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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-369

IN THE MATTER OF	:	
GARY E. FOX,	:	Decision
AN ATTORNEY AT LAW	:	

Argued: December 18, 1997.

Decided: May 11, 1998

JoAnn Eyler appeared on behalf of the Office of Attorney Ethics ("OAE").

Daniel M. Waldman 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 by way of a disciplinary stipulation. R.1:20-15(f). Respondent admitted that he grossly neglected fourteen collection cases and failed to protect his client's interests upon termination of the representation.

Respondent was admitted to the New Jersey bar in 1975 and maintains a law office in Ocean County. Respondent has no prior ethics history.

The stipulation set forth the following facts:

On or about January 5, 1996, Heidi Thomas of United Financial Systems, Inc. ("UFS") filed a grievance with the District IX Ethics Committee ("DEC") alleging that respondent had failed to keep UFS informed about the status of various collection cases for which he had been retained. UFS, a collection agency, had retained respondent in or about 1991 to file civil actions against defaulting debtors and to pursue the collection of the debts. The grievance also alleged that respondent had failed to give UFS an accounting of the matters.

Sometime in 1994 respondent began neglecting some of UFS's matters. UFS telephoned and wrote to respondent repeatedly in an effort to obtain information about its cases, to no avail. Finally, on May 22, 1995 Thomas wrote to respondent and demanded the return of all of UFS' files and an accounting. When respondent did not reply to the letter, Thomas filed the grievance. Immediately upon receipt of the grievance, respondent turned over all of the requested files to UFS, as well as an accounting, and corresponded with the Office of Attorney Ethics ("OAE").

Respondent admitted neglecting fourteen of UFS' files. The neglect included a failure to file complaints in three matters, failure to serve summonses and complaints in six matters, failure to pursue the litigation in two matters and failure to enforce settlements in three matters.

In sum, respondent admitted the following violations: RPC 1.1(a)(gross neglect) and (b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4 (failure to communicate); and

RPC 1.16 (failure to protect the client's interests upon termination of the representation and to surrender the client's papers and property).

* * *

The OAE urged the imposition of a reprimand, citing a number of cases were reprimands were imposed for conduct similar to respondent's. In a brief to the Board dated October 21, 1997, respondent's counsel, Daniel M. Waldman, also urged the imposition of a reprimand, relying on the same cases cited by the OAE.

Both the OAE and respondent's counsel pointed to respondent's prior unblemished record and to respondent's being "in over his head" with UFS' matters. Indeed, it appears that, as a solo practitioner during the relevant time, respondent did not have the staff or financial wherewithal to maintain what was becoming a volume collection practice. In fact, that respondent also filed for personal bankruptcy during the relevant period, after his house was foreclosed upon, added to his turmoil.

* * *

Upon a de novo review of record, the Board is satisfied that the stipulation clearly and convincingly establishes that respondent was guilty of unethical conduct.

Generally, discipline ranging from an admonition to a reprimand is appropriate for gross neglect and lack of diligence, in one or two matters, oftentimes accompanied by other misconduct, such as failure to communicate or failure to cooperate with disciplinary authorities. See, e.g., In the Matter of Aslaksen, DRB 95-391(1995) (admonition imposed where attorney showed gross neglect, lack of diligence and failure to communicate. In a medical malpractice case, the attorney failed to serve answers to interrogatories, retain medical expert or advise client of ultimate dismissal, despite client's requests for information.); In the Matter of Onorevole, DRB 94-294 (1994) (admonition imposed where attorney showed gross neglect, lack of diligence and failure to communicate in an insurance matter); In re Wildstein, 138 N.J. 48 (1994) (reprimand imposed where the attorney showed gross neglect and lack of diligence in two matters, with failure to communicate in a third matter); In re Gordon, 121 N.J. 400 (1990) (reprimand imposed where the attorney showed gross neglect and failure to communicate in two matters).

The misconduct in this case is similar to that of In re Lesser, 139 N.J. 233 (1995) There, the attorney failed to provide the client with a status report and accounting on collection cases. The attorney received a three-month suspension because of his refusal to give a status report and accounting, in an attempt to hold client funds hostage until the resolution of other disputes with the client. His cavalier attitude toward his clients and refusal to recognize his misconduct were other strong factors considered in meting out the appropriate degree of discipline.

The distinction between Lesser and this case, however, lies in the compelling aggravating circumstances in Lesser, as well as in the greater number of cases involved (twenty-five). Here, fourteen cases were involved. Moreover, respondent readily acknowledged his wrongdoing and cooperated with the ethics authorities by stipulating his misconduct. Accordingly, the Board unanimously determined that a reprimand was adequate discipline for respondent's ethics infractions. Two members did not participate.

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/11/98

LEE M. HYMERLING
Chair
Disciplinary Review Board