

BEFORE THE DISCIPLINARY BOARD OF THE
SUPREME COURT OF PENNSYLVANIA

OFFICE OF DISCIPLINARY COUNSEL, : No. 163 DB 2018
Petitioner :
 :
v. : File No. C3-17-42 & C3-17-148
 :
MARK M. MACK : Attorney Registration No. 37985
 :
Respondent : (Luzerne County)

ORDER

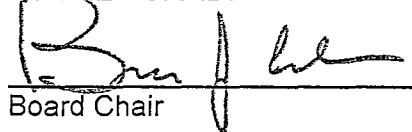
AND NOW, this 21st day of November, 2018, in accordance with Rule 208(a)(5), Pa.R.D.E., the determination by a Review Panel of the Disciplinary Board of the above captioned matter is accepted; and it is

ORDERED that the said MARK M. MACK of Luzerne County, be subjected to a **PUBLIC REPRIMAND WITH CONDITIONS** by the Disciplinary Board of the Supreme Court of Pennsylvania as provided in Rule 204(b) and Rule 205(c)(8) of the Pennsylvania Rules of Disciplinary Enforcement.

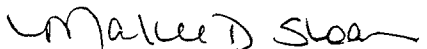
Within thirty (30) days from the date of this Order, Respondent shall submit to the Prothonotary of the Board and Office of Disciplinary Counsel (ODC) proof that he has made payment in the amount of \$3,000 to Ms. Deiter and \$1,000 to Ms. Harvey.

Failure to comply with the above Conditions shall be grounds for reconsideration of this matter and prosecution of formal charges against Respondent under the specific provision of Enforcement Rule 204(b). Costs shall be paid by the Respondent.

BY THE BOARD:


Board Chair

TRUE COPY FROM RECORD
Attest:


Marcee D. Sloan, Prothonotary
The Disciplinary Board of the
Supreme Court of Pennsylvania

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	:	Attorney Registration No. 37985
MARK M. MACK	:	
Respondent	:	(Luzerne County)

PUBLIC REPRIMAND

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

Mr. Mack, you are being reprimanded for your multiple violations of the Rules of Professional Conduct in two separate matters. In the Harvey matter, in 2016, you agreed to represent Ms. Harvey in her criminal matter. She signed a fee agreement, which specified that the \$1,000 fee covered the preliminary hearing before the magistrate and that there would be an “additional charge [of \$1,500.00] if [the matter went] to [the] courthouse.” Based on the language of the agreement and discussions Ms. Harvey had with you, she understood that the legal fee amount was capped at \$1,000.00 because she planned to enter a guilty plea and there was no need to make further court appearances.

You failed to notify Ms. Harvey that you would not appear at her preliminary hearing on December 20, 2016, and that another attorney would appear in your place.

At the preliminary hearing, Attorney Larry Kansky introduced himself to Ms. Harvey as her counsel. Ms. Harvey expressed confusion and called you, at which time you informed her that Mr. Kansky was your partner. In fact, Mr. Kansky was not your partner, had his own practice and was an independent contractor for Mr. Harvey's matter at the hourly rate of \$150.00. You never disclosed your relationship with Mr. Kansky to Ms. Harvey and did not obtain her informed consent for Mr. Kansky to work on her matter or share a fee.

At the preliminary hearing, Ms. Harvey was informed that she could not plead guilty at that time, but that she could enter her guilty plea at her arraignment on February 3, 2017. Ms. Harvey was never told by you or Mr. Kansky that she had the option of pleading and paying the fine that day. Just prior to the rescheduled hearing, Ms. Harvey contacted you about her case. You informed Ms. Harvey that you would not appear and would no longer represent her unless she paid an additional \$1,500. Ms. Harvey refused to make an additional payment because that was not her understanding of the fee agreement. You claimed that Ms. Harvey had the option to plead guilty at the preliminary hearing and pay the fine, but that she declined. However, the record indicates that Ms. Harvey was never told she could avoid returning to court.

