Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-400

IN THE MATTER OF :
JAY GROSSMAN, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: December 15, 1993

Decided: March 21, 1994

Richard T. Sweeney appeared on behalf of the District X Ethics Committee.

Respondent waived appearance for oral argument.

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 X Ethics Committee (DEC). The formal complaint charged respondent with violations of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.2 (a) (failure to abide by the client's decisions), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate), RPC 3.3(a)(1) (false statement of fact to a tribunal), RPC 4.1(a)(1) (false statement of material fact to a third person), and RPC 8.4(a),(b),(c) and (d)(violation of the Rules of Professional Conduct; committing a criminal act; conduct involving dishonesty, fraud, deceit or misrepresentation, and conduct prejudicial to the administration of justice). In his answer, respondent admitted the allegations

against him. Respondent offered testimony before the DEC only by way of explanation and mitigation.

Respondent was admitted to the New Jersey bar in 1986. He currently maintains a law office in his parents' home in Fair Lawn, Bergen County. At the time of the within misconduct, he was employed by the law firm of Pressler and Pressler, in East Hanover, Morris County, a firm specializing in collection matters. Respondent has no history of discipline.

The Olsher Matter

In September 1988, approximately three to four months after he began his employment at Pressler and Pressler, respondent was retained by David Olsher, a long-term friend, to represent him in a collection matter (T16).[1] Olsher was owed approximately $12,000 by Metropolitan CAD Systems. Respondent told Olsher that he would handle the matter through his employer, Pressler and Pressler. In fact, respondent never revealed to his employers that he had been retained by Olsher but, rather, intended to handle the matter himself, privately. On four occasions, between late 1988 and early 1989, respondent misrepresented to Olsher that he was pursuing Olsher's claim against Metropolitan CAD Systems by means of a lawsuit.

During the above time period, Olsher unsuccessfully attempted to contact respondent on numerous occasions at his office, using, as suggested by respondent, the name of another defendant in a case

[1] T represents the transcript of the hearing before the DEC on June 23, 1993.

being handled by Pressler and Pressler. Respondent told Olsher that the use of that defendant's name would help Olsher to reach respondent. Subsequently, when Olsher requested that respondent send him written evidence of the case progression, on three occasions respondent indicated to Olsher that he would send a copy of the "return of service." Respondent neither sent this document to Olsher nor any other evidence that the case was progressing. In or about October 1989, Olsher learned that respondent had disappeared and, further, that suit had never been filed in his behalf. (The record does not reveal how Olsher obtained this information).

The Van Buren Matter

While employed at Pressler and Pressler, respondent was assigned a matrimonial case, in which a former law firm employee, Barbara Van Buren, was seeking a divorce. In or about June 1989, while awaiting a trial date, respondent signed a judge's name to a judgment of divorce. Respondent then gave the forged judgment to Van Buren and her husband, misrepresenting to them that the judge had signed it.

The record is silent as to how respondent's deception came to light. The record does reveal, however, that ultimately, Van Buren sued Pressler and Pressler, that the matter was settled and that respondent paid the damages.

According to respondent's testimony, the case was initially being pursued by another attorney at Pressler and Pressler, who

asked respondent to handle the uncontested divorce proceeding. As the hearing was approaching, respondent admitted to the other attorney that he did not know what to do. According to respondent, the other attorney gave him a list of questions to ask. During the proceeding, however, the judge became angry because the file had not been prepared properly. The judge chastised respondent in the courtroom. When respondent relayed these events to the other attorney, the attorney instructed him on how to prepare the case. Respondent explained that the case then became "undifferentiated from any other collection case" in the way he pursued it, allowing it to become backlogged (T19). Apparently, Van Buren was telephoning respondent, and he "didn't feel that [he] could tell her, 'Well, basically I've been doing nothing with your case for six or eight months'" (T20). He then forged the judgment of divorce and signed the judge's name thereon.

Respondent's Disappearance

In or about October 1989, respondent disappeared. Subsequently, approximately two hundred files from Pressler and Pressler were found in the trunk of respondent's car, which was parked at Kennedy Airport. The DEC found that, in many of those files, respondent had made misrepresentations to the court and to the parties, namely:

1. Respondent had marked many of the cases as settled, when, in fact, they had not been settled.

2. Respondent had misrepresented to the court that the cases were settled, when they were still active.

> 3. Respondent had stated to various defendants that their cases had been settled, without first seeking his clients' approval of the settlements.

