SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-407

IN THE MATTER OF

WILLIAM C. BRUMMELL

AN ATTORNEY AT LAW

Decision

Argued: February 7, 2002

Decided: April 30, 2002

Maurice J. Donovan appeared on behalf of the District VB Ethics Committee.

Gerald Krovatin appeared on behalf of respondent.

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

This matter was originally the subject of an agreement in lieu of discipline ("diversionary agreement"). R.1:20-3(i)(2)(B). In the fall of 1998, the Office of Attorney Ethics ("OAE"), the DEC and respondent signed a diversionary agreement charging respondent with minor misconduct in two matters. In the Bazemore matter, respondent admitted violations of RPC 1.1(a), RPC 1.3 and RPC 1.4(a) for neglecting to properly

pursue Bazemore's personal injury case and failing to adequately communicate with his client. In the second matter, the Bent matter, respondent admitted that he failed to adequately communicate with Bent (the grievant) or with her mother, respondent's client.

Under the terms of the diversionary agreement, respondent was required, within one month, to attend the New Jersey State Bar Association Diversionary Continuing Legal Education Program and to prepay any costs associated with the course. If respondent complied with the requirements, the matter would be dismissed and there would be no record of discipline against him. Otherwise, a formal complaint would be filed.

Respondent failed to comply with the conditions of the diversionary agreement, prompting the filing of a complaint in February 2000. Respondent then failed to reply to the complaint and the matter was certified to us as a default for the imposition of discipline. Thereafter, respondent filed a motion to vacate the default, which we granted on the basis of its contents and the supporting certification from a licensed New Jersey psychiatrist. The certification stated, among other things, that respondent suffered from a severe depressive disorder that rendered him incapable of taking timely and effective action in answering the formal ethics complaint.

Following a hearing, the matter is now before us on a recommendation for discipline filed by the District VB Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1970. He maintains an office in East Orange, New Jersey. He was privately reprimanded in September 1989 for lack

of diligence and failure to communicate with a client about the status of the matter. In the Matter of William B. Brummell, Docket No. 89-160 (September 22, 1989).

The three-count 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) and RPC 1.1(b) (pattern of neglect) (count one); RPC 1.4(a) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) (count two); and failure to comply with the terms of an agreement in lieu of discipline (no RPC cited) (count three).

At the DEC hearing, the presenter offered, in support of his case-in-chief, the diversionary agreement, which was deemed an admission to the ethics rules cited therein, the complaint and the answer. Respondent testified only as to mitigation. Respondent did not contest the underlying ethics complaint, which, he stated, contained essentially "claims of failure to act diligently in communicating with the client and pursuing the client's claim." While the diversionary agreement set forth violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with client) in the first matter and RPC 1.4(a) in the second matter, the complaint added the charges of violations of RPC 1.1(b) (pattern of neglect) to the first count and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) to the second count.

The two count complaint, in essence, factually tracked the diversionary agreement. The first count charged that Terry Bazemore retained respondent to pursue a personal injury case arising from a motor vehicle accident that occurred on October 13, 1993.

Thereafter, respondent failed to file an action, to take appropriate action to protect Bazemore's interests and to reply to Bazemore's inquiries about the case.

Respondent's answer added some relevant facts. It stated that Bazemore was involved in an automobile accident with an uninsured driver in October 1993. She retained an attorney to file uninsured motorist and personal injury protection claims. Respondent took over her representation in late 1994 and continued to pursue the claims. However, in 1995, respondent's staff mistakenly closed Bazemore's file, thereby preventing him from reviewing the file in accordance with his office procedures. At the DEC hearing, respondent explained that he had taken over a number of cases, including Bazemore, from a friend who had left the practice of law. Because the cases were not fee-generating, they were not entered into his database. Therefore, his staff closed them out. According to respondent, he did not realize this mistake until the grievance was filed.

The answer continued that, after Bazemore filed an ethics grievance, respondent wrote to the DEC, explaining that he had reorganized and retrained his staff to ensure that mistakes of that nature would not recur. Respondent also claimed that, at the time he replied to the grievance, Bazemore's claim was still pending. He denied any unethical conduct.

The second count charged respondent with violations of RPC 1.4 and RPC 8.4(c) in representing Kathy Bent's mother in a real estate transaction. The complaint alleged that respondent misrepresented and/or otherwise misstated facts to his client about the status of her case and failed to keep her informed about its progress.

