

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-229

IN THE MATTER OF
JOHN K. MEDFORD
AN ATTORNEY AT LAW

Decision

Argued: September 18, 1996

Decided: October 17, 1996

Dennis P. LaHiff appeared on behalf of the District IIA Ethics Committee.

Respondent waived his appearance for oral argument.

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 IIA Ethics Committee ("DEC"). Service of process was made on June 10, 1994. Respondent did not file an answer, but appeared pro se at the hearing.

The charges of misconduct embodied in the complaint are: RPC 1.1(a)(gross negligence); RPC 1.3 (lack of diligence); RPC 1.4(a)(failure to communicate with client); RPC 1.15(b) (failure to promptly deliver funds to client); RPC 3.3(a)(1) and RPC 3.3 (a) (5)(false statement of material fact to a tribunal or failure to disclose material facts to tribunal); RPC 5.5(a)(practice of law while

ineligible) and RPC 8.1(failure to cooperate with disciplinary authorities).

Respondent was admitted to the New Jersey bar in 1984.

In or about April 1989, the law firm of R.M. James Ruscick was retained by Rita Ann Trover (néé Laraia)("Grievant") to represent her in a divorce action. Grievant was represented in the ensuing trial mainly by R.M. James Ruscick (respondent is the nephew of Mr. Ruscick and was an associate in the firm), with the assistance of respondent. The divorce action was tried in March 1991 with a decision unfavorable to grievant.

After filing a notice of appeal, respondent became primarily responsible for handling the case. Mr. Ruscick had become ill and died in October 1991. During the course of his representation, respondent failed to correct the technical deficiencies in the appellant's brief and failed to file transcripts of the trial court proceedings, resulting in dismissal of the appeal on April 4, 1992. Respondent verbally assured grievant that the errors in the filing of the appeal had been corrected. They had not been. Respondent never advised grievant that the appeal had been dismissed.

At some point, grievant obtained new counsel, who, on repeated occasions, requested that respondent turn grievant's file over to him in order to investigate the reasons for the dismissal of the appeal and to reinstate it, if possible. Respondent did not turn over the file to new counsel or reply to repeated requests for the return of the file. As a result of respondent's failures, grievant's rights on appeal were alleged to have been irreversibly prejudiced. In fact, attempts to reinstate the appeal were unsuccessful.

In connection with the divorce trial and appeal, respondent was to hold in escrow a check payable to grievant in the amount of \$900, pending the outcome of the appeal. The check represented the cash value of an insurance policy distributed to her. Although grievant questioned

respondent on several occasions about the check, respondent failed to return either the check or its proceeds.

* * *

Respondent was declared ineligible to practice law on September 9, 1993, for failure to pay his 1993 Client Protection Fund assessment. While ineligible, respondent continued to practice law. In January 1994, he appeared as attorney-of-record in two family court matters in Bergen and Morris counties.

The DEC unanimously recommended a suspension of not less than three months, finding violations of RPC 1.1, RPC 1.3, RPC 1.4, RPC 1.15(b) and RPC 8.1(b).

* * *

Following a de novo review of the record, the Board determined that the DEC's finding of unethical conduct is clearly and convincingly supported by the evidence.

Respondent acknowledged at the DEC hearing that he received a notice from the Appellate Division regarding deficiencies in his papers and that making the necessary corrections would have required approximately two hours of his time. Respondent admittedly "did a very foolish thing" in not correcting the deficiencies. He described himself as an unhappy individual who was extremely depressed and dissatisfied with himself. He stated that he "knew some day that a letter [from the ethics committee] would come." He had engaged a psychiatrist and undergone treatment for

continued to hold the check and failed to return it to grievant, notwithstanding the dismissal of the appeal and the passage of an additional two years. His conduct in this regard violated RPC 1.15(b).

