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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-154

IN THE MATTER OF

DANIEL E. ABRAMS,

AN ATTORNEY AT LAW

Decision

Argued: June 19, 1996

Decided: June 30,1997

Christopher L. Patella appeared on behalf of the District VI Ethics Committee.

Robert E. Margulies 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). The complaint charged respondent with a violation of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (a) (failure to communicate) and RPC 8.1(b) (failure to cooperate with the DEC).

Respondent was admitted to the New Jersey bar in 1988. He formerly maintained an office in Jersey City, Hudson County. Respondent currently lives in Florida, of which bar he is not a member. Respondent has no history of discipline.

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On January 11, 1992, Minerva Soto, the grievant herein, was injured while in "Bumpers," a club located in a Ramada Hotel in New Jersey, when she bit down on a piece of glass in her drink. Soto was acquainted with respondent, whose office was located in the same building as the bank in which she worked. Respondent was a customer of the bank. On or about February 20, 1992, Soto consulted with respondent about the January 11, 1992 incident. Soto understood that respondent would pursue her claim against Bumpers and/or the Ramada Hotel. Contrarily, respondent testified that he had agreed only to write a letter in Soto's behalf and to attempt to settle the case. Respondent had no experience in personal injury cases. He stated that he verbally disclosed this fact to Soto. (Soto was not questioned on this issue).

According to Soto, on an undisclosed date respondent gave her a retainer agreement to sign. Soto made changes to the agreement and gave it back to respondent, who stated that he would make the changes and return it to her for signature. Respondent never gave Soto the amended retainer to sign. Soto believed that she had retained respondent, despite not having signed a retainer agreement. Respondent disputed Soto's testimony on this issue. As discussed below, he had no recollection of any changes to a retainer agreement.

Respondent undertook some action in Soto's behalf. By letter dated February 20, 1992, he notified personnel at the Ramada Hotel that he had been "retained" by Soto in connection with the January 11, 1992 incident. Respondent asked that his letter be forwarded to the hotel's insurance carrier so that the matter could be settled. The record contains a series of subsequent letters between respondent and the carrier. The letters are dated between March 6, 1992 and October 30, 1992. One

letter from the carrier to respondent, dated October 19, 1992, states, "I have attempted contact with your office to no avail." Copies of respondent's letters were sent to Soto. Respondent also sent Soto to a dentist for an examination/evaluation.

During the course of the representation, Soto became involved in a real estate transaction. She testified that she never mentioned the transaction to respondent and that she was unaware that he did real estate closings. She ran into respondent while on her way to the closing in or about August 1993 and may have told respondent why she was there. (The attorney Soto hired in or about May 1993 for the closing had an office in the same building as respondent's office and the bank).

Contrarily, respondent testified that, in or about April 1993, Soto asked him if he did real estate closings. Respondent replied affirmatively. Soto then stated that she would get back to respondent about the transaction. According to respondent, Soto subsequently told him that she had been unable to reach him and had hired another attorney for the real estate closing. Respondent testified that he was upset

> [b]ecause that's bread and butter work to bring in right away. Personal injury cases can take a while. I figured if she didn't have confidence for me to do the real estate closing she'll have confidence for them to handle the personal injury cases.
> [T12/8/95 57]

Ultimately, respondent determined that Soto's case could not be settled and that he would need to file suit. According to respondent, it was at that point, April 1993, that he discussed signing a retainer agreement with Soto. It was respondent's belief that a retainer had to be signed at the time of the filing of the complaint. According to respondent, for reasons not explained, Soto did not sign the retainer. He claimed that he told Soto to hire another attorney to pursue the matter because he, respondent, had not signed a retainer agreement, there had been no amicable resolution to the matter

and suit would have to be filed. Respondent did not forward a letter to Soto stating that he was no longer representing her and that she had to retain another attorney to file suit. Respondent deemed it unnecessary to send a letter because he talked to Soto on a daily basis. Furthermore, respondent failed to advise Soto about the statute of limitations on her claim.

Respondent took no further action in Soto's behalf. The statute of limitations on her claim expired. Soto received no compensation and paid her dental bill of $1,809.75 herself.

Respondent contended that, despite his lack of experience in personal injury matters, had Soto signed the retainer, he would have represented her. He added, "[t]hat's why we have law libraries to draw complaints and things."

Respondent closed his practice in April 1993. He was evicted from his office in May 1993. He testified that he personally talked to his clients at that time – of which there were three – and referred them to other counsel. It is not clear if Soto was included among those three clients. Respondent maintained that he had told Soto that he was closing his office, a contention she denied.

At the DEC hearing, respondent was asked why he wanted Soto to sign a retainer agreement in April 1993 if he knew that he was closing his practice. Respondent replied, "Well, that was just to show that she would have to file, file the complaint." It is not clear what respondent meant by that statement.

