

Matter of McCoy
Del. Supr. No. 508, 2000 (1/17/01)
Board Case Nos. 21, 23 and 27, 1999

Disciplinary Rules: DLRPC 1.2(a), 1.3, 1.15(a), 1.15(b), 1.15(d), 1.16(d), 3.4(c), 8.1(b), 8.4(d), BPR 7(6), I.G. 2

Sanctions Imposed: Disbarment.

On January 17, 2001, the Delaware Supreme Court ordered the disbarment of Thomas V. McCoy from the practice of law in the State of Delaware. The Court affirmed the findings of the Board on Professional Responsibility (the "Board") that Mr. McCoy had committed multiple violations of the Delaware Lawyers' Rules of Professional Conduct ("Rules") in three disciplinary matters. Mr. McCoy formerly practiced as a solo practitioner in Georgetown, Delaware.

Board Case No. 27, 1999: Mr. McCoy was suspended indefinitely by the Court on July 13, 1999 when, after failing to provide the Court with the required 1999 Annual Registration Statement or to pay the required registration assessments, he failed to appear at a hearing before the Court on a Rule to Show Cause why he should not be suspended from practice. When Mr. McCoy failed to communicate with the Office of Disciplinary Counsel ("ODC") despite several attempts by the ODC to contact him, on July 16, 1999, the Court of Chancery appointed James D. Griffin, Esquire and Vincent G. Robertson, Esquire, of the law firm of Griffin & Hackett, P.A., as the receivers of Mr. McCoy's law practice. The Court of Chancery's order specifically obliged Mr. McCoy to cooperate with and assist the receivers in notifying and protecting the interests of his clients. Mr. McCoy failed to comply with this obligation. In particular, he (1) failed to respond to repeated attempts by the receivers to communicate with him about receivership matters; (2) failed promptly to provide the receivers, upon their repeated requests, with his active client files and related information about pending client matters, or with certain accounting records for his law practice; and (3) failed to provide the receivers with access to his law office so that the receivers could readily obtain client files and other information needed to carry out their obligations pursuant to the Court of Chancery's order. Furthermore, Mr. McCoy failed to assist the receivers in their efforts to deal with his real estate escrow account, which had not been maintained by Mr. McCoy in a manner that complied with Rule 1.15(d). The Board found that Mr. McCoy's conduct resulted in a great burden to the receivers, who made extensive and diligent efforts to protect Mr. McCoy's clients without his cooperation or

assistance, and was prejudicial to the administration of justice and the interests of his clients, many of whom were in bankruptcy, in their active legal matters.

The Court affirmed the Board's conclusions that Mr. McCoy's conduct in this matter violated Rule 3.4(c) (providing that a lawyer shall not "knowingly disobey an obligation under the rules of a tribunal"); Rule 8.4(d) (providing that it is professional misconduct for a lawyer to "engage in conduct that is prejudicial to the administration of justice"); and former Board on Professional Responsibility Rule 7(6) (providing that "[d]iscipline may be imposed for ... [w]ilful failure to appear before the Court or the Board when required to do so").

Board Case No. 21, 1999: Since some time in 1996, Mr. McCoy had been acting as an attorney for a client in an ongoing medical malpractice suit. In July 1998, the client was experiencing serious financial difficulties with her business, which she owned in part and operated. In August 1998, when the client's business checking account was closed by her bank due to a series of checks having been written without sufficient funds, Mr. McCoy decided to allow checks and deposits for the business to be processed through one of his own bank accounts. From August 28, 1998 through September 18, 1998, Mr. McCoy's account was regularly used for checks and deposits of the business. Client funds and checks against those funds were commingled with Mr. McCoy's own funds and transactions. In December 1998, the client, through other counsel, sought return from Mr. McCoy of all

funds being held in his possession on behalf of the client. Mr. McCoy calculated that he was holding \$383.49 due to the client, but did not pay that amount to the client until instructed to do so by the ODC in June 1999. Mr. McCoy failed to maintain adequate records relating to the client's business to enable the auditor for the Lawyers' Fund for Client Protection, Martin Zukoff, CPA, to substantiate the amount due to the client. Mr. Zukoff also found other areas of noncompliance by Mr. McCoy, specifically that his real estate escrow account was not in compliance with Rule 1.15(d).

