SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 94-292

IN THE MATTER OF :
JEFFREY P. RUDDY, :
AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: March 15, 1995

Decided: June 13, 1995

Philip S. Elberg appeared on behalf of the District VA Ethics Committee.

Alan Dexter Bowman 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 a private reprimand (now an admonition) filed by the District VA Ethics Committee (DEC), which the Board to determined to hear pursuant to R.1:20-4(f)(2). The complaint charged respondent with misconduct in two matters. In both, respondent was charged with a violation of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate). Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1967. During the time relevant to the within matters, he maintained an office in Newark, Essex County.

Respondent was suspended for two years, by Order dated

September 22, 1992, for violation of RPC 8.4(b) (criminal conduct that adversely reflected on his fitness to practice law). In re Ruddy, 130 N.J. 85 (1992). He was reinstated by Order dated November 28, 1994. In re Ruddy, 138 N.J. 167 (1994).

The Baldwin Matter

On March 4, 1983, Edward Baldwin, then sixteen years old, suffered injuries to his eye during a fight with a fellow student in a high school gymnasium. Damage to his eye was repaired during surgery on that date. On March 7, 1983, Edward and his mother, Phyllis Baldwin, retained respondent. (The retainer agreement, Exhibit R-1 in evidence, is misdated).

Later in 1983, Edward was injured in a bicycle accident. He retained respondent to represent him in that matter in August 1983. That case was ultimately settled in 1986 by another attorney, Peter Hilgendorff, Esq. The Baldwins had no complaints about respondent's handling of that matter.

The record reveals that respondent initially pursued the eye injury case appropriately. He had Mrs. Baldwin sign an authorization for the release of medical records and sent Edward to a psychiatrist for treatment. On July 15, 1983, respondent filed a claim with the Violent Crimes Compensation Board (VCCB). He also filed a claim under N.J.S.A. 59:1-1 et seq.

According to the Baldwins, the fight in which Edward was injured was instigated by the other student involved and there was no teacher present at that time. In approximately March 1984,

respondent received a copy of the teacher's incident report, which stated that, in fact, a teacher had been present at the time of the fight and that Edward had instigated it. Respondent testified that, when he received that information, he telephoned Mrs. Baldwin and asked her to meet with him to view the contradictory report. Both Edward and Mrs. Baldwin came to the office. According to respondent, Edward was shocked at the report. Respondent informed the Baldwins that he could no longer represent them in this matter, but that he would continue the representation in the bicycle case. Respondent stated that he told the Baldwins that he would obtain missing medical information so they would have a complete file to take to another attorney, if they so desired. He contended that he also told them of their time limitations for doing so. (The record contains a letter from respondent to Mrs. Baldwin, dated July 12, 1984, asking for her authorization to get medical bills and reports. Exhibit C-1.) Respondent took no additional action to pursue the case. He did not send a letter to the Baldwins withdrawing from the representation.

Contrary to respondent's testimony, the Baldwins had no recollection of this conversation with respondent about the contradictory teacher's report. They were apparently unaware of its existence.

In August 1986, respondent received a determination letter from the VCCB denying the claim. An earlier letter had been sent to respondent, informing him that the claim would be denied and that Edward had the right to appeal. Respondent never relayed that

information to the Baldwins. He testified that he never saw the letters until he went through his file prior to the DEC hearing. (Interestingly, however, in a letter to the DEC investigator dated November 16, 1990, respondent stated that he had been aware of the VCCB's determination. Exhibit C-4).

There was differing testimony regarding what the Baldwins and respondent knew. Mrs. Baldwin testified that it was her belief that Edward's case was based on the school's delay in obtaining medical treatment for him after the fight. Respondent, in turn, testified that the delay in treatment had never been mentioned to him. The Baldwins also testified that a juvenile proceeding had been held based on this incident; as a result of that proceeding, the other student was placed on probation. Mrs. Baldwin testified that she told respondent of these events. Respondent, however, denied knowledge of the outcome. Respondent added that he did not look into the matter because he did not believe that it would be useful in Edward's civil suit.

