SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-199

IN THE MATTER OF	:
DAVID BRANTLEY,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 17, 1993

Decided: June 8, 1994

Robert Novack appeared on behalf of the District VB Ethics Committee.

S. Dorell King 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 public discipline filed by the District VB Ethics Committee (DEC). The formal complaint charged respondent with a violation of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate) and RPC 8.1(b) (failure to cooperate with the DEC) in three matters.

Respondent was admitted to the New Jersey bar in 1970 and has been engaged in practice in East Orange, Essex County. During the time period relevant to the within matters, respondent was affiliated with the law firm of Brantley and Brummel, in East Orange.

Respondent was privately reprimanded, on March 29, 1982, for failure to represent his client zealously in a discrimination case. A second private reprimand was imposed on February 29, 1988, for driving under a suspended license and failure to pay fines. Respondent was again privately reprimanded, on May 25, 1988, for gross neglect and misrepresentation in a personal injury matter.

Respondent was suspended for one year, effective April 15, 1991, for misconduct in four matters. Specifically, he was found guilty of gross neglect, lack of diligence, failure to communicate, failure to carry out contracts of employment, misrepresentation to a client, pattern of neglect and failure to cooperate with the disciplinary authorities. Respondent was reinstated by order dated June 9, 1992.

The Denis Matter (District Docket No. VB-90-4E)

Archie Denis retained respondent in connection with the defense of a lawsuit brought against Denis in his capacity as executor of an estate. Denis filed a grievance against respondent on November 3, 1989, providing more information by letter dated January 23, 1990. Denis' grievance alleged that respondent neglected his matter and failed to communicate with him (Exhibit 1-C). Subsequently, Denis no longer wished to pursue the grievance and refused to cooperate in the investigation and prosecution of this matter. Denis refused to appear voluntarily at the DEC hearing, despite several notices thereof. Several attempts to

serve a subpoena on him were unsuccessful (1T 206-207).[1] Accordingly, the DEC dismissed the allegations against respondent arising out of the underlying litigation, (violations of RPC 1.4(a) and RPC 1.1(b)). However, the DEC determined that respondent was guilty of a violation of RPC 8.1(b), as established by the following facts:

By letter dated February 1, 1990, Martin F. Kronberg, Esq., the DEC investigator, forwarded a copy of Denis' grievance letters to respondent's office address. Kronberg's letter requested that respondent reply to Denis' allegations within two weeks. Respondent did not reply. Thereafter, by certified letter dated April 5, 1990, Kronberg again requested that respondent reply to Denis' grievance within two weeks, forwarding a copy of his February 1, 1990 letter and attachments. On April 27, 1990, respondent telephoned Kronberg and stated that he would reply by May 4, 1990. No response was forthcoming. On June 15, 1990, Kronberg again sent a certified letter to respondent, referencing the two earlier letters, as well as the April 27 telephone call, and giving him one week to respond (2T 30). Respondent did not reply to this letter. Respondent offered no explanation for his failure to reply to the grievance (2T 192-193).

By letter dated January 24, 1991, respondent was served with a copy of the formal complaint and advised that he had ten days to file an answer. The record reveals that there was some confusion

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[1] 1T refers to the transcript of the hearing before the DEC on February 3, 1993. 2T refers to the transcript of the hearing before the DEC on February 4, 1993.

in the matter, in that respondent received a copy of a letter from the DEC to Denis, dated March 22, 1991, stating that the matter had been dismissed and setting forth the procedures for appeal to the Board. Accordingly, respondent believed that the allegations against him had been resolved (Exhibit 11-C).

Apparently, Denis' grievance led to a demand audit by the OAE. After the OAE investigation revealed no misconduct, the OAE recommended a dismissal of those claims, and transfer of the underlying allegations back to the DEC. Evidently, the entire matter was mistakenly dismissed. Accordingly, the complaint was sent to respondent again, on April 1, 1992, and Denis' grievance was sent on April 7, 1992, pursuant to respondent's request (Exhibit 12-C, Answer, Exhibit 24-C).

By letter dated January 13, 1993, respondent's counsel was advised that, although an answer had been received in the Johnson and Scott matters, infra, no answer had been received in the Denis matter. Counsel was asked to send the answer before the hearing. Respondent did not file an answer to the complaint until February 2, 1993, the night before the first day of hearings before the DEC, when he faxed his answer to the presenter's office at approximately 10:30 p.m. (2T 44). Respondent's counsel explained that the answer had been prepared over one year earlier and that it had not been sent to the presenter through an oversight (1T 11).

