

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-013

IN THE MATTER OF :
:
BRETT K. KATES, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: March 9, 1994

Decided: May 20, 1994

Janet Brownlee Miller appeared on behalf of the District III-B Ethics Committee.

Respondent appeared pro se.

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

This disciplinary matter arose from a recommendation for public discipline filed by the District III-B Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1987. He has no history of prior discipline. At the time of the relevant events, he maintained an office in Burlington County, New Jersey.

In March 1991, Donna Romond ("grievant") and her brother, Kevin Romond, retained respondent, after the death of their father, to obtain the proceeds from three life insurance policies. In or about September 1991, respondent was successful in obtaining \$50,000 for grievant and \$25,000 for her brother from the total \$80,000 value of one of the insurance policies. Presumably, the

remaining \$5,000 went to the ex-wife of grievant's father, who had been named a beneficiary on the policy. Grievant and her brother each gave respondent \$5,000 as legal fees from their proceeds, for a total of \$10,000.

Thereafter, from November 1991 through March 1992, grievant unsuccessfully attempted to reach respondent by telephone on numerous occasions to obtain information about the two remaining policies. After her efforts to contact respondent were unavailing, grievant wrote him a letter on April 10, 1992, complaining about respondent's inaction and lack of communication. In that letter, grievant asked respondent to contact her within three weeks. Grievant also stated:

If you do not contact me within this time frame, I will assume that you are no longer interested in my business and I will have another legal representative [sic] contact you for all the original paperwork that is in your possession.

I would like to take this time to tell you how I feel about you not returning my phone calls since Christmas [sic]. I feel so hurt, abused and let down. I feel like a niece [sic] child when I paid you. You took my money and never spoke to me again. I really think you are lacking professional experience. If you were not interested in representing me any longer I think you should have called me or wrote [sic] me. The original [sic] paperwork that is in your possession should be returned to me.

[Exhibit 1]

(Although the transcript of the DEC hearing indicates that all exhibits were marked for identification and makes no mention of their admission into evidence, the transcribed hearing panel decision clarifies that they were admitted into evidence. (T12/16/93 34)).

Respondent ignored grievant's letter. On May 28, 1992, grievant once again wrote to respondent, notifying him that she would be filing an ethics grievance against him. Grievant also asked for the return of her documents:

Now that this going [sic] to be handled legally, you will have to return the life insurance policy. I do not want you as legal representation [sic] any longer. I am seeking other avenues. If you do not return the life insurance policy, I will pursure [sic] separate legal counsel for this too. I'm giving you two weeks to this date to return that item. Thanking you in advance.

[Exhibit 2]

On June 17, 1992, the DEC's secretary, Robert D. Vetra, Esq., sent a letter to respondent enclosing a copy of the grievance and requesting a written response by July 1, 1992. On July 1, 1992, respondent replied to the DEC's secretary's letter of June 17, 1992. In that letter, respondent complained that he was at a loss to understand grievant's dissatisfaction with his services, as he had successfully negotiated the distribution of the life insurance benefits to her and to her brother. He acknowledged that there had been a "break-down in communication with the Romond's [sic] which I'm trying to rectify." Exhibit 3. He indicated that he had attempted to contact grievant at work on a couple of occasions, but that he was unsuccessful. He added that, upon hearing of the grievance, he had called grievant to ascertain what, if anything, he could do to satisfy her. He acknowledged that there were two outstanding "minor" matters. He assured the DEC secretary that the matter could be resolved "to all parties [sic] satisfaction" and

proposed to complete any outstanding work at no fee. Exhibit 3.

Grievant testified that respondent indeed telephoned her in June 1992, at which time they agreed to meet on a certain date. When grievant, however, was unable to keep that appointment, she telephoned respondent several times to reschedule it. Because respondent did not return her calls, the meeting never took place.

By letter dated July 27, 1992, the DEC secretary transmitted to respondent grievant's acceptance of his offer "to do any outstanding work for no fee." The DEC secretary also relayed grievant's request that the matters be completed without delay and with better communication on respondent's part. Exhibit 5. By that time, respondent had been placed on the list of ineligible attorneys for failure to pay the Client Protection Fund's annual assessment. According to the Fund, respondent became ineligible to practice law on July 20, 1992. (Respondent informed the Board, at the March 9, 1994 hearing, that he had paid all outstanding assessments to the Fund that morning. The complaint did not charge him with practicing law while on the ineligible list because respondent was still on the active list when the complaint was drafted. At the DEC hearing, the DEC secretary alluded to the fact that respondent was ineligible to practice law. The complaint, however, was not amended to include that charge).

On September 16, 1992, the DEC secretary again wrote to respondent, enclosing a copy of a letter from grievant dated September 10, 1992. In that letter, grievant informed the DEC secretary that she had hired new counsel and that she had requested

respondent to return the documents in his possession. She also informed the investigator that respondent had not contacted her, despite his assurances that he would do so. The September 16, 1992 letter was returned to the DEC secretary as "undeliverable." The sealed envelope indicated that respondent had moved and had left no forwarding address. Exhibits 6, 7 and 8.

On November 2, 1992, the DEC secretary once again wrote to respondent, via certified and regular mail, enclosing a copy of his September 16, 1992 letter and complaining that respondent had disregarded that letter. The DEC secretary asked respondent to provide a written reply by November 13, 1992. This time, the secretary received a green card signed by a person whom the secretary believed to be "F. Higgin." Exhibit 9.

