

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 93-369
93-441
94-081

IN THE MATTER OF :
:
RICHARD W. RAINES, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: December 15, 1993 and April 20, 1994

Decided: July 1, 1994

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Harvey L. Stern appeared on behalf of respondent.

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

These five matters were before the Board based on two separate recommendations for public discipline, one filed by the District I Ethics Committee ("DEC") (Docket No. DRB 93-369) and the other by the District VII Ethics Committees (Docket No. DRB 93-441), and on a stipulation signed by respondent and the Office of Attorney Ethics ("OAE") (Docket No. DRB 94-081).

Respondent was admitted to the New Jersey bar in 1977. On July 2, 1993, respondent was privately reprimanded for failure to communicate with his client and failure to return to her the balance of her retainer, as promised.

I. DRB Docket No. 93-369 (District Docket No. I-91-045E)

This matter was first reviewed by the Board on December 15, 1993. It stemmed from a complaint charging respondent with lack of diligence in his representation of Edward R. Smith in a criminal matter. During the course of the investigation, however, Mr. Smith passed away. Accordingly, a first amended formal complaint was filed, charging respondent only with a violation of the bona fide office rule for the year 1987.

When service of the complaint at three different addresses proved unsuccessful, the OAE furnished the DEC with the name of the attorney who was representing respondent in other pending ethics matters, Harvey L. Stern. Counsel agreed to accept service of the complaint. The amended complaint was forwarded to counsel by regular mail on February 16, 1993, and by certified mail on March 9, 1993. By letter dated March 31, 1993, the DEC secretary reminded counsel that an answer should have been filed within ten days of the receipt of the complaint and that the failure to do so could result in an additional charge of violation of RPC 8.1(b). Also, by letter dated April 29, 1993, the panel chair requested that counsel contact him about a possible hearing date. It was agreed that July 29, 1993 was a convenient date for respondent's counsel. Prior to the hearing date, on June 18, 1993, counsel advised the presenter that he was willing to stipulate to respondent's failure to maintain a bona fide office, a violation of R. 1:21-1(a) and RPC 5.5(a). That conversation was confirmed by the presenter's letter to counsel, dated June 18, 1993. Exhibit P-

9. That letter also reminded counsel that the rules required that an answer be filed, notwithstanding the stipulation. Counsel, however, did not file an answer. In addition, counsel failed to appear at the July 29, 1993 DEC hearing. When the panel chair telephoned counsel's office approximately one-half hour after the hearing was scheduled to begin, he was informed by counsel's secretary that counsel was in court that morning and that the DEC hearing was not listed on his calendar. The secretary was asked to inform counsel that the hearing would be going forward without him and that he should telephone the panel chair at the earliest opportunity. Approximately twenty minutes later, counsel telephoned the panel chair. He informed the chair that he had been in court that morning and had intended to telephone the hearing panel prior to the hearing, but had neglected to do so. Counsel confirmed his prior conversation with the presenter about stipulating to respondent's failure to maintain a bona fide office.

At the conclusion of the DEC hearing, the panel concluded that, in the year 1987, respondent had practiced law without maintaining a bona fide office in New Jersey, in violation of R. 1:21-1(a) and RPC 5.5(a). The panel also found that respondent had violated RPC 8.1(b), by failing to file an answer to the complaint and to appear at the DEC hearing.

At the Board hearing, counsel conceded that respondent had not maintained a bona fide office and had failed to cooperate with the DEC (although counsel recognized that the latter might be his, not respondent's, fault). In mitigation, counsel argued that

respondent had been addicted to alcohol and drugs during the period in question. When it was pointed out to counsel that there was no evidence of those addictions in the record, counsel informed the Board that such evidence had been submitted in connection with other pending ethics matters. Counsel mistakenly believed that all ethics matters against respondent were to be reviewed by the Board on December 15, 1993. Upon being apprised that that was not so, counsel requested that all matters be consolidated prior to action by the Board. Counsel also expressed a willingness to stipulate to the allegations in the pending matters. Given these representations, the Board determined to consolidate all matters against respondent. By letter dated January 11, 1994, the Board directed that the OAE take over the investigation and prosecution of two pending matters (Ward and Green) before the DEC and also act as presenter in the matter under Docket No. DRB 93-441, soon to be scheduled for the Board's review, as well as any additional proceedings under Docket No. DRB 93-369. By stipulation dated March 7, 1994, respondent admitted certain ethics violations in the Ward and Green matters, which are the subject matter of Docket No. DRB 94-081, below.

II. Docket No. DRB 93-441

A. The Thomas Green Matter (Docket No. VII-92-020E)

The formal complaint charged respondent with violations of RPC 1.1(a) and RPC 1.3 in a criminal matter. Respondent declined to answer the complaints. Specifically, in 1989, the Green family

hired respondent to represent Thomas Green in connection with his indictment for homicide. Respondent agreed to represent Mr. Green for \$7,000 plus expenses. The fee was paid entirely to respondent in increments over the course of his representation of Mr. Green.

