

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-006

IN THE MATTER OF :
 :
IGNACIO SAAVEDRA, JR. :
 :
AN ATTORNEY AT LAW :

 :

Decision

Argued: March 18, 1999

Decided: June 9, 1999

Kathleen B. Estabrooks appeared on behalf of the District XII Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before the Board based on a recommendation for discipline filed by the District XII Ethics Committee ("DEC"). A one-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.16(c) (when ordered by a tribunal, a lawyer shall continue representation notwithstanding good cause for terminating the representation); RPC 3.2 (failure to expedite litigation); and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Respondent was admitted to the New Jersey bar in 1972. At the relevant time, respondent maintained a law practice in Union City, New Jersey.

In 1978 respondent received a private reprimand for obtaining a retainer from his client and then failing to proceed with the matter without being relieved as counsel. In the Matter of Ignacio Saavedra, Jr., Docket No. DRB 78-35 (June 29, 1978). Respondent was publicly reprimanded in 1993 for gross neglect, failure to communicate and failure to cooperate with the ethics authorities in two matters. In re Saavedra, Jr., 132 N.J. 271 (1993). In 1997, respondent was suspended for a three-month period for misconduct in three matters, which included gross neglect, pattern of neglect, failure to act with reasonable diligence and promptness, failure to keep a client reasonably informed about the status of the matter and to comply with reasonable requests for information, conduct prejudicial to the administration of justice and failure to return an unearned retainer. In re Saavedra, Jr., 147 N.J. 269 (1997). Respondent has not applied for reinstatement to date.

* * *

Respondent had agreed to represent a juvenile, referred to as "M.F.," in connection with a "delinquency complaint." He had earlier represented M.F.'s brother in some other matters and was, therefore, acquainted with the family. There was no written retainer agreement between M.F. and respondent.

The Honorable Mark Baber, J.S.C., the complainant herein, testified that respondent had entered an appearance in M.F.'s case on October 24, 1996 before Judge DeStefano. Ultimately, several other complaints were filed against M.F. Judge DeStefano entered an order on October 24, 1996 scheduling one of the five delinquency matters for trial on November 21, 1996 and the remaining four for calendar calls on the same date. The five matters were to be heard by Judge Baber.

According to the judge, respondent appeared in his courtroom on the morning of November 21, 1996 and remained there for approximately fifteen to thirty minutes. M.F.'s matter was not called for trial until the afternoon. By that time, respondent had already left the courthouse. Judge Baber claimed that respondent had left without notifying him directly or, to the best of the judge's knowledge, any member of his staff.

Respondent, in turn, alleged that, when he appeared in court that morning, he informed M.F.'s mother that he could no longer represent her family for no fee and that, if she wanted him to continue representing M.F., she should return that afternoon with \$100 towards his fee. M.F.'s mother did not return but, instead, M.F.'s godfather accompanied M.F. to court that afternoon. Respondent asserted that, because he was not paid any portion of his fee, he advised M.F.'s godfather to seek the assistance of the Public Defender's Office. Respondent remarked that he left the courthouse that afternoon assuming that M.F.'s godfather would inform the judge that they would apply for representation by the Public Defender's Office.

Judge Baber, in turn, maintained that he received no explanation for respondent's absence. The judge stated that, when the matter was called to trial and respondent failed to appear, he attempted to have him paged in the courthouse and also directed his staff to call respondent's office. The judge's efforts to locate respondent were unsuccessful. Thereafter, the judge entered an order rescheduling the matter for trial on December 20, 1996.

On December 9, 1996, M.F. was brought before Judge Baber on a new matter, an initial detention hearing. According to Judge Baber, another attorney, R.P., entered an appearance in respondent's place. When the judge called M.F.'s matter, R.P. stated that respondent had asked him to appear to advise the judge that respondent did not represent M.F. any longer. Judge Baber's impression was that R.P. was not covering the case for respondent, but that he was there simply to inform the judge that respondent was no longer involved in the case. The judge added that, if R.P. had been there to cover the case for respondent, the matter would have proceeded with R.P. as M.F.'s attorney.

According to the judge, he told R.P. that, because a trial date had already been set, respondent could not unilaterally withdraw from the representation. The judge instructed R.P. to notify respondent that he had to file a motion to be relieved as counsel and that, as far as the judge was concerned, respondent was still M.F.'s attorney. Judge Baber told the attorney that respondent had to appear that afternoon at 1:30 P.M.

