

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 94-205 and
DRB 94-206

IN THE MATTER OF :
: A. ROBERT GLOESER, :
: :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 21, 1994

Decided: March 10, 1995

Morris G. Smith and James J. Rafferty appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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

This matter, encompassing two cases, was before the Board based upon a recommendation for public discipline filed by the District IV Ethics Committee (DEC). The formal complaints in both matters charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate). The complaint in Docket No. DRB 94-206 further charged respondent with a violation of R.1:20-3 (failure to cooperate with the DEC). Respondent did not file answers to the complaints in either matter.

Respondent was admitted to the New Jersey bar in 1981. He is engaged in practice in Williamstown, Gloucester County. Respondent has not been previously disciplined.

The Farley Matter (District Docket No. IV-93-10E)

On September 11, 1991, James Farley retained respondent to represent him in pending matrimonial and domestic violence matters. Farley had been represented by another attorney whom he had discharged. He appeared pro se in the matrimonial matter, prior to retaining respondent. Farley gave respondent a \$500 retainer. Although there was testimony offered before the DEC with regard to respondent's representation of Farley in the domestic violence matter, the within allegations stem from respondent's actions in the matrimonial case.

On November 18, 1991, the court entered a case management order, setting various discovery deadlines and a Matrimonial Early Settlement Panel (MESP) date of March 19, 1992. Opposing counsel, Mary Cay Trace, Esq., agreed to respondent's request to postpone the MESP date to May 1992.

By letter dated December 5, 1991, respondent forwarded interrogatories and supplemental interrogatories to Farley. Later that month, Farley met respondent in his office and provided him with draft answers to the interrogatories. Respondent also prepared a draft case information statement (CIS) at approximately that same time. Respondent, however, failed to produce discovery documents, including the CIS and answers to interrogatories, by the deadlines set forth in the court's November 18, 1991 order. Consequently, on February 21, 1991, opposing counsel, Trace, filed a motion returnable in early March 1992, seeking an order compelling discovery, citing her repeated unsuccessful requests to

respondent for the CIS and other financial documents. In her motion, Trace also requested that counsel fees be awarded. Respondent did not inform Farley of the discovery requests or of the motion.

Prior to the return date of the motion, Trace and respondent agreed to resolve the issue by signing a consent order that extended the deadline for Farley to provide discovery materials. Respondent, however, failed to comply with the revised discovery schedule, whereupon Trace re-listed her motion, with a new return date of May 8, 1992. Respondent, again, did not inform Farley of the motion or of the return date. By order dated June 4, 1992, the court compelled respondent to execute consent orders previously drafted by Trace and scheduled a MESP date for May 21, 1992. The court also awarded counsel fees to Trace in the amount of \$630, two-thirds to be paid by respondent and one-third to be paid by Farley. Respondent testified that he had informed the court that the failure to produce discovery was "largely his fault" (1T69).¹ Although respondent told Farley that he, Farley, was to pay counsel fees, Farley apparently thought, pursuant to information received from respondent, that the court order was based on the fact that he earned more money than his wife (1T21, 103). (Respondent did not recall conveying that information to Farley.) It was not until June 1992, after the MESP date and after Farley had discharged respondent and retained substituted counsel, that Farley learned

¹ 1T refers to the transcript of the hearing before the DEC on March 17, 1994.

that he had been ordered to pay counsel fees for failure to comply with discovery requests (1T26).

As of the DEC hearing, Farley had not yet paid the amount owed. It appears that, depending on the outcome of this ethics proceeding, the court might vacate the order compelling Farley to pay counsel fees (1T69-70).

The MESP date went forward on May 21, 1992, at which time respondent provided the answers to interrogatories and CIS to Trace. Respondent had failed to notify Farley of the MESP date until 9:00 p.m. of the prior evening. According to Farley, that was the first contact he had with respondent since the December 1991 meeting, when they discussed the interrogatories. (Although the record is unclear, it appears that respondent had informed Farley of the original March 1992 MESP date.) Farley had no further contact with respondent after that date.

Throughout the representation, respondent sent no written communications to Farley, other than the December 5, 1991 letter forwarding interrogatories. As noted above, respondent further failed to fully inform Farley of discovery requests, motions and court orders.

Respondent admitted the allegations against him. He had no explanation for failing to comply with discovery requests. With regard to communication, respondent testified that, at the time, it was not his practice to send copies of correspondence, motions or notices to his clients in matrimonial matters.

