SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-295

IN THE MATTER OF :
:
E. EDWARD BOWMAN :
:
AN ATTORNEY AT LAW :

Decision

Argued: November 20, 2003

Decided: February 3, 2004

Robert A. Porter appeared on behalf of the District IV Ethics Committee.

Carl D. Poplar 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 on a recommendation for discipline filed by the District IV Ethics Committee ("DEC"), following respondent's misconduct in six client matters. In February 2001, respondent and the Office of Attorney Ethics ("OAE") entered into a stipulation of facts, and a stipulation of discipline by consent. We considered the motion for discipline by consent at our June 2001 meeting. Respondent and the OAE sought the imposition of a reprimand, with which we agreed. The Court, however, in November 2001, rejected the tendered consent to discipline and remanded the matter to us for further action. The order stated that the Court had "determined based on the record presented that acceptance of the discipline recommended [was] not warranted." We, in turn, remanded the case to the OAE. Our letter to

the OAE stated: "[s]ince the Board gave great weight to the mitigating factors present here, it might be helpful to the future determination of this matter if, upon its return to the Board, those factors could be more fully developed by your office." The DEC hearing, therefore, focused on the issue of mitigation.

Respondent was admitted to the New Jersey bar in 1984. During the relevant period, he was a partner at Gruccio, Pepper, Giovinazzi, DeSanto & Farnoly ("Gruccio Pepper") in Vineland, Cumberland County. He is currently engaged in practice with a law firm in Bridgeton, Cumberland County. He has no history of discipline.

COUNT ONE (Smith)

Respondent began representing Justin C. Smith, Jr. on or about February 23, 1995, in an age discrimination claim. He failed to file a complaint in Smith's behalf and missed the statute of limitations. Over the course of several years, Smith telephoned respondent to inquire about the status of his case. Respondent misrepresented to him that the case was pending.[1]

Respondent stipulated that he violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation).

COUNT TWO (Giovinazzi I)

On or about May 7, 1991, Charles Giovinazzi leased a computer system from AllData Corporation, which he financed through Eaton Financial ("Eaton"). Giovinazzi defaulted in his payments and retained respondent to represent him in defense of the collection action, filed on

[1] Smith contended that respondent told him that his case had been settled for $780,000 ($530,000 in settlement and $250,000 to pay income taxes). Respondent, on the other hand, recalled telling Smith that he thought the matter had substantial value, but did not recall telling him that the case had settled for a specific sum. The hearing panel did not make a factual finding on this issue.

September 15, 1992. On or about August 29, 1995, Eaton filed a motion for summary judgment. Respondent did not oppose the motion, and judgment in the amount of $17,719.09 was granted in favor of the plaintiff on September 29, 1995.

There was no indication in respondent's file or elsewhere that he told Giovinazzi that judgment had been entered against him. Sometime thereafter, in discussing the case with Giovinazzi, respondent learned that AllData was a viable company and realized that he should have joined AllData as a party to the action. Respondent then began to misrepresent the status of the matter to his client. At one point, respondent told Giovinazzi that Eaton would settle the matter for $2,000, although he had no such agreement with Eaton. In fact, that statement was false and respondent knew it to be false at the time he made it. On May 26, 1998, Giovinazzi gave respondent $2,000, payable to Gruccio Pepper's trust account, in settlement of the Eaton collection case. On June 12, 1998, Gruccio Pepper forwarded the $2,000 payment to Eaton. Respondent then made several payments to Eaton from his personal funds to prevent Eaton from taking action to collect the balance due from his client. Respondent paid Eaton a total of $6,369.50. At an undisclosed time, the Giovinazzis entered into an agreement to sell their house, and the judgment appeared of record. That was their first indication that a judgment had been entered against them. Respondent continued to misrepresent the status of the case to Giovinazzi. Specifically, he provided his clients with letters dated February 2, 1999, and March 10, 2000, falsely indicating that the matter was resolved and he was awaiting closing papers.

Respondent stipulated that he violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 8.4(c).

COUNT THREE (Giovinazzi II)

On or about July 19, 1993, Charles Giovinazzi and Jami Giovinazzi retained respondent to represent them as the plaintiffs in civil litigation. Summary judgment was granted to the defendants on March 28, 1995. There was no indication in respondent's file or elsewhere that he told the Giovinazzis that judgment had been entered in the defendants' favor.

