Joseph W. Farrell
Executive Director

Elaine M. Bixler
Secretary of the Board

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THE DISCIPLINARY BOARD
OF THE
SUPREME COURT OF PENNSYLVANIA

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September 27, 2005

John A. Vaskov, Esq.
Deputy Prothonotary
Supreme Court of Pennsylvania
Western District Office
801 City-County Building
Pittsburgh, PA 15219

Re: Office of Disciplinary Counsel
v. JOSEPH EDWARD HUDAK (Allegheny County)
No. 852, Disciplinary Docket No. 3 – Supreme Court
Nos. 148 DB 2003 & 174 DB 2003 – Disciplinary Board
Attorney Registration No. 45882

Dear Mr. Vaskov:

By Order of the Supreme Court dated March 1, 2005, Joseph Edward Hudak was Suspended from the Bar of this Commonwealth for a period of one year and one day, with credit for four and one-half months served.

It was recently brought to our attention that there is an error contained on page 23, paragraph 146 in the Report and Recommendation of the Disciplinary Board filed in the above matter on October 25, 2004. Paragraph 146 is a finding of fact which states that Craig Simpson, among others, was a character witness for Respondent. In actuality, Mr. Simpson did not appear as a character witness. Mr. Simpson was subpoenaed by Respondent's counsel to testify in the case-in-chief.

Pursuant to your instructions, we are sending this correction letter with the request that a copy of it be provided to anyone seeking a copy of the Board's Report in this matter.

Sincerely,

Elaine M. Bixler
Secretary of the Board

/emb

cc: Joseph E. Hudak, Respondent
Samuel F. Napoli, Disciplinary Counsel
Paul J. Killion, Chief Disciplinary Counsel

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL	:	No. 852, Disciplinary Docket
Petitioner	:	No. 3 – Supreme Court
	:	
	:	Nos. 148 DB 2003 & 174 DB 2003
v.	:	Disciplinary Board
	:	
	:	Attorney Registration No. 45882
JOSEPH EDWARD HUDAK	:	
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

By Order of the Supreme Court of Pennsylvania dated October 3, 2003, Respondent, Joseph Edward Hudak, was suspended on an emergency temporary basis. However, Respondent was reinstated by Order of the Supreme Court dated February 18,

2004. The original suspension Order directed that a Petition for Discipline be filed within 30 days and that proceedings be conducted on an expedited basis. On November 3, 2003, a Petition for Discipline was filed against Respondent at No. 148 DB 2003. On November 18, 2003, a second Petition for Discipline was filed against Respondent at No. 174 DB 2003. On November 26, 2003, Office of Disciplinary Counsel filed a Motion to Join the two Petitions for Discipline. On December 2, 2003, Respondent filed a Motion to Dismiss and Motion in Opposition to the Motion to Join. On December 4, 2003, Petitioner filed a Reply to Respondent's Motion to Dismiss and Motion in Opposition to Motion to Join. On December 7, 2003, the Disciplinary Board ordered the joining of the two Petitions for Discipline on an accelerated basis.

Disciplinary hearings were held before Hearing Committee 4.11 comprised of Chair Michael A. Fetzner, Esquire, and Members Karen Y. Bonvalot, Esquire, and Matthew F. Burger, Esquire. These hearings took place on December 12 and 23, 2003, and January 5, 6 and 12, 2004. Respondent was represented by Thomas R. Ceraso, Esquire.

Following the submission of briefs by the parties, the Hearing Committee filed a Report on April 30, 2004, finding that Respondent violated Rules of Professional Conduct 1.3, 1.4(a), 1.16(d), and 8.4(c), and recommending that Respondent be suspended for two years.

Respondent filed a Brief on Exceptions and Request for Oral Argument on May 20, 2004. Petitioner filed a Brief Opposing Exceptions on June 7, 2004.

Oral argument was held on July 12, 2004 before a three member panel of the

Disciplinary Board chaired by Smith Barton Gephart, Esquire, with Members Marvin J. Rudnitsky, Esquire, and Robert C. Saidis, Esquire.

This matter was adjudicated by the Disciplinary Board at the meeting of July 17, 2004.

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, Joseph Edward Hudak, was born in 1955 and was admitted to practice law in Pennsylvania in 1986. He maintains an office at 200 Grant Street, Pittsburgh PA 15219. He is subject to the disciplinary jurisdiction of the Disciplinary Board of the Supreme Court.

