

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-124

IN THE MATTER OF
LAWRENCE MAGID
AN ATTORNEY AT LAW

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Decision

Argued: July 20, 2000

Decided: December 20, 2000

Thomas Gosse appeared on behalf of the District IV Ethics Committee.

Respondent waived appearance for oral argument.

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 by the District IV Ethics Committee ("DEC"). Counts one and two of the complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 1.16(b) (a lawyer may withdraw from representation of client if it can be accomplished without material adverse effect on the

interests of the client) and RPC 1.16(d) (upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests). Count two also charged respondent with a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1969. He currently lives and practices law in the State of Arizona. He received a reprimand in 1995, following a conviction for simple assault. In re Magid, 139 N.J. 449 (1995).

Respondent did not appear at the DEC hearing, although his counsel was present. The record consists primarily of respondent's admissions to the allegations of the complaint, an unsigned stipulation of facts (exhibit R-1) and brief testimony from an investigator from the Office of Attorney Ethics ("OAE") and also one of the grievants.

The Hansen Matter

Count one relates to respondent's representation of Deborah A. Hansen, who retained him in May 1994 for representation in administrative and court proceedings in connection with her removal from the position of Deputy Compact Administrator for the New Jersey Department of Corrections. Hansen was discharged for allegedly engaging in a relationship with a former inmate, who was out on parole. The former inmate, Neal Hunterson, is the grievant in count two. Hansen was charged with a violation of N.J.A.C. 4A:2A-2.3(a)6 and N.J.A.C. 4A:2-2.3(a)9, as well as Human Resources Bulletin 84-17,D.4, which prohibits the

improper or unauthorized contact with an inmate and undue familiarity with inmates, parolees, their families or friends.

On May 16, 1994, the Department of Corrections notified Hansen that she was being placed on administrative leave with pay, pending an investigation. Thereafter, a hearing was scheduled. Respondent telephoned Hansen's "fiancé," Hunterson, looking for Hansen. According to the stipulation, Hunterson informed respondent that Hansen was unable to attend the hearing because she had been drinking. Therefore, the initial hearing was "waived." The stipulation does not state who made that decision.

On May 27, 1994, Hansen was found guilty of the charges and suspended without pay, effective May 25, 1994. A disciplinary appeal hearing was scheduled for June 17, 1994. On June 8, 1994, respondent wrote to Hansen asking her to contact him to prepare for the hearing. Respondent requested an additional \$2,000 in legal fees.

On June 10, 1994, respondent attempted to obtain discovery and prepare the witnesses for the hearing. When a dispute developed over the discovery, the hearing was postponed until respondent could file an interlocutory appeal with the Merit System Board. It was later determined that the discovery issues should be raised on final appeal.

The stipulation also stated that, due to Hansen's "condition," respondent waived the hearing scheduled for August 10, 1994. The stipulation does not detail Hansen's condition.

Thereafter, on August 12, 1994, a Final Notice of Disciplinary Action was issued. Effective May 25, 1994, Hansen was removed from her position as Deputy Compact

Administrator of the Department of Corrections. Respondent filed an appeal on August 19, 1994. A final hearing was to be held at "a future date."

By letter dated February 9, 1995, respondent notified Hansen about a settlement conference scheduled for February 21, 1995. The letter also informed Hansen that the Department of Corrections would not agree to reinstate her, although it would allow her to resign. At Hansen's request, the settlement conference was waived.

By letter dated March 20, 1995, respondent informed Hansen that her disciplinary hearing was scheduled for April 11, 1995. He requested that she contact him to schedule an appointment. The hearing date was subsequently adjourned, presumably so that respondent and the deputy attorney general ("DAG") could address discovery issues.

On September 5, 1995, a psychiatrist informed respondent that Hansen was being treated for a severe disorder that required psychotropic medication and, in addition, rendered her incapable of participating in the pending hearing. Respondent immediately notified the administrative law judge ("ALJ") of Hansen's inability to proceed in the matter.

On September 7, 1995, the DAG requested that the ALJ transfer the Hansen matter to the inactive list, because of Hansen's disability. Because Hansen's psychiatric condition prevented her from testifying, as of December 7, 1995 the matter was moved to the inactive list.

In July 1996, while the matter was still on the inactive list, respondent moved to Arizona. The formal ethics complaint charged that respondent unilaterally ceased

representing Hansen, an allegation that respondent denied in his answer. Respondent admitted only that he moved to Arizona in July 1996, at the time the Hansen matter was on the inactive list. Respondent's answer also denied that he failed to inform Hansen of his whereabouts and of his intentions regarding her representation, and that he had no further contact with her. The complaint also alleged that, after Hansen learned of respondent's location, she made numerous attempts to contact him. Although the OAE investigator testified that respondent had admitted those allegations, respondent's answer denied the charges.