During the preparation of the case for trial, Mr. Green asked respondent to retain an investigator to identify and locate witnesses to testify that, although Mr. Green was present at the time of the crime, he had not been involved in the murder. Because, however, Mr. Green did not give respondent a fee for such purpose, respondent never retained an investigator. In November 1990, respondent tried Mr. Green's case before a jury, which returned a guilty verdict. Mr. Green asked respondent to file a motion to set aside the verdict. Respondent failed to do so.

Sentencing had been scheduled for January 2, 1991. Shortly before that date, however, respondent learned from the sentencing judge's chambers that the Parole Department had not completed its Pre-Sentencing Investigation (PSI). On the assumption that sentencing would not occur on January 2, 1991, respondent did not appear at the sentencing proceeding, although Mr. Green was present. It was respondent's belief that the sentencing would not take place because the PSI had not been completed. Respondent, however, did not seek the court's permission not to appear and did not advise Mr. Green of his intention not to be present. On that date, the court adjourned the sentencing for two weeks. Thereafter, respondent failed to appear at the rescheduled date, offering no explanation or excuse for his absence.

In addition, after the jury returned a guilty verdict, respondent accepted \$1,250 in two installments from Mr. Green's family to file an appeal. Respondent never filed the appeal.

Moreover, on October 11, 1990, before the beginning of the trial on the Green matter, respondent was declared ineligible to practice law in New Jersey for his failure to pay the 1990 annual assessment to the Client Protection Fund. Respondent was not removed from the ineligible list until February 28, 1991.

B. Possession of Crack Cocaine Matter (District XIV-91-003E)

On January 4, 1991, respondent was arrested for possession of crack cocaine and charged with the disorderly persons offense of failure to make lawful disposition of a controlled dangerous substance, in violation of N.J.S.A. 2C:25-10c. On April 16, 1991, respondent was granted a conditional discharge and placed under supervisory treatment, pursuant to N.J.S.A. 2C:36A-1, for a period of one year. He was also ordered to pay fines and penalties of \$595.

Thereafter, respondent participated in an out-patient supervisory treatment program run by Catholic Charities. After respondent returned to using alcohol and drugs, in September 1991, he was admitted into the Bowling Green Institute for additional in-house patient treatment. At the conclusion of such treatment, respondent was transferred to a halfway house in Philadelphia. Throughout 1991, respondent repeatedly sought treatment, but relapsed, spending time in the Delaware Recovery Center, the Mount

Sinai Hospital, in Philadelphia, and another halfway house in Philadelphia. Despite treatment, respondent continued using alcohol and drugs until the end of 1991.

On January 7, 1992, respondent began a course of treatment with the Somerset Project, in Philadelphia. He also started attending Alcoholics Anonymous meetings and returned to church activities. Since January 1992, respondent has submitted to bi-weekly urinalysis, with consistent negative results for drugs and alcohol. In March 1992, he was selected as a staff member of the Somerset Project and given responsibility for one of its transitional living houses. In November 1992, he was promoted to the position of Assistant Coordinator.

* * *

At the conclusion of the DEC hearing, the panel found that respondent had grossly neglected the Green matter, by failing to file a motion to set aside the verdict, by failing to appear at the adjourned date of sentencing, and by failing to file an appeal, in violation of RPC 1.1(a). The panel also found that respondent had engaged in the unauthorized practice of law, in violation of RPC 5.5(a), by representing Mr. Green at a time when he was ineligible to practice law for failure to pay the annual assessment to the Client Protection Fund. Lastly, the panel found that respondent's arrest for crack cocaine constituted criminal conduct that adversely reflected on his fitness to practice law, in violation of RPC 8.4(b). In mitigation, the panel considered that respondent's misconduct had been a direct result of his addictions,

that he had expressed genuine regret for his conduct and that he has overcome his addictions to become, once again, a productive member of the society.

III. Docket No. DRB 94-081

A. The Ward Matter (Docket No. XIV-94-030E, formerly
Docket No. VC-92-011E)

This matter was the subject of a disciplinary stipulation between respondent and the OAE. The stipulation states, in relevant part, that

a) In or about April 1991, grievant and respondent met in East Orange and negotiated a fee of \$630.00 for respondent's representation in a change-of-name application. Grievant paid \$210.00 at the first meeting and later paid the balance of \$420.00 to respondent.

b) Between April and November 1991, grievant called respondent repeatedly to inquire as to respondent's progress in the matter. Respondent replied to grievant that the matter was proceeding in due course.

c) From and after November 1991, respondent ceased all communication with grievant.

d) Contrary to respondent's representations to grievant, the name-change action was never commenced. Respondent did not refund any portion of the \$630.00 fee.

e) By virtue of the foregoing, respondent violated RPC 1.1(a) (gross negligence) and RPC 8.4(c) (misrepresentation).