3. Respondent has a prior record of discipline consisting of an informal admonition imposed in 2001.

4. Respondent was placed on temporary suspension by Order of the Supreme Court dated October 3, 2003. By Order of February 18, 2004, the Court

dissolved the temporary suspension and Respondent was reinstated to practice effective immediately.

Petition at No. 148 DB 2003 - Bryant Matter

5. Respondent was retained by Ronald Bryant on August 27, 2002 to expunge his criminal record. Respondent provided Mr. Bryant with a Power of Attorney and a fee agreement, which indicated that Respondent was to provide three expungements, the legal fee was $500, and the fee was a non-refundable retainer.

6. Mr. Bryant signed the fee agreement and paid Respondent $500.

7. After the initial meeting, Respondent told his client to come to his office to discuss the matter. Mr. Bryant traveled to Respondent's office on a few occasions only to find he was not available.

8. Mr. Bryant called Respondent’s office at least 30 times without reaching Respondent.

9. Mr. Bryant finally met with Respondent at the end of September 2002 and was told that he had a court date on October 24, 2002 for a hearing in regard to the expungement.

10. Mr. Bryant never heard from Respondent and was only able to make contact with Respondent's secretary thereafter.

11. Respondent never filed an Expungement Petition on behalf of Mr. Bryant, nor was an expungement hearing scheduled on October 24, 2002 or any other date.

12. Mr. Bryant filed a civil action before District Justice Oscar J. Pettit, seeking monetary damages because of Respondent's failure to provide an expungement of his criminal record. Mr. Bryant obtained a default judgment against Respondent in the amount of $8,111.50 on March 11, 2003.

13. Respondent testified at the disciplinary hearing that there were problems with the Bryant case because he had three sets of charges, at least one of which was a felony that cannot get expunged.

14. Respondent admitted he procrastinated, but it was not due to laziness.

Moore Matter

15. On April 12, 2002, Darlene Moore met with Respondent and Attorney Carl Marcus to discuss their representation of her son Jared Moore, in an action against Gateway School District.

16. Ms. Moore informed Respondent and Attorney Marcus that her primary concern was to ensure that Jared received his high school diploma.

17. Respondent and Mr. Marcus agreed to undertake representation of Ms. Moore for a fee of $3,500 plus an additional filing fee of $150. By check dated April 15,

2002 made payable to Carl Marcus and annotated “injunctive relief”, Ms. Moore paid Attorney Marcus $1,150, which reflected an initial retainer of $1,000 and a filing fee of $150.

18. Prior to May 14, 2002, Attorney Marcus advised Ms. Moore that Respondent had taken over the litigation of the case.

19. On May 14, 2002, at a meeting with Respondent at his office, Jared Moore signed verifications for a Complaint in Equity and an Emergency Motion for Temporary Restraining Order and other Equitable Relief.

20. On May 15, 2002, Respondent filed the Complaint in Equity and the Emergency Motion in the Court of Common Pleas of Allegheny County.

21. On June 7, 2002, Attorney Robert B. Cottington, representing the school district, faxed a letter to Respondent indicating that Jared Moore had not been in school for over a year, pointing out that the allegations in the Complaint were not accurate. Attorney Cottington indicated that if the Complaint was not withdrawn he would seek sanctions on behalf of his client.

22. In response to the letter, Respondent faxed a letter to Attorney Cottington dated June 11, 2002, indicating that the Complaint would be withdrawn.

23. Respondent failed to advise his client that he was withdrawing the Complaint.

24. On June 28, 2002, the Moore’s met with Respondent and Attorney Marcus.

25. Respondent requested additional money for a hearing, which was provided by Ms. Moore in the amount of $1,000 by check dated June 28, 2002.

26. Respondent told Ms. Moore that he had filed for an injunction, he should be ready to go to Court and he would contact her within the next few days.

27. Ms. Moore received no further communication from Respondent and her telephone calls were never returned.

28. Ms. Moore never received any legal documents or correspondence regarding the progress of the case from Respondent.

29. On September 4, 2002, Respondent sent Attorney Cottington a letter indicating he was willing to meet with Mr. Cottington and Darlene Moore to resolve the matter.

30. Ms. Moore never received a copy of this letter.

31. Attorney Cottington attempted to contact Respondent because he understood based on the June 11, 2002 fax from Respondent that the matter was no longer being pursued.

32. Attorney Cottington never received a response to his telephone call and had no further communications with Respondent regarding the lawsuit.

33. Ms. Moore contacted Carl Marcus and demanded a refund. Mr. Marcus refunded $650.

34. By letter of May 17, 2003, Ms. Moore terminated Respondent's representation and requested a full refund of $1,000 within 10 days.

