

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-228 and
90-297

IN THE MATTER OF :
: STANLEY MARCUS, :
: AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 28, 1990

Decided: April 10, 1991

Irving L. Hurwitz appeared on behalf of the District VA Ethics Committee.

Michael R. Perle and Joseph A. Hayden 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 two presentments filed by the District VA Ethics Committee. Seven matters were considered by the committee, one of which was dismissed.

Docket No. DRB 90-228

The Afotey Matter (District Docket No. VA-89-45E)

Seth M. Afotey retained respondent as a result of a 1986 automobile accident wherein he sustained personal injuries and his automobile was damaged. The personal injury claim was settled for

\$6,000, and a release was signed on January 29, 1988. After Afotey was paid for his personal injuries, he informed respondent that the sum did not cover the damage to his automobile. Afotey testified that, for approximately eighteen months, he telephoned respondent twice a week attempting to obtain information about his property damage claim. Afotey also testified that he spoke with respondent on five to ten occasions during that time period. In addition, Afotey went to respondent's office, at which time respondent told him he was working on the case. Afotey also wrote to respondent two months before the filing of the grievance, receiving no response to his letter.

Afotey filed a grievance with the ethics committee in July 1989, and received a letter from respondent in September 1989. On September 12, 1989, Afotey signed a release and settlement agreement as to the property damage. In October 1989, respondent obtained payment for the property damage, and Afotey received a check from respondent on October 12, 1989. Respondent then asked Afotey to sign a statement indicating that he wished to withdraw the grievance, which statement he signed on October 12, 1989. Respondent testified that, at some point in time, Afotey's file was misplaced and was not found until after the grievance was filed (1T 147).¹

¹1T refers to the transcript of the hearing before the committee on February 7, 1990.

The Thomas Matter (District Docket No. VA-89-54E)

On or about January 21, 1987, Carrie Thomas, a government employee, fell in Newark City Hall. Within one month, Thomas retained respondent to pursue a personal injury action and, several weeks thereafter, provided him with all documentation he had requested. Thomas testified that, from early 1987 until July 1989, she telephoned respondent on numerous occasions, speaking with him once or twice. Ultimately, in the summer of 1989, respondent informed Thomas that her file had been lost. Respondent testified that Thomas' expenses were below the necessary threshold under the applicable statute. Thomas testified that she had additional bills that she never sent to respondent because he had not asked for them (1T 56).

In 1988, Thomas spoke with another attorney about pursuing the matter on her behalf. The new attorney did contact respondent, but apparently took no further action on Thomas's behalf. Thomas' claim is now barred by the statute of limitations.

The Powell Matter (District Docket No. VA-89-30E)

Lee C. Powell retained respondent in the summer of 1983 to represent him in a workers' compensation claim arising out of an injury that occurred the previous day. Powell testified that, throughout the remainder of 1983 and until mid-1985, respondent was usually unresponsive to his telephone calls, and that it was

difficult to meet with him. Respondent did inform him, however, that his claim was being pursued.²

After Powell filed the grievance, respondent told him that his file had been lost and that he had stopped pursuing it after Powell failed to appear at an appointment in July 1986. Respondent was able to locate the file after Powell filed his grievance. The panel report indicated that Powell's claim had been dismissed for failure to prosecute, and that a motion to reinstate had been denied. However, respondent's brief to the Board indicated that, in fact, the motion was pending at the time the panel report was issued, and that the matter was ultimately settled for the full value of the claim.

The Santiago Matter (District Docket No. VA-89-7E)

In January 1982, Marie Santiago retained respondent to represent her in a workers' compensation matter. Respondent did take some action on Santiago's behalf, including sending her a letter about the status of the case, and sending her to four doctors in 1982. Santiago testified that she telephoned respondent repeatedly, occasionally up to three times per day, asking that he return her calls (1T 80). None of these calls were returned. During one call, in 1986 or 1987, respondent did speak with Santiago and admitted to her that her file had been lost. That was

²Although two letters from respondent to Powell were produced at the hearing, Powell was unable to state with certainty if he received them (1T 63).

the final contact Santiago had with respondent. As late as in December 1989, Santiago was told by another attorney in respondent's office that they were waiting for a court date.³

In 1986 or 1987, Santiago contacted another attorney with regard to her case. According to her testimony, the second attorney would not take the matter, but did contact respondent who, apparently, was then able to locate Santiago's file.⁴ During the hearing respondent testified about the difficulties in getting the hospital records because Santiago had moved and listed different addresses on her hospital records and on her medical authorization form given to respondent (1T 162-163). However, the following exchange took place later during the ethics proceeding:

Q. And you also testified about your difficulty in getting hospital records because of the problem with the address. You're not telling the Committee, are you, that the reason nothing was done on this file between 1982 and 1987 -- resulted from a problem with the address, are you?

A. No.
[1T 207.]

³Respondent's counsel indicated in his brief to the Board that, in fact, respondent's office did resolve this matter on Santiago's behalf.

⁴Respondent was not certain whether the Santiago file he had was the original or a duplicate, due to the fact that correspondence in the file did not go back far enough in time to be the original (1T 164).

The Rice Matter (District Docket No. VA-89-31E)

Roberta Rice retained respondent to represent her in a personal injury action arising from a motor vehicle accident in which Rice was a pedestrian. Respondent filed a civil complaint on Rice's behalf. Criminal charges were also filed against the driver of the vehicle. During the criminal trial, Rice admitted to lying during the civil deposition, stating that she did so based on respondent's advice.