Respondent testified that, based upon events connected with Farley's domestic violence matters, he became uncomfortable representing Farley. In February 1992, respondent expressed to Farley his discomfort with the representation, advising Farley to look for another attorney. Respondent, however, never told Farley that he was no longer representing him and never withdrew as counsel. Farley did not seek other counsel until after the MESP date, when he determined to obtain new counsel based upon the court's demeanor toward him (1T24). Substituted counsel completed the case; a judgment of divorce was entered on November 2, 1992.

Respondent did not file an answer to the complaint in this matter, for which he offered no explanation.

The DEC found that respondent had violated RPC 1.1(a), RPC 1.3 and RPC 1.4(a).

The Bailey Matter (District Docket No. IV-93-49E)

In early 1992, Sandra Bailey retained respondent to represent her and her husband in the sale of their house. The Baileys paid respondent \$350. At the time of respondent's representation, the Baileys had a pending Chapter 13 bankruptcy matter. The Baileys had been previously represented by another attorney, but were dissatisfied with the representation.

Respondent obtained the necessary certificate of no objection (or certificate of abandonment) to the sale of the Baileys' house. However, the buyer of the house was unable to obtain financing and the sale was not completed.

Another buyer was located and settlement was scheduled for October 30, 1992. Respondent admitted before the DEC that he had performed virtually no work to prepare for the closing. In fact, respondent did not recall the closing date and failed to appear at the scheduled time. Prompted by a telephone call, respondent appeared at the closing without a deed or other required documents, including payoff figures. Further, respondent had not obtained the certificate of no objection. Accordingly, a "dry" settlement was held. A second settlement took place several days later, at which time the mortgages were paid off, but no funds were released to the Baileys (2T21).²

Respondent admitted that he did not conduct a proper analysis of how he should proceed in the Baileys' case, in light of the fact that the house was being sold under a Chapter 13 bankruptcy, as opposed to a Chapter 7 bankruptcy (2T51). He acknowledged that, had he analyzed the Baileys' debts, he would have taken the proper steps to obtain the certificate of no objection from the court prior to settlement to enable the sale to go through and the Baileys' funds to be released. He would also have converted the Baileys' bankruptcy from Chapter 13 to Chapter 7 so that debts appearing on the settlement sheet would have been dischargeable as of the time of settlement (2T56-57).

Specifically, the settlement sheet revealed outstanding debts to be paid out of the settlement proceeds, including \$750 to the

² 2T refers to the transcript of the hearing before the DEC on December 21, 1993.

City of Philadelphia, \$774 to Atlantic Electric Company, \$3,994.43 to the Philadelphia Post Office and \$2,935.52 to the Internal Revenue Service. Respondent testified that he realized that some of these debts, specifically the debts to Atlantic Electric Company and Philadelphia Post Office, would be dischargeable in bankruptcy after conversion to Chapter 7. He stated that he so informed the Baileys and told them that, ultimately, the funds in the amounts indicated on the settlement sheet would be disbursed to them.

Following the settlement, respondent took no action to obtain the required certificate of no objection from the bankruptcy court, despite representations to the Baileys to the contrary. Further, he failed to take appropriate steps to ensure that the debts were discharged.

In January 1993, respondent had the bankruptcy converted from Chapter 13 to Chapter 7. He still failed, however, to obtain the certificate of no objection. In fact, Mrs. Bailey obtained the certificate on her own, on April 28, 1993, so that the title company would release her funds. She ultimately received \$2,041.03 in April or May 1993.

During the course of the representation, Mrs. Bailey had seldom been able to contact respondent to ascertain the status of her matter. Mrs. Bailey testified that she telephoned respondent's office on numerous occasions attempting to learn the status of respondent's efforts to have the settlement funds disbursed. According to Mrs. Bailey, between the closing on October 30, 1992 and December 31, 1992, she telephoned respondent on numerous

occasions. She further attempted to contact him on at least ten occasions between January 1, 1993 and June 2, 1993, when she filed the ethics grievance. On the few occasions that respondent returned her calls, he stated that he had been making efforts to have her funds released. (During that time period, on March 8, 1993, respondent and the Baileys had attended a meeting of the Baileys' creditors.)

The discharge of the debtor in bankruptcy was dated June 1, 1993. Respondent testified about his efforts thereafter to convince the title company that the discharge eliminated specific debts and that the checks should be made payable jointly to himself and the Baileys. According to respondent, the title company insisted that, despite the discharge, the checks be drawn as the debts appeared on the HUD-1 form. Respondent received three checks dated June 10, 1993, in the amounts reflected on the settlement sheet as his fee, the amount due to the Atlantic Electric Company and the amount due to the Philadelphia Post Office. It was respondent's intention to have the creditors sign off on the checks and to forward the funds to the Baileys (2T45-46). Respondent, however, took no steps to have these debts, which had been reduced to judicial liens, formally discharged in bankruptcy or state court after filing the Chapter 7 petition and following the discharge (2T61-62).