35. Respondent did not respond to Ms. Moore's attempts to contact him.

Mawhinney Matter

36. In November 2002, Paul Mawhinney contacted Respondent in regard to representing his brother Gerald at a bond hearing and criminal trial.

37. Mr. Mawhinney agreed to pay Respondent $500 for the bond hearing and an additional $2,500 for representation at trial.

38. On December 6, 2002, Mr. Mawhinney signed a fee agreement which acknowledged payment for the bond hearing and $1,000 toward the cost of trial, leaving a balance due of $1,500.

39. Respondent represented Gerald Mawhinney at the bond hearing.

40. After the bond hearing in December 2002, Respondent did not discuss the details of Gerald Mawhinney's case with him, he did not enter his appearance in the matter and did not attend the pre-trial conference held on February 14, 2003.

41. Gerald Mawhinney believed Respondent was representing him and was surprised when a public defender appeared at the pre-trial conference.

42. By certified letter dated March 10, 2003, sent by Paul Mawhinney, Gerald Mawhinney terminated Respondent's representation. The letter also requested a refund of all money ($1,500) that was paid to Respondent within ten days.

43. Respondent did not respond to this letter.

44. On June 19, 2003, Gerald Mawhinney sent a letter to Respondent, reminding Respondent that he had been paid $1,500 to represent him.

45. Respondent did not respond to this letter nor did he refund any unearned fees.

Chambers Matter

46. On December 23, 2002, Che King met with Respondent about representing Lori Lynn Chambers in several criminal matters. Respondent appeared in court for several of Ms. Chambers' matters but failed to appear for three specific hearings.

47. At the initial meeting with Respondent, Mr. King entered into a written fee agreement, which indicated that Respondent was to represent Ms. Chambers in a preliminary hearing in West Mifflin on December 26, 2002 for $500, a preliminary hearing in Allison Park for $500 on December 27, 2002, preliminary hearing in Bethel Park for $300, and a Gagnon I parole hearing for $350.

48. After being paid the retainer of $1,450, Respondent visited Ms. Chambers in prison on December 24 and 25, 2002.

49. On December 27, 2002, Respondent appeared before District Justice Regis Welsh in Allison Park, but the case was continued at the request of the Commonwealth.

50. On January 10, 2003, Respondent appeared before Justice Welsh and the charges were withdrawn.

51. On April 17, 2003, the charges were re-filed by the Commonwealth.

52. On December 26, 2002, Respondent did not appear before District Justice Richard D. Olasz, Jr., to represent Ms. Chambers at the preliminary hearing scheduled in West Mifflin. The hearing was continued to January 9, 2003 and then rescheduled to January 16, 2003.

53. Respondent appeared on behalf of Ms. Chambers at the January 16, 2003 preliminary hearing at 9:30 a.m. He waited until after 10 a.m., and then requested that the hearing be postponed because he had another commitment to appear before a Common Pleas Court judge at 1:30 p.m. Shortly thereafter Ms. Chambers retained other counsel to represent her before District Justice Olasz.

54. On January 16, 2003 Respondent did not appear before District Justice Robert Wyda in Bethel Park for a scheduled preliminary hearing. The case was continued to January 30, 2003. On January 30, 2003 Respondent did not appear, and Ms. Chambers received court appointed counsel to represent her in that matter.

55. On December 31, 2002, Respondent was to represent Ms. Chambers at a state parole violation proceeding but failed to appear. Ms. Chambers then retained other counsel for that matter.

56. On February 1, 2003, Ms. Chambers called Respondent's office and informed his secretary that she was discharging Respondent and requested a refund of the retainer that had been paid.

57. Mr. King went to Respondent's office in early February and requested a partial refund.

58. Respondent advised Mr. King that he would not refund any portion of the retainer because the fee agreement provided that the retainer was non-refundable, and furthermore, that the work Respondent performed for Ms. Chambers had far exceeded the amount Mr. King paid to Respondent.

59. A certified letter dated March 17, 2003 was sent by Ms. Chambers to Respondent requesting a refund of $1,100.

60. Respondent failed to respond to this letter.

Petition at No. 174 DB 2003 – Catron Matter

61. In January 2003, Joanne Catron was arrested and charged with making false statements to the police.

62. Mrs. Catron gave a confession to the State Police when she was arrested. She was incarcerated at the Erie County Prison and her husband Daniel Catron posted a $5,000 cash bond.