During the time that Edward's cases were proceeding, and subsequent to the bicycle case settlement in 1986, Edward called respondent's office for information about the status of the eye injury case. According to Edward's testimony, in 1984 or 1985, respondent told him that his case was proceeding. On one occasion in 1987, he was told "they were still going to court, a trial or whatever the case may be" (1T 26).[1] In 1989 or 1990, Edward went

[1] 1T refers to the hearing before the DEC on September 28, 1993. 2T refers to the hearing before the DEC on March 22, 1994.

to respondent's office and was told by respondent that the case was proceeding. Edward also mentioned another occasion at an undisclosed time when he called the office, spoke to respondent's sister and was told that his case had been settled. Edward was certain on each occasion that they had been discussing the eye injury case. (Edward had been receiving satisfactory information on the bicycle case from the attorney who ultimately handled it.) Mrs. Baldwin never attempted to contact respondent for information.

With regard to the conflicting information given to Edward, respondent testified that, at some point prior to the 1986 bicycle case settlement, Edward came in for information on that case and also asked if anything else could be done on the eye injury case. Respondent replied that nothing else could be done. Respondent did not recall a 1989 conversation with Edward. Respondent did recall, however, a 1990 conversation, wherein he told Edward that the bicycle case had been settled and that the eye injury case had been discontinued.

Edward filed his grievance with the DEC in August 1990. In 1991, the DEC investigator/presenter requested that respondent turn over Edward's file. Respondent represented that the file could not be located. Respondent explained that, between 1989 and 1990, his office was broken into three times and that files were destroyed during one break-in.

Respondent was questioned before the DEC about the apparent inaccuracies in the information he had provided during the investigation stage, for example, as to whether the damages

threshold for a N.J.S.A. 59:1-1 et seq. claim had been met. It seems that the inconsistencies in respondent's replies might have been explained by the fact that he was answering without benefit of the file. The file was located, however, when respondent learned of the DEC hearing and told his office staff to forward the bicycle file to respondent's counsel. They located the eye injury case file at that time. Respondent was unable to look for the file himself because, beginning in 1988, he had been the subject of a criminal investigation. As noted above, he was suspended from the practice of law by Order dated September 22, 1992. Respondent stated that he "was not allowed in that office after October 15 of 92' to the present time" (1T 102).

* * *

The Legrier Matter

The grievant, Johnny Legrier, who did not testify before the DEC, retained respondent in 1983 to represent him in connection with a personal injury matter arising from an August 10, 1983 accident. It appears that respondent met with Mr. Legrier, obtained his documents and gave the information to his secretary to set up a file. No file was set up and the matter slipped through the cracks. Thus, the statute of limitations on Mr. Legrier's claim ran without a complaint having been filed. (Curiously, the record contains a letter from respondent to Mr. Legrier, dated December 7, 1983, asking him to sign an authorization for the release of medical records.)

In May 1990, Mr. Legrier contacted the DEC. By letter dated

May 22, 1990, the DEC secretary advised respondent of the problem. Respondent testified that, prior to the receipt of the DEC secretary's letter, he had no knowledge of Mr. Legrier's case. (Respondent spoke with his father, who was his law partner. His father also had no recollection of Mr. Legrier's case.) By letter dated May 24, 1990, respondent asked Mr. Legrier to come in for a meeting. Respondent promised that he would pursue his matter. Mr. Legrier provided respondent with additional copies of his documentation and, according to respondent, he again gave the papers to a secretary to obtain additional necessary information. Once again, Mr. Legrier received no communication from respondent. By letter dated June 12, 1991, Mr. Legrier contacted the DEC and relayed the difficulties he was still having with respondent. Respondent admitted that, after May 1990, he lost track of the file and had no recollection of it until he was contacted by the DEC in June 1991. Respondent further admitted that, between May 1990 and June 1991, he had no system in place that would have allowed him to keep track of Mr. Legrier's file. In September 1991, after being contacted by the DEC investigator, respondent located Mr. Legrier's documents and his notes on a former secretary's desk. Respondent explained to the DEC investigator that the secretary had left his employ "under mysterious circumstances" (Exhibit 3 to P-1). Subsequently, respondent obtained additional information on Mr. Legrier's damages and, in December 1991, negotiated a settlement with Mr. Legrier for $5,000. The DEC determined that the amount of the settlement was fair. Indeed, Mr. Legrier retained respondent

to handle a second matter on his behalf, which led to a 1992 settlement to Mr. Legrier's satisfaction. (The record is not clear whether Mr. Legrier retained respondent on the second matter before or after the settlement in the first matter).