Respondent stipulated that he violated RPC 1.4(a).

COUNT FOUR (Houck)

On or about October 13, 1994, Carmella Houck retained respondent to represent her in a disability claim against her deceased husband's insurance company. Respondent never filed a complaint on Houck's behalf and missed the statute of limitations in which to file her claim. When Houck telephoned him, inquiring about the status of her case, he told her that the case was pending, although he knew it was not.

Respondent stipulated that he violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 8.4(c).

COUNT FIVE (Butler)

On or about January 25, 1995, John Butler retained respondent to represent him as the plaintiff in a personal injury claim. Respondent filed suit in Butler's behalf. After a settlement conference, the defendant made a settlement offer of $1,800. There was no indication in respondent's file that he advised his client of the settlement offer or that his client had accepted the offer. The file contained an unsigned release for Butler dated December 1998, indicating a settlement amount of $1,800. The file did not contain any communications from respondent to

Butler after December 1998. On August 4, 2000, the court entered an Order Enforcing Settlement for $300.[2]

Respondent stipulated that he violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 8.4(c).

COUNT SIX (LoBiondo)

On or about August 22, 1990, LoBiondo Brothers retained respondent to represent it as the defendant in litigation, and as the plaintiff in a companion case. Thereafter, on or about January 4, 2000, respondent signed the name of George R. LoBiondo, the president of LoBiondo Brothers, on a Settlement Agreement and Mutual Release without the knowledge or consent of his client. In so doing, respondent accepted a settlement on behalf of his client in the amount of $155,000 (net settlement of $138,132.74), although he knew that LoBiondo Brothers was seeking between $240,000 and $250,000 to settle the case. On or about March 23, 2000, respondent received a check for $138,132.74. He did not forward the check to his client and it was never negotiated.

LoBiondo wrote to respondent on May 12, 2000, and May 19, 2000, seeking information on his case. Respondent did not reply to LoBiondo's inquiries.

Respondent stipulated that he violated RPC 1.1(a), RPC 1.2(a) (failure to abide by a client's decision), RPC 1.4(a), RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation), and RPC 8.4(c).

[2] According to the stipulation, on October 11, 2000, Butler obtained a copy of his file from Gruccio Pepper and stated that he planned to consult with another attorney.

COUNT SEVEN

Respondent admitted that his handling of the six above matters was negligent. He stipulated that he violated RPC 1.1(b) (pattern of neglect).

COUNT EIGHT

At the time of the events described herein, respondent was an alcoholic and by reason of that condition, he was materially impaired in his ability to represent his clients.

Respondent stipulated that he violated RPC 1.16(a) (failure to decline or withdraw from representation of a client when the attorney's physical or mental condition materially impaired his ability to represent the client).

As noted above, the DEC hearing focused on the issue of mitigation. Respondent testified that he suffers from alcoholism, as does his wife. Her condition was compounded by depression after the birth of their second child in 1996. In addition, according to respondent, Gruccio Pepper required not only long hours of work, but a great deal of civic involvement as well, creating further demands on his time. Also compounding the situation, were respondent's financial difficulties. As he explained, if an attorney at Gruccio Pepper did not meet the required "billing goal," his salary was withheld, and possibly forfeited. Respondent testified that, in part, his problems stemmed from an innate need to please others and "difficulty saying no" when asked to take on additional work.

Dr. Barton A. Singer, a psychologist who treated respondent from June 2000 through October 2001, testified before the DEC.[3] Dr. Singer stated that respondent had been suffering from acute depression as well as alcoholism. Dr. Singer confirmed respondent's testimony about his family difficulties after the birth of his second child. He further confirmed that respondent

[3] Dr. Singer also provided a report to respondent's counsel dated July 15, 2002. Exhibit R-2.

took on too much responsibility at work, and at home. According to Dr. Singer, at the time that respondent stopped his treatment, he was fit to practice law if he did not "over extend himself." In Dr. Singer's view, respondent had dealt sufficiently with his alcoholism and depression and had a better understanding and control of his need to please others.