After the DEC received no answer from respondent, the grievance proceeded to its investigative phase. On August 20, 1993, a formal ethics complaint was filed against respondent. On August 24, 1993, the DEC secretary attempted to serve the complaint on respondent by regular and certified mail. Both were returned to the DEC secretary. Thereafter, on August 12, 1993, the DEC secretary's law partner, who apparently had been handling a civil matter in which respondent was his adversary, received a summons listing a new address for respondent's office. That address was Suite B, 2311 Route 541, Burlington, New Jersey 08016. The law partner then asked the DEC secretary whether he knew respondent. The DEC secretary replied affirmatively. Upon being shown the summons with the new address, the DEC secretary re-served

respondent at the Burlington address, by letter dated August 23, 1993. Exhibit 11. On August 26, 1993, the DEC secretary received a green card, signed by an individual other than respondent, acknowledging receipt of the complaint. Exhibit 12. In addition, the regular mail forwarding the complaint was not returned to the DEC secretary.

Respondent did not file an answer to the formal ethics complaint. On November 23, 1993, the DEC secretary notified respondent, by regular and certified mail, of the DEC hearing scheduled for December 16, 1993. That letter was sent to respondent's Burlington address. The return green card showed a signature by an individual whom the DEC secretary did not recognize. In addition, the regular mail was not returned. Exhibits 13 and 14. On December 13, 1993, three days before the DEC hearing, the DEC secretary's partner received a "fax" sheet from respondent, showing his Burlington office address. That sheet carried the following message:

Just a short note to wish everyone a Happy and Healthy Holiday! Kindly note the new fax number 428-7103.

[Exhibit 15]

Additionally, the transcribed hearing panel decision indicates that the DEC independently dialed the telephone number listed on respondent's letterhead. According to the hearing panel chair, the individual who answered the phone identified the place as respondent's law office. T12/16/1993 35. Respondent did not appear at the DEC hearing.

As of the date of the DEC hearing, December 16, 1993, respondent had neither resolved grievant's matter nor returned to her the original insurance policy, as requested.

* * *

At the conclusion of the DEC hearing, the hearing panel found that respondent had violated RPC 1.3 (lack of diligence), RPC 1.4 (lack of communication) and RPC 8.1(b) (lack of cooperation with the DEC). The hearing panel recommended public discipline.

At the Board hearing, respondent claimed that a telephone call from Office of Board Counsel, a few days before the hearing, had been the first notice he had received of these proceedings, after his "communication" with the DEC's secretary. Respondent did not identify the communication to which he was alluding, among all the letters sent to him by the DEC secretary. It is presumed, however, that he was referring to the DEC's secretary's first letter, on June 17, 1992. Indeed, respondent contended that, after his assurance to the DEC secretary that he would rectify his inaction at no fee to grievant, "[w]hat happened after that is really, very honestly, a breakdown both in communications and in understanding. I never heard again. I have seen in the record letters to me." T3/9/1994 4. Respondent added that he travels throughout the country six months out of the year teaching tax law to accountants and that he had not received the additional letters from the DEC secretary. In fact, respondent claimed that he was unaware that there had been a DEC hearing. T3/9/1994 5. Respondent admitted,

however, that he had not notified the DEC's secretary of his change of address. T3/9/1994 8.

With respect to the Romond matter, respondent asserted at the Board hearing that he had understood his engagement to be for a particular purpose, while grievant understood it to be for another. He also maintained that, not having heard from grievant after his offer to complete her matter, he had discussed her lack of communication with her uncle, with whom he shared an office suite; the uncle's reply had been that grievant was unwilling to talk to respondent. That comment, according to respondent, had prompted him to assume that grievant had sought legal help elsewhere. T3/9/1994 4,7.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent acted unethically is fully supported by the record.

In failing to complete the matter promptly, particularly after his assurances to the DEC secretary, respondent violated RPC 1.3. He also failed to comply with the client's reasonable requests for information about the status of the matter, in violation of RPC 1.4(a).

More seriously, however, respondent ignored his obligation to keep the DEC informed of his whereabouts, with the knowledge that there was a pending grievance against him that required his cooperation in its investigative phase. By breaching his duty to

make himself accessible to DEC members — unpaid volunteers who dedicate countless hours and considerable effort to the disciplinary system — respondent hindered the investigation of the grievance, did not answer the formal complaint and did not appear at the DEC hearing. The Board reached the unavoidable conclusion that respondent's failure to keep the DEC apprised of his office or home address was knowing and deliberate. The cavalierism that respondent exhibited toward the disciplinary authorities should not be tolerated. When an attorney shows disrespect to an ethics committee, the attorney also shows disrespect to the Supreme Court, of which the committee is an arm. In re Grinchis, 75 N.J. 495, 496 (1978).

In view of the foregoing, the Board unanimously recommends that respondent receive a three-month suspension. See In re Beck, 127 N.J. 391 (1992). The Board's recommendation is largely grounded on respondent's extreme indifference to the ethics system and particularly to the volunteers who unselfishly devote their time and attention to fulfill the obligations with which they are charged by the Court. Two members agreed with the measure of discipline, but did not find clear and convincing evidence that respondent received actual notice of the DEC hearing. One member did not participate.

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

Dated: 5/20/94

By: Elizabeth L. Buff
Elizabeth L. Buff
Vice-Chair
Disciplinary Review Board