As noted above, the DEC determined that respondent violated RPC 8.1(b), as a result of his failure to cooperate with the DEC.

The Johnson Matter (District Docket No. VB-90-7E)

In January 1990, Charles A. Johnson retained respondent to represent him in connection with a motion to increase child support and enforcement of child support arrearage. An order had been entered in 1985, compelling Johnson to pay $75 per week (1T 179, 2T 158). According to Johnson, after that order, he and the mother of his son (the plaintiff in the child support action), agreed that he would only pay $50. A note to that effect was allegedly given to Johnson's former attorney and forwarded to the court, but no modification of the order was ever entered (1T 179 2T 167). According to Johnson, the attorney who was handling that matter for him is now deceased (1T 142, 200). The plaintiff's certification alleged that Johnson had unilaterally reduced the amount of the payment to $50 (2T 167). The motion also stated that Johnson earned over $100,000 per year when, in fact, he only earned approximately $38,500 (1T 144). Johnson had provided respondent with documentation on his income (Exhibit R8-A).

Although no retainer agreement was signed, Johnson paid respondent $200 (Johnson testified that the amount was $250) (1T 145). Respondent testified that he and Johnson had agreed that the minimum fee would be $600 (2T 163). The balance of $400 was not paid.

The motion was scheduled for hearing on February 2, 1990. Johnson explained that, after he met with respondent, he continued to pay $50 per week, which he had done since 1986 or 1987, according to his agreement with the plaintiff in the matter (1T

148). According to Johnson's testimony, respondent told him that he would take care of the situation (1T 148).

In February 1990, Johnson retained respondent in connection with a ticket he had received on February 1, 1990, for driving while intoxicated. A retainer agreement was signed in March 1990, indicating a minimum fee of $1,000 (Exhibit R-6), which was paid in June 1990 (1T 187). Johnson testified that, although he had meetings with respondent to discuss the DWI matter, he did not recall if the support matter was discussed during those meetings (1T 173-174). Respondent testified that there was "ongoing communication" with respect to both matters (2T 165). The DWI matter was resolved in May 1990.

With regard to the child support action, there were negotiations between respondent and the plaintiff's attorney, John O. Goins, Esq., beginning immediately after respondent was retained (2T 159). By letter dated January 25, 1990, Goins notified the Essex County Probation Department that a continuance of the February 2, 1990 motion had been granted to allow for ongoing negotiations. Johnson testified that he was unaware of these events (1T 159). Respondent filed a response to the motion on February 14, 1990. According to the DEC findings, however, respondent did not file his response with the court but, rather, with the Essex County Probation Department (according to respondent he had filed the document with the Superior Court, Chancery Division, Family Part (2T 175)). The DEC noted that respondent failed to attach the necessary documents to his response, such as,

a case information statement and information about Johnson's financial status (Panel Report at 4).

On March 19, 1990, Judge Thomas Zampino entered an order directing Johnson to pay $200 per week in child support and permitting thirty days to seek modification of the order. The issue of the arrearages was reserved. Respondent did not appear before Judge Zampino. By letter dated May 17, 1990, Goins forwarded a copy of the order to respondent. Respondent testified that Goins had not appeared on this matter and that he had telephoned Goins, who had no knowledge of why the judge had entered the order (2T 176). In his answer, respondent stated, "I telephoned Mr. Goins and he informed me that he did not know how Judge Zampino had executed this Order without his or my knowledge" (Answer, Exhibit 13-A). Respondent testified that the copy of the order from Goins was the first notice he had received of the court's action (2T 176-177). Respondent also stated that he informed Johnson of his receipt of the order. According to Johnson, however, respondent never informed him of the order (1T 182); instead, he received a copy of the order through the mail, which he then gave respondent (1T 160-161).

In May or June 1990, Johnson received notices that he was in arrears and that his wages would be executed. Johnson took the notices to respondent (1T 148-150). On June 6, 1990, respondent filed a motion for modification of the support order, which was granted after a hearing on August 10, 1990. The court ordered the support set at $105 per week, with an additional $20 per week

payment and several lump sum payments of $500 on the arrearages, fixed at $5,280 (the order was not signed until October 31, 1990).

