

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 95-011

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IN THE MATTER OF :  
RONALD BROWN, :  
AN ATTORNEY AT LAW :  
\_\_\_\_\_

Decision  
of the  
Disciplinary Review Board

Argued: March 15, 1995

Decided: May 11, 1995

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

Respondent did not appear.<sup>1</sup>

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board based on a recommendation for discipline filed by the District VA Ethics Committee ("DEC"). The formal complaint charged respondent with violations of RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) and (b) (failure to keep client informed and to reply to reasonable requests for information; failure to adequately explain a matter), RPC 1.2 (failure to abide by a client's decisions concerning objectives of representation) and RPC 1.5(a) (unreasonable fee).

<sup>1</sup> Notice by publication was made in the Star Ledger and the New Jersey Law Journal.

Respondent was admitted to the New Jersey bar in 1976. On April 30, 1991, he was suspended from the practice of law for a period of six months for various recordkeeping violations and for his failure to keep a client adequately informed about the status of his matter. Respondent has never applied for reinstatement. In the interim, since his suspension, the Lawyers' Fund for Client Protection has paid several claims asserted against him for his failure to return unearned retainers.

Respondent neither filed an answer to the formal complaint, nor appeared at the DEC hearing. The DEC made several unsuccessful attempts to notify respondent of the pending charges and the hearing date. In addition, representatives from the Office of Attorney Ethics attempted to serve the formal complaint upon respondent personally, but found his residence to be abandoned. Exhibit C-3. Notice of the DEC hearing, therefore, was made by publication in a local newspaper of general circulation. Exhibit C-2. For reasons not explained by the record, the DEC was unable to have notice of the hearing published in the New Jersey Law Journal.

Respondent was charged with misconduct in three separate personal injury matters.

Alston I Matter (VA-91-042E)

Troy Alston ("grievant") retained respondent to represent him for injuries sustained as a result of an automobile accident that occurred on January 20, 1988. Respondent was retained shortly

after the accident. However, at some unspecified point thereafter, grievant began to experience difficulty in communicating with respondent about the status of his matter. Grievant made several attempts to telephone respondent, but respondent either would not take his calls or would hang up once he realized that grievant was the caller. On at least one occasion, grievant visited respondent's office and demanded to speak with him. When respondent's staff advised grievant that respondent was not in, grievant refused to leave and elected instead to wait until respondent returned. Grievant made it clear to respondent's staff that he would wait "all day or all night," if necessary, to talk with respondent. T32.<sup>2</sup> During the several hours that grievant waited for respondent's "return," he could hear respondent's voice within the office. Finally, after several hours, respondent came out to the waiting area to speak with grievant. At that point, grievant demanded to know the status of his matters (respondent was handling another matter for grievant, discussed below). Respondent then took grievant down to respondent's car to show grievant the work he had performed on grievant's matters. When they reached respondent's car, respondent produced a copy of a complaint he had filed in grievant's behalf. Exhibit C-10. That complaint was stamp-marked "filed" on January 18, 1991 — one year after the expiration of the two-year statute of limitations. However, the body of the complaint identified the accident date as January 20, 1989, as opposed to 1988. It cannot be determined from the record

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<sup>2</sup> "T" denotes the DEC hearing transcript of October 25, 1994.

whether respondent made a typographical error on the complaint or whether he intentionally misrepresented the date of the accident to avoid the bar of the statute of limitations. The formal ethics complaint did not charge respondent with misrepresentation.

On or about January 22, 1991, respondent forwarded a letter to grievant notifying him that he could no longer represent him in the matter due to a "conflict of interest" and further informing grievant that he had referred the matter to another attorney for handling. It is unclear whether respondent considered the conflict to be a potential malpractice suit against him for missing the statute of limitations or his representation of both grievant (driver) and grievant's children (passengers) in the same automobile accident. The complaint did not charge respondent with a conflict of interest in any respect. The attorney to whom respondent referred the matter refused to represent grievant for unknown reasons.

The record does not address the present status of grievant's civil action. He has not heard from respondent to date.

Alston II Matter (VA-91-041E)

On or about April 9, 1990, Troy Alston retained respondent to represent his sister in a wrongful death action against the Wake County School Board in North Carolina. Apparently, grievant's nephew had suffered a heatstroke during certain school-sponsored activities. The retainer agreement signed by grievant, respondent and grievant's sister acknowledged that at least two other

attorneys had refused to handle grievant's matter because of the speculative liability of the defendant. By July 27, 1990, grievant had paid respondent a total of \$7,000 as a retainer and costs of suit. Thereafter, respondent flew down to North Carolina on two occasions incident to his representation. Although grievant was unclear about the purpose of these trips, he recalled respondent telling him that "he was checking on different people about the case, different doctors, different lawyers, and so forth and so on." T10. It further appears that, on one occasion, respondent may have met with a North Carolina attorney, whom respondent considered to be acting as local counsel. T33, 36-7. Furthermore, by letter dated August 14, 1990, respondent filed a formal notice of appearance in grievant's sister's behalf with the North Carolina Industrial Commission. See Exhibit C-7. In that letter, respondent requested that all communications in the matter be directed to local counsel in North Carolina. Thereafter, on or about January 7, 1991, respondent again wrote to the Industrial Commission requesting a review of its order of dismissal.

