SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-178

IN THE MATTER OF

MICHAEL A. MELE

AN ATTORNEY AT LAW

Decision

Argued: September 11, 2003

Decided: October 31, 2003

Michael P. Kemezis appeared on behalf of the District IIB Ethics Committee.

Alan M. Liebowitz appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before us based on a recommendation for discipline filed by the District IIB Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1987. On December 6, 2002, he was temporarily suspended for failure to pay a fee arbitration award. On motion from respondent, the Court vacated the determination and remanded the matter to the DEC for a new hearing because respondent was not notified of the original fee arbitration. However, the

Court left the temporary suspension in force for respondent's "willful failure to provide information to the Office of Attorney Ethics and to answer the motion for temporary suspension," pending the resolution of the matter on remand. In addition, respondent failed to pay the $500 sanction levied against him by the Board for failure to answer the motion for temporary suspension. Respondent remains suspended to date.

I. **The Moorehead Matter** – District Docket No. IIB-01-02E

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4(a) (failure to communicate with the client) in a collection matter.

In February 1998, Paqueta Moorehead, the grievant, retained respondent to represent her in a $5,000 collection matter. She gave him a $1,175 retainer with instructions to collect the debt and to initiate litigation, if necessary.

Moorehead testified briefly at the DEC meeting. She stated that respondent kept her informed about the status of the matter until November 2, 1999, when respondent called her to advise that he had filed a complaint in her behalf. Thereafter, she contacted respondent on numerous occasions for information about her case. Respondent, however, did not reply to her requests for information. The statute of limitations for her matter expired in December 1999, barring her claim thereafter.

For his part, respondent admitted that he had allowed the matter to languish in his office. He conceded that Moorehead had retained him to file a complaint, but he never did so,

in violation of RPC 1.3.[1] Respondent also admitted that, after November 1999, he failed to reply to Moorehead's requests for information about the case, in violation of RPC 1.4(a).

Without explanation, the presenter withdrew the RPC 1.1(a) charge of gross neglect at the beginning of the DEC hearing.

II. **The Glendale Investment Corp. Matter** - District Docket No. IIB-01-12E

The complaint alleged that respondent violated RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate with the client) in a corporate matter.

At some point in late 1999 or early 2000, Angelo Scalo, the grievant, retained respondent to establish Glendale, a limited liability corporation. Respondent established the corporation and obtained a federal tax identification number. Thereafter, Scalo made numerous attempts to obtain information and the corporate books from respondent. Respondent admitted at the DEC hearing that he failed to turn over the corporate records to Scalo and that he did not reply to Scalo's repeated inquiries for them. However, respondent turned over the corporate books and stock certificates to the DEC at the hearing.

Respondent admitted that his misconduct in this regard violated both RPC 1.3 and RPC 1.4(a).

[1] We note that the record does not explore the possibility that respondent had misrepresented the status of the case to Moorehead, although their respective stories differed.

III. **The Nason Matter** – District Docket No. IIB-01-031E

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), and RPC 1.16(d) (failure to notify client upon termination of the representation).

In June 1999, Leonard Nason retained respondent to represent him in matters handled by his prior attorney, who was winding up his own law practice. In July 1999, Nason and respondent entered into a retainer agreement, under which Nason paid respondent a total of $15,000 ($12,500 plus $2,500) as a retainer to defend Nason and his company, MicroNet, in lawsuits instituted by three corporate creditors — Graybar, Computel, and Ponzini.

According to Nason, he and respondent met at least three times over the course of the representation. The first meeting took place on June 11, 1999, at which time Nason turned over the prior attorney's files. At the time, Nason explained, answers to complaints were due in all of the matters. Yet, according to Nason, respondent never filed answers in any of those cases.[2]

According to Nason, the Computel and Graybar suits concerned MicroNet's failure to pay suppliers for raw materials. Those debts totaled about $36,000. The Ponzini matter, however, was much more troubling. It involved a mortgage from Nason to Ponzini, in the approximate amount of $100,000. Nason explained as follows:

[2] It became evident that Nason was mistaken about the need for answers to be filed in all of the matters, as they were in various stages of litigation when respondent received them.