B. The Eugene Green Matter (Docket No. XIV-94-029E, formerly
Docket No. VC-91-036E)

This matter was also the subject of a stipulation between respondent and the OAE. The stipulation states as follows:

a) In January 1990, grievant's sister paid respondent \$500.00 to review the grievant's trial records and to meet with grievant at the New York Prison where grievant was incarcerated.

b) Respondent received the trial records, but did not review them and did not meet with grievant.

c) Grievant and his sister called respondent numerous times on the telephone to obtain progress reports and were unable to speak with respondent.

d) Grievant eventually requested his trial records back from respondent, but again respondent refused to reply or send the records.

e) By virtue of the foregoing, respondent violated RPC 1.1(a) (gross negligence), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate), and RPC 1.16 (failure to properly terminate representation).

* * *

The stipulation encompassing the Ward and the Green matters also cited the following aggravating and mitigating factors:

7. Respondent has been disciplined in the past, having received a private reprimand on July 3, 1993, for violations of RPC 1.4(a) and RPC 3.2. (Exhibit C).

8. In addition, there are presently pending before the Board three additional matters, DRB 93-369 (I-91-045E) and DRB [93-441] (XIV-91-003E and VII-92-020E), in which the Hearing Panels below recommended public discipline.

* * *

9. Respondent contends that, at the time of the events forming the basis for the two above-recited grievances, respondent was an alcoholic and drug abuser and was incapable of performing his professional responsibilities in a competent manner.

10. Since that time, respondent has undergone treatment for alcoholism and drug abuse and has reformed and no longer uses alcohol or controlled dangerous substances.

Although the OAE made no mention in the stipulation of the discipline that should be imposed for respondent's ethics

violations, it recommended that respondent submit to periodic drug and alcohol screening and that his restoration to practice be conditioned on a proctorship for a period of two years. At the Board hearing, however, the OAE urged the Board to recommend a six-month suspension. Respondent's counsel, on the other hand, argued that, if a period of suspension were to be imposed, it should be made retroactive to December 15, 1993, when respondent first appeared before the Board on the matter under Docket No. DRB 93-369.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the evidence clearly and convincingly establishes that respondent acted unethically in all five matters. The Board is not convinced, however, that respondent violated RPC 8.1(b) in Docket No. DRB 93-369. There is no proof that respondent's failure to file an answer and to appear at the DEC hearing was his fault, rather than his counsel's. Accordingly, the Board recommends that the charge of failure to cooperate with the DEC be dismissed.

The balance of the ethics charges, however, was proven by clear and convincing evidence.

Respondent failed to maintain a bona fide office in 1987; failed to act with diligence in and grossly neglected the Thomas Green matter (RPC 1.3 and RPC 1.1(a)); practiced law while on the Client Protection Fund ineligible list (RPC 5.5(a)); received a conditional discharge for possession of crack cocaine (RPC 8.4(b));

grossly neglected the Ward matter (RPC 1.1(a)) and made a misrepresentation to his client (RPC 8.4(c)); failed to act with diligence in and grossly neglected the Eugene Green matter (RPC 1.3 and RPC 1.1(a)); failed to communicate with his client (RPC 1.4(c)); and failed to return the trial records to his client (RPC 1.16).

One aggravating factor is respondent's prior private reprimand, on July 3, 1993, for lack of communication and failure to return a retainer to a client, as promised. Respondent's counsel urged the Board to consider, in mitigation, respondent's addiction to drugs and alcohol. Although the Board could not consider respondent's addiction to drugs as a mitigating factor, In re Turner, 120 N.J. 706 (1990) and In re Stein, 97 N.J. 550 (1984), the Board took into account that respondent's longtime addiction to alcohol -- respondent began drinking when he was fifteen years of age -- was, in some measure, responsible for his misconduct. The Board also noted that respondent has sought extensive treatment for his addictions.

There remains the issue of appropriate discipline. Respondent's possession of crack cocaine alone would merit a three-month suspension. In re Sheppard, 126 N.J. 210 (1991) and In re Nixon, 122 N.J. 290 (1991). After taking into consideration respondent's remaining violations and his prior private reprimand, the Board unanimously recommends that he be suspended for a period of six months. The Board also recommends that respondent submit proof that he is currently drug- and alcohol-free (the last report

provided was dated July 1993), that he again show such proof prior to reinstatement and that, upon restoration to practice, he be supervised by a proctor for two years. One member did not participate.

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

Dated:

7/1/94

By:



Raymond R. Trombadore
Chair
Disciplinary Review Board