

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 97-455

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IN THE MATTER OF  
ANTONIO VELAZQUEZ  
AN ATTORNEY AT LAW

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Decision

Argued: March 19, 1998

Decided: November 2, 1998

Joseph J. Talafous, Jr. appeared on behalf of the District VI Ethics Committee.

Spencer W. Clark appeared on behalf of respondent.

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 VI Ethics Committee ("DEC"). Each count of the seven-count complaint charged respondent with violations of RPC 1.1(b) (pattern of neglect), RPC 1.4 (failure to communicate) and RPC 1.16(d) (failure to protect a client's interests upon termination of representation). The fourth and sixth counts also charged respondent with violations of RPC 8.4(d) (conduct prejudicial to the administration of justice). The charges stemmed from respondent's failure to close down his New Jersey law practice when he left the state for a

vacation that turned into a permanent relocation to Virginia.

At the relevant times, respondent maintained a law practice in New Jersey, first in Newark, then in Weehawkin. He was temporarily suspended on September 9, 1997, following allegations of financial improprieties. His suspension is still in effect.

This matter was previously before the Board in November 1995 on a motion for discipline by consent. The Board denied the motion and remanded the matter to the DEC for a full hearing.

At the DEC hearing, respondent's counsel made several motions to dismiss the complaint for alleged procedural deficiencies in the complaint. Counsel also argued that respondent's due process rights were violated because the complaint did not provide adequate notice of the scope of the charges and because of the significant passage of time between the alleged conduct and the hearing. The DEC denied respondent's motions and proceeded with the hearing, relying both on stipulated facts and on respondent's testimony.

Some of the grievants could not be located. It is not clear from the record whether any attempt was made to produce any or all of the grievants for the hearing.

The stipulated facts are vague and omit any details relating to, among other things, dates of particular events and the extent of services that respondent provided. The stipulation also sets forth mitigating circumstances advanced by respondent.

The stipulated facts follow, supplemented by respondent's testimony.

**1. The Olga Nakajima Matter - District Docket No. VI-95-42E**

Nakajima retained respondent to represent her in a divorce action. Thereafter, she met with respondent on June 15, 1991, at which time he apprised her of the status of the case. Nakajima paid respondent the fee "balance due" (the amount is not noted in the stipulation) to serve a summons and complaint on her husband.

Nakajima heard nothing more from respondent following their meeting. She repeatedly tried to contact respondent, to no avail. Eventually respondent's mother informed Nakajima that respondent had left the state.

According to the stipulation, at some point in 1991 respondent "closed" his office, left New Jersey and went to Miami, Florida for a vacation. While in Florida, he was involved in an automobile accident. The record suggests that respondent did not sustain any serious injury. Subsequently, respondent relocated to Virginia, where he resided for several years. He recently returned to New Jersey.

The stipulation states that (1) respondent's neglect in the Nakajima matter, together with his neglect in other client matters, constituted a pattern of neglect, in violation of RPC 1.1(b); (2) his failure to keep Nakajima informed about the status of her matter, following his departure from New Jersey, violated RPC 1.4; and (3) his failure to inform Nakajima that he had closed his office and left the state, failure to terminate the representation of her case, failure to advise her to retain other counsel and to allow sufficient time for her to do so, failure to surrender her papers and property and failure to refund any unearned fees violated RPC 1.16(d).

According to the stipulation, the DEC secretary attempted to contact Nakajima but the mail was returned as "undeliverable" because Nakajima had moved without leaving a forwarding address. Hence her absence from the DEC hearing.

The stipulation also sets forth mitigating circumstances. According to respondent, he understood that he was not to take any further action in the divorce matter because Nakajima had informed him that she and her husband were in the process of reconciling. Furthermore, respondent alleged, Nakajima had not paid him to serve the summons and the complaint on her husband; she had paid him only for work already performed.

According to the stipulation, after respondent decided to relocate to Virginia, he notified the New Jersey Bar Association and later the Office of Attorney Ethics ("OAE") of his change of address, assuming that this action would constitute sufficient notice to any person who might want to contact him about any legal matters.

The stipulation further stated that respondent was in the process of terminating a relationship with a woman who "persistently and vigorously threatened, harassed, and pursued respondent, causing him stress and emotional distress which prompted him to originally take a vacation in Florida and later to decide to relocate in Virginia." According to the stipulation, respondent's professional judgment was affected by this woman's conduct.

