

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-026

IN THE MATTER OF
EUGENE M. LAVERGNE,
AN ATTORNEY AT LAW

Decision

Argued: May 11, 2000

Decided: September 18, 2000

Brian Gillet appeared on behalf of the Office of Attorney Ethics.

Robert A. Weir, Jr. appeared on behalf of respondent.

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

This matter was before us based upon a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE").

Respondent was admitted to the New Jersey bar in 1990. Since 1993, respondent has maintained an office at various locations in Monmouth and Ocean Counties. He has no history of discipline.

The Kamberogiannis Matter - (District Docket No. XIV-98-008E)

On or about December 29, 1997 Arthur and Sandra Kamberogiannis filed an ethics grievance with the District IX Ethics Committee (“DEC”), alleging that respondent failed to pay off a mortgage on their newly purchased home.

Closing took place on October 31, 1997. An attorney in respondent’s office, William Gage, covered both closings for respondent. On November 3, 1997, Gage reminded respondent of the pay-off of the Russo mortgage and provided a pay-off letter the following day. Over the next several months, Gage made repeated written and telephonic requests for respondent to pay off the mortgage. Respondent did not do so until more than two months later, on January 13, 1998.

Respondent stipulated a violation of RPC 1.3 (lack of diligence).

The Hussey Matter (District Docket No. XIV-98-008E)

In 1997, Robert Hussey was convicted of a weapons offense and sentenced to a seven-year jail term. On April 21, 1997, shortly after sentencing, Hussey retained respondent to file a motion for a reduction or modification of his sentence and for a consent order extending the time to file an appeal of the sentence. Hussey paid respondent a \$2,250 retainer. On May 29, 1997, respondent filed the motion, which was denied on or about June 27, 1997. Thereafter, Hussey retained respondent to appeal the conviction and the denial of the motion for a sentence reduction and to seek bail pending the appeal. Hussey paid respondent a \$5,000 retainer in two installments.

Hussey urged respondent to file the appeal and to seek bail, sending several letters to respondent and calling him from jail. Respondent, however, never filed the appeal or sought bail. In fact, the appeal was ultimately filed on March 30, 1998 by the Office of the Public Defender.¹

Respondent stipulated violations of RPC 1.3 (lack of diligence) and RPC 1.4(a) and (b) (failure to communicate with the client).

Although respondent was not charged with a violation of RPC 8.4(c) for misrepresenting to Hussey the status of the appeal, the stipulation contains the following admission at paragraph seventeen:

Respondent never filed the appeal, though he told Mr. Hussey that the appeal was complete which led the Husseys to believe that it was actually filed with the Appellate Division.

The Wharton/Lyon & Lyon Employment Matter (District Docket No. XIV-98-009E)

In or about December 1994, Thomas Lowe retained respondent to represent him in an employment discrimination case against his employer, Wharton/Lyon & Lyon (“Wharton”). The case proceeded apace until March 1996, when Wharton’s attorney filed a motion to dismiss the complaint, which respondent did not contest. On May 29, 1996, the

¹Respondent later had to refund the entire unearned retainer pursuant to a fee arbitration award.

court dismissed Lowe's complaint without prejudice. Respondent never notified Lowe that the motion to dismiss had been filed or that the case had been dismissed.

Thereafter, respondent took no significant action in the case. In July 1997, Lowe terminated the representation and retained new counsel. Between July and October 15, 1997, Lowe and his new attorney made repeated requests to respondent for the return of his file. Respondent failed to return the file. On October 15, 1997, Lowe's new counsel filed an order to show cause to compel the release of the file. Between October 20 and November 3, 1997, the return date on the order to show cause, Lowe's counsel made several more unheeded requests for the file. On November 14, 1997, the court entered an order directing respondent to turn over the file within two days. Respondent still did not do so. Finally, on or about November 19, 1997, Lowe's counsel filed a second order to show cause why respondent should not be held in contempt of court for his failure to comply with the court's prior order to turn over the files.