Respondent and Johnson met on August 30, 1990 to discuss the court's ruling. Johnson testified that he informed respondent that he was able to pay the $105, but that he wished to appeal Judge Zampino's order with regard to the arrearages (1T 156-157). Johnson testified that he did not think that the $20 payment was fair (1T 197). Respondent testified that Johnson was angry and that he did not believe that he would pay him the $400 he was owed. Respondent explained that, since he and Johnson did not have a signed retainer, he did not pursue the collection of the balance of his fee (2T 166). Respondent also testified that, when he met with Johnson, there was never any discussion of an appeal of Judge Zampino's order. Respondent testified that he informed Johnson that he would no longer represent him (2T 170). After that meeting, Johnson and respondent had no further contact (2T 167-168). It was respondent's testimony that he had no further obligations to Johnson after that time, other than to send him a copy of Judge Zampino's order when he received it. However, respondent did not recall sending the order to Johnson (2T 170).

With regard to communication after that time, the following exchange took place between respondent and the presenter:

> Q. . . . It's your testimony he never called you during that time period?
>
> A. I'm saying if I did receive calls from him, I didn't answer them. I was not going to answer them.
>
> Q. You ignored his calls?

A. Yes.

Q. Because you believed you no longer had a relationship with him?

A. Absolutely.

[2T 171]

Johnson received a letter dated October 15, 1990, advising him that a tax refund from the IRS would be withheld. In addition, by letter from his employer, dated November 2, 1990, Johnson was informed that his wages would be executed (1T 157-158). Johnson explained that, from the time the wage execution began, he telephoned respondent approximately every day and never received a return call (1T 152, Exhibit 2-B). Johnson testified that he went to respondent's office on one occasion, in November 1990, to attempt to speak with him. He was told that respondent was not in his office, although it was Johnson's opinion that respondent was, in fact, in his office at that time (1T 153-154). Thereafter, Johnson retained another attorney, who also attempted to contact respondent by telephone, to no avail. Apparently, the new attorney saw respondent in a courthouse and discussed Johnson's case with him (1T 154-155). The subsequent attorney was ultimately able to have the wage execution lifted (1T 162).

Before that, however, on December 6, 1990, Johnson wrote to the DEC secretary because he was unable to contact respondent and his wages were being executed at $235 per week, leaving him unable to pay his bills (1T 146, Exhibit 2-B). The DEC investigator, Robert Novack, Esq., sent a letter to respondent dated April 30, 1991, enclosing Johnson's grievance and requesting that he reply to

the allegations within two weeks (Exhibit 6-B). No reply was forthcoming. Thereafter, respondent telephoned the investigator and informed him that he was not receiving his mail. An additional letter, dated June 1, 1992, forwarding the relevant documents, was sent to respondent's home, requesting a reply within ten days (2T 45-47, Exhibit 7-B).

On September 11, 1992, the formal complaint was sent to respondent in this matter as well as in the Scott matter, infra. By letter dated October 16, 1992, respondent was advised that a formal complaint had been filed, that he was required to file an answer within five days and that the failure to do so was a violation of RPC 8.1(b). By letter dated October 21, 1992, the presenter acknowledged receipt of respondent's new office address from respondent's wife. The presenter forwarded his communications of September 11, 1992 and October 16, 1992 to that address. Respondent's answer to the complaint was filed on January 8, 1993 (2T 48, Exhibit 14-B).

The DEC determined that respondent violated RPC 1.3 and RPC 8.1(b). The DEC did not find clear and convincing evidence of the alleged violation of RPC 1.4, despite Johnson's testimony regarding his lack of communication with respondent. The DEC disbelieved Johnson's testimony that he never consulted with respondent about the support matter, particularly given the fact that he admitted having several discussions concerning the DWI matter with respondent and that the two were concurrent. The DEC believed

respondent's testimony that the child support matter had been discussed during the conferences on the DWI matter.

The Scott Matter (District Docket No. VB-91-84E)

In August 1990, Patricia and Paul Scott retained respondent to represent them in connection with the purchase of a condominium. The contract of sale was signed on August 20, 1990. The realtor referred the Scotts to respondent, who met with them briefly on August 22, 1990. On that same date, respondent was given a copy of the contract (2T 54). On August 25, 1990, the Scotts again met with respondent. A retainer agreement was then signed and the requirements for closing were discussed (1T 18). Although respondent testified that the contract of sale was reviewed at that time and that the Scotts were provided with a copy (2T 57), Patricia Scott denied that they received a copy of the contract and that respondent reviewed it with them (1T 22). Respondent's fee for handling the closing was $900 and $50 for expenses (1T 19).

