XIV-02-61E

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-294

IN THE MATTER OF

PHILIP L. KANTOR

AN ATTORNEY AT LAW

Decision
Default [R.1:20-4(f)]

Decided: December 18, 2003

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

Pursuant to R.1:20-4(f), the Office of Attorney Ethics ("OAE") certified the record in this matter directly to us for the imposition of discipline, following respondent's failure to file an answer to the formal ethics complaint.

On July 10, 2003, the Office of Attorney Ethics ("OAE") mailed a copy of the complaint by certified and regular mail to respondent at his last known home address listed in the records of the New Jersey Lawyers' Fund for Client Protection: 1014 Elk Road, Monroeville, New Jersey 08343.[1] The certified mail was returned marked "Unclaimed." The regular mail was not returned.

[1] The complaint mistakenly stated respondent's address as 1013 Elk Road.

On July 15, 2003, the complaint was served on respondent in accordance with R.1:20-4(d), by publication in Today's Sunbeam, and on July 21, 2003, by publication in the New Jersey Lawyer.

Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1990. During the relevant time he maintained an office in Williamstown, Gloucester County.

Respondent was temporarily suspended on March 17, 2003, following his apparent abandonment of his law practice. In re Kantor, 175 N.J. 555 (2003). He remains suspended to date. Previously, in November 2000, respondent was reprimanded for making a false statement of material fact or law to a tribunal, offering evidence he knew to be false, and misrepresentation. In re Kantor, 165 N.J. 572 (2000). More recently, respondent received a three-month suspension for gross neglect, lack of diligence, failure to communicate, failure to provide a written fee agreement and failure to cooperate with disciplinary authorities. In re Kantor, ___ N.J. ___(2003).

According to the report of the New Jersey Lawyers' Fund for Client Protection, respondent has been ineligible to practice law since September 30, 2002, for failure to pay his annual assessment to the fund.

**Count One**

In or about June 2002, respondent abandoned his law practice, leaving twelve open client matters. On October 9, 2002, Thomas P. Farnoly, Esq., was appointed as attorney/trustee for respondent's law practice, pursuant to R.1:20-19. Farnoly's report indicated, and the OAE's investigation confirmed, that respondent abandoned active client files in ten of the twelve matters. He failed to file suit within the statute of limitations, failed to pursue discovery, failed

to communicate settlement offers to clients, failed to advise a client that her case had been dismissed, and failed to appear for a court date. Farnoly reported on the status of the twelve cases in question by letter dated December 23, 2002, to the Honorable George H. Stanger, Jr., A.J.S.C. Farnoly's letter to Judge Stanger is exhibit four to the complaint. Briefly, the facts of the twelve cases, as set forth in Farnoly's letter, are as follows:

1. Frank Rush: Rush was injured in two work-related accidents. Seymour Wasserstrum, Esq. filed two claim petitions in Rush's behalf. He passed the workers' compensation files and third-party liability case to respondent. Respondent settled the two workers' compensation matters. Rush agreed to accept a $4,000 settlement offer in the personal injury matter, but had not received any proceeds from the claim. Farnoly contacted the insurance company and confirmed that the offer had been made. He was further advised that respondent had neither contacted the insurance company about the offer nor filed suit in the matter. The statute of limitations had run, and the insurance company closed its file. After speaking with Farnoly the insurance company agreed to pay Rush $4,000.

2. Ida Galiyano: "It appears that one of the carriers involved in Ms. Galiyano's matter has been granted summary judgment. [Farnoly was] unable to obtain documents related to her third-party lawsuit."[2]

3. Joseph M. Saunders: Saunders retained Wasserstrum to pursue a personal injury action. He turned the matter over to respondent, who filed a complaint in Saunders' behalf. After respondent stopped practicing law, Wasserstrum took the file back, and turned it over to another attorney.

---

[2] This language was quoted from Farnoly's letter, and is all the information available in the file about the Galiyano matter.

4. Ricardo Castro and Vanessa Adams: Miguel Mendez operated a church van that was allegedly hit by a police car. Castro and Adams were passengers in the van. The plaintiffs retained Wasserstrum, who filed a PIP claim in behalf of Mendez. Respondent was assisting Wasserstrum in the matter, and settled the PIP claim. As to the underlying personal injury matter, Wasserstrum filed a notice of tort claim against the city, but there was no indication in the file that he or respondent initiated a complaint for personal injury. Furthermore, according to the county clerk's office, there was no civil action pending in behalf of the plaintiffs. Mendez was unaware of the status of his case.

5. Nelson Perez and Maria Torres: This was a personal injury matter arising from a motor vehicle accident. The PIP case was settled, and counsel for the defendant sent respondent a letter confirming the settlement amount. There was subsequent correspondence between respondent and counsel regarding the settlement figure. Counsel did not reply to respondent's final letter, and approximately nine months later, Wasserstrum sent a letter and a release to the plaintiffs for signature. Torres did not sign the release, and it appears that, as of the date of Farnoly's letter, the matter was still pending.

6. Kathy Creamer: Respondent represented Creamer in an arbitration arising out of a personal injury matter. The matter was appealed for a trial de novo. Respondent failed to appear for the trial and the court appointed new counsel.

7. Virginia Cruz: Respondent represented Cruz in a personal injury matter. He filed a PIP claim in her behalf, which was settled. He also filed suit against the alleged tortfeasor. That case was dismissed for failure to meet the permanent injury criteria of the verbal threshold. Respondent never advised Cruz that her case had been dismissed.