63. Mrs. Catron's first contact with Respondent was through Respondent's then associate, Attorney Haft at the Erie office.

64. Attorney Haft agreed to represent Mrs. Catron at her preliminary hearing for $550.00. Mrs. Catron signed a fee agreement that the fee would be $2,000 to $3,000 if the case went to trial. Mrs. Catron paid the $550 fee.

65. The preliminary hearing, which was initially scheduled for February 18, 2003 before District Justice MacKendrick, was postponed several times due to Attorney Haft leaving the Hudak Law Firm and because of conflicts in Respondent's schedule.

66. On April 24, 2003, the preliminary hearing was waived after Respondent and the District Attorney's Office reached a plea agreement. Mrs. Catron signed the plea agreement, which noted the Commonwealth's consent to a reduction of bond to unsecured, and charges were bound over to the Court of Common Pleas of Erie County.

67. District Justice MacKendrick reduced Mrs. Catron's bond from $5,000 straight cash bond to a $5,000 unsecured bond. The Catrons were mistakenly informed by the District Justice that they could collect their bond money at the Clerk of Courts Office at the courthouse.

68. Respondent informed Mrs. Catron that she would need to pay him $2,000 for his continued representation of her in the matter. Daniel Catron wrote Respondent a check for $2,000, but told Respondent that he did not have sufficient funds at the time and asked him to hold the check until the $5,000 bail money was returned.

69. On April 24, 2003, the office manager for District Justice MacKendrick informed the secretary that the Catron bond money was in the office escrow account, so the Catrons could have collected their money when they were at the District Justice's office.

70. The Catrons did not have a telephone so the District Justice's office contacted Respondent and was informed that Respondent would return to the office and obtain the bond check for the Catrons.

71. District Justice MacKendrick personally handed the $5,000 check to Respondent.

72. Joanne Catron was informed that Respondent had the check and would mail it overnight to the Catrons.

73. Respondent did not forward the $5,000 bond refund check. On or about April 25, 2003, Respondent, without the permission of the Catrons, endorsed or caused the endorsement of Daniel Catron's signature on the bond check and negotiated or caused to be negotiated the $5,000 check.

74. When the Catrons failed to receive the check, they called Respondent's office on April 27, 2003, and every day thereafter until May 5 or 6, when they called District Justice MacKendrick's office. Daniel Catron left messages at the Pittsburgh and Erie offices but his calls were not returned.

75. The Catrons finally contacted the State Police and received a response from Respondent the next day, indicating that he would send Mrs. Catron a $3,000 check

and her uncashed $2,000 check, representing her payment in full of her legal fees as well as reimbursement of the bond refund check.

76. Mrs. Catron received the $3,000 check from Respondent but he did not return the original personal check for $2,000.

77. After receiving the check from Respondent, Mrs. Catron believed that Respondent was going to continue his representation of her. However, there was no further communication between Mrs. Catron and Respondent.

78. Respondent did not attend Mrs. Catron's arraignment on June 23, 2003.

79. Daniel Catron contacted Respondent and spoke to the secretary at the Erie office regarding Respondent's failure to appear at the arraignment. She informed Mr. Catron that Respondent no longer represented Mrs. Catron because she owed Respondent money and Respondent had withdrawn from the case.

80. Mrs. Catron sent a certified letter to Respondent on August 13, 2003, and informed him that she was terminating his representation and requesting a refund of the $2,000 fee she had paid.

81. Respondent did not reply to the letter of August 13, 2003 nor refund any monies.

Jordan-Rich Matter

82. On April 1, 2003, John Jordan called Respondent's law office with regard to representing his daughter, Janeen Rich, in a pending criminal matter concerning her failure to pay a fine on a 1999 DUI conviction.

83. Mr. Jordan was told that Respondent's services would cost $500.

84. Mr. Jordan provided Respondent's office with his debit card number to pay because of the urgency of the matter. While Mr. Jordan was reading the number of his card to Respondent's office manager, Mr. Jordan's daughter arrived home, having been released from prison.

85. Mr. Jordan told the office manager that he would not need Respondent's services.

86. Janeen Rich never met with anyone from the Hudak Law Offices nor was any paperwork generated by the Law Offices on her behalf.

87. Mr. Jordan realized he did not need Respondent's services as his daughter had a public defender, so he called Respondent's office and requested a refund of his $500.

88. Mr. Jordan never received any further communication from Respondent or anyone else at the office.

89. On April 4, 2003, Respondent debited the sum of $500 against Mr. Jordan's bank account.

90. Respondent did not have a written fee agreement with either John Jordan or Janeen Rich indicating that he had been hired to provide services for Ms. Rich.