On or about December 8, 1997, respondent released some files to Lowe. Believing that certain documents had not been provided, Lowe's counsel requested the court to hold respondent in contempt, issue a warrant for his arrest and compel the production of the complete files. Ultimately, respondent was, in fact, arrested. After a hearing, the judge satisfied with respondent's compliance with the order and vacated the arrest warrant.

Respondent admitted violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), RPC 1.16(d) (failure to

surrender papers and property to the client) and RPC 8.4 (d)(conduct prejudicial to the administration of justice).

The Tvrdik v. Tvrdik Matter (District Docket No. - XIV-98-218E)

In June 1997, Edward J. Tvrdik retained respondent to represent him in a divorce action. Respondent prepared a case information statement and an answer to a complaint for divorce previously filed by Tvrdik's wife. Although the answer was due by July 28, 1997, respondent never filed the answer or case information statement.

On or about July 30, 1997, Karen Tvrdik's counsel filed a request to enter a default, which was granted. On October 2, 1997, respondent filed a motion to vacate the default, which was granted on October 29, 1997. The order vacating the default required respondent to file an answer within ten days of the entry of the order. Respondent did not do so.

On November 19, 1997, Tvrdik's wife filed another motion for the entry of default and for pendente lite support. Respondent did not oppose the motion, which was granted on or about December 9, 1997. Included in the relief granted by the Court was the requirement that Tvrdik make support payments of \$254 per week. Respondent never told Tvrdik about the motion or the order. Tvrdik became aware of them, for the first time, when the Monmouth County Probation department contacted him about the support payments, on or about December 15, 1997. Tvrdik then retained new counsel.

Respondent stipulated violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) and (b) (failure to communicate with a client).

The Charterina Adoption (District Docket No. XIV-98-218E)

In early November 1996, Julian and Mary Charterina retained respondent to represent them in connection with the private adoption of a child that was due to be born in late August or early September 1997. The child was born on September 1, 1997 and released to the Charterinas the following day.

For the next six months the Charterinas took no action to complete the adoption, relying on respondent's advice that there was a six-month waiting period during which the birth parents could reclaim the child. Once that waiting period was over, the Charterinas attempted unsuccessfully to obtain a social security card and birth certificate for the child. It was then that they found out, for the first time, that respondent had not even filed for the adoption.

On or about April 1, 1998, the Charterinas retained new counsel, who repeatedly asked respondent for information about the case. Respondent failed to reply to counsel's inquiries. In fact, the new attorney was compelled to start the process anew, including obtaining new affidavits of consent from the birth parents.

Respondent stipulated violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4 (a) (failure to communicate with the client).

The Nielsen v. Powers Matter (District Docket No. XIV-98-011E)

In or about August 1996, respondent settled a legal malpractice case for his clients, the Niensens, for \$120,000. Although the record is not clear, it appears that the subject matter of the malpractice case was a personal injury action. At least three doctors had letters of protection in the case and, therefore, liens against the settlement proceeds. Respondent, however, failed to notify the doctors of the settlement or to satisfy their bills. The record is clear that no misappropriation of client funds, either negligent or knowing, occurred. Respondent admitted violations of RPC 1.15(a) (safekeeping property) and RPC 1.15(b) (notification to third persons).

The Vastano Matter (District Docket No. XIV-98-143E)

On or about March 10, 1994, respondent took over the representation of Anthony and Geraldine Vastano in a foreclosure action involving a business property that they owned. On the eve of trial, June 21, 1995, the matter settled. In early November 1995, the Vastanos and respondent became embroiled in a fee dispute. By letter dated December 2, 1995 respondent terminated the representation and agreed to forward the file to the Vastanos' new counsel. He never sent the files, however.

Respondent admitted a violation of RPC 1.16(d).