After respondent left Pressler and Pressler and the files were located, they were reviewed by that law firm. Motions were filed to reinstate cases that had been inappropriately marked as settled. The record shows that, whenever the firm was unsuccessful in reinstating cases, respondent would make restitution to the clients. It is not clear, however, if the restitution was made by respondent personally (T24). It was revealed, during the DEC hearing, that respondent does not carry malpractice insurance.

* * *

As noted above, respondent admitted the allegations against him and testified before the DEC only to explain his conduct and to present mitigation. According to respondent, he found himself in a high-pressure, fast-paced collection practice. He was psychologically unable to cope with the strains on him. Respondent testified that Pressler and Pressler had 50-60,000 active files, each attorney in the firm having responsibility for a large number of them. In response to the strain, respondent embarked on a course of misrepresentation and deception to relieve the pressure. As respondent testified,

> [t]here was a lot of pressure from clients obviously, from the courts, to push matters through, and also from Mr. Pressler to stay on top of all the files, and early on I quite frankly came to the understanding that I didn't really belong there, that I was not equip [sic] to handle this type of volume.

> Unfortunately, and this was my biggest mistake, I didn't quit and look for employment elsewhere. I stayed there.
>
> I spent my time covering my tracks and basically trying to stay out of trouble any way I could think of. As a result, I neglected the case load, except the ones that were most pressing, and when I found that cases were coming up for trial that I hadn't prepared, as the Complaint alleges [sic]. I settled them or I went to the court and represented that they were settled, and I basically -- I mean , I hoped they would go away.
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> * * *
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> I ought to have owned up to the fact that I didn't belong at Pressler & Pressler. I should have sought employment elsewhere with a case load that wasn't so heavy and where I would have to deal effectively with what was going on, but I didn't. And I'm paying the price for it now.
>
> [T9-10]

According to respondent, these problems grew so serious that respondent simply abandoned his practice, unable to deal with the situation.

Respondent currently does some work for the Appellate Section of the Public Defender's Office. He explained that he receives approximately three to four cases per year and that he writes appellate briefs, which are then reviewed by that office. If necessary, respondent appears in court, but has only made one appearance. Respondent also occasionally handles closings and refinancing for friends and relatives. Respondent testified that, although he is not interested in returning to the practice of law on a full-time basis, he wishes to continue to handle occasional matters. He is currently working on a few matters as a source of income, while he determines what career to pursue (T26).

With regard to his understanding of what caused his conduct and whether the problems have been overcome, respondent testified as follows:

> I'm in counseling now. I've been in counseling for three and a half years, a weekly basis, and I have -- I can't represent to you now, I don't see how I could, that to a certainty, to 100% certainty, I understand all the factors that went into this, they have all been overcome and they will never occur again. I can't do that. The best I can tell you is that I -- . . .
>
> I'm confident that I understand what contributed to these things. It was basically my inability to deal with people I considered my superiors who I saw as being very critical of things that I was doing.
>
> So, for instance, if I was handling a file and someone came into my office screaming 'you're an idiot. What are you doing with this? You are going to shut me down after 35 years of being in business.'
>
> My reaction was to make sure I didn't have to deal with that. Unfortunately, I chose the wrong path. Rather than either quitting or working twice or three times as hard, I simply buried files so that people wouldn't be finding them and criticizing them. I don't do that any more. I only handle maybe two or three files at a time and each one gets the full amount of time that it needs.
>
> I work under very close supervision with the Public Defender's Office. I don't do anything without checking with them. They watch the deadlines for me. Although I do keep an eye on the deadlines and meet them, nevertheless there's that oversight. Also there's the oversight of the Appellate Division.
>
> So I guess what I am saying to you is the few cases I'm handling are not within a context that would give rise to these problems. That's the best that I can do to answer your question.
>
> [T14-15]

Later in his testimony, respondent explained that, while he is capable of functioning without that type of supervision, he now confers with the Public Defender's Office when uncertain of what to do, as distinguished from his prior situation, where he was afraid to ask questions "for fear of the reaction" (T25).

Respondent submitted a letter from his treating therapist, stating that he has been making progress and appears committed to continuing his treatment.

* * *

The DEC found respondent guilty of the violations charged in the complaint, namely, violations of RPC 1.1(a) and (b), RPC 1.2(a), RPC 1.3, RPC 1.4, RPC 3.3(a)(1), RPC 4.1(a)(1) and RPC 8.4(a),(b),(c) and (d). The DEC noted "that the only gain which predicated any of the Respondent's actions was the desire to ameliorate the real or perceived pressures which his employment and conduct placed upon him" (Panel Report at 4). Recognizing, however, that respondent's actions were serious, the DEC recommended the imposition of a public reprimand and the establishment of a proctorship for at least one year. Further, the DEC recommended continued counseling or therapy.

