

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-278

IN THE MATTER OF :
FRANK FORD, III, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the Disciplinary Review Board

Argued: October 19, 1994

Decided: May 23, 1995

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper notice of the hearing.

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

This disciplinary matter arose from a six-count complaint charging respondent with violations of R.1:21-6 (recordkeeping violations); RPC 1.1(a) (gross negligence); RPC 1.1(b) (pattern of neglect); RPC 1.3 (failure to act with reasonable diligence); RPC 1.4(a) (failure to communicate with a client); RPC 8.4(d) (failure to comply with a fee arbitration award) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Respondent was admitted to the New Jersey bar in 1986. His last known office address was in Browns Mills, Burlington County, New Jersey.

Respondent has been ineligible to practice law in New Jersey since July 18, 1991 for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. On January 6, 1992, respondent received a two-year suspension, following a motion for reciprocal discipline filed by the Office of Attorney Ethics ("OAE"). In re Ford, 126 N.J. 483 (1992). In that matter, respondent continued to represent a client in a civil case in the Virgin Islands, despite having been suspended by the United States Court of Appeals for the Third Circuit for failure to file a petition for certiorari in a criminal matter. Respondent was suspended in the Virgin Islands for two years.

The Ernest Turner Matter

On July 6, 1990, respondent opened an account at the First Fidelity Bank in Pemberton, New Jersey, to hold trust monies for Ernest Turner. Respondent was the sole signatory on the account. Turner had been a medic with the United States Armed Forces and had been stationed in Germany until 1982, when he was involved in a motorcycle accident. As the result of complications from that accident, Turner suffered brain damage. In November 1991, Turner was adjudged incompetent to handle his affairs. Exhibit 3D.

Turner had originally retained respondent to represent him in a matrimonial matter. As of July 1990, however, respondent was

handling all of Turner's finances, which apparently included veterans' disability income and social security disability benefits. The record does not explain how respondent came to control Turner's funds.

At the time of the District IIIB Ethics Committee ("DEC") hearing, Turner was thirty-four years old and had been living with his mother since 1982.

Turner's mother, Shirley Turner, testified at the DEC hearing because her son was not competent to do so. She claimed that she initially did not know that respondent was handling her son's financial affairs. In July 1990, she attempted to take over her son's finances, by contacting the social security office. It was only then that Ms. Turner discovered that respondent was representing her son and was holding her son's monies in trust.

Ms. Turner testified that she went to respondent's office (which was also his home), but respondent was reluctant to let her in and did not want to answer any of her questions regarding her son. Respondent failed to give Ms. Turner an accounting of Ernest's funds despite her requests. T14, T20.¹

Ms. Turner testified that her son was able to obtain funds from respondent only by repeatedly going to his office. At times, respondent was not there; at other times, he refused to open the door. Ernest had to "run him down" to get any money and then it was only \$10 to \$20 at a time. T17. Eventually, Ms. Turner

¹ T denotes the transcript of the DEC hearing on January 5, 1994.

retained another attorney, who was able to take control of Turner's accounts. T21.

OAE Investigative Auditor D. Kenneth Tulloch was assigned to investigate the Turner matter in September 1991. He testified that, even though he was unable to personally contact respondent, it appeared that respondent had taken some steps to represent Ernest Turner by paying certain bills. T23. Tulloch subpoenaed information from First Fidelity Bank. From his analysis of the bank records from July 6, 1990 to October 31, 1991, he discovered that ~~deposits~~ in excess of \$8000 had been made. The amount included social security payments, veterans' disability payments and interest.

Respondent made a number of withdrawals from the Turner trust account, all in cash, for what appeared to be money orders. Tulloch was unable to account for all of the cash withdrawals made by respondent from July 16, 1990 through May 22, 1991. Respondent made fifteen withdrawals from Turner's account totaling \$4,153.69. Of the fifteen withdrawals, Tulloch was unable to correlate only three withdrawals to payments made to or on behalf of Turner. Those withdrawals were made on October 16, 1990 (\$755.53), February 25, 1991 (\$550) and March 15, 1991 (\$502.50).

At the DEC hearing, the presenter conceded that, under the circumstances, which included Turner's mental condition, he could not prove knowing misappropriation because there was no evidence that respondent had taken Turner's money for his own use.

The Alvin Crain Matter

Respondent was retained to represent Crain in a divorce matter. Respondent did some work on Crain's behalf, including obtaining a restraining order against Crain's wife and answering her counterclaim.