91. By certified letter of June 13, 2003, Mr. Jordan requested that Respondent provide a full refund of the $500.

92. Respondent did not reply to the letter or refund the $500.

Williams Matter

93. On January 16, 2003, Melvin Marie Williams met with Respondent about representing her granddaughter, Laur'n Williams, who was criminally charged as a result of her involvement in a drive-by-shooting and possession of drugs. Trial had been postponed once and was scheduled for January 27, 2003.

94. Ms. Williams and Laur'n had several concerns about Laur'n's case. Ms. Williams informed Respondent that Laur'n had an alibi defense, that three cases involving Laur'n had been split between two judges and would have to be consolidated, and Laur'n wanted all three cases to go to a jury trial by January 27, 2003. If Laur'n wanted a plea agreement the public defender's office could do that.

95. Laur'n did not want the case postponed and if Respondent could not conduct a jury trial on January 27 she did not want to hire him.

96. At the January 16 meeting Respondent agreed to represent Laur'n for $6,000.

97. Ms. Williams was not able to get the initial $2,000 requested by Respondent until January 22, so she brought him the deed to her house.

98. On January 21, 2003, a secretary from Respondent's office went to Ms. Williams' house to pick up the $2,000 fee check and to have Ms. Williams' sign a power of Attorney and fee agreement which referred to a plea agreement. Ms. Williams' refused to sign the documents.

99. The next day Respondent's secretary returned to Ms. Williams' house with the Power of Attorney. Ms. Williams requested that certain language be added to make certain that January 27 would be the date of the trial on all three cases.

100. Ms. Williams check for $2,000 to Respondent was annotated "three court cases, trial January 27, 2003, jury aggravated assault narcotics false identity and then payment arrangements."

101. Ms. Williams had no further contact with Respondent after the check was issued on January 22, 2003.

102. On January 23, 2003, Respondent negotiated the $2,000 check.

103. Respondent entered his appearance for Laur'n on January 25, 2003 and filed a Motion for Postponement. The Motion was granted and the case continued until April 30, 2003.

104. Respondent did not notify Laur'n that he had requested and received a postponement of the January 27, 2003 trial date.

105. On January 27, 2003 Ms. Williams appeared in court for Laur'n's trial and was informed that it had been postponed by Respondent.

106. Ms. Williams went to Respondent's office and requested the deed to her house and the $2,000 check.

107. On various occasion in February 2003 Ms. Williams called and left messages for Respondent that she was terminating his representation of Laur'n.

108. After the cases had been postponed the public defender's office resumed representation of Laur'n. A plea agreement was reached on May 1, 2003.

109. On May 1, 2003, Respondent appeared before Judge Durkin of the Court of Common Pleas of Allegheny County in a drug case filed against Laur'n.

110. Laur'n informed Respondent that she had fired him back in January and that Sumner Parker of the public defender's office was her attorney.

111. Respondent requested to withdraw from the case, which was granted.

112. On May 1, 2003, Attorney Larry Kovel spoke with Respondent on behalf of Ms. Williams, regarding the return of Ms. Williams' deed. Respondent assured Attorney Kovel that he would return the deed.

113. Despite this assurance Respondent failed to return the deed to Ms. Williams until January 6, 2004, the date Respondent's counsel handed the deed to Disciplinary Counsel.

114. By certified letter received by Respondent on September 8, 2003, Ms. Williams advised Respondent that he had breached his agreement and she wanted a refund of her $2,000 and the deed to her house.

115. Respondent did not reply to the letter of September 8, 2003.

116. Respondent testified at the disciplinary hearing that he did not believe he was fired in January 2003, as Ms. Williams paid him another $225 after January 7, 2003.

117. Respondent was unable to locate a receipt for the $225, but believes he earned $2,225 that he had been paid.

118. Respondent further testified that no one made a demand upon him for the return of $2,000.

Case Matter

119. On May 19, 2003, Phyllis Case spoke to Respondent's secretary in the Erie office about retaining Respondent to represent her son Eugene Case.

120. On May 21, 2003, Mrs. Case returned to Respondent's Erie office and executed a power of Attorney and Fee Agreement which reflected that Respondent was to file a Motion for release and/or House Arrest on behalf of Eugene Case, acknowledged payment of $400, and provided that Respondent's legal fee was a non-refundable retainer. It further provided that an additional defense in the matter would cost $750.

