SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-447

IN THE MATTER OF	:
JOHN L. ANTONAS	:
AN ATTORNEY AT LAW	:

Decision

Argued: March 19, 1998

Decided: September 28, 1998

Peter J. Hendricks appeared on behalf of the District VIII Ethics Committee.

Respondent waived appearance before the Board.[1]

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

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

[1]Respondent filed an oral argument form in which he indicated his agreement with the conclusions and recommendations of the trier of fact.

Respondent was admitted to the New Jersey bar in 1977 and maintains a law office in Palm Beach County, Florida. At the time of the alleged ethics infractions, respondent had an office in Edison, Middlesex County. He has no prior ethics history.

The complaint alleged violations of RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4(d)(conduct prejudicial to the administration of justice) for respondent's failure to appear at a trial in Middlesex County, despite being counsel of record in a criminal case. The formal ethics complaint was filed on November 11, 1996, based on a letter by the Middlesex County judge assigned to hear the trial. The trial judge, respondent and several other witnesses testified at the DEC hearing. At the time, respondent denied any wrongdoing. Thereafter, on February 28, 1998, respondent filed a letter-brief with the Board in which, for the first time, he admitted the DEC's findings of fact and agreed with the DEC's recommendation for discipline.

* * *

In or about June 1992 respondent was retained by Alaketu Idowu to represent him in a criminal case in Middlesex County Superior Court. The matter was apparently scheduled for trial on several occasions over the years prior to the Spring of 1995.

At the DEC hearing, the judge assigned to the case testified that the Idowu matter was scheduled for trial in October 1995. He recalled that respondent had been anxious to

conclude the case because of his planned relocation to Florida in January 1996. The trial started on December 12, 1995 and proceeded until December 19, 1995, when a major snowstorm unexpectedly closed the courthouse. When the courthouse reopened two days later, the judge declared a mistrial, rather than allow the jury to be separated from the case through the week-long Christmas break two days thence. The judge scheduled a new trial for January 3, 1996.

Concerned about his ability to try the case to completion under the time constraints of his relocation on January 3, 1996 respondent brought another attorney, with him, Ambar Abelar, Esq., who intended to take over the representation of Idowu. At the trial, respondent moved for an adjournment to obtain a transcript of the first trial for Mr. Abelar's enlightenment. When that motion was denied, Mr. Abelar refused to take the case, prompting respondent to take an interlocutory appeal of the judge's decision.

On January 18, 1996 the Appellate Division reversed the trial court's determination, directed the trial court to reschedule the new trial after March 1, 1996 and allowed respondent additional time to either order the transcript for new counsel or to return to New Jersey to try the case. The trial was rescheduled for April 1, 1996. In the interim, respondent relocated to Florida. In a letter to the judge dated March 7, 1996, respondent asked to be relieved as counsel, citing financial hardship. According to respondent, Idowu had promised to reimburse him for expenses to return to New Jersey for the April 1, 1996 trial and to pay a reduced rate for respondent's representation at trial. Respondent drafted an amended

retainer agreement and sent it to Idowu. Idowu apparently refused to sign it, telling respondent that he should represent him gratis in the new trial because the first trial was not conclusive. Despite the letter's informality, the judge considered it as a motion to be relieved as counsel and denied the motion. Respondent again wrote to the judge on March 28, 1996, indicating that he would not return to New Jersey for the April 1, 1996 trial date.

On April 1, 1996 respondent did not appear for trial. The judge "faxed" a letter to respondent in Florida, citing him for contempt and notifying him that he could purge the contempt by appearing for trial on April 3, 1996. When respondent did not appear on the adjourned date, the judge entered the contempt order and fined respondent $2,000 for failure to appear on April 1 and April 3, 1996.