When respondent appeared that afternoon, M.F.'s mother, who had been in the courthouse earlier, had already left. Respondent entered a waiver of probable cause on the new complaint and M.F. was detained at the youth house. The judge set a trial date for the

earlier matter and a calendar call for the new complaint for December 20, 1996. Respondent then informed the judge that he did not intend to represent M.F. any longer. The judge replied that respondent could not withdraw from the matter without leave of court. The judge added that it was unlikely that a motion would be granted at that late date. Judge Barber testified that "as far as I was concerned, he was still counsel of record for M.F. and he should be present on December 20 for the trial date."

On December 20, 1996, respondent neither appeared for trial nor filed a motion to withdraw from the representation. Judge Baber adjourned the trial. It was not until December 23, 1996 that the court received from respondent a one-page notice of motion without a certification. The motion was enclosed in an envelope postmarked December 20, 1996. On the following day, December 24, 1996, the judge sent a letter to respondent denying his motion because it had been received after the scheduled trial date. The letter also informed respondent that the trial had been rescheduled for January 15, 1997 and that he was required to appear on behalf of M.F. and to be ready for trial.

In the interim, while M.F. was in the youth detention center, another delinquency complaint was filed against him. That matter was assigned to Judge DeStefano, who instructed M.F.'s mother to apply for legal assistance from the Public Defender's Office. On January 15, 1997, an attorney from the Public Defender's Office appeared for M.F. on the new complaint. Even though respondent had been ordered to appear that day on other matters for M.F., he failed to do so. Judge Baber, before whom all of the matters were to be heard, requested that the public defender represent M.F. on all of the outstanding complaints.

The public defender agreed to do so. The judge did not recall seeing either respondent or R.P. in court that day.

Because of respondent's failure to appear on January 15, 1997, Judge Baber issued an order to show cause directing him to appear in court on January 22, 1997 for the imposition of sanctions. Again, respondent failed either to appear on that date or to contact the court.

Although the order to show cause was returnable on January 22, the return receipt card showed that it was not received by respondent until January 24, 1997. As a result, Judge Baber waited several days to see if respondent would either appear in court or contact him. When respondent failed to do either, on February 6, 1997 the judge issued a warrant for his arrest.

On February 11, 1997, R.P. appeared in court on another matter and was advised by Judge Baber's law clerk of the arrest warrant issued against respondent. The attorney immediately relayed the information to respondent, who, thereafter, promptly contacted the court. Because the next day was a court holiday precluding respondent's appearance, he surrendered to the court on February 13, 1997.

For his part, respondent testified that, when he appeared in court on November 21, 1996, he told M.F.'s mother that he could no longer represent her family without a fee and that she should seek assistance from the Public Defender's Office. As noted earlier, respondent testified that, when he left the courthouse that day, he assumed that M.F.'s

mother or godfather would inform the judge that the Public Defender's Office would take over M.F.'s case.

As to the motion to be relieved as counsel, respondent claimed that he assumed it would take only one day for the mail to reach the courthouse. He believed that he had mailed the motion on December 19, 1996. In contrast, respondent admitted that he knew that the motion was late and that he had not been released from the case. Respondent also claimed that he thought the judge had received the motion in time and routinely granted such motions. In the next breath, however, respondent admitted that he knew he had to appear. He conceded that the judge had told him that it would be unlikely that the motion would be granted. According to respondent, however, he believed that the judge had made that comment for the record and that he would nevertheless grant the motion.

Respondent contended that, on January 15, 1997, he was waiting by the telephone in case R.P. could not appear for him and he would be required to try the case. As noted above, the Public Defender's Office had already assumed representation of all outstanding matters and the judge did not see R.P. in the courthouse.

Respondent contended that he believed that he was required to represent his client only if he was paid a fee. He, therefore, left the courthouse on November 21, 1996 because he had not been paid and because M.F.'s family was going to obtain the assistance of the Public Defender's Office. Respondent also claimed that he had spoken to "someone" on the judge's staff and had told that person that M.F.'s family would obtain representation from the Public Defender's Office. Notwithstanding this claim, respondent admitted that he did

not make this representation on the record and did not obtain the court's permission to leave or to be relieved as counsel.

Additionally, respondent admitted that he neglected his mail, including correspondence from the court, neglected court dates, failed to check his telephone messages and did not have a Lawyers Diary.

Although respondent was given the opportunity to present R.P. to testify in his behalf, he failed to do so, claiming that he did not want to "bother" R.P. Respondent further asserted that he had intended to pay R.P. to represent M.F. out of proceeds of a case that R.P. had referred to him.

Respondent testified that, as of the date of the DEC hearing, he was still under suspension and never provided the Board with the required documentation to be reinstated. He claimed, though, that he would like to practice law again and intends to work for the Public Defender's Office, once reinstated.

* * *

The DEC noted that respondent had entered his appearance on behalf of M.F. without being paid a fee, based on his prior relationship with the family. The DEC concluded, however, that it was inappropriate for respondent to withdraw from the matter without seeking leave of court.

