SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-314

IN THE MATTER OF

RICHARD ONOREVOLE

AN ATTORNEY AT LAW

Decision

Argued: December 21, 2000

Decided: May 29, 2001

John C. Whipple appeared on behalf of the District X Ethics Committee.

Respondent appeared pro se.

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

This matter was before us based on a recommendation for discipline filed by the District X Ethics Committee ("DEC"). A four-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with client) and RPC 7.1 (making false or misleading communications about

the lawyer's services, or any matter in which the lawyer has or seeks a professional involvement).

Respondent was admitted to the New Jersey bar in 1983. He maintains a law office in Lake Hiawatha, New Jersey.

In 1994 respondent received an admonition for gross neglect, lack of diligence and failure to communicate with a client. In the Matter of Richard Onorevole, Docket No. DRB 94-294 (November 2, 1994). In 1996 respondent was reprimanded for gross neglect, lack of diligence, failure to communicate with a client, failure to cooperate with ethics authorities and conduct involving a misrepresentation to his client. In re Onorevole, 144 N.J. 477 (1996).

Respondent admitted the allegations of the complaint. At the DEC hearing, the presenter relied solely on the formal ethics complaint and respondent's answer. Respondent provided little additional insight into the matter by way of his testimony.

The undisputed facts are as follows:

In early December 1977, William A. Schmolze, the grievant, consulted with respondent about a defect in his sports utility vehicle. Several weeks thereafter, Schmolze formally retained respondent. In the interim, on December 10, 1997, respondent wrote to GMC, placing the company on notice that Schmolze's vehicle was defective. GMC replied to respondent's letter, offering to repair the vehicle. Despite the attempts at repair, Schmolze continued to experience a "drifting" problem when he applied the brakes.

Respondent then sent a second certified letter to GMC on February 11, 1998, which was received on February 20, 1998, demanding that GMC deem the vehicle a "lemon" under the "Lemon Law." The letter imposed a deadline of February 26, 1998 for the company to remedy the problem. The letter further stated that, if the problem was not remedied, respondent would proceed with a "lemon law" claim through the New Jersey Attorney General's Office.

The imposed deadline of February 26, 1998 passed without a response from GMC. Thereafter, respondent waited until April 13, 1998 to request a "lemon law" dispute resolution application from the Division of Consumer Affairs. According to respondent, he completed the application on May 21, 1998, but did not file it with the Lemon Law Unit of the Office of Consumer Protection until a year later, May 6, 1999. Respondent provided no explanation for this long delay.

During that one-year period, Schmolze telephoned respondent on numerous occasions, in an attempt to determine the status of his case. Respondent told Schmolze that the application had been filed and that the matter was proceeding appropriately. In fact, he had not even filed the claim.

In February 1999, Schmolze contacted the Division of Consumer Affairs, Lemon Law Unit, and was informed that an application had never been filed in his behalf. Schmolze then filed the application himself. However, by letter dated May 13, 1999, the Division of Consumer Affairs, Office of Consumer Protection, Lemon Law Unit, informed

Schmolze that his vehicle was no longer eligible for relief under New Jersey's Lemon Law, N.J.S.A. 56:12-29 et seq. The letter explained that Schmolze's complaint was rejected because (1) his application was filed more than one year after the demand letter was received by the manufacturer and (2) the vehicle's mileage greatly exceeded the 18,000 mile mark. The letter further informed Schmolze that, even though that office could not accept his application, he was not necessarily foreclosed from pursuing a private legal action through the courts or attempting to pursue an informal dispute settlement procedure with the manufacturer.

The DEC found that respondent cooperated fully with the investigation, did not deny the allegations and that the record supported the violations alleged in the complaint. The DEC, therefore, found violations of RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 7.1.

In recommending the appropriate discipline for this matter, the DEC considered respondent's ethics history. The DEC mistakenly believed that respondent had twice before been discipline for violations of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). However, only one of respondent's prior ethics infractions involved such a violation. The DEC, thus, improperly considered this as respondent's third violation of RPC 8.4(c) (treating RPC 7.1 as an RPC 8.4(c) violation) and initially determined that a brief suspension might be warranted. In mitigation, the DEC considered respondent's personal history, including (1) his service to his community since he opened a solo practice in Lake Hiawatha, in May 1988; (2) his service as a Rotarian, since 1985; (3) his service as

the public defender in Parsippany for six years; and (4) as one of only two attorneys in a "less-than-affluent community," his frequent pro bono representation of clients. The DEC also considered that respondent was the family's primary source of income and that he had three young children, ages five through twelve.

The DEC remarked that respondent provided no explanation, in the form of a personal or professional conflict in his life from May 1998 until May 1999, that would explain his lack of attention to the matter. The DEC's concern about respondent's pattern of unprofessional conduct and its belief that respondent's conduct needed to be strongly addressed in order to protect the interests of the public were tempered by its concern over the impact a suspension would have on respondent, his family and his profession. Because the DEC learned that one-month suspensions are never imposed in disciplinary matters, it recommended a reprimand..

* * *

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The DEC properly found that respondent's conduct included violations of RPC 1.1(a), RPC 1.3 and RPC 1.4. As to RPC 7.1, we find that respondent's conduct more

properly falls within RPC 8.4(c) (misrepresentation to the client about the status of the matter). Although the complaint does not specifically cite RPC 8.4(c), it alleges facts that would have put respondent on notice of a finding of a potential violation of that rule.

In cases dealing with misrepresentations to clients about the status of their cases, often accompanied by gross neglect and/or lack of diligence and failure to communicate, the appropriate degree of discipline is generally a reprimand. See, e.g., In re Horton, 132 N.J. 266 (1993) (reprimand for lack of diligence, failure to communicate, failure to provide sufficient information to allow a client to make informed decisions about the representation and misrepresentation; attorney allowed an appeal to be procedurally dismissed, based on his belief that he could not win the appeal, first allowing his client to believe that the appeal was pending and then attempting to mislead the client that the appeal had been dismissed on the merits); In re Martin, 120 N.J. 443 (1990) (public reprimand imposed where attorney displayed a pattern of neglect in five matters, in addition to misrepresenting to one client that the case was pending, when the attorney knew that the case had been dismissed; attorney was also grossly negligent in allowing the matter to be dismissed) and In re Cervantes, 118 N.J. 557 (1990) (public reprimand where attorney failed to pursue two workers' compensation matters, exhibited a lack of diligence and failed to keep the clients reasonably informed of the status of the matter; in one matter, the attorney misrepresented the status of the case).

More recently, the court has reiterated its position that discipline no harsher than a reprimand is appropriate where, as here, an attorney exhibits gross neglect, lack of diligence and misrepresentation in a single matter. In re Riva, 157 N.J. 34 (1999).

Although respondent had no explanation or excuse for neglecting his client's matter for one year or for misrepresenting to the client that the matter was proceeding apace, he cooperated with the DEC investigation and admitted all of the allegations of the complaint. We also noted that this is respondent's third ethics transgression. As a result, six members of the Board voted to impose a reprimand, warning respondent that any further transgression will be met with more serious discipline. One member voted for a three-month suspension. Two members did not participate.

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

Dated: May 29 2001

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Richard Onorevole
Docket No. DRB 00-314

Argued: December 21, 2000

Decided: May 29, 2001

Disposition: Reprimand

Members	Disbar	Three-month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Peterson			X				
Boylan			X				
Brody		X					
Lolla			X				
Maudsley							X
O'Shaughnessy			X				
Schwartz							X
Wissinger			X				
Total:		1	6				2

Robyn M. Hill 7/25/01
Robyn M. Hill
Chief Counsel