At the DEC hearing, respondent testified that, although his relationship with the woman was brief, it produced a child. Respondent added that, when he attempted to terminate the relationship after only a few months, the woman started a campaign of harassment towards him, his family, his new fiancée (now his wife) and even his secretary.

Finally, the stipulation stated that prior investigators assigned to this matter had been unable to locate respondent and, therefore, could not “vigorously” pursue the investigation. Eventually, the DEC became aware of respondent’s address in Virginia through the OAE, after the Virginia bar examiners contacted the OAE about respondent’s application for admission to the Virginia bar. In November 1994, when respondent was served with the grievances in this matter, he began to cooperate with the investigation.

## 2. The Ricardo Piche Matter - District Docket No. VI-95-43E

According to the stipulation, Ricardo Piche retained respondent for a bankruptcy matter and paid him \$300 in advance to handle the case. After retaining respondent, Piche had no further contact with him. Piche called and wrote to respondent, to no avail. Piche also sent respondent a certified letter that was returned as “unclaimed.” The stipulation stated that respondent’s conduct in this matter was also a violation of RPC 1.1(b), RPC 1.4 and RPC 1.16(d).

Contrary to the facts in the stipulation, respondent maintained, in mitigation, “that payment by Piche was for legal services that had been rendered in the past.” According to respondent, the value of the services exceeded \$300. Respondent also stated that the mitigating circumstances advanced in Nakajima were applicable to this matter as well.

### 3. The Alfredo Ordonez Matter - District Docket No. VI-95-44E

Alfredo Ordonez retained respondent for a bankruptcy matter. He paid respondent a \$500 retainer over a period of several months. Respondent prepared a bankruptcy petition, which was signed by Ordonez on October 20, 1990. Thereafter, Ordonez had no further contact with respondent, despite repeated visits and telephone calls to respondent's office. The stipulation noted that respondent's office was empty. Presumably, Ordonez made this observation while trying to meet with respondent at his office. Respondent's telephone was eventually disconnected. Respondent stipulated that he violated RPC 1.1(b), RPC 1.4 and RPC 1.16(d).

Pursuant to the stipulation, the mitigating circumstances in Nakajima also apply here. By way of mitigation, respondent also maintained that he was representing Ordonez on a "bifurcated basis;" respondent prepared certain documents relating to the bankruptcy, but planned to charge Ordonez an additional fee for actually filing the papers and making the necessary court appearances.

When the investigator tried to serve Ordonez with respondent's reply to the grievance, the correspondence was returned as "undeliverable." The stipulation noted that, because Ordonez apparently moved without leaving a forwarding address, "it [might] be difficult or impossible to produce him for a hearing."

At the DEC hearing, respondent testified that the bifurcated rate was \$500 to prepare the schedules for the bankruptcy petition and \$500 to file the petition. Respondent claimed that he believed that the case was on "inactive status" because Ordonez had not paid him the

additional \$500 to file the petition. Respondent also contended that he had given Ordonez the option to file the petition himself or to have respondent do it.

Respondent was not able to locate a signed retainer agreement in this or any of the other matters.

#### 4. The Maria L. Andresson Matter - District Docket No. VI-95-45E

Respondent represented Andresson in a divorce action before Judge Stephen J. Schaeffer, the complainant in this matter. After Andresson had placed several calls to the judge's chambers, it became apparent to the judge that respondent had left the state without advising the court of his departure or making any arrangements to obtain new counsel for Andresson. When the court attempted to send hearing notices to respondent's office and home address, all of them were returned. The stipulation noted, however, that the court sent notices to the wrong address in both instances. Nevertheless, respondent never notified the court that he had left the state and relocated elsewhere.

Respondent stipulated that his conduct was a violation of RPC 1.1(b), RPC 1.4, RPC 1.16(d) and RPC 8.4(d):

Again, the stipulation stated that the mitigating circumstances described in Nakajima are equally applicable to this matter. The stipulation also noted that, according to respondent, during his last appearance in this matter he was advised that Andresson's husband was in Portugal. He, therefore, believed that the case would not proceed until the defendant returned to the United States.

At the DEC hearing respondent testified about the legal services he performed in this matter, which included filing an order to show cause to preserve certain marital assets. Respondent, however, did not understand that he had a duty to put the case on the inactive list. He stated that, at that time, his judgment was impaired because of the “emotional problems” he was experiencing due to his former girlfriend’s conduct.

According to respondent, he believed that the defendant would not return from Portugal and that the matter would be put on inactive status. He acknowledged, however, that he took no action toward that end or to have the matter dismissed. Respondent admitted that, when he left New Jersey, the case was officially open and that he did not return the file to Andresson.