121. On May 26, 2003, Mrs. Case spoke to Respondent at his Pittsburgh office to be sure that he knew that Eugene's hearing was scheduled for May 30, 2003 before Judge Cunningham.

122. Respondent assured Mrs. Case that her son would be out of jail before the hearing.

123. On May 28, 2003, Respondent's secretary in Erie left a message on Mrs. Case's answering machine advising that if Mrs. Case wanted Respondent to represent her son at the May 30, 2003 hearing she would have to pay an additional $750 before the May 30 hearing.

124. On May 29, 2003, Mrs. Case hand delivered $500 in cash to Respondent's Erie office for Respondent to represent Eugene at the May 30, 2003 probation/parole revocation hearing.

125. On May 30, 2003, Respondent failed to appear at Eugene Case's probation/parole revocation hearing. Mrs. Case called Respondent's Pittsburgh office later that day to request a refund.

126. On June 2, 2003, Mrs. Case went to Respondent's Erie office and advised the secretary that she wanted a refund of $900 as Respondent had not appeared on May 30 to represent her son. She further advised the secretary that she no longer wanted Respondent's services.

127. Respondent did not contact his client or return any fees paid to Respondent for representation of Eugene Case.

128. On June 26, 2003, Respondent was served with a bench warrant issued by Judge Cunningham of the Erie County Court of Common Pleas due to Respondent's failure to appear on May 30, 2003 to represent Eugene Case, and a Notice to Appear for Contempt Hearing that was scheduled for June 26, 2003 at 4 p.m. before Judge Cunningham.

129. Respondent was placed under arrest and taken before Judge Cunningham.

130. By Order of Court filed on June 27, 2003, Respondent was found in contempt for his failure to appear for a revocation hearing on behalf of Eugene Case on May 30, 2003.

131. Respondent was ordered to pay a fine of $500 and issue a written letter of apology to Eugene Case and Mrs. Case.

132. Respondent was ordered to refund $900 within 24 hours if Eugene Case no longer desired Respondent's services.

133. By letter dated July 2, 2003, Respondent forwarded to the Clerk of Courts of Erie County a $500 check.

134. Respondent did not at that time contact his client or refund any monies.

135. By letter of July 31, 2003 to Mrs. Case from Respondent's office manager, Respondent apologized for failing to attend her son's hearing. The letter further advised her to call the office manager, Richard Hersperger, to discuss whether she wanted Respondent to continue representation of her son or whether she would like a refund of her monies.

136. On at least four occasions, Mrs. Case attempted to contact Mr. Hersperger regarding a refund but was unable to talk to anyone.

137. By certified letter of October 23, 2003, Mrs. Case acknowledged receipt of the July 31, 2003 letter and demanded a refund of her monies.

138. Respondent has not replied to this letter nor refunded any monies.

139. Respondent testified that the first time he became aware that Mrs. Case required a refund was when he received the certified letter of October 23, 2003. He did not believe that he had been discharged even after he received the letter, as it was his belief only Eugene Case could fire him.

140. Respondent has had contact with Office of Disciplinary Counsel going back to 1986. Attorney Helen M. Kistler, former Counsel-in-Charge of District IV, used to handle complaints filed against Respondent by discussing matters with him and working things out without having to file formal charges.

141. In the few years prior to Ms. Kistler leaving the Office of Disciplinary Counsel in 2002, the majority of complaints received against Respondent were lack of communication.

142. The number of complaints began to increase, alleging not only lack of communication but no shows and failure to appear in court and failure to return unearned fees.

143. Since June 2002, 46 complaints have been filed with Office of Disciplinary Counsel against Respondent. Respondent was placed on notice of these complaints.

144. President Judge William Cunningham testified at the disciplinary hearing and presided over four cases involving Respondent.

145. Judge Cunningham saw a pattern of promises made to clients with no resulting action.

146. Respondent offered the testimony of nine character witnesses: Patrick Lenehy, Ronald E. Phillips, Robert Comer, Michael Pribanic, Romel Nicholas, Craig Simpson, Patrick James Malseed, and Kelly O'Brian.

147. These witnesses testified that Respondent is a professional attorney who presents his cases well. He has a reputation for tenacity and willingness to do what it takes for his clients.

148. Respondent testified on his own behalf. He believes that he earned the fees in most of the matters that are the subject of the Petitions for Discipline.

149. Respondent admitted that he did not earn his fee in the Eugene Case matter and that the entire $900 should be refunded.

