SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-289

IN THE MATTER OF	:
STEVEN F. HERRON,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 19, 1994

Decided: January 5, 1995

Peter J. Boyer appeared on behalf of the District IV Ethics Committee.

Leonard S. Baker 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 on a recommendation for public discipline filed by the District IV Ethics Committee ("DEC"). The formal complaint charged respondent with violations of RPC 1.1 (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (failure to act with reasonable diligence and promptness); RPC 1.4(a) (failure to keep client reasonably informed about status of the matter and to comply with reasonable requests for information); RPC 1.15(b) (failure to promptly notify client of receipt of funds and delivery of funds); and RPC 8.1(b) (failure to respond to lawful demand for information from disciplinary authority).

Respondent was admitted to the New Jersey bar in 1978. He was

a sole practitioner in Cherry Hill at the time of the ethics infractions. He has no prior disciplinary record.

Respondent works as in-house counsel for W.S.R. Corporation in South River, New Jersey. W.S.R. Corporation is a holding company involved with auto dealerships and the R & S Strauss store chain. Respondent acts as an intermediary between the insurance company and outside counsel for the corporation's "slip-and-fall" litigation. He also coordinates, through outside counsel, for zoning or planning board meetings, construction repairs, landlord-tenant matters, and he follows up on interrogatories answered by the store managers.

Seven grievants claimed that respondent neglected their files and ignored their telephone calls between 1988 and 1992, as described separately below. The presenter testified that respondent "ignored written inquiries" from him and from the DEC secretary during the investigation, which resulted in charges of violation of RPC 8.1(b) in each case. T4.[1]

A formal seven-count complaint -- one count for each grievant -- was filed on January 10, 1994. Respondent did not file an answer, although he did stipulate to all counts the day before the DEC hearing on March 29, 1994. T4. At the hearing, respondent offered to return retainers and documents to certain grievants within ten days. T5-6, 56. Although that time was extended, respondent did not follow through on his offer.

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[1] T indicates the transcript of the DEC hearing held on March 29, 1994.

WELKER

Ronnie D. Welker of California retained respondent in August 1991 to obtain a wage execution for enforcement of an obligation to pay support, previously awarded to her under a decree of dissolution of her marriage to Stephen W. Blatcher, Jr. The DEC found that respondent had prepared certain documentation to secure a wage garnishment. However, the payments stopped in January 1993. Despite repeated phone calls and assurances that respondent had mailed her a check, Welker received no further payments and no explanation either for the cessation of the payments or for the status of the matter. Respondent failed to return Welker's phone calls, to pursue the matter and to provide Welker with notice of receipt of or disposition of funds. Exhibit G-1.

GRUEN

Therese B. Gruen of Florida retained respondent to represent her in the sale of a house, payoff of a mortgage, and forwarding of the sale proceeds to her. Closing of title occurred on or about September 23, 1992. The title company delivered the proceeds to respondent on September 28, 1992. Respondent, nevertheless, held said funds for approximately three weeks before remitting them to Gruen, during which time he also failed to return her phone calls.

NELSON

Donald W. Nelson retained respondent on November 4, 1992 to prepare a deed for property in Cape May county that he and his

siblings had inherited from their father. Nelson paid respondent $101: $75 as a legal fee and $26 for recording fees. Nelson testified that he signed blank papers at respondent's office to transfer title efficiently. It is not clear whether respondent ever prepared the deed. Nelson had difficulty reaching respondent by telephone in early 1993. When respondent did return a call, he "expressed concern that this title hadn't been processed" and stated he "would put pressure on the people that were processing it." T23-24. Respondent did not answer Nelson's letters of February 22, 1993 and March 16, 1993, the latter requesting a refund of the $101. On his own, Nelson contacted the county clerk and learned that no documents had been recorded as of March 16, 1993. Ultimately, Nelson was forced to make other arrangements to change title. Exhibit G-3, T21-31.

MARKOWITZ

Elaine R. Markowitz testified that she retained respondent in November 1992 to file a motion for child support against her daughter's father. Markowitz paid respondent $115. After a lengthy delay, respondent delivered documents to Markowitz for her signature. Markowitz requested copies, but respondent did not have any with him. Although respondent assured Markowitz that he would send her copies, she never received them.