The record reveals that respondent did take steps to represent the Scotts in the purchase. He ordered a title search and title insurance on August 22, 1990 and, again, on September 6, 1990 (2T 57, Exhibits R-12, R-13). Respondent communicated with the seller's attorney and entered into amendments and riders to the initial contract. On or about September 10, 1990, the Scotts executed a rider to the contract, which was returned to respondent on or about September 17, 1990.

The DEC found that, from approximately September 17 to October 17, 1990, respondent failed to communicate with the Scotts (Panel Report at 7, Transcript of Panel Report at 17).

According to Patricia Scott, she was in need of a copy of the contract of sale and was told by the realtor to obtain it from respondent. Scott testified that she made numerous attempts to contact respondent, both to obtain the contract and to discuss difficulties she was having with the Federal Housing Administration (FHA) and with maintenance problems on the property. Although Scott left messages with respondent's secretary, he never returned her telephone calls (1T 24).

Scott obtained a copy of the contract from respondent's secretary, by fax, on October 16, 1990, after a request by an attorney in the law firm where she is employed as a legal secretary (1T 57, 80-81). According to Scott's testimony, that attorney reviewed the contract and attempted to telephone respondent, but was unable to reach him (1T 26). Respondent stated that he never received any messages from his secretary that Scott had telephoned (2T 89) and denied that the calls had been placed (2T 62). Respondent admitted, however, that he did not recall speaking to the Scotts after the rider was executed in September 1990 (2T 88-89).

By letter dated October 15, 1990, Patricia Scott informed respondent that she had repeatedly tried to contact him, that her calls were not returned and that she had attempted unsuccessfully to obtain a copy of the contract from him. Her letter also stated

that she wished to rescind the contract because she no longer wished to be involved with the FHA and because the property was not being properly maintained. According to Patricia Scott's testimony, she was having difficulty obtaining a mortgage because the FHA was asking her to submit documents that she had already furnished (1T 67). Respondent, who was not involved in the mortgage application process with the Scotts (1T 74, 2T 98), testified that he was "shocked" when he received her letter (2T 96). Respondent testified that the Scotts never advised him of the difficulties they were having with the mortgage company (2T 72).

By letter dated October 18, 1990, the realtor explained to the Scotts the potential consequences of their decision to rescind the contract. The seller's attorney sent a letter to the Scotts on October 19, 1990, also warning them of the repercussions of their actions, including the forfeiture of their deposit. By letter dated October 23, 1990, the realtor asked the Scotts to reconsider their decision to rescind the contract. Respondent was copied on all three of these letters. In addition, by letter to respondent, dated October 19, 1990, the seller's attorney requested that respondent turn over the deposit funds he was holding, given the Scotts' default (Exhibit R-14).

Respondent testified that he attempted to telephone Patricia Scott and was unable to contact her (2T 96-97, 144). Respondent also testified that he may have contacted the broker after receipt of the October 18, 1990 letter (2T 143). Of greater import is the fact that respondent did not speak with the Scotts to obtain more

details but, rather, accepted the information that he had obtained from the broker (2T 97, 103). Respondent contacted the Scotts by letter dated October 26, 1990, wherein he stated that he had received their letter regarding the rescission of the contract and that he was "aware" that they had tried to contact him over the previous several weeks (2T 92 Exhibit 5-A). The letter advised them that the contract was binding and warned of the possible consequences of their proposed actions, including a potential lawsuit. The letter also stated that he had attempted unsuccessfully to telephone them and asked that they contact him (2T 99). During a meeting the following week, respondent advised the Scotts that they had to proceed with the contract or they would forfeit their deposit funds and expose themselves to a lawsuit (1T 31). Patricia Scott testified that, during that meeting, she made respondent aware of the problems with the property (1T 33). Nevertheless, the Scotts determined to proceed with the closing because of the risk of losing their deposit (1T 76).

Within the body of the contract there were provisions relating to the buyers' right to have various inspections done to the property. Patricia Scott testified that no inspection was performed because they were told by the realtor that this was new property and no inspection was necessary. According to Patricia Scott, respondent agreed with that advice (1T 34, 124-125). Respondent did not recall that conversation (2T 119). Respondent testified that he informed the Scotts "that they're entitled to have an inspection that they would go through and check the whole

place, the electrical, the plumbing, the whole house, the whole unit to make sure that there was [sic] no problems, and that it generally ran anywhere between $200.00 to say $350.00 for this inspection, and if they wanted to, she could get this inspection" (2T 155).

