SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-116

IN THE MATTER OF :
:
ARTHUR N. MARTIN, :
:
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: June 20, 1990

Decided: July 31, 1990

Steven Beckelman appeared on behalf of the District VA Ethics Committee.

Theodore V. Wells, Jr. appeared on behalf of respondent.

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

This matter is before the Board based upon a presentment filed by the District VA Ethics Committee on five separate matters. Respondent was admitted to the practice of law in New Jersey in 1973.

The Moss Matter (District Docket No. VA-87-24E)

William J. Moss retained respondent in 1981, to represent him in a civil rights action against his former employer, the United States Post Office. Disciplinary charges had been filed against Mr. Moss, who was subsequently discharged by the Post Office. An administrative hearing took place, as well as an evidentiary hearing before a magistrate. By order dated October 3, 1984, the

judge accepted the magistrate's findings and dismissed the case for failure to state a claim. Respondent failed to advise Moss of the dismissal until after February 1985. Moss was, therefore, unaware of his limited time to appeal the judge's decision, and that his potential remedies in the matter would otherwise be lost. In addition, respondent failed to tell Moss of an additional order, dated November 29, 1984, assessing costs against him.

The committee found that respondent had competently represented Moss both at his administrative proceedings and at the evidentiary hearing before the magistrate. However, the committee found that respondent had violated RPC 1.4(a), in that he failed to communicate with Moss regarding the status of the case.

The Boyer Matter (District Docket No. Va-87-28E)

Lillian and Ronald Boyer were the principal owners of Babe Trucking Company. A judgment was entered against them in an action by Mack Financial Corporation. On March 11, 1986, respondent was retained by the Boyers to represent them on an appeal of the judgment, and was given a $1,000 retainer. On April 23, 1986, respondent filed the appeal. The appeal was later dismissed for failure to prosecute. Respondent failed to tell the Boyers that the appeal had been dismissed, and also failed to tell them of a settlement offer that had been made by Mack Financial Corporation.

Respondent argued that he asked another attorney to review the case and determine whether the appeal was worth pursuing. The second attorney testified at the committee hearing that he told the

Boyers that the appeal had no merit. He testified that his impression was that Lillian Boyer indicated that the appeal should be abandoned, but he was unable to testify that she authorized withdrawal of the appeal. Respondent testified that he was under the same impression, but likewise did not recall being expressly authorized to withdraw the appeal. In addition, although respondent argued that, in late May 1986, he was told not to pursue the case, evidence presented before the committee indicated that he filed an additional document in the case, after he was allegedly told not to pursue the matter further.

The committee found that respondent violated RPC 1.3, in that he failed to protect the Boyers' interests diligently, failed to prosecute the appeal and failed to tell them that the appeal had no merit. The committee also found that respondent violated RPC 1.4(a), in that he failed to tell his clients that the appeal had been dismissed.

The Flores Matter (District Docket No. VA-87-29E)

On April 13, 1986, Herman Flores and Fausto Sotolongo, (hereinafter "the clients"), retained respondent to represent them in a pending action against the Oil/Chemical and Atomic Workers' Union. A $2,500 retainer was deducted from proceeds due Flores in another matter involving Flores' employer. Respondent informed the clients that he would account for the retainer, and would return the unused portion if the case did not go to trial. The case was voluntarily dismissed by order dated May 28, 1986. There was

conflicting testimony as to whether the clients were advised of the dismissal, and whether the dismissal was authorized. In an affidavit dated August 6, 1986, submitted to the United States District Court, the clients stated that they did not consent to the dismissal. The clients received a letter, dated September 3, 1986, from Chief Judge Fisher, stating that respondent had told him that it was respondent's impression that the clients had approved the dismissal. The clients, by letter dated September 26, 1986, requested Judge Fisher's help in getting their retainer back from respondent. Respondent received a copy of the letter. The clients thereafter filed a civil action against respondent. Out of the $2,500 retainer, $2,000 was ultimately returned on April 29, 1987, conditioned on the signing of a release to respondent.[1] The release did not prevent the clients from pursuing an ethics complaint.

The committee found that respondent violated RPC 1.15, in that respondent failed to return the balance of the retainer, and RPC 8.4(a).

The Baldwin Matter (District Docket No. VA-87-30E)

Respondent was retained to represent Louis Baldwin in an action against his former employer, the Inmont Corporation, United Technologies, and a former supervisor. The complaint alleged that respondent violated RPC 1.1(a), RPC 1.2(a), RPC 1.3, RPC 1.4(b) and RPC 8.4(a).

