

Frank

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-073

IN THE MATTER OF :
 :
 :
WALTER D. CLARK, :
 :
 :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: April 21, 1993

Decided: July 6, 1993

Benjamin J. Delvento appeared on behalf of the District VB Ethics Committee.

Respondent neither appeared nor waived appearance, although various forms of notice, including notice by publication, were made.

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 consolidated six separate grievances, and charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence) and RPC 1.4 (failure to communicate).

Respondent was admitted to the practice of law in New Jersey in 1986 and was in private practice in East Orange, Essex County. He was temporarily suspended by Order dated April 24, 1991 for abandonment of his law practice and a preliminary finding by the

DEC that he had grossly neglected at least six matters. His suspension was continued by the Court on June 6, 1991.

The facts of the six matters considered by the Board are as follows:

The Blount/Little Matter (District Docket No. VB-91-24E)

In December 1988, Jasmine Blount and Jacqueline Little retained respondent in connection with a personal injury action arising from a December 3, 1988 automobile accident. Blount was the driver of a car that was struck by another vehicle running a stop sign. Little, Blount's daughter, was a passenger in the car and was a minor at the time of the accident. Blount executed a contingent fee agreement in December 1988. During a subsequent meeting with respondent, Blount executed medical authorizations to permit respondent to obtain necessary medical records. At that meeting and in other conversations, respondent assured Blount and Little that he would pursue the personal injury claims on their behalf.

Thereafter, Blount attempted to contact respondent to determine the status of the claims. For an extended period of time, respondent did not respond to messages that Blount left with respondent's secretary. On one occasion when Blount tried to telephone respondent, she learned that his telephone had been disconnected. In December 1990, Blount went to what had been respondent's office and learned that respondent no longer had an office at that location. Blount was never advised by respondent or anyone in his behalf that his telephone had been disconnected or

that his office had moved. Accordingly, Blount was unable to communicate with or locate respondent.

On February 20, 1991, Blount went to see another attorney, Robert Lord, Esq. Lord, too, was unable to locate respondent. Recognizing the potential conflict between the driver and passenger of the vehicle, Lord recommended that Blount be represented by another attorney, Deborah Shane-Held, Esq.

Lord testified that respondent had filed a complaint on December 24, 1990, more than two years after the date of the accident and, therefore, outside of the statute of limitations. Despite efforts by Shane-Held, the complaint was dismissed upon motion by the defendants. Lord continued to represent Little, because she was a minor at the time of the accident and her claim was, therefore, not time barred. Shane-Held has filed a malpractice claim against respondent. However, as of the date of the DEC hearing, she had not yet served respondent with the complaint due to her inability to locate him.

The DEC determined that respondent violated RPC 1.1, RPC 1.3 and RPC 1.4.

The Tadegrin Matter (District Docket No. VB-91-11E)

On or about January 2, 1991, Marie C. Tadegrin retained respondent to represent her in a matrimonial matter. She paid him \$40 on that date and \$240 on the following day. Respondent's total fee in the matter was to be \$700. No written retainer agreement was executed. Thereafter, Tadegrin made numerous attempts to

contact respondent via telephone. She testified that no one answered the telephone when she called. During one call she was advised that respondent's telephone had been disconnected. In or about late January 1991, Tadegrin visited respondent's office, only to learn that his office was closed. Neither respondent, nor anyone acting in his behalf, ever contacted Tadegrin to inform her of a new telephone number or new location for respondent's office. Respondent never provided Tadegrin with any information on the status of her case. In fact, Tadegrin had no contact with respondent after January 3, 1991.

Respondent stated in his answer that he was unable to view his file and did not recall Tadegrin.

The DEC found that respondent violated RPC 1.1(a), RPC 1.3 and RPC 1.4.