The DEC determined that respondent failed to properly advise the Scotts of these rights. Prior to closing, a walk-through of the property was conducted and new difficulties were discovered. By letter dated January 26, 1991, respondent advised the seller's attorney of the problems found during the walk-through. Accordingly, the Scotts were given a $300 credit at closing for these repairs (1T 34-35, 2T 75). The Scotts' concerns over the maintenance of the property were not discussed at the January 29, 1991 closing. (1T 34).

The Scotts were never provided with a homeowners' warranty, despite the seller's attorney's promise to do so (2T 78, 119). After closing, they discovered other difficulties in the property, which they discussed with respondent (1T 104). Shortly thereafter, on February 5, 1991, respondent sent a letter to the seller's attorney, setting forth a number of additional problems with the property. Respondent did not request extra fees from the Scotts for the additional service after the closing (1T 43). The seller's attorney replied to respondent by letters dated February 8, 1991 and February 13, 1991. (Although the first page of the earlier letter is dated February 8, 1991, the second page, postmark and fax transmittal cover letter indicate that it was written on February

12, 1991). According to respondent, the problems in the property were resolved (2T 81).

Respondent testified that he had informed Mrs. Scott that he would attempt to have the problems remedied, but that his obligations to her terminated after the closing on January 29, 1991 (2T 116). Patricia Scott testified that she and her husband did not understand that respondent's services ended as of the day of closing (1T 85). She also testified that respondent never informed them that he would not follow up on these matters (1T 127).

Patricia Scott learned, in May 1991, that respondent had been suspended when she telephoned his office to follow up on his letter and was told of the suspension by his secretary (1T 130). Respondent testified that, at the time of his suspension, the Scotts were no longer his clients (2T 116).

The Scotts contacted the DEC by letter dated October 10, 1991. Thereafter, on May 15, 1992, the DEC investigator wrote to respondent, enclosing the grievance and requesting a reply within two weeks. On June 1, 1992, the investigator sent a second letter, enclosing the May 15 letter and requesting an immediate reply. Respondent testified that he had no recollection of having received these letters (2T 121-122). As noted above, the Scott and Johnson complaints were sent to respondent on September 11, 1992. As mentioned in the Johnson matter, the investigator, by letter dated October 16, 1992, noted that there had been no answer filed and advised respondent to file it within five days. Subsequently, by letter dated October 21, 1992, the investigator informed respondent

that his wife had conveyed respondent's desire to have the documents forwarded to a different address, which was done on that date. Respondent's answer was filed on January 8, 1993 (2T 124-125).

According to respondent's testimony, he did not receive his mail because he lived in a large complex and the address used did not reflect his complete mailing address (2T 132-133). However, as noted by the DEC, the address had been provided to the Lawyers' Fund for Client Protection by respondent himself in his April 24, 1992 letter to that office. As the DEC remarked, "his later allegations that the address was insufficient for the mail to reach him, given the fact that he provided that address, is unconvincing" (Panel Report at 8).

Respondent testified that he failed to file an answer because he had just been reinstated in June 1992 and was operating under a great deal of pressure. Respondent claimed that he had prepared his answer in Scott, but could not draft his answer in Johnson until approximately December 1992, when he was able to obtain the file from his former law partner (2T 126). Respondent explained that he then gave his answer to his attorney for review and submission to the DEC. Respondent never provided information to the DEC about his difficulty in obtaining the file (2T 127).

Parenthetically, the Scotts filed a claim with the Lawyers' Fund for Client Protection. The claim was rejected based upon a lack of evidence of dishonest conduct by respondent.

The DEC did not find clear and convincing evidence that respondent was guilty of gross neglect, in violation of RPC 1.1(a). However, the DEC found that respondent was guilty of violations of RPC 1.3, RPC 1.4 and RPC 8.1(b). In addition, the DEC determined that this misconduct, considered in conjunction with the earlier misconduct that led to his one-year suspension, evidenced a pattern of neglect of client matters, in violation of RPC 1.1(b).

