SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-386

IN THE MATTER OF

CHARMAN T. HARVEY,

AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: December 21, 1994

Decided: February 1, 1995

Gerald Poss appeared on behalf of the District VB Ethics Committee.

Cassandra T. Savoy 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 upon a recommendation for public discipline filed by the District VB Ethics Committee (DEC). Two separate complaints charged respondent with various ethics violations.

The first complaint, Docket No. VB-92-033E, charged respondent with violations of RPC 1.1 (gross negligence); RPC 1.1(b) (pattern of negligence); RPC 1.2(a) (failure to abide by the client's directives to settle a claim); RPC 1.3 (failure to act with reasonable diligence or promptness in representing a client); RPC 1.4 (failure to keep a client reasonably informed); RPC 1.15 (failure to properly maintain trust account); and RPC 3.2 (failure to expedite litigation consistent with the interests of the client

and failure to treat all persons in the legal process with courtesy). These charges stemmed from a real estate closing in which respondent failed to promptly refund monies to the purchaser of her client's property, after an error in the computation of closing costs was made known to her and after her client provided her with the funds to be returned.

The second two-count complaint charged respondent with the following ethics violations: In count one (Docket No. VB-91-071E), RPC 5.4 (sharing legal fees with a non-lawyer), RPC 1.1(a), 1.1(b), RPC 1.2(a), RPC 1.3, RPC 1.4 and RPC 8.4(b), (c), (d) and (f). These charges arose from respondent's failure to meet with her client and to properly investigate potential sources of recovery in her client's personal injury action. Moreover, the client's name was signed on a release and a settlement check was signed by someone other than the client, without the client's knowledge or consent. In count two (Docket No. VB-91-070E), respondent was again charged with violations of RPC 1.1, RPC 1.1(a) and (b), RPC 1.3 and RPC 1.4 (a) and (b) (failure to explain a matter to the extent necessary to permit the client to make informed decisions regarding the representation). The complaint alleged that respondent failed to keep her client reasonably informed about a personal injury action, failed to notify the client of her decision not to file suit, and failed to file suit before the running of the statute of limitations.

Respondent was admitted to the practice of law in New Jersey in 1977. While she has no prior ethics history, eight ethics cases

are currently pending against her at the DEC level. These matters involve charges of gross negligence, failure to communicate, failure to maintain a bona fide office, misrepresentations to a client, fraud and forgery, failure to comply with the directives of a client and attempting to deposit a forged check into her trust account.

ABDUL WAHAB - District Docket No. VB-92-033E

The grievant in this matter, Abdul Wahab (Wahab), did not appear at the DEC hearing. Respondent, however, admitted a number of the allegations in the complaint.

Wahab had retained respondent to represent him in connection with the closing on the sale of a house. The closing took place on December 23, 1991. An error in the computation of closing costs — not attributable to respondent — resulted in an excess payment of $2,250 to Wahab. At some point prior to February 1992, the error was discovered and the buyer's attorney demanded a refund from respondent. In her answer to the complaint, respondent claimed that she was notified of the error several days after the closing and immediately advised Wahab that he was required to reimburse the buyer. According to respondent, Wahab could not afford to return the funds. Respondent, therefore, spoke to the buyer's attorney on several occasions to try to work out installment payments on behalf of her client. T15.[1] Wahab was able, however, to give respondent a refund check for the full amount on or about February 15, 1992.

[1] T denotes the transcript of the DEC hearing on December 10, 1992.

According to respondent, the check was deposited into her trust account by one of her staff members, on or about February 19, 1992. Respondent claimed that she did not become aware of the deposit until May 1992. T20.

Respondent stated that she was in trial in various matters from February 8, 1992 to the first or second week in May 1992, with only minor breaks. She also noted that she was experiencing cash flow problems because of the New Jersey Automobile Full Insurance Underwriting Association ("JUA") freeze on payments of claims. Her law office at 60 Evergreen Place, West Orange, New Jersey, was closed, whereupon she operated from her house for a certain period of time. T11.

