Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-440

IN THE MATTER OF :
:
IGNACIO SAAVEDRA, JR., :
:
AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: January 31, 1996

Decided: June 3, 1996

Mark K. Lipton appeared on behalf of the District VI Ethics Committee.

Respondent waived appearance.

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

This matter is before the Board based upon a recommendation for discipline filed by the District IV Ethics Committee (DEC). Respondent was charged with unethical conduct in two separate complaints. The first complaint charged respondent with violations of RPC 8.4(d) (conduct prejudicial to the administration of justice); RPC 1.1(a) (gross negligent); RPC 1.3 (lack of diligence); and RPC 1.4 (failure to keep a client reasonably informed about the status of a matter). The second complaint

charged respondent with violations of RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 1.15(a) (safekeeping property) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1972. He maintains an office in Union City, New Jersey.

In 1993, respondent received a reprimand for violations of RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to communicate) and RPC 8.1(b) (failure to cooperate with ethics authorities). In re Saavedra, 132 N.J. 271 (1993). He also received a private reprimand in 1978 for a violation of DR 7-101 (lack of diligence).

* * *

Court Reporters Management Service, Inc. Matter (District Docket No. VI-92-45E

The representative of Court Reporters Management Service, Inc., the grievant in this matter, did not appear at the DEC hearing. Respondent did not deny the allegations of the complaint concerning this matter. The presenter, thus, obtained permission from the DEC secretary to proceed by reading the allegations of the complaint into the record and allowing respondent to reply to them.

According to the December 14, 1992 complaint, on June 19, 1991, respondent retained Court Reporters Management Service, Inc. (CRMSI) to transcribe depositions in one of respondent's matters, Torres v. Crimmins. After the transcript was completed, respondent refused to accept it or to pay for the services provided. CRMSI

filed a civil suit against respondent in small claims court, which resulted in a judgment against respondent. Respondent did not satisfy the judgment. Thereafter, respondent failed to participate in supplementary proceedings and also failed to appear on the return date of an order directing him to "show cause why he should not be adjudged guilty of contempt for failing to obey [the] Court's Order . . . ." As a result, on April 15, 1992, the court issued an order for respondent's arrest. Exhibit CR-7.

In a letter dated June 4, 1993 from respondent to the DEC secretary, entitled "ANSWER", respondent wrote:

> Regarding the bill owed to [CRMSI], I spoke to them around 6 or more months, that I was willing to pay them, they refused stating there were costs involved. On 6-4-93 I phoned them, leaving in the recording machine my desire to pay them. On 11-4-92 the check for the Torres settlement was issued.

At the DEC hearing, respondent testified that he did not cooperate or participate in the supplementary proceedings or appear in response to the order to show cause because he did not expect CRMSI to obtain a judgment against him. T13-15.[1]

Respondent stated:

> I thought that my word was good enough, that they was [sic] going to get paid. It was not necessary for me to appear in open court and be embarrassed in front of a public there, that I was going to pay my bills.
> [T16]

After respondent was served with the warrant for his arrest, he had his secretary telephone the constable. As a result,

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[1] T denotes the transcript of the March 3, 1995 hearing.

respondent was given more time to satisfy the judgment. While the depositions in the Torres matter had been transcribed in June 1991, respondent did not pay CRMSI for its services until sometime in 1993, even though the case had been settled in November 1992.

Respondent claimed that it was the first time he had ever been pressured for payment by a court reporting service. Apparently, it was his practice to pay for the transcripts after the cases were concluded. Respondent stated that, even where cases were not resolved for two to three years after depositions had been taken, the court reporter would wait for payment. He claimed:

> Well, they have been doing that on a -- as a matter of fact, I have several cases now and none of them have sued me.
>
> They would send me bills, yes, but they have not sued me or anything like that.
> [T22]

* * *

Alberto Gonzalez-Noda Matter (District Docket No. VI-92-52E)

The testimony of the grievant in this matter, Alberto Gonzalez-Noda, was difficult to understand because of a language barrier. However, based on his testimony, on the allegations of the complaint and on respondent's admissions, the following was gleaned from the record:

On November 11, 1991 Gonzalez-Noda retained respondent to represent him in a personal injury matter arising from a car accident. Respondent filed a complaint in Gonzalez-Noda's behalf in the Superior Court of New Jersey, Hudson County, but failed to serve the complaint on the defendant.