CONCLUSION AND RECOMMENDATION

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

The Board agrees with the DEC's dismissal of the alleged violation of RPC 1.4(a) in the Johnson matter, deferring to the DEC's determination that Johnson was not credible when he testified that he and respondent had not discussed the support matter when they met to discuss the DWI matter. However, the Board is concerned by respondent's admission that he would not speak with Johnson after their meeting on August 30, 1990. If, in fact, respondent no longer wished to represent Johnson, then his obligation was to make that clear to his client, which was apparently not done. Although respondent testified that he made the point to Johnson, he produced no evidence of a writing to that effect. The fact that Johnson continued to telephone him would

have given a reasonable attorney clear notice that his client was still relying on him for representation. Although the Board does not deem it necessary to make an additional finding in this regard, it notes that respondent's conduct was not that of a prudent attorney.

Similarly, in the Scott matter, respondent did not adequately communicate with the Scotts prior to the closing. In addition, he should have made it more understandable to them that he had completed his representation after the closing. Respondent should have made it clear that his fee only covered services through the closing and that, past that point, he would have to charge them an additional fee.

Of great concern to the Board was respondent's lack of reasonable explanation for his failure to cooperate with the DEC. This is particularly troublesome because of his similar behavior in the prior disciplinary matters. During his closing argument, the presenter opined that respondent was not candid in his testimony about the first time he learned of the grievances against him (2T 204). Respondent testified that he did not receive the complaint in the Johnson and Scott matters when originally sent in September 1992, or the follow-up letter of October 16, 1992. However, respondent also testified that, when he was responding to the Lawyers' Fund for Client Protection in the Scott matter, he did learn that the grievances had been filed against him. According to his testimony, respondent contacted the DEC investigator and requested copies of the grievances because he had a petition for

reinstatement to the practice of law pending and he did not want these subsequent matters to impede his reinstatement. He stated that, although he waited for the copy of the complaint, he did not receive it prior to his reinstatement. Respondent further testified that, in May and part of June of 1992, he was not in New Jersey. He added that, between June and September 1992, he was not living at home but, rather, lived in his office, which contained an apartment facility, for as long as eight weeks at a time (2T 131-132). During the proceeding, the following exchange took place between respondent and the presenter:

> Q. Is it your testimony, [respondent], that you made some efforts to have the Scott matter resolved so that you could make your application for reinstatement?
>
> A. Yes. That's why I requested to get it moved.
>
> Q. You wanted to move the Scott matter along because you thought it would interfere with your reinstatement application?
>
> A. That's absolutely correct.
>
> Q. When was your reinstatement application filed?
>
> A. May, I believe.
>
> Q. May 1992?
>
> A. May 1992.
>
> Q. When were you reinstated?
>
> A. In June.
>
> Q. So as of May 1992 you knew of the existence of the Scott grievance. Isn't that right?
>
> A. Yes because I filed an answer to the Lawyer's Fund.
>
> Q. Did you know Mrs. Scott had filed an ethics grievance against you as of May 1992?

A. No. I had not received any documents about an Ethics complaint at that time, just the letter from the Lawyer's Fund for Client Protection.

Q. So you're distinguishing the Client Security matter from the Ethics grievance?

A. Right, and when I spoke to I believe it was an individual named Mr. Steffens at the Fund, it was he who told me that there was an Ethics complaint that had been filed, and that's when I contacted the Ethics Committee.

Q. Mr. Steffens told you that an Ethics complaint had been filed also by Mrs. Scott?

A. Yes, that's what I recall.

* * *

Q. You knew from your conversations with the Office of Attorney Ethics in May of 1992 that there were several additional grievances that had been filed, didn't you?

A. I don't know exactly when. I can't say it was May, but I knew after I had filed this Answer here. I knew -- I was told about the Ethics complaint and then I called the Local District Board in Newark and was told what matters had been filed.

Q. Did you ask the District Ethics Committee to give you a copy of those grievances?

A. I believe I did.

Q. But you never got them?

A. Whatever I got, I got. Right now I don't recall what was sent to me, but after my discussions with the Local Board I was told about the Scott matters and about the Archie Denis matter, and I believe subsequent to that I called Trenton and spoke to a Mr. McGill who had pulled the file, and we had some discussion and I believe I had some discussions with you relative to that.

Q. Your reinstatement took place, or your order of reinstatement took place by June 1992?

A. Yes.

Q. So at least by that outside date you knew of the existence of the additional grievances, but were unable to secure copies of them?

A. Right.

* * *

Q. At the time of your reinstatement in June 1992, did you have an office -- immediately following your reinstatement in approximately June 1992, did you have an office out of which you worked in New Jersey?