Despite numerous requests that respondent reimburse the buyer by both the buyer's attorney and Wahab, respondent failed to issue a refund check. She also failed to return their numerous telephone calls. As a defense, respondent alleged in her answer that she did not recall the telephone calls or the demands for reimbursement.

Because of respondent's failure to refund the $2,250 to the buyer and her failure to communicate with the buyer's attorney, the buyer instituted suit against Wahab. Respondent failed to reimburse the buyer until on or about June 15, 1992, just before a default judgment was to be entered against Wahab.

Respondent admitted that she failed to keep the $2,250 paid by Wahab in her trust account between February 19, 1992 and June 15, 1992. The complaint, however, was not amended to specifically charge her with knowing or negligent misappropriation. It merely

charged a general violation of RPC 1.15. Respondent claimed that, because of her trial schedule, she was unaware that Wahab's funds had been deposited into her trust account. She believed that the only monies in her trust account were fees that were due to her, but had not yet been transferred into her business account and she, therefore, made use of the Wahab funds.

Respondent acknowledged that she did not carefully maintain her trust records while she was in trial. T18. She claimed, however, that she left her fees in the trust account because she was not able to do the ledger sheets. Whenever funds were received, she filled out deposit slips and also prepared client ledger cards when the funds were disbursed. She entered the check numbers and the amounts of the disbursements on the ledger cards. Generally, she also performed quarterly reconciliations "just to make sure there weren't any errors." T19. Respondent testified that, because of her busy trial schedule, she was unable to perform her quarterly reconciliations during the period in question. T20.

The DEC found that respondent's failure to maintain the $2,250 in her trust account was a violation of RPC 1.15 and RPC 1.1(a), but did not address the issue of misappropriation of client funds, whether negligent or knowing. The DEC also found violations of RPC 1.2(a) for respondent's failure to follow her client's decision to return the funds to the buyer, RPC 1.3 for her failure to act with due diligence, and RPC 1.4 for failure to keep her client reasonably informed. Finally, the DEC found that respondent violated RPC 3.2 for failing to expedite litigation.

DAISY RIVERA - District Docket No. VB-91-071E

Daisy Rivera (Rivera) was involved in an automobile accident on July 12, 1989. Her boyfriend, Edwin Rios, was driving her car. Rios ran a stop sign and was hit by a car driven by Hasan James. According to Rivera, even though Rios ran the stop sign, he had been driving slowly, while James may have been speeding.

As a result of the accident, Rivera suffered fairly serious injuries and was hospitalized for two days. Apparently, an attorney, not identified in the record, visited Rivera in the hospital, whereupon she retained him to represent her. Rivera signed a retainer agreement with the attorney.

Rivera testified that, while still in the hospital, two men not previously known to her, Ahmad Mohamed and another individual possibly named Gerard, both of whom worked for respondent, approached her to see if she was interested in being represented by respondent. They told Rivera that respondent was a good attorney and would be able to get her a good settlement. T29. The two convinced Rivera to meet with respondent; they even drove her from her home to respondent's office for the initial "intake" meeting, at which at least Mohamed and another male were present. It was in dispute whether respondent dropped in on the "intake" meeting. T30. Rivera claimed that she did not meet respondent during her initial office visit. In fact, she testified that she did not meet or speak with respondent until she went to pick up her settlement check on January 29, 1992. T32-33. Respondent, however, contended that she met Rivera during the "intake" meeting and even briefly

spoke to her at that time. T56. Respondent also claimed that she had another informal meeting with Rivera when she brought her insurance declaration pages to respondent's office. T57.

During Rivera's initial meeting at respondent's office, she signed a letter discharging the first attorney she had retained. Rivera may also have signed a retainer agreement for respondent's services. However, Rivera never received a copy of the retainer agreement.