According to the stipulation, on May 1, 1997, the ALJ told respondent, the DAG and Hansen that, unless Hansen was prepared to move forward, he would dismiss her case without prejudice. On May 14, 1997, respondent notified the ALJ that he was living in Arizona, was no longer an active New Jersey attorney and could not continue to represent Hansen. Respondent also indicated that he would file a motion to be relieved as counsel. On June 23, 1997, the ALJ gave respondent thirty days to file such a motion. On August 18, 1997, when respondent did not act, the DAG informed the ALJ that the thirty day-period had expired. The DAG also indicated that he had received the June 20, 1997 letter from Hansen's physician, stating that she was still being treated and, therefore, unable to participate in the proceedings. The DAG requested that the case be dismissed without prejudice.

As of his May 1997 letter, respondent had no further contact with the court or with the DAG. As a result, on October 15, 1997, the ALJ sua sponte removed respondent as counsel for Hansen and gave her sixty days to obtain new counsel. Respondent received a copy of the letter, but failed to reply. When Hansen was unable to comply with the ALJ's directive, she obtained a sixty-day extension to retain new counsel. The record is silent on what happened thereafter.

The Hunterson Matter

Count two of the complaint involved respondent's representation of Neal Hunterson. Hunterson retained respondent in September 1994, after he was arrested for possession of marijuana with intent to distribute. At that time Hunterson was on parole. Hunterson hired respondent to defend him against the criminal charges and the revocation of his parole because of the arrest.

From September 1994 through September 1995, respondent diligently represented Hunterson in numerous proceedings, including parole revocation hearings and appeals. Problems with respondent's representation only arose in 1996.

According to the complaint, in January 1996, respondent told Hunterson that he was going to Arizona on vacation and asked Hunterson to file an appeal pro se, in order to have the matter docketed. The complaint further stated — and respondent admitted — that he told Hunterson that he would file an emergent application with the Appellate Division for a writ

of habeas corpus, using the same docket number. In his answer to the complaint, respondent admitted that he had not filed the emergent application, claiming that Hunterson had failed to "perfect his appeal." Instead, Hunterson had filed an emergent application for leave to appeal the Parole Board's determination on January 19, 1996. The Appellate Division, however, denied Hunterson's application on January 22, 1996, declining to find it "emergent," since the period of parole ineligibility had not yet been determined.

On January 24, 1996, the Parole Board decided that Hunterson had to serve a five-year period of parole ineligibility. On February 23, 1996, Hunterson filed a pro se notice of motion for leave to appeal, which the court found to be incomplete.

On July 7, 1996, either respondent or Hunterson moved before the Parole Board to reopen Hunterson's appeal. On August 5, 1996, the Parole Board denied Hunterson's motion and sustained the five-year parole ineligibility period. The Parole Board advised Hansen that he had exhausted his administrative remedies and that, if he wished to pursue the matter further, he would have to file an appropriate application with the Appellate Division. The complaint alleged — and respondent admitted — that he assured Hunterson that he had prepared a notice of motion for leave to appeal, request for emergent relief, writ of habeas corpus and request for a stay of the Parole Board's order that were ready to be filed upon receipt of the Board's written decision, but that were not filed.

Respondent denied that he had ever promised Hunterson that he would file civil complaints in federal and state courts, as alleged in the complaint. Respondent admitted,

however, returning to New Jersey in September 1996 and visiting Hunterson at the Leesburg Farm, where he was incarcerated. He also admitted giving Hunterson a copy of a complaint he had prepared against, among others, the New Jersey State Parole Board, to be filed in federal court. According to respondent's answer, he had advised Hunterson that he would not represent him in the matter and that Hunterson had to either find a new attorney or proceed pro se. Hunterson apparently agreed to file the complaint on a pro se basis. Respondent further admitted that he agreed to file a state court complaint for the sole purpose of tolling the statute of limitations. He filed the complaint on October 3, 1996. According to respondent's answer, it was his and Hunterson's clear understanding that respondent would not proceed with the matter and that Hunterson would obtain a new attorney. The case was dismissed on April 18, 1997 for lack of prosecution. Respondent acknowledged that he knew the matter had been dismissed. He also acknowledged that he did not communicate with Hunterson about the state claim, after he had filed it.

On November 25, 1996, the federal court determined that Hunterson's federal claim was a hybrid claim, containing both a request for habeas corpus relief and for damages. The request for habeas corpus relief was dismissed without prejudice until all state remedies were exhausted. The claim for damages was also stayed, pending the exhaustion of all state remedies. Respondent never filed the notice of motion for leave to appeal and writ of habeas corpus. At first, he told the OAE investigator that a motion was not filed because Hunterson's appeal was never filed. Later, he admitted that he knew that Hunterson had

filed the appeal, but believed that it had been dismissed. According to the stipulation, respondent contacted four or five New Jersey attorneys to take over Hunterson's case. Respondent was unable to recall the names of these attorneys. The complaint further alleged that respondent gave the OAE investigator the name of one attorney who could not be located in the "records of the Office of Attorney Ethics."