* * *

The DEC determined that respondent had violated RPC 1.1(b) and RPC 1.4(a) and (b) in the Baldwin matter. [Only section (a) was cited, but the violation described actually falls under section (b) as well].

In the Legrier matter, the DEC determined that respondent violated RPC 1.1(a) and RPC 1.3. The DEC did not find clear and convincing evidence of a violation of RPC 1.4, based upon the lack of testimony from Mr. Legrier. The DEC also found a violation of RPC 1.1(b) (pattern of neglect), when the within two matters were considered together.

Although recognizing that respondent was under stress from the above mentioned criminal matter, the DEC did not deem that circumstance sufficient to excuse his misconduct. The DEC also noted that, if the Legrier matter had been the only matter considered, "it would not have found the attorney guilty of any violations based on the fact that it feels that there would have been just a claim for negligence as against the attorney" (Panel report at 5-6). The DEC recommended a private reprimand and a proctorship by someone other than respondent's father, should respondent be reinstated after his prior two-year suspension.

* * *

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

The DEC found respondent guilty of a violation of RPC 1.1(a) and RPC 1.3 in one matter, RPC 1.4 in one matter and RPC 1.1 (b) when the two matters were considered together. As to the latter violation, it has been the Board's practice that three cases of neglect are necessary for a finding of a pattern of neglect. The Board, therefore, disagreed with the DEC in that regard and has dismissed that allegation.

In the Baldwin matter, setting aside for one moment the communication problems, it is difficult to say if respondent was guilty of gross negligence, with which he was charged. If respondent's version of the facts is accepted, he filed appropriate claims on his client's behalf, learned that the underlying facts were not as his client had represented and withdrew from the representation. The difficulty arose because his client appeared to have had no idea of these developments. Indeed, it seems that Edward thought that respondent had been pursuing his claim for many years after he had stopped working on the case. The situation became more severe because the Baldwins lost their opportunity to retain other counsel to pursue Edward's claim.

There is no question, however, that respondent was guilty of an egregious failure to communicate. From his testimony, it appears that much of the blame in that regard could be placed on

his lack of office organization. A great deal of testimony was offered in these matters about respondent's office procedures. He described a system the DEC report termed as "bizarre." During the DEC hearing, the following exchange took place in connection with the Baldwin matter:

> Q. Is it a fair statement that your office procedures may have led to significant confusion with respect to the status of these two separate matters? Is that correct?
>
> A. Yes.
>
> [1T 162]

Had respondent's office procedures been better, indeed, had he sent a letter to his clients withdrawing from the representation, it is likely that a grievance would not have been filed.

The same is true about the Legrier matter. It is not clear that what occurred at the beginning of the matter could be termed gross neglect. The file simply slipped through the cracks in respondent's office. Later, however, after having been notified through the strongest of measures - a letter from the DEC - that there was a problem, the file again was overlooked. At this point, it is unquestionable that respondent's conduct was grossly negligent. Although respondent chose to blame this situation on his former secretary, the ultimate responsibility was his. At that same point, contrary to the DEC's view, the violation of RPC 1.4(a) also became clear. Mr. Legrier's testimony was not required to prove a violation that respondent essentially admitted.

Of some moment in this matter - and an issue not mentioned by the DEC - was the fact that respondent entered into an improper

agreement with Mr. Legrier for the payment of $5,000 as compensation for respondent's mishandling of the matter. While this misconduct is not serious enough to warrant increased discipline, the Board has deemed the complaint amended to conform to the proofs and, therefore, found a violation of RPC 1.8(h).

In sum, respondent was guilty of gross neglect and lack of diligence in one matter, failure to communicate in two matters and entering into an impermissible settlement agreement with a client. Accordingly, the Board unanimously determined to reprimand respondent. See In re Girdler, N.J. (1994) (where the Court imposed a public reprimand for lack of diligence, failure to communicate and failure to provide a written retainer in a personal injury case).

As noted above, respondent was recently readmitted to the practice of law after a two-year suspension. The Board is hopeful that this reprimand will drive home for respondent the importance of setting up and maintaining a good office system. To that end, the Board determined that respondent is to practice under the supervision of a proctor, approved by the Office of Attorney Ethics, for a period of six months. Respondent's proctor is to be discharged at the conclusion of six months, provided that respondent and the proctor can certify that his office systems are functioning appropriately. Three members did not participate.

The Board further determined that respondent is to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 6/13/1995 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board