The DEC found clear and convincing evidence that respondent failed to adequately represent M.F. in his case. The DEC also remarked that respondent was not obligated to represent M.F. on all of the cases without being retained for that purpose. Nevertheless, the DEC concluded that respondent entered his appearance in several matters and thereafter abandoned the interests of his client.

The DEC also found that respondent left the courthouse on November 21, 1996 without leave of court and without arranging to have other counsel represent M.F.'s interests. The DEC found that respondent was not entitled to unilaterally terminate his representation of M.F. despite his assumption that the family would apply for the services of the Public Defender's Office. The DEC found that, once respondent had entered his appearance on behalf of M.F., he had the duty to represent his interests responsibly.

Finally, the DEC found that respondent failed to provide the DEC investigator with a written explanation for his conduct and did not participate in this proceeding until it reached the formal complaint stage. Although respondent was not charged with a violation of RPC 8.1(b) (failing to comply with requests for information from a disciplinary authority), the DEC found clear and convincing evidence of such a violation. The DEC also found clear and convincing evidence of violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.16(c) (discontinuing representation without obtaining leave of court); and RPC 8.4(d) (conduct prejudicial to the administration of justice). The DEC did not find a violation of RPC 3.2, concluding that there was insufficient proof that the various juvenile

cases would have been resolved on December 20, 1996 or that the court would not have remanded M.F. to the detention center, even if respondent had appeared.

Based on the foregoing, the DEC recommended a three-month suspension, the completion of ethics courses and a one-year proctorship.

* * *

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

The DEC found a violation of RPC 8.1(b) even though the complaint did not charge respondent with such a violation. While in certain cases a complaint may be deemed amended to conform to the proofs, here there is insufficient evidence of this violation. Moreover, the complaint did not allege sufficient facts to give respondent adequate notice of such charges or the opportunity to defend against them. The Board, therefore, did not find a violation of this rule.

The evidence is clear, however, that respondent undertook the representation of M.F. in connection with several complaints. On the morning of November 21, 1996 respondent appeared in court with the intention of representing M.F. in the juvenile matter. After M.F.'s family failed to provide respondent with the requested \$100 fee, he left the courthouse. Notwithstanding the fact that respondent may have advised M.F.'s family to seek the

assistance of the Public Defender's Office, respondent left the building before M.F.'s matter was called, without either entering an appearance or notifying the court that he was leaving. Until respondent properly withdrew from the representation, he had an obligation to continue to represent M.F.'s interests.

The matter was rescheduled for a December 20, 1996 trial. In the interim, on December 9, 1996, M.F. was again brought before the court. Respondent was ordered to appear on that date. When respondent appeared, the court instructed him to show up at the December 20, 1996 trial, even though he wanted to be relieved as counsel. The court specifically instructed respondent to file a formal application and to be prepared to proceed with the trial. Respondent acknowledged that the judge informed him that it was unlikely that he would be relieved at that late date. Nevertheless, respondent waited until the eleventh hour to apply to be relieved as counsel. His explanations for failing to appear were contradictory and not credible. An example of respondent's inconsistent testimony was his claim that he no longer wanted to represent M.F.'s family for no charge. Yet he planned to pay R.P. to take over M.F.'s representation from the proceeds of a case that R.P. had referred to him. Respondent's conduct in this matter violated RPC 1.1(a), RPC 1.3, RPC 1.16(c) and RPC 8.4(d).

The DEC properly concluded that there was insufficient evidence to determine that respondent had violated RPC 3.2.

Respondent's conduct in this matter is less egregious than that in In re Saavedra, Jr. 147 N.J. 269 (1997), for which he received a three-month suspension. Ordinarily, under the

instant circumstances, a reprimand would suffice. However, at the time of respondent's conduct here, he had been disciplined twice before and a panel report recommending discipline had already been issued for his conduct in a third disciplinary case that resulted in his three-month suspension. Respondent's conduct in this matter, therefore, was not part and parcel of the same conduct that led to his prior discipline. Clearly, respondent has not learned from his prior mistakes. Additional discipline is, therefore, in order.

The Board determined that respondent's conduct, including his disregard of Judge Baber's orders, requires the imposition of additional discipline. The Board, therefore, unanimously determined to impose an additional three-month suspension. Three members did not participate.

The Board further determined to require respondent, prior to reinstatement, to submit proof of fitness to practice law and to complete the skills and methods courses offered by ICLE. Once reinstated, respondent should practice under the supervision of a proctor, approved by the OAE for a period of two years.

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

Dated: 6/9/99

By: 

LEE M. HYMERLING
Chair
Disciplinary Review Board