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[1] The clients had independent counsel in this matter.

After a full hearing, the committee determined that, although respondent's conduct in his handling of Baldwin's matter was not highly professional, his misconduct did not rise to the level of an ethical violation.

The Vines Matter (District Docket No. VA-87-31E)

Leonard Vines retained respondent to represent him before the Equal Employment Opportunities Commission. Vines made repeated attempts to contact respondent. Other than one conversation in 1987, his only contact was a form letter from respondent's office detailing respondent's summer office hours. In addition, respondent failed to respond to requests for information by the ethics investigator.

The committee found that respondent violated RPC 1.4(a), by failing to keep his client informed of the status of the case, RPC 8.1(a) and RPC 8.4(a).[2]

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are supported by clear and convincing evidence.

When retained, respondent owed his clients a duty to pursue

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[2]Although the panel report finds a violation of RPC 8.1(a), respondent was charged with and admitted a violation of RPC 8.1(b).

their interests diligently. See Matter of Smith, 101 N.J. 568, 571 (1986); Matter of Schwartz, 99 N.J. 510, 518 (1985); In re Goldstaub, 90 N.J. 1,5 (1982). The Board finds by clear and convincing evidence that, in the Boyer matter, respondent violated RPC 1.3, by failing to pursue the Boyers' appeal, and by failing to tell them he felt that the appeal had no merit. In the Flores matter, respondent violated RPC 1.15, by failing to return the retainer, and RPC 8.4(a). In the Vines matter respondent violated RPC 8.4(a) and RPC 8.1(b), by failing to respond to requests for information by the ethics investigator.

The Board agrees with the committee's finding that in three matters-- Moss, Boyer, and Vines-- there was a violation of RPC 1.4(a). An attorney's failure to communicate with his clients diminishes the confidence the public should have in members of the bar. Matter of Stein, 97 N.J. 550, 563 (1984).

The Board also agrees with the committee's conclusion that the Baldwin matter should be dismissed.

The remaining question is the appropriate quantum of discipline. In Matter of Grabler, 114 N.J. 1 (1989), the attorney was suspended for a period of one year, after a finding of gross neglect in four matters, failure to communicate in two matters, and misrepresentation of the status of cases to two clients, as well as recordkeeping violations. The attorney in Grabler had no prior discipline.

In Matter of Getchius, 88 N.J. 269 (1982), the attorney was found guilty of neglect, failure to communicate, failure to act

competently, misrepresentation of the status of cases, and failure to carry out contracts of employment in six matters. The Court held that a suspension of two years was the appropriate measure of discipline. The Court noted that "[t]he picture presented is not that of an isolated instance of aberrant behavior unlikely to be repeated. Respondent's conduct over a period of years has exhibited a "pattern of negligence or neglect in his handling of legal matters." Matter of Getchius, supra, at 276, citing In re Fusciello, 81 N.J. 307, 310 (1979).

In the matter currently before the Board, respondent's misconduct, like that of the attorney in Getchius, is not an isolated incident, nor was that the case in his earlier appearance before the Board.[3] This fact leads to the Board's conclusion that respondent's actions were not an aberration, but a pattern of behavior.

The purpose of discipline, however, is not the punishment of the offender but "protection of the public against an attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." Matter of Getchius, supra, citing In re Stout, 76 N.J. 321, 325 (1978). The severity of the discipline to be imposed must comport with the seriousness of the ethical infraction in light of all the relevant circumstances.

In determining the quantum of discipline to be imposed, the Board

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[3]Respondent received a six-month suspension on March 23, 1990, for misconduct in seven matters.

has taken into account respondent's prior six-month suspension from practice, by order of the Supreme Court dated March 23, 1990. The Board unanimously recommends that respondent be suspended for an additional six months, to run consecutive to the six-month suspension he is already serving. In addition, the Board agrees with the committee's conclusion that there were "serious indications of what must be considered as indifference to not only his clients, but to the courts demonstrating a continuing inability to properly manage the affairs of his clients and to communicate with them" (Panel Report at 19). Accordingly, upon reinstatement, the Board recommends that respondent be required to practice under the supervision of a proctor, approved by the Office of Attorney Ethics, for a period of six months.

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

Dated: 7/23/90 By: Raymond R. Trombadore
Chair
Disciplinary Review Board