In his letter-brief to the Board, respondent explained that he had become overwrought in late 1995 and early 1996 with wrapping up his law practice and personal affairs in New Jersey. Respondent recognized that he should have handled the Idowu case differently and indicated that he would never engage in such misconduct in the future. In mitigation, respondent sought to clarify three factual issues contained in the panel report. First, respondent asserted that the Idowu trial was originally scheduled in 1992 and that he had always been ready for trial since that time. According to respondent, part of his frustration with the case was the court's inability to move it along. Secondly, respondent sought recognition that the judge considered his March 7, 1996 letter as a motion to be relieved as Idowu's counsel, despite the informal nature of the request. Lastly, respondent sought to

clarify the transcript issue. According to respondent, only in the event that Abelar had taken over the representation would that transcript have been needed. Finally, respondent stated that, until Idowu reneged on his promise to pay legal fees incurred with the new trial in early March 1996 and just prior to the rescheduled trial date of April 1996, respondent fully intended to return to New Jersey to try the case.

* * *

The DEC found respondent in violation of RPC 8.4(d) for his failure to appear at the trial, despite his knowledge that he was the attorney of record. The DEC dismissed the charge of a violation of RPC 8.4(c), finding no clear and convincing evidence that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation. The DEC recommended the imposition of a reprimand.

* * *

Upon a de novo review of the record, the Board was satisfied that the DEC's conclusion that respondent was guilty of misconduct is fully supported by clear and convincing evidence.

In his letter-brief to the Board, respondent admitted a violation of RPC 8.4(d) for his failure to appear on the scheduled trial dates. Indeed, the facts adduced below support the DEC's finding of a violation of that rule. However, the record does not support, and the

DEC rightly dismissed, the allegation of a violation of RPC 8.4(c). The record is devoid of any evidence that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in his handling of the Idowu case. Therefore, the Board confirmed the dismissal of the charge of a violation of RPC 8.4(c).

As to the factual issues raised in respondent's letter-brief to the Board, first, it is clear from the record that the judge considered respondent's March 7, 1996 letter as a motion to be relieved as Idowu's counsel. No alleged violations flowed from the informal nature of respondent's motion. Therefore, the issue is of little import. Second, with regard to the age of the Idowu case, it is obvious that, as one of the oldest matters on the court's docket in late 1995, it was a source of frustration for all concerned. Lastly, with regard to the transcript of the first trial, it appears reasonable that respondent never ordered it, despite having obtained an Appellate Division order authorizing him to do so. After all, once it became clear that respondent had not found another attorney to take over the representation, he had no use for the transcript.

One other issue remains that was not raised below: that respondent also violated RPC 1.1(a) by grossly neglecting Idowu's matter, once the motion to be relieved as counsel was denied. The Board concluded that respondent violated that rule by failing to protect his client's interests after Idowu refused to compensate respondent for the second trial and its expenses. Although respondent was not specifically charged with a violation of RPC 1.1(a), the facts in the complaint gave him sufficient notice of the alleged improper conduct and of

the potential violation of that RPC. Furthermore, the record developed below contains clear and convincing evidence of a violation of RPC 1.1(a). Respondent did not object to the admission of such evidence in the record. In light of the foregoing, the complaint is deemed amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

Finally, the Board noted that, when respondent acknowledged making mistakes in the case, he was referring to his failure to appeal the trial judge's determination not to relieve him as counsel, once Idowu refused to pay for respondent's trip to New Jersey. Respondent should have known that, having failed to procure a new attorney for Idowu on the eve of trial, it was his obligation to appear for trial because of the court's denial of his motion whether or not Idowu had agreed to pay legal fees for the new trial.

Respondent's conduct was serious, but no more so than that of the attorneys in recent contempt cases. See, In re Hartmann, 142 N.J. 587 (1995) (reprimand for intentionally and repeatedly ignoring court orders to pay opposing counsel a fee, resulting in a warrant for his arrest, and for discourteous and abusive conduct toward a judge with intent to intimidate her) and In re Yengo, 92 N.J. 9 (1983) (reprimand following conviction for contempt based on persistent abuse of judicial process and lack of respect for the administration of justice; strong mitigating factors considered). In addition, there is no indication in the record that Idowu was harmed in any way by respondent's misconduct. In light of the foregoing, the Board unanimously determined to impose a reprimand and to require respondent to pay the contempt fine of $2,000, if still outstanding.

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

Dated: 9/28/98

LEE M. HYMERLING
Chair
Disciplinary Review Board