The Carvain Matter (District Docket No. VB-91-08E)

On or about March 31, 1989, Melanie Carvain retained respondent to represent her in an uncontested matrimonial matter. Carvain paid respondent \$400 on that date, which represented his total fee in the matter. No written retainer agreement was executed. Respondent filed a complaint and a hearing was held before Judge Thomas P. Zampino in June 1990. Carvain was granted a divorce at that time, subject to respondent filing certain additional documents. Respondent failed to file the necessary documents. Accordingly, the divorce matter was automatically relisted for hearing on November 15, 1990. Carvain believed,

however, that she was divorced as of the date of the June 1990 hearing.

Carvain testified that she received a notice, dated October 9, 1990, from respondent, stating that her matter was rescheduled for November 15, 1990. Carvain then telephoned respondent, who informed her that he had failed to file the required documents and therefore, they had to appear in court again. Respondent was to inform Carvain if she had to appear with him. Subsequently, Carvain attempted to reach respondent by telephone, and learned that his telephone had been disconnected. On November 26, 1990, Carvain sent a letter to respondent via certified mail, advising him that she had been unable to reach him via telephone and inquiring as to the status of the divorce matter. The letter was returned to Carvain unclaimed. Respondent never contacted Carvain regarding the divorce. Carvain was never advised by respondent, or anyone acting in his behalf, of a new telephone number or of a new office address.

Thereafter, Carvain filed a grievance with the DEC. The DEC investigator contacted Judge Zampino advising him of the circumstances surrounding the case. On January 2, 1991, Judge Zampino entered a final judgment of divorce.

The DEC determined that respondent violated RPC 1.1, RPC 1.3 and RPC 1.4. In addition, the DEC found that Blount, Tadegrin and Carvain, considered together, demonstrated a pattern of neglect, as well as conduct prejudicial to the administration of justice. The DEC noted that respondent's misconduct affected not only his

clients, but the courts and other parties as well. The DEC pointed to the harm that could have befallen Carvain, given her belief that she was divorced as of June 1990 although the matter was not finalized until January 2, 1991.

The Gourdine Matter (District Docket No. VB-90-73E)

In approximately 1987, Barbara Gourdine (a/k/a Barbara Kahiga) retained respondent to represent her in connection with a personal injury claim arising from a fall, together with a potential malpractice claim against a physical therapist. Gourdine also retained respondent to represent her in connection with injuries resulting from the collapse of a ceiling on top of her. Although written retainers were executed, Gourdine was not provided with copies.

Respondent was able to obtain \$9,000 for Gourdine in the collapsed ceiling case. On April 18, 1989, Gourdine signed a release against the tortfeasors in that case. She received payment on May 2, 1989. During those meetings with respondent, Gourdine inquired as to the status of her personal injury and malpractice claims. Respondent informed her that he was pursuing those matters on her behalf. Thereafter, respondent failed to reply to subsequent telephone and letter inquiries about those matters. Gourdine apparently went to respondent's office to retrieve her files on more than one occasion, but respondent convinced her that he was pursuing the matters. Eventually, Gourdine was unable to contact respondent because his telephone was disconnected. She

then discovered that respondent's office was closed. Gourdine did not hear further from respondent.

Although respondent filed a complaint in the fall down case, it was not timely filed and the statute of limitations ran. Respondent also allowed the statute of limitations to run in the malpractice claim. In his answer, respondent alleged that Gourdine did not actually ask him to pursue these two claims. The DEC found sufficient evidence in the record to determine that respondent had, in fact, undertaken representation of Gourdine in these matters. The DEC also noted the existence of a pending malpractice claim against respondent arising from these matters.

The DEC determined that respondent violated RPC 1.1, RPC 1.3 and RPC 1.4. In addition, the DEC found that respondent's misconduct in this matter, considered with his misconduct in the four other matters, constituted a pattern of neglect. Further, the DEC found respondent's failure to cooperate with the DEC to be a further infraction (although RPC 8.1(b) was not referenced).

Allegations were raised during the hearing that respondent had improperly deducted \$3,000 from the settlement proceeds in the ceiling collapse case to cover a fee in another matter. The DEC, noting that this allegation was not raised in the complaint and mindful of the high standard of proof in disciplinary matters, did not find a violation in this regard.