At some point, Rivera was contacted by respondent's office about the settlement value of her case. According to Rivera, she was told by someone, who was not identified in the record, that, because of her insurance policy limits and the fact that she could not sue James because Rios had been "at fault" for the accident, she should settle the case for $15,000. Rivera did not want either to settle the matter or to sue her boyfriend. After Ahmad and Gerard abruptly left respondent's employ, Rivera spoke to an individual whom she believed to be respondent's secretary. She repeatedly told this individual that she wanted to speak with respondent, but respondent was never available. T33. Because of the severity of her injuries, Rivera repeatedly advised "respondent's office" that she did not want to settle the matter. T36. She wanted to pursue other alternatives. Each time, Rivera was advised by "someone" at respondent's office that nothing could be done and that she would have to take the $15,000 settlement. Rivera unequivocally testified that she was never asked to sign a release in the matter and she never authorized anyone to sign a

release on her behalf. She was not interested in settling the matter. T36.

Respondent, or her paralegal, nevertheless, settled Rivera's case. Contrary to Rivera's testimony, respondent claimed that she personally discussed the case with Rivera (T61) and explained to her that, because there were no other policies to pursue, she would be able to recover only $15,000. Furthermore, respondent claimed that she "kept having her office call" Rivera to get her into the office to sign a release form before the JUA freeze took effect. According to respondent, Rivera authorized respondent to sign the release (Exhibit J-5) on her behalf-so they could "fax" the release to the insurance company. Respondent claimed that she did not know who signed the release. Respondent testified as follows:

> A. And I said, if you want your money, we could get your money before the freeze if you come up here and sign your release.
>
> Q. What was her response?
>
> A. She wasn't sure. She had to do something. She wasn't sure if she could make it at the 11th hour, which was about 2:00, and it was hard to get through on the fax machines. She was asked if we could sign a release.
>
> Q. You asked her yourself if you could sign a release?
>
> A. I asked her. She said yes, but still give her time to come in. I believe Rennay [Tigner] called her.
>
> Q. Who's Rennay?
>
> A. A paralegal in the office.
>
> Q. When you say she wasn't sure if she could come, did you have some discussion with her about whether or not she would accept the 15 or she was satisfied with that?
>
> A. After the conversation, because we did go through it again, whether she thought she should get more money,

just the injuries, [sic] I went over it again with her. The only thing payable to her was the $15,000. I truly believed when I finished the conversation she understood this was what she was going to receive.

Q. And your professional opinion was that was the best you could do for her?

A. That's the best I could do unfortunately.

Q. And did she ultimately agree to accept that?

A. Yes.

Q. And did she authorize you to sign the release on her behalf?

A. Yes.

Q. Did you personally sign the release?

A. No.

Q. Do you know who signed the release?

A. No, I don't. I don't recognize the handwriting.

Q. You do agree that you notarized it?

A. Yes, I do.

Q. That's an improper act, correct?

A. Yes, I do [sic].

Q. What was your reason for notarizing it?

A. Well, at the time I was just trying to get Daisy's money in the office before the freeze went on because I didn't know how long the freeze was going to be. We were talking about a substantial sum of money.

Q. All right. Did you fax the release that day?

A. Yes, we faxed it, but it didn't get through in time.

Q. Did you manage to obtain Daisy's money before the freeze?

A. No.

Q. Okay. Did you ultimately receive money?

A. Yes, we did.

Q. And did you deposit the check or did someone in your office do it?

A. I'm not sure I deposited the check, if I personally did it.

Q. You've seen the writing on here. That indicates, that suggests Ms. Rivera signed it?

A. Yes.

Q. Did you sign that?

A. Did I sign?

Q. Did you sign Daisy Rivera's name?

A. No, that's not my handwriting.

Q. Do you know whose handwriting it is?

A. No, I don't.

Q. Were employees in your office authorized to sign checks and deposit them?

A. No, they weren't, they weren't authorized to sign checks.

[T62-65]