Between September 1993 and February 1994, Soto made thirty to forty attempts to contact respondent to ascertain the status of her case, to no avail. Soto testified about conversations with respondent's secretaries at undisclosed times. During those conversations, she was told that respondent was ill, had personal problems or was out of town. She added that "most of the time [she] was told something that, you know, [she] felt comfortable with." Respondent testified,

however, that he received none of the messages. Soto did not go to respondent's office to see him because, as of September or October 1993, she no longer worked in the same building as his office. Similarly, Soto did not write to respondent. Respondent explained that, after he closed his office, he continued to have an answering service for several weeks. In addition, for an undetermined period of time, respondent's calls were forwarded to his counsel in this matter. Respondent did not know what message was heard if a client dialed his number after that time.

In July 1993, respondent filed for bankruptcy. He learned of Soto's grievance in or about February 1994. On advice of counsel, respondent amended his bankruptcy petition to include Soto as a potential creditor, in case she sought monetary damages from him. Despite the fact that the statute of limitations on Soto's claim had not run by the time respondent learned of her grievance, he failed to advise Soto of her option to file a complaint before the expiration of the statute of limitations.

* * *

Respondent was charged with a violation of RPC 8.1(b). As stated in the complaint, on or about February 23, 1994, the DEC investigator wrote to respondent seeking a reply to the grievance. On March 25, 1994, Francis R. Monahan, Jr., Esq., respondent's then counsel in this matter, advised the investigator that a written reply was forthcoming. Follow-up letters were sent to respondent on June 14, October 25, November 1 and November 8, 1994. The last letter, received by Monahan on November 10, 1994, advised that respondent's failure to cooperate with the DEC could constitute a separate violation of the RPCs. Respondent's counsel appeared to contend that the derelictions

in this regard were his fault and not the fault of respondent.

Although the complaint does not contain a charge in this regard, the DEC noted that respondent's retainer agreement, providing for a straight one-third recovery, is not permitted under the New Jersey rules. Respondent contended that he had been unaware of that fact.

* * *

The DEC determined that respondent violated RPC 1.1(a), RPC 1.3 and RPC 1.4(a). The DEC also found a violation of RPC 1.1(b) based on two earlier grievances filed against respondent that were dismissed. (The DEC mistakenly stated that there were three prior cases). The DEC did not find a violation of RPC 8.1(b) because it appeared that respondent's counsel, not respondent, had violated this section.

The DEC stated:

> It is clear from Respondent's demeanor at the hearing and from his testimony that once he found out that Grievant had engaged another real estate attorney, Respondent was upset that Grievant did not have him handle the real estate matter, and clearly could have cared less what happened to Grievant and/or her case. His behavior is one of abandonment without any notice or explanation. Respondent and Respondent's attitudes were cavalier toward the Grievant and the Respondent did not acknowledge that he even saw anything wrong with his behavior toward the Grievant.

The DEC recommended that respondent be disbarred.

* * *

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. The Board cannot agree, however, with all of the DEC's findings.

Specifically, the DEC found respondent guilty of a pattern of neglect because of two earlier cases that had been dismissed by the DEC. The Board has no evidence that these matters were ever litigated at the DEC level. Mere allegations of neglect are insufficient for the Board to find a pattern of neglect. Absent proof that respondent was afforded a full hearing on the charges of neglect in the earlier matters dismissed by the DEC, it would be inappropriate to consider those matters at this juncture. Accordingly, the alleged violation of RPC 1.1(b) is dismissed.

With regard to the violation of RPC 8.1(b), the DEC determined that the fault rested with respondent's counsel. The Board agrees. That allegation, too, should be dismissed.

It is unquestionable, however, that respondent was guilty of a violation of RPC 1.1(a), RPC 1.3 and RPC 1.4. As noted above, the DEC recommended that respondent be disbarred. That discipline is excessive. Respondent's misconduct, standing alone and in the face of his heretofore unblemished record, would generally warrant the imposition of an admonition. The complicating factor here is respondent's apparent abandonment of his client. Respondent claimed that he told Soto that he was closing his office, a contention that she denied. In this regard, Soto's testimony is more credible. Indeed, had she known that respondent was closing the practice, she more likely would have asked for her file or for another number at which she could reach respondent, or she would have retained another attorney. She would not have continued to call respondent at his former office number and allowed her claim to become time-barred.

With regard to the real estate transaction, it is possible that Soto was mistaken when she testified that she had not told respondent about it. More probably, respondent was annoyed when he learned that Soto had hired someone else to represent her. Nevertheless, if respondent no longer wished to represent Soto, the correct course of action would have been to withdraw from the representation, instead of frustrating Soto's personal injury claim.

It is obvious from the record that respondent lacks a basic understanding of his responsibilities toward his clients. Accordingly, the Board unanimously determined to impose a reprimand. See In re Lane, 147 N.J. 3 (1996) (reprimand imposed where an attorney was guilty of gross neglect, lack of diligence and failure to communicate in a bankruptcy proceeding.)

As noted above, respondent is not currently practicing law and testified that he has no intention of practicing law. In his brief and at oral argument before the Board, respondent's counsel stated that respondent would like to have the option to practice law. In light of this circumstance, the Board determined that, should respondent resume the practice of law in New Jersey, he is to complete ten hours of continuing legal education classes in ethics and to practice under the supervision of a proctor, both requirements to be filled or observed during the first year of his resumption of the practice of law. Two members did not participate.

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

Dated: 4/30/97

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board