8. Fannie L. Ford and Leroy Ford, Sr.: This was a personal injury matter brought by the Fords after their son, a minor, was struck by a car. The matter was initially handled by

Wasserstrum. Respondent filed a complaint in the Fords' behalf. Arbitration resulted in a finding of no liability by either party. Respondent appealed the arbitration findings, and Wasserstrum filed a demand for trial de novo. According to defense counsel, the matter was settled in late 2001, and the court reviewed the settlement. The money was deposited with the surrogate's office, and, according to counsel, respondent received his fee. Farnoly contacted the county civil division, and confirmed that the case was concluded, and an order to enter judgment had been filed.

9. Karen A. Williams: Wasserstrum represented Williams in a personal injury matter. He referred the case to respondent, who filed a complaint in her behalf. As of the date of Farnoly's letter, discovery was not yet completed.

10. Juan and Juana Rodriguez: The Rodriguezes went to Wasserstrum for representation in a personal injury matter. Respondent filed a PIP suit in their behalf. The plaintiffs settled the claim, and signed a release. The underlying personal injury case was subject to UM/UIM arbitration. The arbitrators determined that neither plaintiff met the verbal threshold, and no damages were awarded. Respondent never explained the outcome of the case to the Rodriguezes. It also appears that Wasserstrum gave the file to respondent without the Rodriguezes' consent.

11. Chris Snyder: Respondent filed a complaint in Snyder's behalf arising out of a personal injury action. As of the date of Farnoly's letter, defense counsel had answered the complaint, and had requested that the court stay the proceedings until the case was reassigned to a new attorney.

12. Olga Martinez: Martinez was the driver of an automobile that was struck by another vehicle. The court granted the defendant's motion for summary judgment based on Martinez'

failure to meet the verbal tort threshold. Respondent did not explain to Martinez why her case had been dismissed.

At about the time Farnoly was appointed as attorney/trustee, he received the names of ten additional clients, whose files he did not have, and whose cases may have been abandoned by respondent. Farnoly's letter to Judge Stanger indicated that he had been able to contact some of those clients.

During the OAE's investigation in this matter, that office subpoenaed respondent's trust and business account statements for the period from January 2001 to December 2002. The records reflected that in August 2002, respondent withdrew $3,937.80, reducing the trust account balance to $1.00. According to Farnoly, respondent withdrew personal funds remaining in the trust account, and there was no indication that the withdrawal had invaded client funds. The account balance remained at $1.00, with no activity through December 2002.

The complaint charged respondent with a violation of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the client), and RPC 1.16(d) (failure to protect the client's interests upon termination of representation).

**Count Two**

By letter dated February 11, 2003, the OAE directed respondent to appear and produce his attorney financial records for a demand audit to be conducted on February 27, 2003. The OAE scheduled the audit after numerous telephone calls to respondent from Chief of Investigations, Gerald J. Smith, had gone unanswered. On February 25, 2003, Smith called respondent's home, and spoke with an unidentified female who stated that she would convey Smith's message to respondent, reminding him of the February 27, 2003 audit. Respondent neither appeared for the audit nor communicated with the OAE. Thereafter, the OAE made

several additional calls to respondent, seeking information pertaining to its investigation. Again, respondent failed to reply. On April 14, 2003, Smith went to the site of respondent's former law office. Another entity, however, was located there. On the same day, he went to respondent's home, and spoke with an individual who identified himself as respondent's brother. Smith asked him to tell respondent that it was extremely important that he contact the OAE. Respondent failed to do so.

The complaint charged respondent with a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Service of process was proper in this matter. The regular mail sent to respondent's home address on July 10, 2003, enclosing a copy of the complaint, has not been returned to the OAE, and delivery is assumed. In addition, notice by publication was made in two newspapers. A review of the record shows that the facts recited in the complaint support a finding of unethical conduct.

Discipline in other matters involving the abandonment of clients has ranged greatly, depending on the other ethics violations involved, and the number of clients abandoned. See, e.g., In re Grossman, 138 N.J. 90 (1994) (three-year suspension where attorney signed a judge's name to a divorce judgment and gave it to his client to cover up his mishandling of the case; he also abandoned approximately two hundred cases after misrepresenting to the courts and clients that the cases had been settled); In re Mintz, 126 N.J. 484 (1992) (two-year suspension where attorney abandoned four clients and was found guilty of a pattern of neglect, failure to maintain a bona fide office, and failure to cooperate with ethics authorities); In re Bock, 128 N.J. 270 (1992) (six-month suspension) imposed on attorney who, while serving as both a part-time municipal court judge and a lawyer, with approximately sixty to seventy pending cases, abandoned both positions by feigning his own death); and In re Velazquez, 158 N.J. 253 (1999) (three-month

suspension imposed upon attorney who abandoned seven clients and was found guilty of gross neglect and pattern of neglect, failure to communicate with the client and failure to protect the clients' interests upon the termination of the representation in all seven matters, The attorney also engaged in conduct prejudicial to the administration of justice in three of the matters, That suspension was subsumed in Velazquez' disbarment case, In re Velazquez, 158 N.J. 253 (1999).

In the within matters, it was not the case that respondent took no action for the clients. Rather, he failed to complete the representation, or failed to communicate with the clients when their cases had been dismissed, as in Cruz, Rodriguez, and Martinez. This case is most akin to Velasquez in number of cases involved and additional violations present, specifically, his failure to communicate with clients and failure to protect the clients' interests upon termination of representation. Taking, as a starting point, therefore, a three-month suspension, when respondent's failure to cooperate with the OAE, and the default nature of these proceedings are added to the mix, more severe discipline becomes appropriate. In light of all of the above circumstances, and the misconduct involved, we unanimously determined that a six-month suspension is appropriate discipline. In addition, if respondent is reinstated to the practice of law, he is to practice under the supervision of a proctor for two years.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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