Significantly, Exhibit J-5 was purportedly notarized by respondent on June 3, 1991. A review of respondent's file (Exhibit J-1) in the Rivera matter, however, reveals that an earlier release had been prepared and forwarded to CSC Insurance services ("CSC"). The earlier release, dated April 30, 1991, also contained Rivera's signature, in the same handwriting as the one dated June 3, 1991, and was notarized in what also appears to be respondent's signature. Tigner, respondent's paralegal, unequivocally admitted signing Rivera's name on the June 3, 1991

release. The letter in respondent's file, from respondent's office to CSC, reveals that the first release, dated April 30, 1991, needed additional language. Exhibit J-5 was the revised release. Apparently, Rivera did not sign either release, nor did she sign the settlement check prior to its deposit into respondent's trust account. The DEC did not charge respondent with a violation of RPC 5.3 (responsibilities regarding nonlawyer assistants).

Notwithstanding the foregoing, the release was not timely received by CSC and, as a result, Rivera's settlement was held up by the JUA freeze. Even after it became clear that Rivera would not immediately obtain her settlement check, respondent did not attempt to obtain a properly signed release from Rivera during the JUA freeze.

Apparently, at some point, a copy of the release was forwarded to Rivera's attention. According to Rivera, when she received the release, she telephoned respondent's office to inquire why her name had been signed to the release:

> I asked, why is my name signed to something? I didn't sign it. She [the identity of the speaker is unknown] said that's what they were going to settle for.
>
> * * *
>
> I didn't know if it was right or wrong for them to sign my name on something like that. I felt it was wrong. So I wasn't sure. So I didn't know what to do about it. So I would -- in other words, I was leaving it like that 'cause I didn't know really what to do.
>
> [T37]

According to Rivera, when respondent finally received the settlement proceeds, Rivera refused to take her check on July 24,

1991. She had not wanted to settle the case. On that date, however, she had gone to respondent's office to verify that all her medical bills had been paid to avoid future problems with the bills. T39. Six months later, on January 29, 1992, Rivera returned to respondent's office, signed the settlement statement and received her settlement check in the amount of $9,800. T41.

Contrary to Rivera's statement that she never met respondent until she picked up her settlement check on January 29, 1992, respondent claimed that they had met three or four times. Respondent admitted that, despite these alleged meetings, she never obtained a statement from Rivera about how the accident had occurred. T70. Moreover, respondent never spoke to Rios about the accident. T72. Respondent believed that, because of the extent of the injuries sustained by her client, the claim was worth more than $15,000. Respondent also admitted that she did not understand that Rivera wanted to sue James and admitted that she had little contact with Rivera. T78. Respondent did not interview any of the individuals involved in the accident. Instead, she relied on the insurance adjuster's assessment of liability -- that James was not at fault. Respondent based her determination in the matter on that fact and also on her reading of the accident report.

Respondent's paralegal, Rennay Tigner, testified that she had negotiated Rivera's settlement with the insurance company. She also admitted that she had signed Rivera's name on the release and had obtained Rivera's authorization to do so. According to Tigner, she told respondent that she had signed Rivera's name. T95.

Tigner did not know, however, who signed the settlement check on Rivera's behalf.

Tigner claimed that, according to office procedure, there should have been a statement in the Rivera file regarding the claimant's version of the accident. However, Tigner did not recall reading it. After reviewing the file at the DEC hearing, Tigner admitted that statements regarding the accident were missing from the Rivera file. T131.

Finally, respondent testified that Ahmad Mohamed had been her paralegal and investigator. He was a salaried employee and received $250 per week plus expenses. Respondent claimed that Mohamed was not compensated for bringing Rivera in as a client.

The DEC did not find clear and convincing evidence of a violation of RPC 5.4. It found, however, that respondent's failure to investigate sources of recovery, other than the driver of Rivera's car, was a violation of RPC 1.1(a), RPC 1.3 and RPC 1.4. The DEC also found that, by falsely notarizing Rivera's signature on the release, respondent had violated RPC 8.4(b), (c), (d) and (f). The DEC did not make any findings as to Tigner's signing of Rivera's name on the release or the fact that "someone" had endorsed Rivera's signature on the settlement check.