The new attorney, Glenn M. Rocca, Esq., testified that he was retained by grievant in March 1993 in order to ascertain the status of her appeal and move to reinstate it, if appropriate. He testified about numerous telephone calls and letters to respondent that went unanswered. There was one response from respondent to set up an appointment with Mr. Rocca on May 3, 1993, which appointment respondent failed to keep or cancel in advance. Respondent also communicated once by way of a facsimile transmission on October 19, 1993, promising the return of the file that day or the following morning. Respondent never released the file, thereby violating RPC 1.16(d). It appears that the complaint alleged a violation of RPC 1.4 for respondent's failure to turn over the file to grievant. The proper citation is RPC 1.16(d) (failure to surrender property to client after representation). See In re Logan, 70 N.J. 222 (1976).

Respondent also violated RPC 8.1(b) by failing to cooperate with the DEC. Letters to respondent from the DEC covering the period from November 1993 to June 1994, soliciting information, went unanswered. Two such letters were sent via certified mail, were signed for and remained unanswered.

Lastly, respondent was declared ineligible to practice law in the State of New Jersey on September 20, 1993 for failure to pay the annual assessment to the Client Protection Fund. He was not reinstated to active status until June 23, 1994. Notwithstanding his ineligible status, respondent appeared as attorney of record in matters before the Bergen County Family Court in January 1994 and the Morris County Family Court in or about May 1994.

In this connection, respondent stated that, after the death of his uncle (R.M. James Ruscick),

his aunt (Mrs. R.M. James Ruscick, also an attorney) closed the firm's Fort Lee office and moved it to the Ruscicks' Alpine, New Jersey, residence in March 1992. Respondent speculated that notices from the Client Protection Fund may have been sent to the Fort Lee office and never forwarded to the Alpine office. Respondent did not recall receiving any notices from the fund in 1993 or early in 1994. He claimed to have received the 1994 notice late in the year. He attended to it immediately, resulting in his reinstatement in June 1994. Respondent further asserted that he did not knowingly violate the unauthorized practice of law rule or knowingly fail to show candor toward any tribunal in that regard. The DEC found respondent's explanation credible and persuasive as to the alleged violations of RPC 3.3(a)(1) and 3.3(a)(5) inasmuch as he did not knowingly violate its provisions. The DEC rightfully recommended the dismissal of that section of the amended complaint. In addition, the DEC recommended dismissal of the charge of RPC 5.5(a), finding that, although there was a per se violation of its provisions, the conduct was not knowing. The Board disagrees. Nowhere in the rule is there a requirement of knowledge on the part of the attorney to sustain a violation of RPC 5.5(a). Respondent clearly violated RPC 5.5(a), and the Board so finds.

* * *

There remains the issue of discipline. The violations in this case are similar to those found in In re Sternstein, 141 N.J. 166(1995) (where the attorney was suspended for three months for gross neglect, lack of diligence and failure to cooperate with the disciplinary authorities in four matters), In re Saginario, 142 N.J. 424(1995) (where the attorney was suspended for three months for grossly

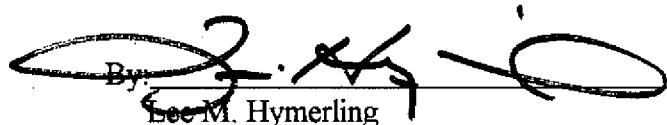
neglecting a matter by failing to file an appeal after accepting substantial payment) and In re Brantley, 139 N.J. 465(1995) (where the attorney was suspended for three months for grossly neglecting two matters and failing to cooperate with the disciplinary authorities in a third case).

In mitigation, it should be noted that respondent has no history of prior discipline.

The Board took into consideration all relevant factors, including respondent's candor regarding the Trover matter. Nevertheless, respondent's misconduct is deserving of a term of suspension. The Board unanimously determined to impose a three-month suspension, with the further requirements of proof of fitness to practice law prior to reinstatement and a proctor for a period of one year after respondent's restoration to the practice of law.

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

Dated: 11/17/96

By: 
Lee M. Hymerling
Chair
Disciplinary Review Board