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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-442

IN THE MATTER OF	
WILLIAM O. PERKINS, JR.,	
AN ATTORNEY AT LAW	

Decision of the
Disciplinary Review Board

Argued: May 17, 1995

Decided: October 2, 1995

Cara M. Corbo appeared on behalf of the District VI Ethics Committee.

Respondent appeared pro se.

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 a private reprimand (now an admonition) filed by the District VI Ethics Committee (DEC), which the Board determined to hear pursuant to R.1:20-4(f)(2). The complaint charged respondent with misconduct in five matters. At the beginning of the DEC hearing, the presenter withdrew the complaints in three of the five cases, Mansour, Smith and Gonzales, with the exception of an alleged violation of RPC 8.1(b) (failure to cooperate with the DEC) in each of those matters. (The alleged violation of RPC 8.1(b) was the only charge in Smith.) In the Brown/Lathrop matter, respondent was charged with a violation of RPC 1.4(a) (failure to communicate) and of RPC 8.1(b). In the Diaz matter, respondent was charged with a

violation of RPC 1.3 (lack of diligence), RPC 1.4(a), RPC 1.16 (failure to return a file) and RPC 8.1(b). Over respondent's objections, the complaint was amended during the hearing to allege a violation of RPC 5.3 (failure to supervise) (the rule is mistakenly cited in the transcript as RPC 5.1) and R.1:21-7 (failure to provide a written retainer) in the Diaz matter. Respondent was also charged with a violation of RPC 1.1(b) (pattern of neglect) in each matter, except Smith.

Respondent was admitted to the New Jersey bar in 1970. He has been engaged in private practice in Jersey City, Hudson County. He has no history of discipline.

The Brown/Lathrop Matter

(District Docket Nos. VI-91-29E and VI-91-30E)

Carole A. Brown and her brother, Millard Lathrop, retained respondent in August 1990 to handle the estate of their mother, who had died intestate earlier that month. Ms. Brown and Mr. Lathrop paid respondent $4,000. The record is not clear about the dates and the sequence of the events that followed. Ms. Brown signed an inheritance tax return. Respondent indicated that he would file the return and obtain waivers. Although the return is dated October 20, 1990, Ms. Brown testified that she was not in respondent's office on that date and that she signed all documents in August 1990.

Ms. Brown had additional meetings and telephone conversations with respondent, during which he assisted her with the paperwork

relating to the estate, such as the payment of bills. He led her to believe that the inheritance tax return had been filed.

At some point thereafter, Ms. Brown made twenty to thirty calls to respondent's office to obtain information on the estate, leaving messages for respondent. Her calls were not returned. Ms. Brown made an appointment to see respondent and, after waiting one and one-half hours, was informed that he was on vacation.

Mr. Lathrop also attempted to obtain information from respondent. He met with respondent on January 30, 1991, at which time respondent assured him that the return had been filed. The following day, Mr. Lathrop called the Division of Taxation to attempt to expedite the matter. He was told that no inheritance tax return had been filed in connection with his mother's estate. Thereafter, Mr. Lathrop attempted to contact respondent several times, to no avail. By letter dated February 4, 1991, Mr. Lathrop informed respondent that the Division of Taxation had no record of the filing of the inheritance tax return. By letter dated March 24, 1991, Mr. Lathrop expressed his displeasure with respondent's failure to communicate. According to respondent, Mr. Lathrop then called him and, although respondent did not recall the contents of the conversation, he stated that he probably told Mr. Lathrop that the procedures took time. (In his grievance, Mr. Lathrop stated that he had no communication with respondent after January 1991.)

Respondent took no action in response to the numerous communications from Ms. Brown and Mr. Lathrop. Despite the information in Mr. Lathrop's February 4, 1991 letter, respondent

believed that the inheritance tax return had been filed and that the delay was not inordinate. Respondent ultimately examined the file after he reviewed his mail on his return from vacation. He testified that the return was one of a number of returns he had been expecting and it was among those that had not been received. Upon review of the file, respondent learned that a member of his staff had erroneously placed the return in the file, instead of filing it with the Division of Taxation.

Respondent informed Ms. Brown of what had occurred in the case. She expressed her displeasure at the situation and at the fact that she had been required to obtain a second administration bond because the first had expired. By letter dated September 6, 1991, respondent agreed to refund $1000 of the retainer because the case would not take as much work as he had anticipated. He also agreed to reimburse Ms. Brown for the administration bond.