150. Respondent admitted that John Jordan deserves to have a $500 refund.

151. The Pennsylvania Lawyers Fund for Client Security has paid $9,093.81 in claims filed against Respondent, none of which Respondent has reimbursed to the Fund.

III. CONCLUSIONS OF LAW

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

Bryant Matter

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

2. 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.

Moore Matter

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

4. 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.

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

Mawhinney Matter

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

7. 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.

8. 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.

Chambers Matter

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

10. 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.

Catron Matter

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

12. 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.

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

Jordan Matter

14. 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 refunding any advance payment of fee that had not been earned.

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

Williams Matter

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

17. 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.

Case Matter

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

19. 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.

20. 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 returning any advance payment of fee that has not been earned.

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

IV. DISCUSSION

This matter is before the Disciplinary Board on two Petitions for Discipline filed against Respondent charging violations of the Rules of Professional Conduct in matters involving eight separate clients. Petitioner bears the burden of proof by clear and convincing evidence that Respondent violated the Rules of Professional Conduct. Office of

Disciplinary Counsel v. Surrick, 749 A.2d 441 (PA. 2000). Hearings were held over five days, producing extensive testimony.

The issue at the heart of this matter is Respondent's use of non-refundable retainer fee agreements. A non-refundable retainer generally arises in connection with the request and rendering of specific legal services that have been assigned a specific legal fee. In Respondent's view, the non-refundable retainer permits the lawyer to retain the entire fee even if the services bargained for are not completed. In seven of the eight client matters Respondent had a written agreement with his clients specifying the service to be provided, the cost of the service and the fact that the fee paid to Respondent was non-refundable. In Pennsylvania there is no policy prohibiting the payment of non-refundable retainers, although the retainer may not be illegal or clearly excessive and the client has the right to discharge a lawyer at any time.

Petitioner charges that subsequent to the client signing the non-refundable retainer fee agreement and paying the fee, Respondent failed to take action on the matter. When the client requested a refund of the fee paid, Respondent took the position that he did not have to refund it according to his non-refundable retainer fee agreement. Petitioner alleges that Respondent's conduct violated Rule of Professional Conduct 1.16(d). The Hearing Committee agreed and found that Respondent violated Rule 1.16(d) when he engaged in a pattern of abusing the no refund agreement to retain unearned fees and abandon clients without providing them information about their services or performing or completing legal services.

Rule 1.16(d) provides: Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect the 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 that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

This Rule does not specifically address non-refundable retainer fees. The applicable law in Pennsylvania is found in the case of In re Anonymous No. 98 DB 92, 23 Pa. D. & C. 4th 452 (1994). That case concerned an attorney who commingled his personal funds with fees that were not yet earned and then placed those monies in his general office account. The Board found that with regard to advanced fees included with costs, the total amount should be deposited in the escrow account, and the fees withdrawn as earned. However, the Board took pains to emphasize that this did not apply to situations involving flat fees for specific services, which are distinguishable from retainers to be applied against future fees and costs. The Board did not address situations such as the one in the instant matter, where a flat fee is accepted and then followed by termination of the representation before little or no work is actually performed by the attorney. The Board concluded by stating that flat fee arrangements are governed by and will be scrutinized under the standards set for all fees according to Rule 1.5(a), P.R.P.C, which provides that a lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.

Petitioner's position is that Respondent was required to return the unearned

fees pursuant to the dictates of Rule 1.16(d), and as he did not do so, he charged an illegal or clearly excessive fee in violation of Rule 1.5(a). The problem with this position is that Respondent was not charged with violation of Rule 1.5(a).

The state of the law in Pennsylvania does not prohibit flat fee arrangements such as that used by Respondent. The law only prohibits flat fees that are illegal or clearly excessive. Respondent did not violate Rule 1.16(d) in the matters of Bryant, Moore, Mawhinney, Chambers, Catron, and Williams as he was not required to refund the monies. Respondent admits that he should have refunded the monies in the Jordan and Case matters. The Jordan matter strikes the Board as particularly egregious, as Mr. Jordan informed Respondent's office he did not require Respondent's services mere seconds after advising the office manager of his debit card number. Respondent had no right to the $500 taken from Mr. Jordan's bank account and was required to refund it immediately. In the Case matter there was a written non-refundable retainer fee agreement, but Respondent admits he did nothing on the case, failing to appear at the hearing for Eugene Case.