The Witten Matter (District Docket No. VB-91-01E)

In or about October 1989, Jane Star-Witten retained respondent to represent her in connection with a landlord/tenant matter and the defense of a civil matter. Witten paid respondent \$200. Thereafter, Witten received notice to appear in the landlord/tenant matter. Although Witten appeared on the trial date with her witnesses, respondent failed to appear. On five or six occasions, Witten and her witnesses appeared for trial and respondent did not. Ultimately, given the numerous adjournments, opposing counsel convinced the court to proceed despite respondent's absence. Prior to adjudication, Witten entered into a settlement, whereby she paid \$200 and agreed to vacate the property in question.

During the pendency of the landlord/tenant matter, Witten believed that respondent was also representing her in the civil action. Respondent apparently took no action on Witten's behalf in that matter and a judgment was entered against her. Witten then filed a claim against respondent and, on January 2, 1991, obtained a judgment of \$610 representing the \$200 retainer, \$200 paid to the landlord, \$200 representing the judgment in the civil matter and \$10 in court costs. As of the date of the DEC hearing, the judgment remained unsatisfied.

Throughout this time, Witten sought respondent's assistance in the landlord/tenant and civil matters. She telephoned him on a regular basis, wrote via certified mail and sent a mailgram. Respondent did not reply to any of Witten's attempts to contact him, including a message left with his secretary informing him of

a peremptory date in the landlord/tenant matter. Ultimately Witten visited respondent's office, which she found vacated.

The DEC determined that respondent had violated RPC 1.1, RPC 1.3 and RPC 1.4. In addition, the DEC found that respondent's misconduct in connection with this matter, when considered with the others already discussed, constituted a pattern of neglect. Further, the DEC found that respondent had failed to cooperate with the DEC. Finally, the DEC found a violation of RPC 8.4(d), conduct prejudicial to the administration of justice.

The Rogers Matter (District Docket No. VB-90-72E)

On or about December 22, 1989, Patricia Rogers retained respondent to represent her in connection with a wrongful termination claim. Rogers signed a retainer agreement on that date and paid him \$2,000 in two installments. Rogers testified that the EEO had been investigating her allegations, but that, upon respondent's promise that he would pursue her claim in district court, she stopped the proceeding. Rogers testified that respondent never informed her that she had to answer interrogatories and she was never deposed by opposing counsel.

By letter dated November 20, 1990, Judge H. Lee Sarokin of the District Court, informed Rogers that the defendant had filed a motion, returnable on November 26, 1990, for summary judgment, seeking dismissal of her case. Judge Sarokin, noting that no opposition papers had been filed, advised Rogers that the court had adjourned the motion until December 10, 1990. Judge Sarokin's

letter went on to state that the court had been unsuccessful in attempts to contact respondent by telephone. Respondent was sent a copy of Judge Sarokin's letter.

After receipt of the letter, Rogers attempted to contact respondent and learned he had gone to Moscow. She was unsuccessful in contacting him even after his expected return date. Although Rogers occasionally was able to contact respondent's secretary and left messages for respondent, he did not return her calls. Thereafter, on November 27, 1990, Rogers wrote to Judge Sarokin telling him of her inability to contact respondent and requesting additional time to find respondent or to obtain other counsel. On November 30, 1990, Judge Sarokin responded to Rogers, his letter informing her that the matter was adjourned until February 11, 1991 and granting her until January 28, 1991 to file opposition papers.

Rogers located respondent in his office on December 11, 1990 and confronted him with Judge Sarokin's letters. Respondent informed her that he was very busy and would not be able to devote sufficient time to her case. Respondent then suggested that Rogers allow his brother, Mark Clark, to prepare her documents for \$300, and respondent would appear in Rogers' behalf in court. Under duress, Rogers agreed to respondent's proposal. Mark Clark prepared documents on Rogers' behalf and he, not respondent, appeared in court on the return date of the motion on February 11, 1991.