The Court affirmed the Board's conclusions that Mr. McCoy's conduct in this matter violated **Rule 1.15(a)** (requiring that a lawyer holding the property of clients or third persons in connection with a representation shall hold such property separate from the lawyer's own property, and that complete records of such property "shall be kept by the lawyer and shall be preserved for a period of five years after the completion of the events that they record"); Rule 1.15(b) (requiring that a lawyer who receives "funds or other property in which a client or third person has an interest" shall "promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive and, upon request by the client or third person, shall promptly render a full accounting regarding such property"); Rule 1.15(d) and former Interpretative Guideline No. 2 (requiring that a lawyer maintain books and records in accordance with certain detailed and specific requirements); and Rule 8.1(b) (prohibiting a lawyer from "knowingly fail[ing] to respond to a lawful demand for information from ... [a] disciplinary authority").

Board Case No. 23, 1999: From November 1997 until April 1999, Mr. McCoy represented a client in a matter of a judgment entered against the client in connection with a debt on a lease of commercial real estate. Mr. McCoy failed to carry out his client's instructions to resolve the matter, and as a result subjected his client to actions by the Sheriff against the client's assets. Mr. McCoy also failed, upon termination of the representation by the client, promptly to return the unearned portion of the \$750 advance fee paid by the client, and failed to respond in a timely manner to requests for information made by the ODC in the matter.

The Court affirmed the Board's conclusions that Mr. McCoy's conduct in this matter violated Rule 1.2(a) (requiring that a "lawyer shall abide by a client's decisions concerning the objectives of representation ... and shall consult with the client as to the means by which they are to be pursued"); Rule 1.3 (requiring that a "lawyer shall act with reasonable diligence and promptness in representing a client"); Rule 1.16(d) (requiring that upon termination of representation, a lawyer shall refund "any advance payment of fee that has not been earned"); and Rule 8.1(b) (prohibiting a lawyer from "knowingly fail[ing] to respond to a lawful demand for information from ... [a] disciplinary authority").

In arriving at its recommendation of disbarment as the appropriate sanction, the Board considered the following factors: (a) the ethical duties Mr. McCoy violated; (b) Mr.

McCoy's mental state; (c) the actual or potential injury that Mr. McCoy's misconduct caused to his clients or third parties; and (d) aggravating and mitigating circumstances. The ethical duties violated by Mr. McCoy were numerous and serious, as reflected by the substantive requirements of the Rules of Professional Conduct that had been violated by Mr. McCoy in the three disciplinary matters. The Board also found that Mr. McCoy had knowingly or intentionally committed all of these acts of professional misconduct. As for the injury caused by Mr. McCoy's misconduct, the Board concluded that, "while no irreparable harm occurred, McCoy had caused harm to his clients and had exposed his clients to the *risk* of serious harm, and it was 'only fortuitous' that more drastic harm did not result."

The Board considered the following factors in aggravation: (1) Mr. McCoy's prior disciplinary record, consisting of a public reprimand in 1997 and a private admonition in 1994; (2) Mr. McCoy's pattern of misconduct; (3) Mr. McCoy's commission of multiple offenses in failing to carry out his responsibilities; (4) the vulnerability of Mr. McCoy's victims, who were predominantly clients in bankruptcy; and (5) Mr. McCoy's record of indifference to making restitution. In mitigation, the Board noted, without adopting, Mr. McCoy's position that "he had done a good job over the years representing many clients and had not stolen money from clients."

In concluding that disbarment was the appropriate sanction, the Court observed that Mr. McCoy's violations were "numerous and extended over a long period of time." Mr.

McCoy had “engaged in a pattern of neglect with respect to client matters and effectively abandoned his law practice without taking any steps to protect his clients, which ultimately caused serious or potentially serious injury to his clients. Not only did McCoy fail to take action to protect his clients, but he effectively erected a roadblock to prevent the Receivers from ensuring that McCoy’s clients were properly served.” The Court also pointed out that Mr. McCoy was on suspension by the Court when the Court of Chancery ordered him to cooperate with the receivers in winding up his law practice, but had failed to comply with that order: “Having been given many opportunities to conform his conduct to the standards expected of a Delaware lawyer and having proven himself unable or unwilling to do so, this Court concludes that disbarment is the only appropriate remedy to protect the public and preserve the integrity of the legal profession.”

The Court therefore ordered that Mr. McCoy be disbarred from membership in the Delaware Bar, and his name stricken immediately from the roll of attorneys entitled to practice before the courts of this State.