A. I got an office at 377 South Harrison Street.

Q. Sitting here today at least, you don't have a recollection of advising the Office of Attorney Ethics what your new office location would be?

A. I don't recall specifically telling anybody, and yet I don't have any independent recollection at the present time.

[2T 148-153]

On redirect examination, respondent testified that he informed the New Jersey Lawyers' Diary of his new office address and telephone number. Respondent explained that it was his impression that the information would then be provided to the Lawyers' Fund for Client Protection and the OAE (2T 154). Respondent's mistaken belief, however, is no excuse for his failure to provide required information to the disciplinary authorities. His dereliction is particularly egregious given his knowledge of the matters pending against him.

Respondent is guilty of a violation of RPC 1.1(b), RPC 1.3 and RPC 1.4(a) in two matters. In addition, he failed to cooperate with the DEC, in violation of RPC 8.1(b). These violations would usually merit the imposition of a private or public reprimand, depending on the seriousness of the misconduct. See In re Williams, 115 N.J. 667 (1989) (public reprimand for gross neglect in one matter, failure to communicate, lack of cooperation with the

committee investigator and failure to file an answer to the ethics complaint).

However, any determination of the appropriate quantum of discipline in this case must also take into consideration respondent's serious disciplinary record. As noted above, respondent was previously privately reprimanded on three occasions: once in 1982 and twice in 1988. In addition, he was suspended for one year, by order dated March 19, 1991, for misconduct that spanned the years from 1980 through mid-1989. It cannot be overlooked that this is respondent's fifth brush with the disciplinary system.

Respondent's misconduct in the Scott and Johnson matters spanned the years from early 1990 through mid-1991 (the years of his misconduct in Denis are irrelevant, since the underlying allegations were dismissed). In addition, his misconduct toward the DEC investigator occurred in 1990 through 1992. The Board is particularly concerned with the timing of these matters. Respondent's continued his behavior, despite the fact that his misconduct in other matters had previously been, or was then, under scrutiny by the disciplinary system. Respondent knew or should have known that his conduct was questionable, at best.

The next question is what weight, if any, is to be afforded respondent's testimony in mitigation. Respondent testified that, in 1988 and 1989, he was the presiding judge of the East Orange Municipal Court, which consumed a great deal of his time. In addition, he explained that, in those years, the court was

remodeled and obtained a new computer system. According to his testimony, he was responsible for the computer system and was at the courthouse "ten, 12, 13 hours a day, five days a week" (2T 195). Respondent also testified that, during 1985 and 1986, he was experiencing severe marital problems and, in fact, underwent two divorces that led to ongoing problems. Further, he was having difficulty in dealing with his former law partner and, in 1990, was immersed in the previous disciplinary matter that led to his one-year suspension. The Board notes, however, that, in that previous disciplinary matter, respondent also relied on his appointment as a municipal court judge and his divorce, as mitigation. Respondent cannot invoke those factors as mitigation each time he is charged with ethics violations. That he became a municipal court judge and had additional responsibilities did not excuse him from his responsibilities to his own clients.

In making its recommendation for discipline, however, the Board is relying on respondent's counsel's assurances about the steps respondent has taken to insure that these problems do not arise again. Counsel is currently acting as what amounts to respondent's proctor and illustrated for the Board various steps respondent has taken, such as instituting mail and telephone logs and returning telephone calls each day. Counsel also explained that clients are informed of billing procedures, including what services will be performed and what the costs are. The Board has also taken into account the apparent lack of venality in respondent's conduct.

After consideration of the relevant circumstances, the Board is of the opinion that respondent's misconduct warrants the imposition of a three-month suspension. The Board unanimously so recommends. See In re Smith, 101 N.J. 568 (1986) (where the attorney received a three-month suspension for neglect in an estate matter, failure to communicate with the client and failure to cooperate with the DEC and Board) and In re Martin, 122 N.J. 198 (1991) (where the attorney received a three-month suspension for failure to return the unused portion of a retainer, failure to pursue an appeal, failure to communicate and failure to cooperate with the DEC investigator in four matters. Martin had previously received a six-month suspension). In addition, the Board recommends a proctorship for a two-year period, upon respondent's reinstatement. The Board recommends that respondent's proctor be an attorney other than his current counsel. Three members did not participate.

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

Dated: 6/8/1994 By: Raymond R. Trombadore

Raymond R. Trombadore, Esq.
Chair
Disciplinary Review Board