Gonzalez-Noda attempted to contact respondent for information about the status of his matter on a number of occasions, to no avail. At some point, through his own efforts, Gonzalez-Noda learned that his case had been listed for dismissal because of respondent's failure to comply with the court rules. The impending dismissal was based either on respondent's failure to prosecute the matter or to pay the required filing fee or both.

Thereafter, Gonzalez-Noda himself paid the filing fee and retained a new attorney, who apparently concluded the matter.

In respondent's "answer" (Exhibit CR-3) to the complaint, he stated:

> Concerning the complaint of Mr. Alberto Gonzalez, I filed the complaint on time, but neglected to issue the summons within ten days. Mr. Gonzalez went to another attorney, Mr. William Perkins, to whom I sent copy [sic].

At the DEC hearing, respondent again admitted that the court was going to dismiss Gonzalez-Noda's complaint because, as a result of his own negligence, respondent failed to serve the defendant. T133.

* * *

Luigi Calautti Matter (District Docket No. IV-94-22E)

This matter was referred to the DEC by the fee arbitration committee that decided Luigi Calautti's claim against respondent.

In April 1991, Calautti retained respondent in a divorce proceeding. Calautti signed what purported to be a retainer

agreement (Exhibit LC-3), which stated:

> Divorce proceedings $175.00 per hour, $500.00 half a day or less in court. $750 if morning plus afternoon. Expenses are to be paid by client.

Calautti paid respondent $2,000 as an initial retainer. Respondent did not tell Calautti what he would do with the money and, according to Calautti, they did not discuss the merits of the case at that time.

Calautti claimed that he never met with respondent to go over his case in detail. Generally, they only discussed the case prior to court appearances. Calautti noted that he was never able to speak to respondent when he was the one to initiate the call. Respondent failed to communicate with Calautti during the course of the matrimonial proceedings and failed to return his telephone calls. Respondent only spoke to Calautti occasionally, communicating with him, for the most part, through his secretary.

Respondent and Calautti never discussed the issues of the divorce, which included child custody, alimony, Calautti's wife's disability, the value of Calautti's business and assets and the division of marital property.

Apparently, the court had ordered the valuation of Calautti's business and properties. Respondent did not advise or instruct Calautti to obtain independent valuations. Respondent admitted that he unilaterally decided not to have Calautti's business valued. T104-105. In addition, after Calautti's wife claimed that she was disabled, respondent failed to have her examined or

investigated to determine the veracity of her claim, notwithstanding his belief that the claim was asserted for purposes of obtaining greater alimony payments.

Several unsuccessful attempts were made to settle the matter. The matter eventually went to trial on December 10, 1992. Exhibit LC-5. According to Calautti, when he expressed his dissatisfaction with the outcome, respondent assured him that he would move for a new trial. T43. Indeed, respondent filed a notice of motion for a new trial on or about December 21, 1992, together with his supporting affidavit as well as Calautti's affidavit. Apparently, respondent filed the motion after the time permitted by R. 4:49-1(b) had expired and the motion was denied. Respondent failed to submit a brief with the motion, claiming that that sort of motion was routinely denied.

Calautti testified that, thereafter, respondent called him and inquired whether he wanted to appeal the judge's order. Respondent told him it would cost $5,000 to pursue an appeal. Calautti did not have that amount. He paid respondent $2,000 as a retainer and an additional $300 for the transcript. Respondent gave Calautti a receipt for the payment. There is nothing in the retainer agreement showing that the $2,000 was nonrefundable.

Although respondent prepared and filed a notice of appeal with the Appellate Division, he did not file a case information statement and did not attach the judgment from which Calautti was appealing. Respondent admitted that his failure to include the required documents was caused by his negligence.

Thereafter, when respondent received notification of the deficiencies from the Appellate Division, he failed to correct the problems. On March 16, 1993, the Appellate Division issued an order dismissing the appeal.

According to Calautti, after he paid the retainer, he never saw respondent again and never heard about the status of his appeal, despite the numerous messages that he had left for respondent. T45. Because Calautti was unable to get in touch with respondent, on February 24, 1994, he hired a new attorney, Cindy Vogelman. Vogelman called respondent on that date but was unable to speak with him. Respondent did not return her call. Vogelman, therefore, sent respondent a letter on February 25, 1993 requesting Calautti's file, a signed substitution of attorney form and the return of the $2,000 he had taken for the appeal. Respondent did not comply with Vogelman's request.