Respondent admitted that he unilaterally ceased all communication with Hansen and Hunterson after November 1996 and failed to return their telephone calls and letters.

* * *

The DEC found violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 1.16(d). The DEC found no evidence that respondent had violated RPC 8.4(c). Also, the DEC did not find a violation of RPC 1.16(b), reasoning that respondent's withdrawal from the representation of his clients did not result in any material adverse effect on their interests.

The DEC recommended the imposition of a reprimand.

* * *

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

In both the Hansen and Hunterson matters, it appears that problems arose only after respondent moved to Arizona. It can be gleaned from the stipulation and respondent's admissions that, up until that time, he had done a significant amount of work for both clients.

The Hansen matter became inactive due to her mental condition in September 1995. Respondent denied that he failed to "leave word" as to his whereabouts. He did, however, admit that, when he moved to Arizona, he unilaterally ceased representing Hansen. Respondent informed the ALJ that he was no longer active in New Jersey, could no longer represent her and would file a motion to be relieved as counsel. When respondent failed to file the motion, the ALJ removed him from the case sua sponte. Thus, Hansen was not harmed by respondent's failure to file the motion. Nevertheless, respondent's conduct violated RPC 1.16(d). This rule provides as follows:

Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interest, such as giving reasonable notice to the client, allowing time for employment of other counsel, surrendering papers and property to which the client is entitled and refunding any advance payment of fee that has not been earned. The lawyer may retain papers relating to the client to the extent permitted by other law.

Here, respondent failed to take steps necessary to protect his client's interests, in that he did not give her reasonable notice of his departure to allow her to retain other counsel. She was, therefore, required to request an extension from the ALJ to retain new counsel.

There is no evidence in the record, however, that there was any material adverse effect on Hanson from respondent's withdrawal from her case. We, therefore, dismissed the charge of a violation of RPC 1.16(b). Similarly, there is no evidence in the record that, prior to respondent's move, he neglected this client or failed to act with reasonable diligence and promptness in representing her. Thus, there is no evidence of violations of RPC 1.1(a) or RPC 1.3 and these charges, too, are dismissed.

In Hunterson, respondent did a significant amount of work in his client's behalf. Before respondent left for Arizona, he advised Hunterson to take certain actions pro se, notified him that he was leaving New Jersey and even visited him in prison. Based on this record, we are unable to conclude that respondent's conduct involved gross neglect. However, respondent's failure to file an appeal, as promised to his client, was a violation of RPC 1.3 (lack of diligence).

The DEC properly dismissed the charge of a violation of RPC 8.4(c). Not only is there no specific basis for this charge, but there was no clear and convincing evidence that respondent made any misrepresentations.

As to the charge of RPC 1.16(d), respondent admitted preparing a complaint for Hunterson's federal and state claims. He also alleged that he informed Hunterson that he would not continue representing him and that it was "up to him" to find a new attorney or to proceed pro se. Hunterson's grievance (exhibit P-2) and his September 4, 1996 letter to

respondent (exhibit P-3) show that Hunterson knew that respondent did not intend to continue representing him in the matter.

After respondent's move, he did not take the necessary steps to protect his client's interests. In fact, respondent admitted that he stopped communicating with Hunterson after November 1996. Although no evidence was presented to establish that respondent's withdrawal had a material adverse effect on Hunterson, in violation of RPC 1.6(b), it is unquestionable that respondent's failure to properly withdraw from the case violated RPC 1.16(d).

Finally, respondent's admission that he stopped all communications with both clients after November 1996 violated RPC 1.4(a).

Respondent's conduct, thus, included violations of RPC 1.16(d) and RPC 1.4(a) in both matters and a violation of RPC 1.3 in Hunterson.

Generally, cases involving similar types of misconduct have resulted in discipline ranging from an admonition to a reprimand. See In the Matter of Antoinette Clarke Forbes, Docket No. DRB 98-331 (October 21, 1998) (admonition for violations of RPC 1.4(a) and RPC 1.16(d), where attorney failed to reply to inquiries about the representation and failed to promptly return retainer and turn over file) and In re Fox, 154 N.J. (1998) (reprimand where attorney neglected fourteen collection cases and failed to protect clients' interests upon termination of representation).

Once respondent moved to Arizona, he ignored the interests of his clients, failed to communicate with them and failed to file motions to be relieved as counsel in both matters. Eight members, therefore, voted to impose a reprimand. One member voted to impose an admonition.

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

Dated: 12/20/00

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

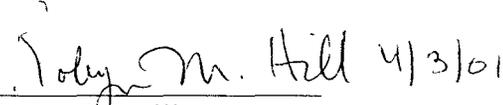
**In the Matter of Lawrence Magid
Docket No. DRB 00-124**

Argued: July 20, 2000

Decided: December 20, 2000

Disposition: Reprimand

Members	Disbar	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:			8	1			


Robyn M. Hill
Chief Counsel