Ms. Brown retained Leon Choate, Jr., Esq., to complete the administration of the estate. After discussing the case with Mr. Choate, in the summer of 1991, respondent filed the inheritance tax return. The waivers were obtained in October 1991 and delivered to Mr. Choate. Respondent had also filed a deed in connection with the estate, which Mr. Choate had to refile because certain information had been omitted.

Ms. Brown filed for fee arbitration with the District VI Fee Arbitration Committee. The committee awarded her $1,000 on January 21, 1992.

The DEC determined that respondent had violated RPC 1.4(a).

The Diaz Matter

(District Docket No. VI-91-31E)

In late 1981 or early 1982, Emily Diaz consulted with respondent about a personal injury matter in behalf of her then-minor daughter against the Jersey City Board of Education. (Ms. Diaz also used Semiday as her last name, which appears on several documents in the record.) During that meeting, respondent advised Ms. Diaz to have her daughter undergo further medical testing. One month later, Ms. Diaz had a second meeting with respondent, during which he explained the procedures to sue a public entity under the Tort Claims Act and the statute of limitations. According to respondent, he told Ms. Diaz that he would not take the case at that time but that she could contact him in the future if she still wished to pursue it. He did not send a letter to Ms. Diaz explaining that he had not accepted the case. Respondent testified that he took no further action in the matter. (In his answer, however, respondent stated that a claim letter was sent to the defendant.)

Ms. Diaz was under the impression that respondent had accepted the representation and that she was to call periodically to determine the status of the case. Ms. Diaz testified that she and her husband subsequently tried to contact respondent, to no avail.

Thereafter, Ms. Diaz had at least fifteen conversations with a paralegal employed by respondent. She provided photographs and medical records to the paralegal. It was Ms. Diaz' belief that respondent had the paralegal handling the matter for him. The

paralegal communicated to Ms. Diaz a settlement offer of $3,000, which Ms. Diaz rejected. Ms. Diaz explained that, after she rejected the offer, she stopped calling respondent's office because of personal problems. Ms. Diaz received no subsequent communication from respondent or the paralegal.

Ms. Diaz then retained Bryan D. Garruto, Esq., to pursue the matter. Mr. Garruto sent requests for the file to respondent. Mr. Garruto received a letter dated February 2, 1990 from respondent's office, stating that the file would be forwarded upon receipt of a substitution of attorney and a "protection letter" for a $1,000 lien on the file. The letter bears what is purported to be respondent's signature. Respondent denied, however, sending the letter to Mr. Garruto and further denied that the signature was his. Mr. Garruto replied by letter dated February 5, 1990, noting that the February 2, 1990 letter was the first reply he had received to his numerous requests for the file. Mr. Garruto requested an itemized bill for services. He also requested that respondent provide the substitution of attorney because he, Mr. Garruto, did not know the caption of the case or if suit had been instituted. There was no reply to that letter. Ultimately, respondent located Ms. Diaz' file behind a filing cabinet in the paralegal's office. Respondent did not remember the exact contents of the file, but recalled a number of letters from Mr. Garruto, some of which were unopened. The file was forwarded to Mr. Garruto by letter dated April 2, 1992. Ms. Diaz' case is still pending.

Respondent was asked during the DEC hearing if the paralegal could have mistakenly believed that Ms. Diaz was respondent's client. Respondent replied in the negative because there was no file, index card or retainer agreement prepared for Ms. Diaz. There was also testimony about another attorney respondent described as an "associate," but not an employee, who had one conversation with Ms. Diaz. That attorney's role in the matter, if any, was not clear.

The DEC determined that respondent had violated RPC 1.3 and RPC 5.3.

The DEC did not find that the lack of a written retainer agreement in the Diaz matter was unethical, reasoning that respondent did not represent Ms. Diaz. The DEC also did not find respondent guilty of a failure to keep her reasonably informed. In addition, the DEC did not find a pattern of neglect, because the Diaz and Brown/Lathrop matters presented two diverse situations: in one, respondent performed work but failed to keep his clients informed and to follow up on his actions; in the other, respondent failed to supervise his staff and failed to follow through on the matter.

Failure to Cooperate with the DEC

Cara M. Corbo, Esq., the DEC investigator, sent numerous letters to respondent requesting information about the five matters then under review. The majority of the letters were ignored by respondent, despite the warning that his failure to reply was a

separate ethics violation. On those occasions where respondent did reply, his answers were unresponsive. For example, in the Mansour matter, respondent forwarded to Ms. Corbo copies of documents filed in a related matter, without explanation. Despite Ms. Corbo's request for clarification, none was provided.

In the Brown/Lathrop matter, respondent forwarded a letter many months after Ms. Corbo's letter, stating his belief that the grievance had been withdrawn after the fee arbitration proceeding.