Respondent did commit other professional misconduct. He did not act with diligence or promptness in handling his clients' matters. He failed to appear in court, he withdrew a complaint without advising his client and generally failed to take action on his clients' matters. There was a definitive lack of communication between Respondent and his clients. Respondent did not inform his clients of the status of their matters. Respondent received numerous telephone calls on behalf of his client and failed to return them or attempt to otherwise get in touch with his clients. Respondent asserts that he has

no duty to communicate with the relatives of his clients. While Respondent is correct that his obligation is to his client, and not to the person who hires him on behalf of the client, he was well aware that the majority of his clients were imprisoned at the time they sought his assistance and had restricted access and ability to communicate with counsel. Respondent was well aware that his clients had appointed or requested their relatives, such as Mr. Paul Mawhinney, Mrs. Williams and Mrs. Case, to act and speak on behalf of the client in question. His refusal to communicate with those persons is illogical given the context of the legal representation. The Board emphasizes that Respondent is not being sanctioned for his refusal to talk to the relatives of clients. He is being sanctioned for not communicating with his clients using the means available to effectuate that communication.

This case presents a disturbing pattern of dereliction by a lawyer seemingly overburdened by his case load. At the time of the misconduct Respondent operated law offices in Pittsburgh, Erie and Washington.[1] He was overscheduled but did not make attempts to scale back his practice in order to better meet the needs of his clients. Respondent acknowledged that he could have done a better job of managing and supervising his case load and his offices, but the fact is that he knowingly and intentionally accepted a volume of cases beyond his capacity to deal with. Respondent has a history of involvement with the Office of Disciplinary Counsel. Prior complaints filed against Respondent were worked out with former disciplinary counsel Helen Kistler and Respondent was able to avoid the filing of formal charges. However, the volume of

1 Respondent currently maintains one office in Pittsburgh.

complaints against Respondent began to increase. Forty-six complaints have been filed against Respondent since 2002. Respondent was aware that his method of doing business was problematic. Respondent received an informal admonition in 2001 for failing to file an action before the statute of limitations ran, among other things. He was cautioned repeatedly by Ms. Kistler about the problems she noticed in his practice.

While the Board is cognizant that each disciplinary case has its own set of unique facts and circumstances, it is instructive to review the recommendation made and the sanctions imposed in prior similar cases in order to better understand the range of discipline for the instant misconduct. In the matter of Office of Disciplinary Counsel v. Mayro, No. 884 Disciplinary Docket No. 3, No. 144 DB 2001 (Pa. Feb. 3, 2004), Mr. Mayro committed multiple acts of neglect in four client matter, including failing to communicate with clients, failing to respond to motions and discovery, and failing to expedite litigation. He also made a misrepresentation to his client regarding the status of that client's case. Mr. Mayro had a history of discipline consisting of two informal admonitions and two private reprimands. The Board determined that due to Mr. Mayro's multiple ethical violations in four separate matters, he deserved a suspension of two years. The Supreme Court imposed a two year suspension. In two other matters, In re Anonymous Nos. 523, 79 & 116 DB 92 and 30 DB 93, 24 Pa. D. & C. 4th 447 (1994) and In re Anonymous Nos. 25 DB 89 and 71 DB 89, 12 Pa. D. & C. 4th 80 (1991), the attorneys therein were subjected to suspension of two years due to numerous acts of procrastination, neglect of client matters, delay and misrepresentation.

There is ample justification in the record before this Board to suspend Respondent. He neglected his obligations to clients in eight separate matters. This misconduct was the culmination of many years of unheeded warnings by Office of Disciplinary Counsel. A two year suspension, with credit for the time Respondent served on temporary suspension, is appropriate to address the misconduct present in this matter.

V. RECOMMENDATION

The Disciplinary Board of the Supreme Court of Pennsylvania recommends that the Respondent, Joseph Edward Hudak, be suspended from the practice of law for a period of two years with credit for four and one-half months served.

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:_____
Marvin J. Rudnitsky, Vice-Chair

Date: October 25, 2004

Board Members Saidis, Newman and Nordenberg dissented and would recommend a three year suspension with credit served.

Board Member Gephart dissented and would recommend a one year and one day suspension with credit served.

PER CURIAM:

AND NOW, this 1st day of March, 2005, upon consideration of the Report and Recommendations of the Disciplinary Board dated October 25, 2004, the Petition for Review with Request for Oral Argument and responses thereto, the Petition for Review and Request for Oral Argument are denied and it is hereby

ORDERED that JOSEPH EDWARD HUDAK be and he is SUSPENDED from the Bar of this Commonwealth for a period of one year and one day, with credit for four and one-half months served, 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.

Mr. Justice Eakin dissents and would suspend respondent for a period of two years with credit for time served.