You did not give Ms. Harvey proper notice that you intended to terminate the representation absent payment of additional funds, and failed to give Ms. Harvey time to secure new counsel. Following the termination of services, Ms. Harvey attended four different court hearings to enter her guilty plea and was fined \$300 plus \$900 in additional court costs, which could have been avoided had the action been resolved at the first preliminary hearing.

We note that you fulfilled the condition of this reprimand to refund \$1,000 to Ms. Harvey.

In the Deiter matter, Melinda Deiter contacted you in early 2016 seeking legal advice regarding appeal options for her brother-in-law, Jeremiah Deiter, who had entered a plea of guilty to aggravated assault and had been sentenced to seven years in prison, a sentence within the standard range and below the maximum. Despite the fact that the appeal period had expired, you told Ms. Deiter that there was a high chance of success in an appeal of the case. You agreed to represent Mr. Deiter to appeal the sentence by way of a *nunc pro tunc* appeal, and you told Ms. Deiter that Mr. Deiter could argue that he was overwhelmed with grief by the death of his brother (Ms. Deiter's husband) and unable to focus on the appeal, so he missed the 30-day deadline. However, Mr. Deiter's brother died one day after the expiration of the appeal window. At the initial consultation, Ms. Deiter met with Attorney Thomas Killino, an alleged associate in your firm who was in fact an independent contractor. Mr. Killino provided Ms. Deiter with your standard fee agreement that she signed on behalf of Mr. Deiter. In that agreement, Ms. Deiter agreed to pay a total of \$10,000.

Fifty days after sentencing, you filed and served a Notice of Appeal *Nunc Pro Tunc* to the Superior Court, alleging that there was a "non-negligent happenstance" on the part of Mr. Deiter as a result of grief over his brother's death, even though you knew that the death occurred after the appeal period expired. Further, you failed to ensure that the appeal was filed in the proper court, which was the Court of Common Pleas. The Superior Court quashed the appeal without prejudice to seek *nunc pro tunc* relief with the trial court. However, you failed to promptly seek *nunc pro tunc* relief or advise your client of that possibility.

You claimed that Mr. Killino was handling the Deiter matter and you were not aware of the details, yet all of the pleadings were filed under your signature. You further represented that Mr. Killino was no longer employed by you and claimed that a different attorney, Joseph Price, was supposed to file the *nunc pro tunc*.

Between January 2016 and February 2017, Ms. Deiter and Mr. Deiter attempted to contact you on multiple occasions to obtain an update on the appeal. You claimed you were not aware of those calls because you relied on Mr. Price to handle the matter; however, you were the attorney of record. You failed to inform the Deiters of the status of the appeal until at least seven months after the appeal was denied.

After Ms. Deiter became aware that the *nunc pro tunc* appeal had been denied, she requested copies of the case file on multiple occasions. You failed to provide Ms. Deiter or Mr. Deiter with a copy of the file. After Ms. Deiter terminated your services, and several weeks after she filed a complaint with Office of Disciplinary Counsel, you met with Ms. Deiter in March 2017 to resolve the fee issue. You refunded \$7,000 of the \$10,000 to Ms. Deiter, leaving you with a \$3,000 fee for filing a meritless appeal.

We note that you fulfilled the condition of this reprimand to refund \$3,000 to Ms. Deiter.

Relatedly, you mislead your clients that independent contractors such as Messrs. Kansky, Killino and Price were associates or partners of your law practice, when that was not the case.