Subsequently, Markowitz called respondent several times and left messages. He finally advised her that the court hearing was set for February 26, 1993. He added that it would not be necessary

for her to attend. On or about February 26, Markowitz contacted respondent again, at which time he advised her that the hearing had been postponed to March 26. About one week prior to March 26, Markowitz called him to inquire whether she should appear. He replied that it was not necessary for either of them to appear. He further advised her that he would contact her on or about March 29 to inform her of the disposition of the matter. Not hearing from respondent, Markowitz telephoned him at least two or three dozen times, but never spoke with him. She then called the court clerk, and was informed that no motion had ever been filed. When she confronted respondent with this discovery, he expressed surprise that the motion had not been filed. Exhibit G-4; T7-13.

RULLO

Michael A. Rullo, III consulted casually with respondent sometime between July and September 1992. Rullo told respondent that he was unable to recover a tenant security deposit of almost $1,000. Respondent offered to send a letter to resolve Rullo's problem.

Rullo called respondent in early September 1992 to inquire about the progress of the matter. Respondent had nothing to report. He assured Rullo that he would send another letter and follow up with a telephone call. After waiting two weeks for a return call, Rullo contacted respondent at home. Respondent told Rullo that "we are going to court" because the ex-landlord had not

replied to his letter. In mid-November 1992, Rullo left numerous messages at respondent's office and home. Finally, when Rullo reached him at home, respondent informed Rullo that the court date had been set for November 27, but that Rullo need not appear.

When Rullo contacted respondent on December 2, respondent provided an "elaborate story of a no-show" (presumably by the ex-landlord) because the ex-landlord wanted to retain counsel. Respondent added that the judge had commented on awarding counsel fees. Respondent called Rullo in late December 1992 to advise that a new court date had been set for January 26, 1993, but that Rullo would not have to appear. After that date, Rullo called respondent about twenty times and left messages, to no avail.

Respondent prepared, and obtained Rullo's signature on, an affidavit of non-military service. The affidavit was not dated, except for the year "1993" typed in the acknowledgement. It is not clear whether respondent went any further in case preparation. Curious about the status of the matter and frustrated by the lack of respondent's communication, Rullo ordered a judgment search on February 1, 1993 and again on March 1, 1993, but found no judgment against the landlord. Rullo asked a friend, who was a legal secretary, to inquire about the court matter. She advised Rullo that a court hearing had not been held on January 26 and, in fact, a complaint had never been filed. Rullo had not paid respondent any retainer or costs. Exhibit G-5.

ATARDI

William Atardi, president of Merit Abstract Corporation, retained respondent in late 1988 or early 1989 to file a collection action. Atardi provided respondent with his original file on the transaction. Atardi was unable to reach respondent by telephone and received no communications from him. On August 13, 1992, Atardi consulted with new counsel, Jack E. Milkis, Esq., who sent respondent a letter on September 17, 1992, by certified mail. Respondent did not answer the letter or return Milkis' telephone calls until February 2, 1993, when respondent left a message at Milkis' office, advising him that the file would be delivered by the end of the week. Respondent never delivered the file and did not return Milkis' subsequent telephone calls.

Although not clear from the record, it is possible that Atardi's claim may be barred by the statute of limitations. Moreover, the lack of necessary documents from respondent's file make it difficult to pursue the claim elsewhere. Exhibit G-6.

DALEUS

Kenneth E. Daleus retained respondent on April 16, 1992 to represent him in an uncontested divorce and to prepare a simple will. At that time, Daleus paid respondent $775, receipt of which respondent acknowledged on the back of his own business card. About two weeks later, Daleus signed certain papers. Respondent advised Daleus that he would be divorced "by the summer." Thereafter, Daleus left many messages at respondent's office, but

he did not receive any reply. In September 1992, respondent contacted Daleus' wife, who met respondent at the Pennsauken Municipal Court to sign some papers. Daleus later learned that, although respondent had filed a complaint for divorce, the complaint had been dismissed on December 27, 1993 for lack of prosecution.

As to the will, Daleus testified that he was not positive as to what document he had signed, although he remembered that there were witnesses at respondent's office. T18-19, Exhibits G-7, G-9.

* * *

In all but the Gruen matter, the DEC found clear and convincing evidence of violation by respondent of RPC 1.1(b), 1.3 and 1.4, as charged. In addition, in Gruen and Welker, the DEC sustained the charge of violation RPC 1.15(b). The DEC also found that, in each grievance, respondent had failed to cooperate with the disciplinary authorities, contrary to RPC 8.1 (b). The DEC recommended public discipline.

Although the DEC stated that respondent had no explanation for his conduct, no medical treatment, and no evidence of a medical disability, respondent did testify about burnout, depression, and physical symptoms that he allegedly experienced in 1992. T39-40, 52-53. When questioned by the Board, at oral argument, about whether respondent had sought professional help, his counsel asserted that respondent was under medication to alleviate the

symptoms.