The Patric J. Lynch Matter (District Docket No. XIV-99-129E)

On or about July 8, 1997, Patric J. Lynch retained respondent to represent him in connection with injuries sustained in a subway accident in New York City. Between July 1997 and July 1998, Lynch spoke with respondent and/or his office staff on several occasions to update respondent on his medical condition, which had apparently deteriorated. Lynch underwent unspecified surgery for his injuries in early July 1998. From then until September 30, 1998, Lynch set up numerous appointments to see respondent and placed phone calls to respondent's office seeking information on the progress of his case. Respondent canceled all appointments and did not return Lynch's telephone calls.

Eventually, Lynch discharged respondent and requested the release of his file. For the next six months, respondent failed to release Lynch's file. Then, by letter dated April 6, 1999, respondent represented to Lynch and to the OAE that he would return the Lynch file. He did not do so until July 29, 1999. The OAE forwarded the file directly to Lynch on August 2, 1999. However, because respondent had failed to file a mandatory notice of claim with the Metropolitan Transportation Authority and to file suit within the one-year statute of limitations, Lynch lost his claim.

Respondent admitted violations of RPC 1.1(a) (gross neglect), RPC 1.3(lack of diligence), RPC 1.4 (failure to communicate with client) and RPC 1.16(d) (failure to surrender the client's file upon termination of the representation).

* * *

In addition to the violations above, there were several other stipulated ethics infractions. First, respondent stipulated a pattern of neglect, in violation of RPC 1.1(b), for his misconduct in the Kamberogiannis, Hussey, Wharton, Tvrdik, Charterina and Lynch matters. Second, on January 8, 1998, the OAE conducted a demand audit of respondent's trust and business account records. The audit revealed several recordkeeping deficiencies, including a failure to maintain client ledger cards, failure to maintain trust and business account receipts and disbursement journals and failure to perform quarterly reconciliations. Respondent admitted violations of R. 1:21-6 and RPC 1.15(d) (recordkeeping).

* * *

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

The only issue is the appropriate degree of discipline for respondent's stipulated misconduct. Altogether, respondent mishandled eight matters. He exhibited lack of diligence in six matters, failure to communicate in five, gross neglect in four and failure to turn over the file upon termination for the representation in three. He also violated RPC 1.15(a) and (b) in one matter and RPC 8.4(d) in one matter, displayed a pattern of neglect,

in violation of RPC 1.1(b), and had several recordkeeping deficiencies, in violation of R. 1:21-6 and RPC 1.15(d).

Lastly, respondent stipulated that he led Hussey to believe that his appeal had been filed, when it had not. “In some situations, silence can be no less a misrepresentation than words.” Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984). Respondent’s conduct constituted misrepresentation by silence. Moreover, although respondent was not specifically charged with a violation of RPC 8.4(c), he agreed to each and every fact contained in the stipulation. He had, therefore, sufficient notice of the alleged improper conduct and of the potential violation of that RPC. Also, respondent did not object to the admission of those facts in the record. In light of the foregoing, we find a violation of RPC 8.4(c).

After consideration of the relevant circumstances, including the number of cases and the extent of respondent’s misconduct, a six-member majority determined to impose a six-month suspension. See In re Pollan, 143 N.J. 306 (1996) (six-month suspension for misconduct in seven matters, including gross neglect, pattern of neglect, failure to communicate, failure to return client file upon termination of representation, misrepresentation and failure to cooperate with the ethics authorities.)

Two members would have imposed a three-month suspension. One member did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 9/18/00

A handwritten signature in black ink, appearing to read "L. M. Hymerling", written over a horizontal line.

LEE M. HYMERLING

Chair

Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Robert A. Weir, Jr.
Docket No. DRB 00-026**

Argued: May 11, 2000

Decided: September 18, 2000

Disposition: Six-month suspension

Members	Disbar	Six-month Suspension	Three- month Suspension	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:		6	2				1

Robyn M. Hill 4/10/01
Robyn M. Hill
Chief Counsel