Respondent admitted that mechanisms had been available to him under state law to remove the judgments so that the funds could have been disbursed to the Baileys. As of the date of the DEC

hearing, however, respondent still had the original three checks in his possession.

Respondent testified that it had been his intention to take the appropriate action to make sure that the Baileys received the funds; he had received the checks, however, within the timeframe in which he received the ethics grievance filed by Mrs. Bailey. Respondent testified that, at that point, he had "frozen up" and was unable to take any action whatsoever in the matter (2T15). Indeed, respondent never even informed the Baileys that he had received the checks from the title company (2T31).

In addition to the above ethics infractions, respondent failed to cooperate with the DEC. By letter dated June 9, 1993 from the DEC secretary, a copy of Mrs. Bailey's grievance was forwarded to respondent, with the request that he reply within ten days. Respondent did not send a reply. A second letter from the DEC secretary was forwarded to respondent, dated July 6, 1993, again asking that he answer the grievance. Once again, respondent did not comply with the DEC's request for information. The matter was then referred to James Rafferty, Esq., a member of the DEC and the investigator assigned to this matter. In August 1993, Mr. Rafferty telephoned respondent and requested a written reply to Mrs. Bailey's grievance. By letter dated August 25, 1993, Mr. Rafferty confirmed his conversation with respondent, wherein respondent had promised to forward a reply. Again, respondent failed to reply.

The formal ethics complaint was filed in October 1993. Respondent did not file an answer. Respondent offered no

explanation for his failure to reply to the investigator's requests for information or to the allegations of the complaint, other than to reiterate that he was unable to take any action after receiving Mrs. Bailey's grievance. Respondent testified that he was unable to tell even his wife about the ethics proceedings. Respondent further stated, at the DEC proceeding, that he was willing to endorse the check for his fee over to the Baileys (2T60-61).

The DEC aptly summarized respondent's misconduct in his handling of the Baileys' bankruptcy:

It appears from the testimony presented that Respondent failed or rather that Respondent handled this matter in such a manner that his conduct constituted gross negligence in that he failed to make any preparations or prepare any documents in connection with [the] real estate settlement, that he failed to undertake any analysis as to the appropriate action to be taken with respect to outstanding judgments or unsecured debts, that once the real estate settlement took place and the property was actually transferred he failed to take steps to protect the Bailey's [sic] interests or to ensure that they received the funds to which they would be entitled that the -- wait a minute. He failed to take steps to ensure that the grievants received the funds they were entitled to receive under the exemptions to the bankruptcy code and that he failed to take steps to discharge those debts and judgments which could be discharged and that as a result thereof that the grievant received \$2041.03 at settlement and would have been entitled to receive essentially the amounts of the checks drawn to the City of Philadelphia, I'm sorry, essentially the amounts of the checks drawn to Atlantic Electric in the amount of \$774 and to the Philadelphia Post Office in the amount of \$3994.43 and that his failure to protect his client's [sic] interests by filing a motion or an order to show cause in state court constitutes gross negligence in violation of RPC1.1A [sic].

[Transcript of Hearing Panel Report at 13-14]

The DEC further determined that respondent violated RPC 1.3, RPC 1.4(a) and R.1:20-3.

CONCLUSION AND RECOMMENDATION


Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. In sum, respondent was guilty of violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 8.1(b) (failure to cooperate with the DEC) in two matters. With regard to the latter violation, although respondent failed to comply with the DEC investigator's requests for information or file an answer to the complaint, he did appear before the DEC, was contrite and admitted his misconduct. In light of his subsequent cooperation, the Board recommends that the charge of a violation of R.1:20-3 be dismissed.

The Board is also persuaded that respondent has corrected the difficulties that had been present in his law practice, as evidenced by the lack of pending disciplinary cases against him. In light of that factor, as well as his lack of prior discipline, the Board unanimously recommends the imposition of a reprimand. See In re Gordon, 121 N.J. 399 (1990) (where a public reprimand was imposed for gross neglect in two personal injury cases and failure to communicate with clients) and In re Breingan, 120 N.J. 161 (1990) (where the attorney was publicly reprimanded for a pattern of neglect in three matters, failure to communicate with his clients and failure to diligently pursue his client's interests in one matter. The attorney's failure to cooperate with the DEC

during the course of the investigation was considered as an aggravating factor).

The Board further recommends that respondent be required to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 3/10/95

By: 
Raymond R. Trombadore
Chair
Disciplinary Review Board