SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-144

IN THE MATTER OF	:
CHARLES BREINGAN,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 29, 1989

Decided: April 3, 1990

Gregory R. McCloskey appeared on behalf of the District IIIB Ethics Committee.

Peter J. Toth appeared on behalf of respondent.

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

This matter is before the Board based upon a presentment filed by the District IIIB Ethics Committee.

THE TRUMP MATTER

In April 1987, Robert B. Trump spoke with respondent regarding possible representation in a personal injury matter. On November 30, 1981, when Mr. Trump was a minor, he injured his hand during a high school metal shop class. Mr. Trump turned eighteen on May 20, 1985. On that day, a written Contingent Fee Agreement was signed between Mr. Trump and respondent.

Mr. Trump testified that, after signing the agreement, respondent ceased communication with him except for a few isolated instances, although Mr. Trump made numerous attempts to speak with respondent. Mr. Trump did receive copies of eight or nine letters respondent had sent to others regarding Mr. Trump's claim.

Mr. Trump was aware that the statute of limitations on his claim would run out on May 20, 1987, and continued, unsuccessfully, to attempt to contact respondent. Mr. Trump's brother was able to contact respondent and was informed that a complaint had been filed. Mr. Trump contacted the Clerk of the Superior Court of New Jersey and was told that, in fact, no suit had been filed. During the committee hearing, it was discovered that a complaint was filed on May 20, 1987. The complaint was dismissed for lack of prosecution in September 1988.

Mr. Trump continued in his attempts to contact respondent and testified that, other than the initial consultation and signing of the fee agreement, respondent did not contact him, except once, to tell him that a $10,000 offer to settle had been made.[1] Mr. Trump retained a new attorney in September 1988.

Respondent testified that he had numerous consultations with Mr. Trump and that he diligently pursued this matter, obtaining necessary medical and expert reports and communicating with defendant's insurance carrier on numerous occasions. Examination

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[1] Respondent testified that, in addition to this $10,000 offer, an offer of $75,000 had been made. Mr. Trump testified that he had no knowledge of this offer.

of respondent's file did reveal substantial investigation and correspondence.

In or about the summer of 1987, Mr. Trump attempted to meet with respondent in his office. He found out that the office had been closed; respondent had moved and Mr. Trump had no knowledge of how to reach him.

The committee found that respondent exhibited a pattern of gross neglect and lack of diligence in his actions, in filing the complaint "... on the last day and hour possible, notwithstanding the fact that the Statute of Limitations was tolled ...", and in allowing the complaint to be dismissed for lack of prosecution, in violation of RPC 1.1(a) and (b) and RPC 1.3. He further failed to keep his client informed of the status of the case and failed to respond to his inquiries, in violation of RPC 1.4.

THE PRICE MATTER

Powell M. Price retained respondent to represent him in a personal injury action arising out of a slip and fall on property controlled by a municipality. While a contingent fee agreement was not signed, a medical authorization was signed on June 5, 1987. After the first consultation, Mr. Price went to respondent's office repeatedly to find out the status of his case. Mr. Price testified that respondent did tell him on several occasions that he was not sure that Mr. Price had a valid claim, and would not confirm that he would represent him. However, Mr. Price stated he was never told, verbally or in writing, that respondent would not represent

him; Mr. Price believed that respondent was pursuing the matter for him.

After not hearing from respondent, Mr. Price went to his office, which he found locked. Thereafter, he had no knowledge of how to reach respondent.

Respondent testified that he told Mr. Price at their initial conference that he would only investigate the matter and then advise him if he would pursue it. He testified that he later told Mr. Price that he did not have a claim and would not represent him, although he admits this was never put in writing.

The Committee found that respondent's conduct exhibited a pattern of neglect, failure to communicate, and/or to pursue a matter entrusted to him, in violation of RPC 1.1(b).

THE KAHOUN MATTER

In the spring of 1987, Chris Patrick Kahoun retained respondent to handle a matter in Burlington County District Court, for which he paid respondent $100. Mr. Kahoun testified that, thereafter, respondent often failed to return his telephone calls.

While this matter was pending, Mr. Kahoun was served with a summons to appear in municipal court on a different matter. Respondent was retained to handle this matter and was paid $300. Mr. Kahoun testified that, at the time he retained respondent to represent him in this second matter, he was not aware that respondent was not pursuing the district court matter.