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.

Respondent's actions were serious. In fact, the Court considers the fabrication of public documents as among the more serious offenses an attorney may commit. "Even absent criminal

intent, when an attorney perpetrates a fraud upon the court, that conduct poisons the stream of justice and can warrant disbarment." In re Yacavino, 100 N.J. 50, 54 (1985), citing In re Stein, 1 N.J. 228, 237-238 (1949).

In In re Fleisher, 66 N.J. 398 (1975), an attorney pleaded guilty to a charge that he had feloniously and falsely altered a final judgment of divorce. The attorney took a final judgment of divorce in another action and changed the names of the parties so as to indicate that his client and his client's wife had been divorced. Relying on the document, the client obtained a marriage license and remarried. Because of special circumstances present in that case — medical reports indicated that the attorney was suffering from a personality disorder and that his actions were symptomatic expressions of long standing psychological conflicts, — the Court suspended the attorney indefinitely, pending his continued psychotherapy. Similarly, in In re Yacavino, supra, 100 N.J. 50 (1985), the attorney was suspended for three years after he prepared and presented to his client two fictitious orders of adoption to cover up his neglect in failing to advance an uncomplicated adoption matter for a period of nineteen months. The attorney had also misrepresented the status of the matter to his clients on a number of occasions. In mitigation, the Court considered the absence of any purpose of self-enrichment, the aberrational character of the attorney's behavior, and his prompt and full cooperation with law enforcement and disciplinary matters. More recently, in In re Meyers, 126 N.J. 409 (1991), the Court

suspended for three years an attorney who, in order to placate a client in a matrimonial matter, fabricated a judgment of divorce bearing the purported signature of a judge. Compounding his misconduct, the attorney confessed his wrongdoing to his client and then requested that she lie to the court to cover up his impropriety. In mitigation, it was noted that the attorney's wife had delivered a stillborn child at approximately the time he was beginning the representation of that client. It was also considered that, like Yacavino's, the attorney's conduct had been aberrational and not undertaken for personal motives.

In addition to forging the judge's signature on a judgment of divorce, respondent abandoned approximately two hundred files. Further, he made numerous misrepresentations to the court and/or the clients. Respondent alluded to the inadequate supervision by the members of his firm. To be sure, the "sink-or-swim" approach taken by respondent's law firm, if true, was troubling. On more than one occasion, the Court has expressed its disapproval of the lack of guidance and supervision of junior attorneys by senior attorneys. See, e.g., In re Barry, 90 N.J. 286 (1982). Nevertheless, respondent was not without choices, one of which was simply to say "no." Instead, he chose to engage in a pattern of neglect, avoidance and deception. As to respondent's psychological difficulties, although they are not an excuse for his misconduct, as noted above, such difficulties, if proven to be causally connected to the attorney's actions, have in the past been

considered as mitigation. In In re Templeton, 99 N.J. 365 (1985) the Court held:

> In all disciplinary cases we have felt constrained as a matter of fairness to the public, to the charged attorney, and to the justice system, to search diligently for some credible reason other than professional and personal immorality that could serve to explain, and perhaps extenuate, egregious misconduct. We have always permitted a charged attorney to show, if at all possible, that the root of the transgressions is not intractable dishonesty, venality, immorality, or incompetence. We generally acknowledge the possibility that the determinative cause of wrongdoing might be some mental, emotional, or psychological state or medical condition that is not obvious and, if present, could be corrected through treatment.
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> [Id. at 373-374]

But see In re Tuso, 104 N.J. 59 (1986) (where causation was not demonstrated).

Despite respondent's psychological difficulties, his violations were among the most serious an attorney can commit. Further, as the presenter noted, although respondent recognized his inability to work at Pressler and Pressler, he continued to work there and buried his problems (T29). The Board is also concerned with the fact that respondent has failed to present evidence that he has overcome his difficulties and is currently capable of practicing law without incident.

There remains the issue of the appropriate quantum of discipline. The Board is unanimous in its decision that respondent's serious misconduct is deserving of public discipline. The Board is divided, however, as to the specific measure of discipline. Three members are of the opinion that a three-year suspension is appropriate. Those members believe that, prior to

reinstatement, respondent should prove his fitness to practice law and practice law under the supervision of a proctor for an indefinite period of time, until discharged by the Court. Three members, on the other hand, believe that respondent should be disbarred. In their view, there is nothing in this record by way of mitigation and there is nothing indicating that respondent is redeemable. Three members did not participate.

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

Dated: 3/21/1994 By: ______________________

Raymond R. Trombadore
Chair
Disciplinary Review Board