On March 17, 1993, Vogelman called respondent's office and spoke with his secretary. She informed the secretary that, if respondent did not immediately turnover the file, she would file an order to show cause seeking the return of the file and of the substitution of attorney.

Apparently, later that day, respondent's secretary called Vogelman and told her that, while she could pick up the file, respondent did not have the $2,000 to return. Respondent had spent the money. At the DEC hearing, respondent claimed that he realized he did not have the right to spend the money because he had not done the work for which he had been retained.

On March 17, 1993, Vogelman finally obtained the file from respondent. It appeared to contain only information from the trial and nothing about the appeal. Thereafter, on March 22, 1993, respondent's secretary called Vogelman to advise her that Calautti's appeal had been dismissed. The secretary "faxed" to Vogelman a copy of the order of dismissal.

Subsequently, Vogelman was able to reinstate the appeal. After she renegotiated a settlement in Calautti's behalf, the appeal was voluntarily dismissed. Vogelman then filed a request for fee arbitration based on respondent's failure to refund the $2,000 retainer. According to Vogelman, the only explanation respondent had given her was that the money had been spent. The retainer agreement that respondent had drafted was deficient and Calautti never received an itemized bill or narrative from respondent explaining what had been accomplished. Moreover, respondent did not keep any time records. He merely made periodic demands for payment to Calautti.

Respondent failed to pay the required $50 fee to the fee arbitration committee and was, therefore, barred from participating in the proceedings, pursuant to R. 1:20-3(a)(2)(1). Respondent did not appear at the proceeding, but contacted the committee the day before to request an adjournment. The request was denied. At the DEC hearing, respondent admitted that he had received the notices from the fee arbitration committee, but had neglected to read the part indicating that he was required to pay a $50 fee. T97. He claimed that he was unaware of that requirement.

The fee arbitration committee awarded Calautti $8,732.75. Exhibit C-23. To date, respondent has repaid Calautti only a small amount of the award, apparently due to financial difficulties.

At the DEC hearing, the presenter noted that the fee arbitration committee found that respondent's representation of Calautti was seriously flawed. T82. The fee committee, therefore, referred the matter to the DEC.

In his defense, respondent claimed that he had done some work on Calautti's behalf. Specifically, he contended that he had spoken to Calautti several times before the trial, had spoken to the Division of Youth and Family Services about respondent's daughter and had spoken with Calautti's accountant and his adversary about the divorce.

Respondent also claimed that he had discussed the court-ordered valuation of the property with Calautti and that he had not seen the need to hire an expert and have Calautti spend a couple of thousand dollars for his own expert. T92. It is not clear from the record whether respondent actually discussed the valuation with Calautti at any length.

Respondent claimed that he returned some, but not all, of Calautti's calls because there were so many. He, however, had nothing in writing to memorialize his contacts with Calautti.

Finally, as his defense for not complying with his adversary's discovery requests, respondent maintained the following:

> As to giving a hard time to the other lawyer as to this discovery that I -- I did it on

purpose.

My technique was a lot of money in a pizzeria come [sic] in cash, people don't pay in checks.

I don't want to start answering too many questions as to this it may harm Mr. Calautti. This may aggravate the judge.

The judge may order IRS investigation and if that is giving opposing counsel a hard time as to discovery.

As a matter of fact, I tried the [sic] settle the case without answering all the records.

[T92]

* * *

The DEC found that respondent's conduct in the Court Reporters Management Services, Inc. matter was a violation of RPC 8.4(d) because, as an officer of the court, respondent "should have been responsible in responding to the lawsuit against him" and CRMSI should not have been forced to file supplemental proceedings against him. The DEC also found that respondent's failure to appear in court, causing the court to issue a warrant for his arrest, was an additional violation of RPC 8.4(d).

In the Alberto Gonzales-Noda matter, the DEC found that respondent violated RPC 1.1, RPC 1.3 and RPC 1.4 because, by his own admission, he failed to take any action after the complaint was filed. The DEC rejected respondent's claim that he believed another attorney was handling the matter.