The DEC concluded that respondent violated RPC 1.1(a), RPC 1.1(b), RPC 1.2(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.16(a), and RPC 8.4(c). The DEC set forth a number of mitigating factors to be considered:

> 1. Respondent has no history of discipline.
> 2. Respondent self reported his misconduct to the Office of Attorney Ethics.
> 3. Respondent provided substantial cooperation to the Office of Attorney Ethics' investigation and to his former law firm to address the consequences of his misconduct.
> 4. Respondent acknowledged his misconduct and offered compelling contrition for his behavior.
> 5. Respondent has provided substantial pro-bono service to the community.
> 6. Respondent voluntarily took himself out of the practice of law for several months and has returned under close supervision.
> 7. Respondent's misconduct appears to have resulted from alcohol abuse and acute depression. [Transcript and exhibit references omitted].
> 8. Respondent currently attends AA and is treating once a week with a therapist.

The DEC recommended that respondent receive a reprimand. In addition, he should practice under the supervision of a proctor for one year, continue his attendance at AA, continue treating with his therapist, and provide a current psychological evaluation.

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

Although respondent's psychological difficulties are not an excuse for his misconduct, such difficulties, if proven to be causally connected to his actions, have been considered in the past as mitigation. In In re Templeton, 99 N.J. 365 (1985), the Court held

> In all disciplinary cases, we have felt constrained as a matter of fairness to the public, to the charged attorney, and to the justice system, to search diligently for

> some credible reason other than professional and personal immorality that could serve to explain, and perhaps extenuate, egregious misconduct. We have always permitted a charged attorney to show, if at all possible, that the root of transgressions is not intractable dishonesty, venality, immorality, or incompetence. We generally acknowledge the possibility that the determinative cause of wrongdoing might be some mental, emotional, or psychological state or medical condition that is not obvious and, if present, could be corrected through treatment.
>
> [Id. at 373-374]

Previously, serious misconduct resulted in a suspension, even in the face of compelling mitigation. In In re Weingart, 127 N.J. 1 (1992), the attorney neglected a case, and misrepresented to the client that suit had been filed, and that court personnel had been unable to locate the file. The attorney not only wrote to the Governor and the Attorney General to complain about the mislaid file, he prepared and submitted to the Administrative Office of the Courts a fictitious complaint, with the intent to continue his web of deceit. The Court imposed a two-year suspension, suspending all but six months of the suspension. The attorney was coping with the death of his young daughter and of his mother.

A six-month suspension was imposed in In re Bosies, 138 N.J. 169 (1994), where the attorney, in four matters, was guilty of gross neglect, lack of diligence, a pattern of neglect, violation of the scope of the representation, failure to communicate with the client, and misrepresentation. The attorney contended that he suffered from an anxiety disorder, but produced no evidence, psychological or medical, to support his claim. See also In re Martin, 118 N.J. 239 (1990) (six-month suspension for a pattern of neglect in seven matters, failure to keep clients informed of case status and entering into settlement agreements without authorization from clients in two matters) and In re Restaino, 127 N.J. 403 (1992) (six-month suspension for gross neglect in one case, compounded by misrepresentation of the status of that matter to the client for a two-year period. The attorney had previously been privately reprimanded).

Although respondent's misconduct did not rise to the level of dishonesty and deceit exhibited in Weingart, his actions encompassed six cases and included numerous instances of misrepresentation to his clients, settling a matter without the clients' authorization, and forging a client's signature. His misconduct is at least as serious as Bosies'. While we are sympathetic toward respondent, the testimony elicited at the DEC hearing about the mitigating factors did not expunge the magnitude of his unethical actions. We unanimously concluded that, taking into account respondent's mitigating factors, a three-month suspension is appropriate. We also determined to require respondent to submit, prior to reinstatement, proof of fitness to practice law, as attested to by a mental health professional approved by the OAE. One member recused herself. Three members did not participate.

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

Disciplinary Review Board
Louis Pashman, Esq., Member

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of E. Edward Bowman
Docket No. DRB 03-295

Argued: November 20, 2003

Decided: January 29, 2004

Disposition: Three-month suspension

Members	***Disbar***	***Three-month Suspension***	***Reprimand***	***Admonition***	***Dismiss***	***Disqualified***	***Did not participate***
Maudsley						X	
O'Shaughnessy							X
Boylan		X					
Holmes							X
Lolla		X					
Pashman		X					
Schwartz							X
Stanton		X					
Wissinger		X					
Total:		5				1	3

Julianne K. DeCore
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Chief Counsel