At some point, an issue arose as to the distribution of Crain's pension to his wife. Respondent failed to appear in court to defend his client's position. Crain did not learn about respondent's absence and the missed court appearance until his ex-wife's attorney sent him a copy of an order requiring him to make certain distributions to her. T35.

Thereafter, Crain attempted to contact respondent on many occasions. He went to respondent's home-office, but was never able to locate him there. He left messages on the door. He tried calling respondent eight or nine times before respondent's phone was disconnected. Crain even went to the municipal court building to see if he could locate respondent while on another case. His efforts were unavailing. Eventually, Crain retained new counsel, after the court advised him that his case was reaching a critical point.

The record is devoid of any information with respect to whether respondent retained unearned fees in this matter.

The Eliza Simmons Matter

In November 1990, Simmons retained respondent to represent her in connection with the probate of her mother's will. Her aunt was

named the executrix of the estate. Because, however, the aunt lived in Alabama, she wanted to renounce her position as executrix. Simmons was to be substituted.

Respondent initially met with Simmons at her home and later at the county surrogate's office. Simmons provided respondent with her mother's will, the deed to her mother's house and an unidentified document. Simmons gave respondent \$100 as a fee for his court appearance. Respondent provided her with a receipt. Simmons also gave respondent \$200 to transfer title to her mother's house to her.

After respondent's meeting with Simmons' at the surrogate's office, he was to call her the following week. Simmons never saw respondent again, despite her attempts to contact him on numerous occasions. Simmons left written messages at respondent's home and with his answering service. She never received any response. Simmons testified that, by the time she started keeping track of her telephone calls to respondent, she had called him approximately thirty times.

Simmons testified that, prior to her mother's passing, her mother had signed a "bill of sale" for her house over to Simmons. Apparently, Simmons' brother sued her, claiming entitlement to the house. Respondent, however, had the relevant documentation and never returned it to Simmons. Eventually, Simmons was forced to retain a new attorney.

Respondent ultimately contacted Simmons, after she informed him that she intended to complain to the district ethics

committee. Respondent inquired whether she wanted her money and her documents back. Although Simmons replied affirmatively, she has not heard from respondent since.

The Sandra Moolchan Matter

Respondent met with Moolchan at her home on March 8, 1991. She gave respondent \$100 in cash as a retainer for respondent to file a bankruptcy petition on her behalf. On March 22, 1991, Moolchan gave respondent an additional \$125 in cash for filing fees. Moolchan did not receive a receipt for either cash payment. There is nothing in the record to show that respondent did or did not provide Moolchan with a retainer agreement.

Respondent prepared the bankruptcy documents and brought them to Moolchan's home for her signature. That was the last time she saw respondent. T42. Respondent never filed a bankruptcy petition in Moolchan's behalf.

Moolchan tried to contact respondent to determine the status of her case. She went to respondent's home, left notes at his door, called him and left messages with his service. She never heard from respondent. Eventually, Moolchan was required to retain the services of another attorney.

Moolchan filed a grievance with the district fee arbitration committee. Respondent failed to appear at the hearing. On October 17, 1991, the committee entered an order compelling respondent to

return \$225 to Moolchan. As of the date of the DEC hearing, respondent had not returned the unearned fees to Moolchan.

The June M. Glover Matter

In March 1990, Glover was referred to respondent by another attorney. Glover met with respondent at his home to discuss a divorce proceeding. Glover paid respondent \$400. Respondent accompanied Glover to court. However, at the initial appearance, the judge assigned to the matter became ill and the matter was postponed. The hearing date was rescheduled for the following month. Glover only became aware of the court date as a result of a conversation with her husband. Glover attempted to contact respondent, but could not locate him. She, therefore, appeared in court without him.

When the judge questioned Glover about respondent's absence, she explained that she had been unable to contact him. The judge adjourned the matter one more time because of respondent's failure to appear. Thereafter, Glover stopped by respondent's home and left him a note to contact her. She left a message with his answering service and sent respondent two certified letters. Respondent still failed to contact Glover. T55.

Glover filed a grievance with the District IIIB Fee Arbitration Committee. Respondent failed to appear at the hearing in September 1991. By order dated September 3, 1991, the committee directed respondent to reimburse Glover \$360. As of the date of the DEC hearing, Glover had not been reimbursed.