The DEC found in the Luigi Calautti matter, violations of RPC 1.1, RPC 1.3 and RPC 1.4. The DEC also found that respondent's

suit, respondent ignored the suit at his own peril and suffered the consequences by having a judgment entered against him. Failure to answer or otherwise file an appearance in a lawsuit in which the attorney is a party is not unethical. The DEC also properly found that respondent violated RPC 1.1(a), RPC 1.3 and RPC 1.4 in the Gonzalez-Noda matter and violated RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 1.15 and RPC 8.4(c) in the Calautti matter. Contrary to the DEC's finding, respondent's failure to deposit the $2,000 retainer in his trust account was not an ethics violation. Absent an agreement to the contrary, a lawyer is not obligated to deposit retainer sums in the trust account. In re Stern, 92 N.J. 611, 619 (1983). Respondent's failure to return an unearned retainer, however, was a violation of RPC 1.15 and RPC 8.4(c). Respondent's conduct in these matters, considered in conjunction with his ethics violations in 1993, also clearly established a pattern of neglect, in violation of RPC 1.1(b).

Respondent's lack of concern for his clients, his failure to pursue his cases and to keep his clients informed about the status of their matters is startling. Respondent's cavalier attitude with regard to paying for services rendered in his behalf, as well as, spending retainer monies, prior to rendering services, seriously calls into question respondent's understanding of his legal responsibilities, both substantively and ethically. What is most alarming about respondent's conduct in these matters, however, is that it continued even though he was aware of the ethics transgressions that resulted from his two prior brushes with the

failure to deposit the $2,000 retainer for the appeal in his trust account was a violation of RPC 1.15. In addition, the DEC concluded from its review of the fee arbitration findings that Calautti was grossly overcharged, especially in light of the quality of respondent's services. Finally, the DEC found that, by spending Calautti's retainer prior to providing the services for which he contracted, respondent violated RPC 8.4(c). The DEC found that this matter was the most serious of the three.

From its review of the exhibits, especially the transcript of the December 10, 1992 trial, the DEC determined that respondent's representation of Calautti was grossly negligent. The DEC remarked that respondent was unprepared for trial, his motion papers were far below acceptable standards throughout the entire matter and his overall representation of grievant lacked any level of professionalism.

* * *

Upon a de novo review of the record, the Board is satisfied that the DEC's finding that respondent was guilty of unethical conduct is clearly and convincingly supported by the evidence. The DEC properly found a violation of RPC 8.4(d) in the CRMSI matter, when respondent disregarded a court order requiring him to appear in court. The DEC erroneously found, however, that respondent violated RPC 8.4(d) when he did not "[respond] to the lawsuit against him." That is not an ethics violation. As a party to the

disciplinary authorities. In the 1993 disciplinary matter, respondent was aware of the DEC investigation against him as early as July 1991. Thus, respondent was already on notice of potential ethics problems at the time the within misconduct began. In the CRMSI matter, respondent retained the reporting service in June 1991 and did not make restitution to CRMSI until sometime in 1993. In the Gonzalez-Noda matter, respondent was retained in November 1991 and did virtually nothing after filing the complaint. The matter would have been dismissed in September 1992, had the Gonzalez-Noda not independently learned of the status of his case and retained a new attorney. Finally, in the Calautti matter, respondent's violations spanned the time he was retained in April 1991 until Calautti retained a new attorney in February 1994. Thus, it would appear that respondent did not make any effort to reform his conduct after receiving notice of potential improprieties.

The Court has imposed discipline ranging from a reprimand to a term of suspension where there is a mixed combination of violations of the sort exhibited by respondent. See In re Chatburn, 127 N.J. 248 (1992) (reprimand for pattern of neglect in three matters and a failure to communicate; attorney had previously received a private reprimand); In re Marlow, 121 N.J. 236 (1990) (three-month suspension for gross neglect, lack of diligence, pattern of neglect and failure to communicate in two cases, misrepresentation of case status in one of the cases and lack of cooperation with the DEC; the attorney's prior public reprimand was

also considered); In re Knight, 134 N.J. 121 (1993) (six-month suspension for gross neglect in one matter, misrepresentation in three matters, failure to cooperate with disciplinary authorities and recordkeeping violations); and In re Rosenthal, 118 N.J. 454 (1990) (one-year suspension for pattern of neglect in four matters, misrepresentation to clients, failure to cooperate with the disciplinary authorities and failure to remit a fee arbitration award; attorney had received a prior public reprimand).

Based on the totality of circumstances, the Board unanimously determined to impose a three-month suspension. One member did not participate. The Board also determined that respondent must complete ten hours of ethics courses within a one-year period and is required to practice under the supervision of a proctor for a period of one year following reinstatement.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 6/3/96

LEE M. HYMERLING
Chair
Disciplinary Review Board