MILDA RAINEY - Docket No. DRB VB-91-070E

Respondent represented Milda Rainey (Rainey) with respect to two automobile accidents; one occurred on September 9, 1987, the

other in 1988. As to the 1988 accident, Rainey was at fault and apparently no action was taken in that matter.

Respondent allowed the statute of limitations to run without filing suit for the 1987 car accident. Respondent maintained that she decided not to pursue the matter because the police report indicated that each driver was fifty percent liable for the accident. Respondent claimed that the chances of recovery in that matter were slim. T113-114.

According to respondent, she "believed" that she had advised Rainey, prior to the time the statute of limitations had expired, that she would not pursue the matter, a contention that Rainey denied. Respondent's file did not contain a letter to Rainey advising her of that fact. The file had no record of any conversations between respondent and Rainey regarding respondent's intention not to file suit. In addition,the file had no letters from the insurance company denying Rainey's claim, even though respondent claimed that the insurance adjuster would not make a settlement offer. Rainey testified that respondent never informed her that her claim could not be settled. The Rainey file was also missing any statement or notes as to Rainey's version of the accident. T118-119. Respondent admitted that her testimony was based on her recollection of the events. T117.

Rainey testified that, after her initial meeting with respondent, she never saw her again. Rainey called respondent several times to discuss the status of her claim, but she was unable to reach respondent. T101.

Respondent had sent Rainey to a doctor for treatment of neck and back injuries sustained in the accident but, apparently, respondent failed to notify Rainey that the insurer required that she be examined by its own physician. T106.

The other driver involved in the accident with Rainey was charged with careless driving. However, respondent admitted that she never followed up on that aspect of the case. T122. Respondent also failed to obtain a statement about the accident from Rainey's sister, who was a passenger in Rainey's vehicle at the time of the accident. T125.

At some point after Rainey's initial contact with respondent, around late 1988 or early 1989, respondent changed office locations without advising Rainey. When respondent was questioned whether she had informed Rainey of her change of address, she replied "[n]o. She must have got lost in the shuffle." Asked whether "in hindsight" there was any reason why Rainey should have been notified of the move, respondent replied, "[n]o." T116. She presumably felt that Rainey was no longer her client.

The DEC found that respondent's conduct in failing to investigate the accident, in allowing the statute of limitations to run and in failing to return Rainey's telephone calls constituted violations of RPC 1.1(a), RPC 1.3 and RPC 1.4(a) and (b).

The DEC also found, with respect to all three matters, that respondent's conduct indicated a pattern of neglect, in violation of RPC 1.1(b).

## CONCLUSION AND RECOMMENDATION

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

### WAHAB

As the DEC properly found, respondent's failure to maintain the $2,250 in her trust account, from February 19, 1992 to June 15, 1992, violated RPC 1.15. Although the complaint did not specifically charge respondent with negligent misappropriation, the proofs support such a finding. Respondent claimed that she was unaware that Wahab's funds had been deposited into her trust account and admitted that she failed to keep those monies in her trust account between February 19, 1992 and June 15, 1992. Because the complaint charged respondent with failure to properly maintain her trust account, respondent had sufficient notice of a possible finding of negligent misappropriation, which is merged with the charged violation. See In re Logan, 70 N.J. 222, 230-32 (1976); reh'g. 71 N.J. 583 (1976).

The Board, however, is unable to find a violation of RPC 1.2(a) (abiding by a client's decision concerning the objectives of representation). That rule is inapplicable because respondent advised Wahab that he would have to make the reimbursement to the buyer. Thereafter, Wahab agreed to repay the buyer, but respondent failed to follow through and to issue a

refund check until a judgment against Wahab was about to be entered. Her failure to act, after repeated requests from Wahab and the buyer's attorney, constituted a violation of RPC 1.1(a), rather than RPC 1.2(a).