Failure to Cooperate With the Disciplinary Authorities

Respondent was notified by regular and certified mail of a demand audit by the OAE, to be held on September 26, 1991. The certified mail was returned unclaimed, but the regular mail was not returned. Respondent failed to appear for the audit and failed to contact the OAE about the audit date.

Thereafter, respondent was again notified by regular and certified mail of a demand audit scheduled for August 4, 1992. A notice of the audit was also hand-delivered to respondent by OAE Investigator Robert J. Haas. Respondent informed Haas that he would appear at the audit. He, however, again failed to appear or to otherwise contact the OAE.

In addition, respondent failed to file an answer to the OAE complaint against him. He also failed to appear at the DEC hearing. Consequently, at the DEC hearing, the presenter moved to amend the complaint to add a charge of non-cooperation with the disciplinary authorities, in violation of RPC 8.1(b).

* * *

The DEC concluded that respondent's conduct was unethical in all five matters. Specifically, the DEC found that respondent violated R.1:21-6 (recordkeeping violations) in the Turner matter; RPC 1.3 (failure to act with reasonable diligence and promptness)

and RPC 1.4(a) (failure to communicate) in the Crain matter; and RPC 1.1(a) and (b) and RPC 1.4(a) in the Simmons matter. In the Moolchan matter, the DEC found violations of RPC 1.1(a) and (b), RPC 1.3 and RPC 8.4(d) (conduct prejudicial to the administration of justice). Finally, in the Glover matter, the DEC found violations of RPC 1.1(a) and (b), RPC 1.3 and RPC 8.4(d). With respect to count six, the DEC found a violation of RPC 8.1 (failure to cooperate with the disciplinary authorities). The DEC recommended the imposition of a period of suspension.

* * *

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

In the Turner matter, respondent was either properly appointed Turner's guardian or took it upon himself to handle Turner's financial affairs. Although it was impossible for the OAE to determine whether respondent had knowingly misappropriated Turner's funds — because of respondent's refusal to submit his attorney records and to appear at the audit — Turner's mother's uncontradicted testimony was that respondent had refused to furnish an accounting to her, that at times respondent refused to open his door when Turner would attempt to collect his payments and that

Turner had to virtually "run respondent down" to obtain the funds that were rightfully his, and then only \$10 to \$20 at a time. Respondent's conduct in this regard violated RPC 1.15(b) (failure to promptly deliver to client or third person funds that the client or third person is entitled to receive). Respondent's obstreperous refusal to submit his attorney records for the OAE audit, despite his assurance that he would do so, successfully precluded the OAE from determining whether Turner's funds had remained intact in respondent's trust account or whether respondent had knowingly misappropriated them.

In all five matters, respondent exhibited lack of diligence, pattern of neglect and failure to communicate with his clients. In at least three matters, Simmons, Moolchan, and Glover, respondent displayed gross neglect. In addition, respondent failed to comply with fee arbitration determinations in two matters, Moolchan and Glover, in violation of RPC 8.4(d) and RPC 1.16(d).


Lastly, it is unquestionable that respondent failed to cooperate with the ethics authorities, by failing to file an answer to the formal ethics complaint, to appear for the OAE audit, to appear at the DEC hearing, and to appear at the Board hearing. The Board also noted that, in the 1992 matter that culminated in his suspension for two years, respondent did not advise the OAE of his two-year temporary suspension in the Virgin Islands. In fact, the OAE was not aware of that suspension for a period of more than two years. It is unquestionable that respondent holds no regard for his privilege to practice law.

All in all, respondent displayed abominable conduct toward five clients. The within offenses, coupled with respondent's misconduct in the matter that led to his two-year suspension in 1992 and, more significantly, with his demonstrated contempt for the disciplinary system, persuaded the Board that discipline short of disbarment would not adequately address the public's interest in maintaining the integrity of the legal profession. The Board noted that respondent began his course of unethical conduct shortly after his admission to the bar —he was admitted to the New Jersey bar in 1986, and was suspended by the Third Circuit on June 19, 1987. He continued on that course to date, by failing to participate in these ethics proceedings. Respondent's persistent disregard of the welfare of his clients, the courts and the disciplinary system convinced the Board that he will not improve his conduct. Accordingly, the Board unanimously recommends that respondent be disbarred. See In re Cohen, 120 N.J. 304(1990). Three members did not participate.

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

Dated:

5/23/95


RAYMOND R. TROMBADORE
Chair
Disciplinary Review Board