Respondent was charged with a violation of RPC 1.2(d). After a full hearing on this matter, the committee determined that there was not clear and convincing evidence to prove a violation of the rule, and the complaint was dismissed.

The committee did not make specific findings as to each matter, but instead determined that respondent had violated RPC 1.3, RPC 1.4(a), RPC 1.5(b), RPC 1.5(c), and RPC 1.1(a).⁵ The committee also determined that, taken together, the matters showed a violation of RPC 1.1(b).

In addition to the violations alleged in the complaint, the respondent admitted, and the committee found, violations of R. 1:21-6(b) and R. 1:21-7(g). The Board has determined that this

⁵The violations of RPC 1.5(b) (communication in writing of the basis or rate of the fee) and RPC 1.5(c) (contingent fee) were not charged in the original complaints against respondent. The committee did not formally amend the complaint to include these charges, but did question respondent on these issues. Respondent's counsel made no objection to these inquiries.

matter was not properly before it, as the violations were not charged in the complaint. The Board is also aware that respondent's attorney trust account records are currently being audited by the Office of Attorney Ethics to determine whether they are in compliance with the recordkeeping rules. Accordingly, the Board will make no determination as to these violations at this time.

Docket No. DRB 90-297

The Barnes Matter (District Docket No. VA-89-5E)

In 1980, James D. Barnes retained respondent in connection with a workers' compensation claim. During the course of his representation of Barnes, respondent failed to take action to resolve Barnes' claim and, in fact, respondent lost Barnes' file. In addition, Barnes made numerous telephone calls to respondent requesting information as to the status of his claim. Respondent failed to respond to the requests. Respondent settled the matter with Barnes based upon the estimated value of the case.

The Reyes Matter (District Docket No. VA-89-86E)

In 1985, respondent was retained by Ulpiana Reyes to represent her in connection with a workers' compensation matter. During the

time of his representation, respondent failed to act diligently to resolve her claim and, in fact, lost her file. Although respondent recalled speaking with Reyes during the period in question, some of her calls requesting information as to the status of her claim went unanswered.

The committee found, and respondent admitted, violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(a). The committee also found a violation of RPC 1.1(b).

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.

Although the record supports the committee's finding that a violation of RPC 1.2(d) in the Rice matter was not proven, the remaining violations have been proven to a clear and convincing standard. 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 finds that respondent violated DR 7-101 and superseding RPC 1.3, by failing to act with diligence in each matter, and DR 6-101(a) and superseding RPC

1.1(a), by grossly neglecting the Thomas, Powell, Reyes, and Barnes matters.⁶

The Board agrees with the committee's finding that there has been a violation of RPC 1.4(a), in that respondent clearly failed to communicate with his clients in these matters.⁷ 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).

With regard to the alleged violations of RPC 1.5(b) and RPC 1.5(c), the Board is also in agreement with the findings of the committee. Respondent failed to advise his clients in writing of the necessary information concerning his fees. Further, respondent violated the rule governing the use of a contingent fee arrangement.

Given the number of matters considered by the Board in this case, it is clear that respondent's misconduct is not an isolated incident or aberration but, rather, a pattern of behavior. Accordingly, the Board agrees with the finding of the committee that respondent violated RPC 1.1(b) by exhibiting a pattern of neglect.

In determining the appropriate quantum of discipline to be imposed, the Board has considered Matter of Mahoney, ___ N.J. ___

⁶The Rules of Professional Conduct replaced the Disciplinary Rules effective September 1984. Respondent's conduct in four of these matters began before that time. Therefore, both the Rules of Professional Conduct and the Disciplinary Rules apply.

⁷Respondent was not charged with a violation of RPC 1.4(a) in the Thomas matter.

(1990). In Mahoney the Court determined that a public reprimand and a one-year proctorship was the appropriate discipline for an attorney who neglected four matters. As in the present matter, the attorney in Mahoney also failed to communicate adequately with his clients.⁸

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.

Respondent attempted to place partial blame for his misconduct on the high volume of cases he handled. As his counsel contended in his brief to the committee: "[w]e also submit that in the context of the volume of cases [respondent] handled, the situations which were the subjects of the complaints do not loom as statistically significant as they might appear, if viewed in isolation." The Board does not accept this argument in mitigation of respondent's conduct. In In re Ackerman, 95 N.J. 147 (1984), the Court stated:

There must be a rational accommodation of a busy trial practice and the legitimate demands of individual clients, to the end that the interests of the clients not suffer. The conventional remedies of increase in staff

⁸The attorney in Mahoney was also found to have violated RPC 1.15 and RPC 8.4.

and reduction in volume of business immediately suggest themselves as practical approaches. Doubtless there are others. Id. at 164-165.

Clearly, the attitude among certain members of the bar that negligence is excusable, if due to a heavy caseload, cannot be countenanced.

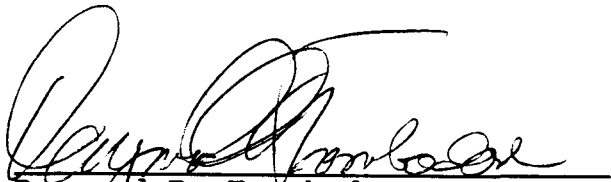
The Board recommends that respondent be publicly reprimanded. In addition the Board recommends that respondent be required to practice under the guidance of a proctor for two years. Two members dissented on the recommendation for a proctor. Two members did not participate.

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

Dated:

4/10/1991

By:


Raymond R. Trombadore
Chair
Disciplinary Review Board