Finally, the DEC found that respondent failed to expedite litigation, in violation of RPC 3.2. The fact that respondent delayed repaying the buyer, however, is not a violation of this rule. Moreover, there is no clear and convincing evidence in the record to otherwise sustain a finding of a violation of RPC 3.2. The record does not establish that respondent represented Wahab in connection with the buyer's action against him. Based on Wahab's inability to persuade respondent to timely reimburse the buyer, it cannot be reasonably inferred that Wahab had retained respondent to represent him in the action filed by the buyer. There is likewise no evidence in the record to find that respondent represented Wahab in any other "litigated" matters.

RIVERA

The Board is unable to find clear and convincing evidence that respondent shared legal fees with a nonlawyer in the Rivera matter. While such an inference might be drawn from the fact that respondent's employees met with Rivera in the hospital and were able to convince her to discharge her first attorney, there is, nevertheless, insufficient evidence for a finding of a violation RPC 5.4.

It is undeniable, however, that respondent's failure to return her client's telephone calls, failure to investigate other potential sources of recovery and obvious lack of personal involvement in the matter by allowing her paralegal to do much of the work, including her failure to obtain statements from any of the individuals involved, support violations of RPC 1.1(a), 1.3 and 1.4. Moreover, the record supports a finding that respondent settled the matter without the knowledge or consent of her client.

As to the alleged violation of RPC 5.3, the Board cannot conclude, to a clear and convincing standard, that respondent knew that Tigner had signed Rivera's name on the release or that someone other than Rivera had signed the settlement check. On the other hand, respondent's notarization of the false signature on the release was clearly a violation of RPC 8.4(c).

RAINEY

The Board finds that respondent violated RPC 1.1(a) and (b), 1.3 and 1.4(a) and (b) in the Rainey matter.

* * *

In sum, respondent's conduct violated RPC 1.1(a) and RPC 1.15 (Wahab); RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 8.4 (Rivera); and RPC 1.1(a), RPC 1.3 and RPC 1.4(a) and (b) (Rainey). Respondent's conduct in all three matters also constituted a pattern of neglect, in violation of RPC 1.1(b).

Discipline ranging from a public reprimand to a term of suspension has been imposed for mixed combinations of misconduct

involving gross neglect, pattern of neglect, lack of diligence, failure to communicate and misrepresentation. See, e.g., In re Chatburn, 127 N.J. 248 (1992) (public reprimand for pattern of neglect in three matters and failure to communicate; the attorney had previously received a private reprimand); In re Breingan, 120 N.J. 161 (1990) (public reprimand for pattern of neglect in three matters, failure to communicate with clients and failure to diligently pursue a client's interests in one of the matters; failure to cooperate with the DEC during the course of the investigation considered an aggravating factor). In re Marlow, 121 N.J. 236 (1990) (three-month suspension for gross neglect, lack of diligence, pattern of neglect and failure to communicate in two cases, misrepresentation of case status in one of the cases and lack of cooperation with the DEC; the attorney's prior public reprimand was also considered); and In re Rosenthal, 118 N.J. 454 (1990) (one-year suspension for pattern of neglect in four matters, misrepresentation to clients, failure to cooperate with the disciplinary authorities and failure to remit a fee arbitration award; attorney had received a prior public reprimand.)

Here, however, the seriousness of respondent's conduct was compounded by her failure to properly maintain her trust account records; failure to keep Wahab's $2,250 in her trust account for four months, as a result of which other client funds were negligently misappropriated; and the execution of a false jurat.

Based upon respondent's cumulative violations in the three matters and her apparent inability to understand her professional

obligations, the Board unanimously recommends a one-year suspension. The Board also recommends that respondent not be readmitted to practice until all ethics matters now pending against her are finally resolved. In addition, the Board recommends that, upon respondent's reinstatement, she be supervised by a proctor approved by the Office of Attorney Ethics for a two-year period. Two members did not participate.

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

Dated: Feb. 1st, 1995 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board