After the hearing, neither respondent nor his brother informed Rogers of the outcome. Several months later, Rogers contacted the

court, and was informed that her case had been dismissed with prejudice. Rogers was never informed of her right to appeal the decision by her attorneys. Thereafter, despite several attempts, she was unable to contact respondent via telephone. Eventually, Rogers went to respondent's office and learned it was closed. Rogers was informed by Mark Clark that he was unaware of respondent's whereabouts.

The DEC determined that respondent violated RPC 1.1, RPC 1.3 and RPC 1.4 and engaged in a pattern of neglect of client matters. Further, the DEC found a violation of RPC 8.4 in that respondent's conduct was prejudicial to the administration of justice: both opposing counsel and the court were inconvenienced on several occasions. Indeed, the court was required to intervene and communicate directly with Rogers on more than one occasion.

Respondent did not appear for the DEC hearing. In recommending public discipline, the DEC noted that, although respondent filed an answer to the complaint, his answer did not meet what is required of an attorney who is the subject of a disciplinary complaint. The DEC found that, although respondent set forth several mitigating factors in his answer, it was his obligation to appear before the DEC and offer evidence in support of his claims. Accordingly, the DEC did not consider his claim of mitigating circumstances.

CONCLUSION AND RECOMMENDATION

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. Respondent is guilty of gross negligence, a pattern of neglect, lack of diligence and failure to communicate in six matters. Further, he is guilty of conduct prejudicial to the administration of justice and failure to cooperate with the DEC. Indeed, he failed to appear for his own hearing before the DEC, and similarly failed to appear before the Board. Although he alleged mitigating factors in his answer, respondent walked away from his practice and from his clients. The harm to those clients was significant.

As an apparent defense to the ethics charges, respondent stated that he was involved in the Moscow Conference on Law and Bilateral Economic Relations, which took him to Moscow for some time. He further stated that he was involved in matters that concerned the FBI and national security, that he is unable to discuss. Even assuming that respondent's statements are true, his involvement in activities outside the realm of his law practice does not give him leave to neglect that practice and abandon his clients.

In his answer, respondent stated that his religious beliefs (he is Buddhist), do not permit him to defend himself against the ethics charges because they arose out of his own actions.

Respondent placed nothing in the record to support this position. Interestingly, respondent stated in his answer "At any hearings Respondent is incapable of defending himself but, will cooperate, provide Respondent's recollection of the facts and admit to any charges against Respondent by the Presenter." As noted, he nonetheless failed to appear before the DEC.

With regard to mitigating factors alleged by respondent, it is impossible for the Board to adopt bare statements by respondent, unsupported by evidence, that are not made under oath and subject to cross examination. Thus, no mitigation has been considered.

Respondent's conduct toward his clients was appalling. He not only ignored their pleas for assistance, but left them without counsel during trials and allowed statutes of limitations to run. Even if respondent's telephone was disconnected and he was evicted from his office due to financial misfortune, he still had a responsibility to be available to his clients. Respondent's answer discloses that he knew of his financial difficulties and, therefore, knew or should have known that he might be evicted and needed to contact his clients. In addition to ignoring his clients, respondent ignored communication from the court in the Rogers matter.

In In re Spagnoli, 115 N.J. 504 (1989), the attorney was disbarred for accepting retainers from fourteen clients over a three-year period without any intention of representing them. Further, Spagnoli lied to the court in order to excuse his failure

to appear and failed to cooperate with the disciplinary authorities. Spagnoli had been previously publicly reprimanded.

Similarly, in In re Dawes, ___ N.J. ___ (1989), the attorney was guilty of a pattern of neglect in fourteen cases over a ten year period. Dawes was also guilty of misrepresentations to clients and negligent misappropriation of client trust funds. While the matter was pending oral argument before the Court, Dawes consented to disbarment.


Respondent caused severe and irreparable harm to clients and inconvenienced other attorneys and the courts. Accordingly, the Board unanimously recommends that respondent be disbarred.

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

Dated: _____

7/6/1993

By: _____


Raymond R. Trombadore
Chair
Disciplinary Review Board