#### 5. The Gilberto Genoval Matter - District Docket No. VI-95-46E

The stipulation stated that Genoval retained respondent for a claim against his insurer, resulting from the theft of his automobile. Genoval paid respondent \$400 and gave him all of the pertinent records in the matter. Thereafter, Genoval had no further contact with respondent. Despite the numerous messages Genoval left on respondent’s answering machine, he received no reply. Eventually, respondent’s telephone was disconnected. Genoval was unable to pursue his claim because respondent had not returned his documents. Respondent stipulated that his actions violated RPC 1.1(b), RPC 1.4 and RPC 1.16(d).

The stipulation stated that the mitigating circumstances listed in Nakajima were to be considered here as well. In addition, the stipulation referred to respondent’s contention that



Genoval's \$400 payment covered work already performed, including conferences with Genoval and representatives of the insurance company. Respondent claimed that he attempted to return Genoval's documents by mail sent to his last known address. According to the stipulated facts, respondent was unsuccessful.

During the course of the DEC investigation, the investigator forwarded documents to Genoval at an address provided by respondent. None of the correspondence was returned. The stipulation suggests that respondent had Genoval's correct address and, therefore, should have been able to successfully return Genoval's documents.

Respondent testified that he believed that this matter was on "inactive status" when he left New Jersey. He admitted that he exercised poor judgment during the summer of 1991, but blamed it on the constant harassment from his former girlfriend. He claimed that he was not "thinking straight."

#### 6. The Doreen DeWoolf Matter - District Docket No. VI-95-47E

Respondent represented DeWoolf in a child custody action before Judge Renee J. Weeks, the complainant in this matter.

According to the stipulation, on July 31, 1991, the day before the trial, respondent's secretary called the court to say that respondent was in Florida, had been involved in an automobile accident and would be unable to attend the trial. On the basis of that information, the trial was rescheduled for dates in September and October 1991.

Subsequent attempts by the court to reach respondent by telephone were unsuccessful. The trial notices sent to him were returned to the court as "undelivered." According to the stipulation, "other attorneys involved in the case experienced the same problem." Apparently they, too, were unable to contact respondent. Respondent never notified the court that he had left the state and relocated to Virginia. Respondent stipulated that the above conduct violated RPC 1.1(b), RPC 1.4 and RPC 1.16(d). Respondent stipulated that he had violated RPC 8.4(d) by failing to advise the court that he had left the state by closing his office, by terminating his representation of DeWoolf and by failing to arrange for new counsel.

As with the other matters, the stipulation stated that the mitigating circumstances in Nakajima also apply here. The stipulation further stated respondent's position that, although he was ready to proceed at his last court appearance, the case was adjourned at the request of respondent's adversary. Respondent contended that he then left for vacation in Florida and did not receive any notices of the new trial date.

Respondent also asserted that he did not receive official notice of the July 31, 1991 trial date; he believed that the judge might have mentioned the date during a previous court appearance. Apparently respondent did not contact his client and did not arrange to have anyone else contact her.

#### **7. The Jose´ Varela Matter - District Docket No. VI-95-48E**

Varela retained respondent in connection with a personal injury matter. Varela's last contact with respondent was a telephone call in May 1991. Thereafter he was unable to

reach respondent. Respondent stipulated that he violated RPC 1.1(b), RPC 1.4 and RPC 1.16(d). Once again, the stipulation stated that the mitigating circumstances described in Nakajima are applicable here as well.

At the DEC hearing, respondent testified that he met his former girlfriend in 1989 and that a "bizarre" relationship developed, from which a child was born. When he tried to terminate the relationship, the girlfriend harassed him, made death threats and engaged in constant abuse of both a "physical" and "mental" nature. According to respondent, the woman tried to set herself on fire, became violent, threatened not only respondent, but also members of his family, his secretary (an ex-fiancée) and his wife. Respondent believed that his former girlfriend was stalking him. Despite all of these problems and respondent's claim that he was deathly afraid of her, he never filed a complaint with the police.

Respondent's testimony was very vague. He stated that he went to Florida in or about July 1991 and then moved to Virginia Beach, Virginia about the end of July 1991. He was, therefore, only in Florida for approximately two or three weeks. While in Florida, he was involved in a car accident. Respondent was not hospitalized for injuries, but treated as an out-patient. Respondent claimed that he had left New Jersey for a vacation only. However, he never returned to New Jersey, settling in Virginia from July 1991 until 1995. Respondent left everything behind, including these seven cases. His mother boxed up the files from his law office in August 1991 and forwarded the boxes to him in Virginia.