As a result of your conduct, you have violated the following Rules of Professional Conduct ("RPC"):

1. RPC 1.1 – A lawyer shall provide competent representation to a client.
2. RPC 1.2(a) – A lawyer shall abide by a client's decisions concerning the objectives of representation and, as required by Rule 1.4, shall consult with the client as to the means by which they are to be pursued.
3. RPC 1.3 – A lawyer shall act with reasonable diligence and promptness in representing a client.
4. RPC 1.4(a)(2) – A lawyer shall reasonably consult with the client about the means by which the client's objectives are to be accomplished.
5. RPC 1.5(a) – A lawyer shall not enter into an agreement for, charge, or collect an illegal or clearly excessive fee.
6. RPC 1.5(e) - A lawyer shall not divide a fee for legal services with another lawyer who is not in the same firm unless the client is advised of and does not object to the participation of all the lawyers involved and the total fee of the lawyers is not illegal or clearly excessive for all legal services that rendered the client.
7. RPC 1.16(d) – Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee or expense that has not been earned or incurred.

8. RPC 3.1 – A lawyer shall not bring or defend a proceeding, or assert or controvert an issue therein unless there is a basis in law and fact for doing so that is not frivolous, which includes a good faith argument for an extension, modification or reversal of existing law.
9. RPC 3.2 – A lawyer shall make reasonable efforts to expedite litigation consistent with the interests of the client.
10. RPC 7.1 – A lawyer shall not make a false or misleading communication about the lawyer or the lawyer's services.
11. RPC 7.2(f) – An advertisement or public communication shall not use a fictitious name to refer to lawyers not associated together in a law firm, or otherwise imply that lawyers are associated together in a law firm if that is not the case.
12. RPC 7.5(d) – Lawyers shall not state or imply that they practice in a partnership or other organization unless that is the fact.
13. RPC 8.4(c) – It is professional misconduct for a lawyer to engage in conduct involving dishonesty, fraud, deceit or misrepresentation.

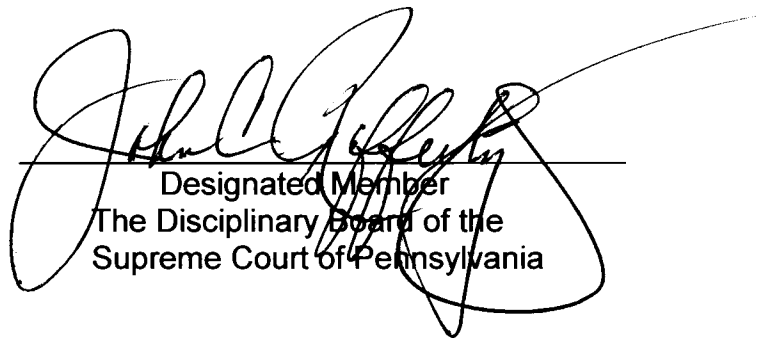
It is my duty to reprimand you for your misconduct. We note that you have no history of discipline in more than thirty-five years as a practicing lawyer. Please be aware that any subsequent violations on your part can only result in further discipline and perhaps more severe sanctions. We sincerely hope that you will conduct yourself in such a manner that future disciplinary action will be unnecessary.

Mr. Mack, your conduct in this matter is now fully public. This Public Reprimand

is a matter of public record.

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

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

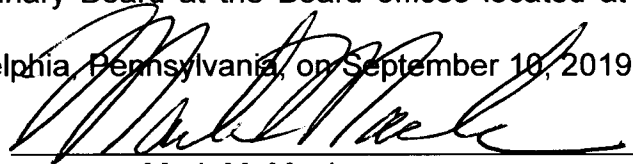


Designated Member
The Disciplinary Board of the
Supreme Court of Pennsylvania

Administered by a designated panel of three Members of The Disciplinary Board of the Supreme Court of Pennsylvania, at Philadelphia, Pennsylvania, on September 10, 2019.

ACKNOWLEDGMENT

The undersigned, Respondent in the above proceeding, herewith acknowledges that the above Public Reprimand was administered in his presence and in the presence of the designated panel of The Disciplinary Board at the Board offices located at the 1601 Market Street, Suite 3320, Philadelphia, Pennsylvania, on September 10, 2019.



Mark M. Mack