> Mr. Ponzini claimed to be an attorney and a CPA and we proved that he was neither. He had a mortgage on my house that he fraudulently put on there. He was opening credit cards under my name, taking the money on credit cards on cash advances, loaning it to MicroNet, claiming it as his personal loan into the business and then taking the money out the back door to himself, to the tune of about $620,000. In that I signed a note to Mr. Ponzini guaranteeing a mortgage on my house, which he enforced, and I wound up settling with Mr. Ponzini to the tune of $27,000 in cash a couple of months ago to settle the entire matter and make this whole thing go away.

Nason further explained that respondent eventually recommended that he consider a bankruptcy filing to stave off his creditors. Respondent recommended another attorney, Mr. Petrolino, who had an office in the same building as respondent. Nason consulted Petrolino and, in late 1999 or early 2000, Petrolino filed a Chapter 13 bankruptcy petition for Nason and his wife. Nason later withdrew the bankruptcy petition based, he said, on the advice of an unidentified attorney-friend.

Once the bankruptcy was withdrawn, Nason contacted respondent to file answers and to otherwise defend him and MicroNet in the Graybar, Computel, and Ponzini litigations. He claimed that, for a period of seven months thereafter, he left messages on respondent's office answering machine, but respondent did not return his calls. Nason stated that, as a result of respondent's inaction, all three plaintiffs obtained judgments against him — judgments that he continued to fight at the time of the DEC hearing.

Finally, Nason stated that he never received a bill or an accounting from respondent in the matters. Therefore, he filed a fee arbitration and obtained a judgment for the entire

retainer amount of $15,000. In fact, Nason's is the same fee arbitration that the Court remanded to the DEC for hearing, and for which respondent remains temporarily suspended to date.

Respondent, too, testified about Nason's matters. According to respondent, Nason retained him for three matters inherited from prior counsel: Graybar, Computel, and Ponzini. According to respondent, those were just a few of Nason's many creditors. Respondent claimed that his role was to slow the progress of those three litigations until a suit against Ponzini for fraud could be initiated.

According to respondent, he and Nason communicated on a daily basis over the first few months of the representation. However, the number of creditors seeking Nason grew rapidly. As the summer months went by in 1999, Nason's creditors became so numerous and persistent that, according to respondent, a bankruptcy filing was required to slow the creditors' collection efforts and to allow Nason time to formulate a strategy for repayment. Toward that end, Petrolino filed a Chapter 13 bankruptcy petition for Nason and his wife, while respondent filed an adversary proceeding (complaint) within the bankruptcy matter against Ponzini, to address the fraud issues.

With respect to the allegation that he neglected Nason's matters, respondent provided little more than general denials. Respondent stated that, in Graybar, Nason had entered into a settlement agreement prior to his retention. According to respondent, Nason was unwilling or unable to abide by the terms of that agreement, but the matter required no further legal work.

Respondent did not address Nason's claim that he should have taken some action to prevent Graybar from obtaining a judgment. In Computel, respondent blamed Nason for problems in the case, stating that he had written to Nason for answers to interrogatories, but Nason failed to reply. Respondent produced a September 16, 1999, letter to Nason chastising him for not producing answers to interrogatories due the following day. Respondent stated as follows:

> This is a letter I wrote to him in September, that year, asking Mr. Nason to please answer the interrogatories so that we could avoid defaulting on that, on that action. He never did, and that was Lenny's pattern. He didn't answer his phone calls. He didn't send you the stuff he wanted and he didn't give Mr. Petrolino the information that he needed in order to pursue the bankruptcy proceeding, and as a result, you know, when everything else was pretty much lost and burned and done, the bankruptcy proceeding was withdrawn.

Yet, respondent produced no other evidence of the need for answers to interrogatories, and admittedly took no action in the matter thereafter. With regard to the Ponzini matter, respondent complained that Nason had failed to give him critical information that he needed to prosecute claims against Ponzini, yet he did not identify the information required of Nason or the steps allegedly taken to obtain it. Respondent repeatedly referred to Nason as an "absentia" client, again blaming Nason for problems in the case, and claiming that he was stymied by Nason's lack of cooperation. In sharp contrast, however, when pressed, respondent admitted that he had filed only one pleading in all of the Nason matters combined — the adversarial proceeding in the bankruptcy matter.

Once Nason withdrew the bankruptcy petition, respondent took no action to set aside the judgments obtained by the creditors in all three matters. Moreover, respondent gave no suitable explanation for his failure to do so.