Mr. Kahoun was found guilty in the municipal court matter,

for which he received a fine. On that night, respondent met with Mr. Kahoun and his family, and told Mr. Kahoun that he would handle the appeal for no cost, except for filing fees. Mr. Kahoun paid costs, the appeal was filed and thereafter dismissed, and the fine reinstated after respondent failed to appear at the hearing. Mr. Kahoun contacted respondent, who told him that he might have lost the notice of the hearing and forgotten about it. Although respondent assured Mr. Kahoun that he would take care of the matter, he did nothing.

As in the Trump and Price matters, Mr. Kahoun was not told by respondent that he was closing his office.

The committee found that respondent violated RPC 1.3, by failing to diligently pursue his client's matter. In addition, the committee found a violation of RPC 1.1(b) and RPC 1.4[2], in that respondent exhibited a pattern of neglect in his failure to answer his client's inquiries, and to communicate the status of the matter to him. This misconduct was aggravated by respondent's failure to pursue the appeal and to attend the appellate hearing. The committee further found a violation of RPC 8.1 in all three matters, in that respondent failed to reply to the letters of the district ethics committee investigator.

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[2] The committee report cited RPC 1.14, instead of RPC 1.4.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are supported by clear and convincing evidence.

When retained, respondent owed his clients a duty to pursue their interests diligently. See Matter of Smith, 101 N.J. 568, 571 (1986); Matter of Schwartz, 99 N.J. 510, 518 (1985); In re Goldstaub, 90 N.J. 1, 5 (1982). The Board cannot agree, however, with the committee's finding that respondent was grossly negligent in the Trump matter. The record does not support that finding by clear and convincing evidence. While respondent delayed filing the complaint until the last day and hour possible, and then allowed the complaint to be dismissed for lack of prosecution, this conduct does not rise to the level of gross negligence; rather, it is part of a pattern of neglect displayed by respondent, in violation of RPC 1.1(b). The Board also finds that respondent failed to keep Mr. Trump reasonably informed about the status of this matter, and failed to inform him of how to reach respondent after his move, in violation of RPC 1.4. An attorney's failure to communicate with his clients diminishes the confidence the public should have in members of the bar. Matter of Stein, 97 N.J. 550, 563 (1984).

In the Price matter, the Board agrees with the findings of the committee that respondent's behavior evidenced a pattern of neglect, in violation of RPC 1.1(b). The Board also finds that respondent failed to communicate with Mr. Price in violation of RPC

1.4.[3]

With regard to the Kahoun matter, the Board again agrees with the committee's findings that respondent failed to diligently pursue Mr. Kahoun's claim in violation of RPC 1.3. His conduct also evidenced a pattern of neglect, in violation of RPC 1.1(b). This pattern of neglect was compounded by respondent's failure to pursue Mr. Kahoun's appeal. Further, respondent failed to communicate the status of the matter to Mr. Kahoun, and failed to answer his inquiries, in violation of RPC 1.4.[4]

Respondent's unethical behavior was aggravated by his lack of cooperation with the ethics committee. In all three matters, respondent violated RPC 8.1(b). Despite receiving two communications from the district ethics committee investigator, respondent ignored them. Respondent testified before the committee that his failure to answer could be attributed to the lack of a secretary and because he was disillusioned with the practice of law. At the Board hearing, respondent's counsel indicated that respondent had failed to answer because he was scared. While the Board sympathizes with respondent, an attorney has an obligation to fully cooperate with the ethics committee proceedings. Matter of Smith, 101 N.J. 568, 572 (1986); Matter of Winberry, 101 N.J. 557, 566 (1986).

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[3] While the committee did find a failure to communicate, it did not specifically find a violation of RPC 1.4.

[4] See footnote number 2.

The purpose of discipline, however, is not the punishment of the offender, but "protection of the public against an attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout, 76 N.J. 321, 325 (1978). The severity of the discipline to be imposed must comport with the seriousness of the ethical infraction in light of all the relevant circumstances. In re Nigohosian, 86 N.J. 308, 315 (1982). Mitigating factors are, therefore, relevant and may be considered. In re Hughes, 90 N.J. 32, 36 (1982).

In making its recommendation, the Board has taken into account that respondent is no longer engaged in the private practice of law, but rather represents only one corporate client. The Board has also considered that respondent received a private reprimand in 1986. In addition, it is noted that the Trump and Kahoun matters are currently being handled by other attorneys. The Board is of the opinion that the totality of the within misconduct merits a public reprimand. The Board unanimously so recommends. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 4/3/1990 By: Raymond R. Trombadore
Chair
Disciplinary Review Board