The extent and nature of any further efforts on respondent's part are unknown, as grievant began to experience difficulty in communicating with him about the status of this matter as well. Grievant recounted how he had made numerous unsuccessful efforts to speak with respondent. On the previously described occasion during which grievant waited for several hours at respondent's office, his purpose was to learn the status of both matters. The record does not disclose the date of that meeting.

Having had no further contact with respondent, grievant contacted North Carolina counsel, who advised grievant that he met with respondent once, but that nothing materialized and, further, that he wanted nothing to do with the matter. T35-37. In addition, after grievant filed his grievance against respondent, the presenter called North Carolina counsel, who advised him that the statute of limitations had run before the grievance was filed. Apparently, no complaint was ever filed.

Gutierrez Matter (VA-91-054E)

In June 1983, Jorge Gutierrez ("grievant") retained respondent to represent him for injuries sustained on June 22, 1983, when his bicycle was struck by a car driven by an uninsured motorist. Thereafter, respondent directed grievant to some physicians for treatment, obtained at least one medical report and filed a notice of intention to make a claim with what was then the Unsatisfied Claim and Judgment Fund ("UCJ"). See Exhibit C-16. Although that notice bore a timely date on its face — September 21, 1983 — the claim was rejected by the UCJ because the notice had not been filed within ninety days of the date of the accident, as required by statute. See Exhibit C-17. Nevertheless, respondent did file a timely civil complaint against the uninsured driver sometime in 1984. See, e.g., Exhibit C-18 (1984 docket number). On or about June 16, 1986, respondent settled the matter with the defendant-driver on grievant's behalf and an order of dismissal was entered on that date. Grievant never authorized such a settlement. That

notwithstanding, by June 18, 1987, respondent still had not received any monies in grievant's behalf, in spite of the settlement one year earlier. Exhibit C-19. In fact, it is unknown whether respondent ever received any monies in grievant's behalf. The presenter, therefore, withdrew the allegations of a violation of RPC 1.15 (improper disbursement).

According to grievant, everything was progressing well until 1985, when grievant was no longer able to communicate with respondent. Grievant called respondent several times a week, visited his office and even left him notes, all to no avail. See, e.g., Exhibit C-20. Finally, at some point, grievant visited the Essex County Courthouse to attempt to find respondent. Grievant did, indeed, locate respondent on that occasion. However, respondent refused to speak with grievant about his case, contending that it would be "unethical" to do so. T55. It would appear that, at least as of August 3, 1990, respondent perceived himself to have committed malpractice when he dismissed grievant's matter in June 1986. Specifically, on August 3, 1990, respondent wrote a letter to grievant, advising him that the case had been dismissed with prejudice and that his office had failed to have the matter reinstated. The letter further advised grievant to seek other counsel to represent him in a possible malpractice action against respondent's office. The letter mentioned nothing about respondent's having settled the case in grievant's behalf. See Exhibit C-21. It is not clear how or when grievant received that letter.

In or about August 1990, grievant retained other counsel to attempt to negotiate a settlement with respondent. Because that attorney ultimately declined to handle the matter, grievant retained another attorney. The current status of that possible malpractice action is not disclosed by the record. It would appear, however, that neither grievant nor his attorney has heard from respondent since January 1991. Exhibit C-22.

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The DEC found respondent guilty of unethical conduct in all three matters. In the Alston I matter (automobile accident), the DEC found respondent guilty of RPC 1.1(a) (gross neglect) for filing the complaint outside the statute of limitations. In addition, the DEC found respondent guilty of RPC 1.1(b) (pattern of neglect) for his subsequent lack of communication in that same matter. The DEC further found respondent guilty of violations of both RPC 1.3 (lack of diligence) and RPC 1.4 (lack of communication) for his failure to keep grievant informed about the status of his matter.

In the Alston II matter (wrongful death), the DEC found respondent guilty of a violation of RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence). The DEC recited no factual bases for these findings. The DEC also found respondent guilty of a violation of RPC 1.4(a) and (b) for his failure to keep his client informed and for his failure to adequately explain to his client



that he was not licensed to practice in North Carolina and that it might be more feasible to simply seek representation from a North Carolina attorney. Finally, the DEC found respondent guilty of a violation of RPC 1.5(a) for accepting so large a retainer in a matter where it was obvious that he could do so little. The DEC declined to find a violation of RPC 1.2.

In the Gutierrez matter, the DEC found respondent guilty of a violation of RPC 1.1(a) (gross neglect) for his failure to keep his client informed, for the settlement of his client's matter without consultation or consent and for his failure to follow up on the settlement. The DEC further found respondent guilty of violations of RPC 1.3, RPC 1.4 and RPC 1.2(a), all for respondent's failure to keep his client informed about the status of his matter.