Respondent did not take any steps to close down his office. His secretary was an unpaid volunteer who apparently was no longer working when he left because she, too, had

been involved in an accident. Respondent did not have his telephone disconnected, did not terminate his month-to-month office lease and did not send notices to his clients or to the courts that he had left the state or closed his practice.

Respondent never completed a change of address form for his law practice and did not notify anyone of his whereabouts. He only notified the New Jersey Fund for Client Protection ("Fund") and eventually the OAE of his new address. He claimed that he did not want many people to know where he was because he was trying to avoid any contact with his former girlfriend. He also never closed out his trust and business accounts. He believed that whatever money remained in the account had just "lapsed."

Respondent testified that he started working in Virginia in December 1991 as a paralegal. He applied for admission to the Virginia bar several times in 1992 and possibly 1993, but did not pass the examination.

Respondent returned to New Jersey in 1995 and resumed the practice of law. He admitted that, when he left the state, he was "distressed, naive and stupid."

During the course of the DEC investigation, respondent turned over to the DEC whatever documents he had available. Respondent explained that he had only approximately twenty cases when he left New Jersey, of which only thirteen were active files. Respondent believed that they were "pretty much wrapped-up."

The DEC found that the complaints were cumulative in nature, arising from respondent's closing down his law practice without notifying his clients, without returning their files and without arranging for new counsel. The DEC also found that, in two matters,

respondent failed to notify the court that he no longer represented his clients.

The DEC, thus, found violations of RPC 1.1(b), RPC 1.4, RPC 1.16(d) in seven matters and RPC 8.4(d) in two matters. The DEC recommended that respondent receive an admonition and that he attend professional responsibility courses administered by the Institute for Continuing Legal Education.

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Upon a de novo review of the record, the Board is satisfied that the evidence clearly and convincingly supports the committee's finding that respondent's conduct was unethical.

Respondent claimed that he had gone to Florida for a vacation to "clear his mind" over the situation with his former girlfriend. The record does not support a finding that, as of that point in time, he had abandoned his clients. Rather, the abandonment took place when respondent left Florida for Virginia with the intention to relocate to that state and not to return to New Jersey. Respondent did not notify his clients or the courts of his decision to leave New Jersey, violating his duty to protect his clients' interests. Despite respondent's assertions to the contrary, many of his files at that time were still active. Yet, respondent did nothing to either see them through completion or to advise his clients to obtain new counsel. It is not known whether respondent's clients suffered any irreparable injury as a result of his abandonment of their interests. Only in the Genoval matter did the stipulation state that the client was unable to pursue his claim because respondent had retained his documents.

Based on this record, there is clear and convincing evidence of violations of RPC 1.1(b), RPC 1.4 and RPC 1.16(d) in all seven matters. The record also supports a finding of a violation of RPC 8.4(d) in the Andresson and DeWoolf matters.

Respondent blamed his conduct on the fact that he was not thinking clearly because of his problems with his former girlfriend and the stress and fear that she had created in his life. There is nothing in the record to dispute these contentions. However, the letters from respondent's ex-girlfriend that are in evidence do not clearly convey the notion that he was being harassed at the time he fled the jurisdiction. To the contrary, the letters sent to respondent in Virginia seemed to be requests for child support or other material items for the child and for respondent to visit his child.

Respondent admitted using poor judgment and being "distressed, naive, and stupid." In fact, respondent had been in practice for only three years at the time he abandoned his clients; for half of that time he was a sole practitioner. These circumstances do not, however, justify or excuse abandoning his clients.

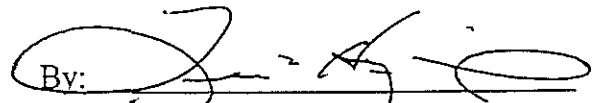
Discipline in other matters involving the abandonment of clients has ranged greatly, depending on the other ethics violations involved and the number of clients abandoned. See, e.g., In re Grossman, 138 N.J. 90 (1994) (three-year suspension where attorney signed a judge's name to a divorce judgment and 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 cases and was found guilty of pattern of neglect,

failure to maintain a bona fide office and failure to cooperate with ethics authorities); and 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).

The Board has considered the age of this case and respondent's youth and inexperience at the time of the conduct. Based on these factors, the Board unanimously determined to impose a three-month suspension. In addition, prior to reinstatement, respondent is to take the core courses offered by the Institute for Continuing Legal Education.

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

Dated: 11/2/98

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board