In the Diaz matter, respondent advised Ms. Corbo that he had no information on the case and would attempt to locate the file. Respondent made no further reply, despite Ms. Corbo's request for additional information.

In the Gonzales matter, respondent testified that he forwarded a reply, albeit late. His reply is not a part of the record.

Respondent testified that he did not willfully fail to cooperate with the DEC. His explanation was that he had sought the services of an attorney who had become involved in a trial. Respondent also stated that he was experiencing marital problems as well as a physical problem in 1991, stemming from an allergic reaction to a blood pressure medication. Respondent offered this information in mitigation of his failure to cooperate and not of his conduct in the underlying matters.

The DEC determined that respondent was guilty of failure to cooperate in violation of RPC 8.1(b) in each of the five matters.

The DEC recommended the imposition of a private reprimand, despite the changes in the disciplinary rules. The panel report in

this matter is dated November 7, 1994. The hearing was held and the decision was made on May 26, 1993, a year before the rule changes went into effect and almost one and one-half years before the panel report issued. The DEC was of the opinion that respondent should not be penalized by the delay.

* * *

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

The DEC found that respondent had violated RPC 8.1(b), based on his failure to cooperate with the DEC investigator. Respondent filed an answer to the complaint and cooperated during the DEC hearing. Ordinarily, under similar circumstances, the Board would not find a violation of RPC 8.1(b). Here, however, respondent did not comply with the investigator's requests for information in a number of matters. After submitting or promising to submit certain information, which ultimately proved to be insufficient, respondent ignored the investigator's letters asking for more information. Respondent's lack of cooperation prior to the filing of the complaint was so extensive that it cannot be cured by his later, more cooperative, actions. Accordingly, the Board finds a violation of RPC 8.1(b).

In the Brown/Lathrop matter, the DEC determined that respondent had violated RPC 1.4(a). Given the numerous calls Ms.

Brown made to respondent – twenty to thirty – and his failure to reply to her requests for information, the Board agrees with the DEC's finding of a violation in this regard.

Respondent stated to Ms. Brown and Mr. Lathrop that the inheritance tax return had been filed, when it in fact had not. According to respondent, he mistakenly believed that the inheritance tax return had been filed. When respondent failed to receive any information from the Division of Taxation within the expected time period, however, he should have reviewed the file and called the Division of Taxation. The complaint in this matter charged that: "[r]espondent's misrepresentation of status to his clients constituted a violation of RPC." RPC 8.4(c), the relevant rule, was not specifically cited. The Board finds that respondent's misrepresentation to Ms. Brown and Mr. Lathrop violated RPC 8.4(c). Here, had respondent bothered to investigate the delay by reviewing his file, it is unlikely that this matter would have risen to the level requiring a disciplinary proceeding.

In the Diaz matter, respondent contended that he did not agree to represent Ms. Diaz. In his answer, however, respondent referred to a claim letter and a settlement offer from the insurance company that was communicated to Ms. Diaz by respondent's paralegal. Respondent also stated in his answer that Ms. Diaz refused the offer and was advised to either wait before taking any further action or to seek advice from another attorney. Respondent added that "[t]he file was closed" and he did not hear from Ms. Diaz until she contacted the DEC. Answer, Exhibit C-2, at 6. This does

not conform with the events portrayed in respondent's testimony: "I did nothing on this file. I didn't even know it existed other than the conversation I had with this person [Ms. Diaz], as indicated at this very outset, in which I refused to take the case, I have [sic] no other contact with this person, none." T5/26/93 86. These inconsistencies cast a shadow on respondent's credibility and lend strong support to the grievant's claim. Thus, the Board agrees with the DEC and finds a violation of RPC 1.3.

The DEC further found that respondent was guilty of a violation of RPC 5.3 for failure to supervise his staff. The Board agrees. Even if respondent's testimony is to be believed – that he did not know about the Diaz matter; that he was not hired to handle the case; and that, when Ms. Diaz called respondent's office, his paralegal apparently took it upon herself to pursue the matter and went so far as to send the protection letter to Mr. Garruto and to ignore his requests for the file – respondent was still guilty of failure to properly supervise the paralegal.

The Board unanimously determined that a reprimand is appropriate discipline for respondent's misconduct. See In re Cervantes, 118 N.J. 557 (1990) (where the attorney received a public reprimand for lack of diligence and failure to communicate in two matters and misrepresentation in one of these matters) and In re Lester, 116 N.J. 774 (1989) (where the attorney received a

public reprimand for gross neglect in two matters and submitting untimely and uncandid answer to ethics complaints).

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

Dated: 10/2/95

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board