Respondent's answer asserted that Lucie Merisier, the grievant's mother, retained respondent in May 1994 to represent her in connection with the sale of her house. The purchasers were represented by Steven M. Olitsky. At the closing, respondent learned that the purchasers were short of funds by approximately $1,800 and that one of them was willing to pay that balance with a personal check. Olitsky purportedly represented that this individual always paid her debts.

Respondent claimed that he explained to Merisier the "pros and cons" of accepting a personal check, including that it could be dishonored for insufficient funds. Respondent told her that they could "abort the transaction" if a personal check was unacceptable to her. At the DEC hearing, respondent added that the house had been on the market for more than one year, that Merisier had gotten more from the sale than had been offered earlier and that all of her possessions had been moved out of the house. She had moved to Kentucky immediately after the closing. According to respondent's answer, Merisier determined to go forward with the closing and accepted the check, which was later dishonored for insufficient funds.

Respondent claimed that he tried to pursue the matter with Olitsky, who agreed to contact his client. In the interim, respondent discussed with Merisier the advantages and disadvantages of suing the buyers. Respondent also continued to "follow up" on the matter with Olitsky. According to respondent, throughout 1996 Olitsky promised to try to get the money back from his client. In early 1997, however, respondent learned that Olitsky had been suspended from the practice of law for six months. Olitsky asked respondent to wait until his suspension expired, at which time he would continue to

pursue his client for the money. Respondent did not hear from Olitsky again. At the DEC hearing, respondent stated that, once he learned of Olitsky's suspension, he did not know how to proceed.

Respondent's answer denied that he or his employees misrepresented or misstated facts to his client about the status of the transaction, in violation of RPC 1.4 or RPC 8.4(c).

Finally, the third count charged that respondent refused to comply with the terms of the diversionary agreement, because he failed to attend the diversion course offered on April 6, 1999 and November 3, 1999. No specific RPC was charged in this count.

Respondent's testimony as to mitigation was somewhat confusing and disjointed. He claimed that he had several problems that prevented him from initially answering the complaint. He asserted that he was embarrassed by the filing of the grievances and, therefore, did not retain counsel. He also claimed that he suffered from depression, which prevented him from dealing with his ethics problems. Respondent added that, in mid-1998, his mother moved in with his family, a situation that exacerbated his problems by creating great stress on the entire family.

Respondent also maintained that (1) he did not understand the effect of the diversionary agreement; (2) his confusion about the agreement contributed to his depression and anxiety; (3) while he did schedule the course required under the diversion agreement, at the time the course was offered he was involved in a murder case that needed his immediate attention; he, therefore, was unable to attend the course, but rescheduled it to November; (4) in November, he forgot about the course, because of

scheduling errors in his office; (5) because he did not have an attorney representing him, he did not understand that his participation in the course would end the disciplinary proceeding against him; (6) all of the attorneys that he knew that were involved in disciplinary matters had hearings; and (7) although he knew that he had to attend the ICLE course, he believed that his case would still proceed to a hearing.

The psychiatric report submitted in connection with this matter indicated that respondent suffered from a major depressive disorder that rendered him incapable of taking timely action in replying to the grievances or answering the complaint filed against him. The psychiatrist concluded that, among other things, respondent had been depressed for at least one year prior to their meeting, that he had gained excessive weight and had decreased energy, feelings of worthlessness and guilt, difficulty thinking and concentrating, difficulty making decisions and an inability to resolve legal problems.

The doctor recommended that respondent continue under the care of a psychiatrist and opined that his condition was treatable and his prognosis was excellent. The psychiatrist also stated that respondent needed anti-depressant medication and long-term psychotherapy to assist him in organizing his life.

Respondent testified that he had met with the psychiatrist only twice and was not receiving therapy at the time of the hearing. Respondent also stated that he had taken anti-depressant medication only for five months, because it did not "work well" with his other medications.

At the DEC hearing, respondent's attorney was permitted to supplement the record with updated information about respondent's psychiatric condition. The same

psychiatrist issued a report, stating that respondent's clinical picture showed marked improvement and that, although respondent was still somewhat depressed, the depression was not severe. The report further stated that respondent's mental status examination showed improvement since the first interview, that he was able to function as a lawyer and that he did not present a danger to himself or his clients. The psychiatrist believed that respondent's prognosis was excellent and noted respondent's interest in continuing psychotherapy and, if needed, medication. The psychiatrist did not believe that medication was required at the time.