Finally, the DEC found that respondent's actions in all three matters constituted a pattern of neglect, in violation of RPC 1.1(b). Given respondent's past suspension, his acceptance of so large a retainer for the negligible amount of services actually performed and his failure to apply for reinstatement, the DEC recommended that respondent be disbarred.

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Upon de novo review of the record, the Board is satisfied that the evidence clearly and convincingly establishes that respondent's conduct was unethical. In the Alston I matter (automobile accident), respondent was clearly guilty of failure to keep his

client apprised of the status of his matter, in violation of RPC 1.4. Similarly, respondent's failure to file suit within the applicable statute, in the face of frequent requests for information from his client, constituted gross neglect, in violation of RPC 1.1(a). See, e.g., In re Grinchis, 75 N.J. 495 (1978) (attorney essentially did nothing to prosecute his client's claim, despite the client's frequent inquiries and urging, both in person and by mail).

In the Alston II matter (wrongful death), respondent was clearly guilty of failure to communicate with his client and to keep him informed, in violation of RPC 1.4. Respondent was also guilty of gross neglect for his failure to file suit within the applicable statute of limitations, in violation of RPC 1.1(a). The Board finds respondent's conduct in this matter to be particularly egregious, given his virtual abandonment of his client's cause after accepting a sizeable and unreasonable retainer. Although it is true that respondent appeared to have performed some work on the matter, his efforts did not justify the retainer respondent received. See e.g. In re Ort, 134 N.J. 146 (1992) (attorney disbarred for, inter alia, charging in excessive fee). In addition, the fact remains that, at some point, all work and communications ceased, leaving grievant with no apparent recourse. Respondent's conduct, therefore, also violated RPC 1.5(a).

In the Gutierrez matter, respondent was guilty of violations of RPC 1.2 and RPC 1.4 for his failure to keep his client informed, to consult his client prior to settling his matter and to reply to

his clients requests for information. Similarly, respondent's failure to reinstate grievant's complaint, after the unauthorized negotiated settlement failed to materialize, constituted gross neglect, in violation of RPC 1.1(a). Furthermore, when combined with the instances of gross neglect in the Alston matter, respondent was also guilty of a pattern of neglect, in violation of RPC 1.1(b). The Board is unable to find clear and convincing proof of a lack of diligence on respondent's part, as respondent had performed some work before he reached the point of settlement (e.g., filing with the UCJ).

Respondent's conduct in this matter is similar to that in In re DePietropolo, 127 N.J. 237 (1992). In that case, the Court suspended an attorney for two years for a pattern of neglect in five matters, failure to communicate with his client, misrepresentation to his client, charging an unreasonable fee in one matter and, finally, for failure to cooperate with the disciplinary authorities. See also In re Hurwitz, 135 N.J. 181 (1994) (attorney suspended for three years for engaging in a pattern of neglect in five matters, lack of diligence, failure to communicate, failure to abide by a client's decision and failure to cooperate with the disciplinary authorities).

While respondent has not been charged with a failure to cooperate (because neither the DEC nor the OAE was able to notify him of the pending charges), there are other aggravating factors in this matter. Respondent has already been the subject of discipline — a six-month suspension — for prior misconduct, which

consisted mainly of recordkeeping violations, but which also included a failure to keep his client informed. In addition, the subject misconduct post-dated the filing of the grievances in the prior matters by up to three years and the filing of the formal complaint by up to two years. Clearly, respondent has not learned from his prior experiences. In addition, since his suspension, respondent seems to have disappeared. There is no indication of any attempt to apply for reinstatement and/or of what has become of his other clients, although a number of them have filed claims with the Lawyers' Fund for Client Protection, for which they have been compensated. Unfortunately, Mr. Alston, whom respondent virtually abandoned after receiving a sizeable retainer and cost advancement, has not been recompensed.

In sum, this respondent has engaged in a pattern of misconduct that has visited serious consequences both upon his clients and upon the system, which has already paid several claims to respondent's former clients for his dishonest conduct. The Board is overwhelmingly convinced that this respondent is unable to conform his conduct to the standards of the profession and that nothing short of a long-term suspension will adequately address the seriousness of his failings and the consequences suffered by his clients. A five-member majority of the Board, therefore, has determined that respondent should receive a three-year suspension for his misconduct. In addition, prior to reinstatement, respondent must produce proof of completion of Skills and Methods and of reimbursement to the Lawyers' Fund for Client Protection for

the several claims paid in his behalf. Upon reinstatement, respondent shall be required to practice under the supervision of a proctor for a period of two years. One member dissented and voted instead for a one-year suspension followed by a proctorship. In addition, that member would require a hearing, prior to reinstatement, to determine the whereabouts of the settlement monies, if any, in the Gutierrez matter.

The Board further directs that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 5/11/95

By: Raymond R. Trombadore

Raymond R. Trombadore  
Chair  
Disciplinary Review Board