The presenter advised the Board that respondent had reported to him that the retainers had been returned to the clients during the week of the Board meeting.

CONCLUSION AND RECOMMENDATION

After an independent, de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent was charged with and stipulated to violations of RPC 1.15(b) (failure to turn over receipt of funds, to promptly notify client and to deliver funds) in two matters, Welker and Gruen, the out-of-state clients who retained respondent for wage attachment and real estate sale.

In six matters (all but Gruen), respondent was charged with and stipulated to violations of RPC 1.3 (failure to act with due diligence and promptness) and RPC 1.4 (failure to reasonably inform and provide requested information to clients).

Respondent was also charged with violation of RPC 1.1(a) (gross negligence) in one matter, Welker, and with violation of RPC 1.1(b) (pattern of neglect) in five subsequent matters, excluding Gruen. Respondent stipulated to those violations.

In all seven matters, respondent was charged with, and ultimately stipulated to, violations of RPC 8.1(b) (failure to respond to lawful demands for information from a disciplinary

authority), in that he did not reply to inquiries during the ethics investigation. Moreover, respondent did not comply with his agreement made on the date of the DEC hearing, to return retainers and documents to certain grievants. Finally, he failed to file an answer to the formal complaint, which, in and of itself, constitutes disrespect to the Supreme Court and the ethics system. In re Skokos, 113 N.J. 389, 392 (1988).

Although respondent was not charged with violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), it is clear from the evidence that respondent violated this rule when he misrepresented the status of the matters in Markowitz and Rullo. "Public confidence in the bar is diminished when an attorney represents to a client that the case is proceeding smoothly when it is not. Clients should not continue to suffer the consequences of being told that their case is under control, when it is not." In re Grabler, 114 N.J. 1, 10-11 (1989).

Similarly, although respondent was not charged with a violation of RPC 1.16(d) (failure to protect a client's interest by surrendering papers), the issue was fully litigated at the DEC hearing, with no objections from respondent. It is evident from the record that respondent failed to return papers to the client or new counsel in Atardi, the collection matter. The complaint is, thus, deemed amended to conform to the proofs. In re Logan, 71 N.J. 583 (1976).

A review of recent cases shows that the Court has ordinarily imposed discipline ranging from a public reprimand to a term of

suspension where the ethics violations have been a mixed combination of gross neglect, pattern of neglect, failure to communicate and misrepresentation. In some cases, two or three of these violations are present, either alone or coupled with an additional violation, such as failure to cooperate with the DEC or failure to keep proper trust account records. Respondent's ethics offenses, especially his misrepresentations about court proceedings in the Markowitz and Rullo matters, are most similar to cases resulting in one-year suspensions. See, e.g., In re Rosenthal, 118 N.J. 454 (1990) (pattern of neglect in four matters, failure to refund a retainer, failure to communicate with clients, misrepresentations to clients and failure to cooperate with disciplinary authorities. The attorney had received a prior public reprimand); In re Jenkins, 117 N.J. 679 (1989) (gross neglect in two matters, misrepresentation of the status of cases to clients and failure to seek lawful objective of clients. Disregard for disciplinary process considered as aggravation); and In re Grabler, 114 N.J. 1 (1989) (gross neglect in four matters, pattern of neglect, failure to communicate in two of the four matters, misrepresentations regarding case status to two of the four clients and recordkeeping violations).

In a number of cases, the Board has demonstrated a willingness to overlook an attorney's initial failure to cooperate with the ethics system if the attorney appears at the DEC hearing and subsequently cooperates. Although respondent appeared at the DEC hearing and offered to redeem himself to a degree by finally

turning over retainers and documents, he failed to comply with that promise until the week of the Board hearing. In addition to his initial lack of cooperation in all seven matters, respondent reneged on his promises to the DEC, a further violation of RPC 8.1(b). He obviously needs a strong reminder that ethics matters are not to be taken lightly.

Accordingly, the Board unanimously recommends a one-year suspension, based on respondent's multiple instances of misconduct in seven matters, including misrepresentations to clients in the Rullo and Markowitz matters, and his violation of RPC 8.1(b). As a condition of application for reinstatement, respondent should provide satisfactory proof of psychiatric fitness to practice law. Upon reinstatement, the Board recommends that respondent practice under the supervision of a proctor for two years. Three members did not participate.

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

Dated: 1/5/1995

By: Raymond R. Trombadore
Raymond R. Trombadore
Chair
Disciplinary Review Board