* * *

From the hearing panel report, it is difficult to determine the precise findings of fact and conclusions of law made by the DEC. The hearing panel was not unanimous as to discipline: the public member recommended a three-to-six-month suspension, depending on the "improvement of [respondent's] psychiatric condition" and supervision by a proctor, while the attorney members found that, although respondent's psychiatric defense was inconsistent and contradictory, he did not pose a danger to his clients. They, therefore, recommended that respondent practice under the supervision of a proctor for one year and attend the diversionary program, lest he be automatically suspended.

* * *

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.

Respondent's conduct included violations of RPC 1.1(a), RPC 1.3 and RPC 1.4(a) in the Bazemore matter. There is no evidence that respondent's conduct violated RPC 1.1(b). Generally, such a finding is reserved for negligence in at least three matters. Here, respondent was charged with negligence in only one matter.

In the Bent matter, we found a violation of RPC 1.4(a) only. While the complaint charged respondent with a violation of RPC 8.4(c), the record does not contain any facts to support this finding. Although at the DEC hearing respondent's attorney admitted the charged violations in the complaint, respondent's answer denied all ethics violations. In addition, the diversionary agreement did not list RPC 8.4(c) as a violation. We, therefore, dismissed this charge for lack of clear and convincing evidence.

The third count charged respondent with failure to comply with the terms of the agreement. When a respondent fails to comply with a diversionary agreement, the matter proceeds to a hearing, as here, requiring additional and duplicative efforts on the part of the disciplinary system. This failure to comply contributes to a violation of RPC 8.1(b) (failure to cooperate with a disciplinary authority). See In the Matter of Lenora Marshall, Docket No. DRB 01-207 (September 26, 2001) (admonition imposed). We found such a violation here.

Generally, in matters involving similar violations either admonitions or reprimands have been imposed. See In the Matter of Oliver W. Cato, Docket No. DRB

00-223 (November 21, 2001) (admonition for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 5.5 (failure to maintain a bona fide office) and R.1:21-1); In the Matter of Lenora Marshall, supra, (admonition for violations of RPC 1.3, RPC 1.4(a) and RPC 8.1(b)); and In the Matter of Angela C. W. Belfon, Docket No. DRB 00-157 (January 11, 2001) (admonition for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 3.2 (failure to expedite litigation) and RPC 1.15(b) (failure to turn over funds to client)). Where aggravating factors are present, reprimands have been imposed. See, e.g., In re Paradiso, 152 N.J. 466 (1998) (reprimand for lack of diligence and failure to communicate; the client's personal injury complaint was dismissed with prejudice due to the attorney's lack of diligence) and In re Carmichael, 139 N.J. 390 (1995) (attorney failed to communicate with a client and displayed lack of diligence in two matters; in one of the matters the attorney failed to file a complaint within the statute of limitations period).

Although respondent's prior private reprimand is too remote vis-à-vis the present transgressions to be considered in aggravation, in his certification filed in connection with his motion to vacate the default he swore that he has never had a charge filed against him with any ethics committee. Clearly, this statement is incorrect. Moreover, respondent's certification also stated that he is being treated by a psychiatrist regularly. This was not borne out by his testimony. Finally, respondent's claim that he did not understand the effect of the diversionary agreement strains credulity. The agreement states unambiguously that, if there is compliance with its terms, "this matter shall be dismissed and there shall be no record of discipline in this case." Moreover, R. 1:20-

3(i)(2)(B)(iii) states that "[i]f the respondent fulfills the terms [of the diversionary agreement], the matter shall be dismissed." (Emphasis supplied).

Respondent's misleading statements are an aggravating factor that require the imposition of discipline greater than the minimum sanction. We, therefore, unanimously determined to impose a reprimand. One member did not participate.

We also determined to require respondent to submit to the OAE, within ninety days of the date of this decision, proof of fitness to practice law, as attested by a mental health professional approved by the OAE.

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

By: _____
ROCKY L. PETERSON
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of William C. Brummell
Docket No. DRB 01-407

Argued: February 7, 2002

Decided: April 30, 2002

Disposition: Reprimand

Members	*Disbar*	*Suspension*	*Reprimand*	*Admonition*	*Dismiss*	*Disqualified*	*Did not participate*
Peterson			X				
Maudsley			X				
Boylan			X				
Brody			X				
Lolla							X
O'Shaughnessy			X				
Pashman			X				
Schwartz			X				
Wissinger			X				
Total:			8				1

Robyn M. Hill 5/7/02
Robyn M. Hill
Chief Counsel