed Respondent to provide certain records pertaining to the entrusted funds. Respondent did not fully comply with this subpoena, as he only provided three one-page documents representing bank statements. Respondent was given the opportunity by Petitioner to provide the balance of the requested documents, yet inexplicably failed to do so.

In addition to the misappropriation of monies and dishonest actions exhibited by Respondent, he neglected client matters. Respondent failed to withdraw his appearance at the termination of his representation of Mr. McArdle. Mr. McArdle asked Respondent many times to withdraw so that Mr. McArdle could negotiate with the insurance company on his own, but Respondent did not communicate with Mr. McArdle, nor did he withdraw from the matter. This went on for nearly three years. By that point the case was in danger of dismissal pursuant to local court rules. Mr. McArdle petitioned the court to withdraw Respondent's appearance, a rule to show cause was issued, which Respondent ignored, and Mr. McArdle was finally able to prosecute his case pro se.

Respondent failed to respond to requests from Ms. Dinnell for information about the status of her matter and did not tell her that he had been transferred to inactive status and was prohibited from representing her.

Respondent's acts of misconduct are extremely serious, particularly the misappropriation of entrusted funds. The Supreme Court of Pennsylvania has determined that misappropriation of client funds is a serious offense that may warrant disbarment. Office of Disciplinary Counsel v. Lucarini, 472 A.2d 186 (Pa. 1983); Office of Disciplinary Counsel v. Lewis, 426 A.2d 1138 (Pa. 1981). The determination to disbar an attorney in a case of theft is made based upon all surrounding circumstances of the matter, including the aggravating and mitigating factors. Office of Disciplinary Counsel v. Rainone, 911 A.2d 920 (Pa. 2006).

Respondent has demonstrated that he has no respect for the disciplinary system and has not complied with its requirements. He ignored a subpoena, and failed to comply with certain rules after his transfer to inactive status. He failed to respond to the Petition for Discipline, failed to appear at the prehearing conference and failed to appear at his disciplinary hearing. He filed no responsive briefs to the Hearing Committee. He offered no explanation nor evidenced any remorse for his actions. Respondent's silence indicates a lack of interest in retaining his professional license. Respondent has no history of professional discipline, yet this one mitigating factor is woefully insufficient to balance the weight of Respondent's bad behavior since 2005.

Respondent has engaged in a pattern of misconduct which clearly shows that he lacks the most fundamental moral qualifications and fitness necessary to practice law in this Commonwealth. We are persuaded that his continued presence as a legal practitioner



is a danger to the public and harmful to the integrity of the bar and the judicial system. For these reasons, we recommend that Respondent be disbarred.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania unanimously recommends that the Respondent, Andrew M. McAneney, be Disbarred from the practice of law.

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: *Charlotte S. Jefferies*  
Charlotte S. Jefferies, Board Member

Date: October 4, 2011

Board Member Momjian did not participate in the adjudication.