With regard to the allegation that he failed to communicate with Nason, respondent claimed that he was in constant contact with his client until late 2000, when he terminated the representation for health reasons, as detailed below. On the one hand, respondent claimed that he spent many hours on the phone and in meetings with Nason about his matters. On the other, he depicted Nason as an absent client. In any event, respondent did not overcome Nason's testimony that respondent had failed to reply to his repeated inquiries for information about the matters after the summer of 2000.

With regard to the allegation that he failed to notify Nason of the termination of the representation, respondent admitted that he never took action to be removed from the case, nor did he advise Nason of his intention to terminate the representation in late 2000. Respondent acknowledged that Nason would have been better served if he had done so.

Respondent also offered evidence in mitigation of his actions. He produced reports from two doctors, which confirm that he suffers from a severe form of rheumatoid arthritis, alongside other mysterious ailments. Respondent's condition was so severe in the summer of 2000 that he could not walk. He was hospitalized for several weeks that summer and has been plagued by maladies ever since. Respondent's ability to attend to his clients' needs was severely hampered during that time and, eventually, he became totally disabled. As a result,

he was forced to give up his law practice. Respondent claimed that he had notified some of his clients that he could no longer represent them, but had failed to do so in Nason's case.

In Moorehead, Glendale, and Nason, the DEC found violations of RPC 1.3 and RPC 1.4(a). The DEC also found a violation of RPC 1.16(d). The DEC recommended the imposition of a reprimand.

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

In Moorehead, respondent admitted that he was retained to file a complaint but took no action in his client's behalf, in violation of RPC 1.3. He also admitted that his failure to communicate with his client over the course of the representation amounted to a violation of RPC 1.4(a). The DEC was mistaken, however, to dismiss the allegation of a violation of RPC 1.1(a). In fact, respondent grossly neglected the matter. It is clear from the record that respondent allowed the Moorehead statute of limitation to expire in December 1999, within a month of speaking to his client about the matter. Thereafter, he took no steps to remedy his inaction. As a result, Moorehead forever lost her claim. Under these circumstances, we found a violation of RPC 1.1(a).

In Glendale, too, respondent admitted lack of diligence for his failure to attend to details coincident with the incorporation, including furnishing his client with the corporate books and stock certificates, in violation of RPC 1.3. Respondent also admittedly ignored his client's reasonable requests for information, in violation of RPC 1.4(a).

In the Nason matters, respondent attempted to defend his inaction by blaming his client. He portrayed Nason as a difficult client who failed to produce evidence in support of his litigations. However recalcitrant Nason may have been, conspicuously absent from the record is evidence of any other attempts by respondent to move the Nason matters forward. Rather, respondent allowed the matters to languish in his care. Respondent's neglect was so severe that, according to Nason, judgments were obtained in all of the cases. We found that respondent's misconduct in Graybar, Computel, and Ponzini, constituted gross neglect, in violation of RPC 1.1(a), as well as lack of diligence, in violation of RPC 1.3. In addition, respondent failed to reply to Nason's repeated requests for information about the cases after about June 2000, in violation of RPC 1.4(a). Finally, respondent violated RPC 1.16, which required him to notify Nason of his intention to terminate the representation. Respondent admitted that he never did so.

In sum, respondent grossly neglected Moorehead and Nason, in violation of RPC 1.1(a). He lacked diligence in Moorehead, Glendale, and Nason, and failed to communicate with his clients in those matters as well. Finally, respondent failed to notify his client in Nason of the termination of the representation, in violation of RPC 1.16(d).

Ordinarily, conduct involving gross neglect in one or a few matters, with or without violations such as lack of diligence and failure to communicate with the client, warrants the imposition of an admonition or a reprimand. See, e.g., In the Matter of E. Steven Lustig, Docket No. DRB 00-003 (April 10, 2000) (admonition for attorney who grossly neglected a

matrimonial matter and failed to adequately communicate with his client); In re Wildstein, 138 N.J. 48 (1994) (reprimand for gross neglect and lack of diligence in two matters and failure to communicate in a third matter); and In re Gordon, 121 N.J. 400 (1990) (reprimand for gross neglect and failure to communicate in two matters). Respondent's misconduct in these matters was serious. Moreover, it was spread across five cases for three separate clients. In mitigation, respondent produced compelling evidence of his bout with arthritis, which manifested itself at about the time of the within misconduct. Moreover, although respondent has no prior discipline, he remains temporarily suspended while a fee arbitration, which arose out of Nason, is pending below. We determined that a reprimand was the appropriate degree of discipline for respondent's misconduct.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Acting Chief Counsel