SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-139

IN THE MATTER OF

WILLIAM C. GASPER, JR.

AN ATTORNEY AT LAW

Decision

Argued: June 19, 1996

Decided: January 6, 1997

Harold Hensel appeared on behalf of the District IIIA Ethics Committee.

Bernard F. Boglioli, Sr. 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 on a recommendation for discipline filed by the District IIIA Ethics Committee ("DEC"). Respondent was charged 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 reasonably informed or to explain a matter to the extent reasonably necessary to permit the client to make an informed decision) and RPC 8.4 (c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1979. He has no prior disciplinary history.

The facts are as set forth in the DEC's report:

> In 1986, respondent agreed to represent Mary Wolantejus regarding a problem with the title to her residence located in Whiting. Additionally, he agreed to review her Will and revoke a Power of Attorney. He was paid a $1,500 retainer, and received fees totaling in the area of $1,900. With regard to the title to her residence, there was a problem with the title being in the name of Mrs. Wolantejus and her son, John Warren. She had executed a Power of Attorney in favor of John Warren, who then closed title placing title of the property in his and his mother's name. Mrs. Wolantejus wished to contest this closing. After being retained, Mr. Gasper prepared a Will, and revoked the Power of Attorney. He spoke with his title company to determine the status of the deed regarding the residence. He determined that an action would have to be filed in the Chancery Division to remove the name of John Warren from the deed. At no time did Mr. Gasper file the complaint. He does not recall whether he told Mrs. Wolantejus whether he had filed the complaint or not. However, he did make representations to her [other] son, Richard Wolantejus, that the complaint had, in fact, been prepared and filed.
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> In 1987, Richard Wolantejus questioned Mr. Gasper regarding what progress was being made with the lawsuit. Mr. Gasper testified that Mr. Wolantejus had become angry, and was calling his home several times after working hours. He told Mr. Wolantejus that he had cleared the title to the property. In April, 1987, Mr. Gasper met with Richard Wolantejus. Prior to that meeting, Mr. Gasper had personally prepared a bogus order (P-1). This order was purported to be signed by the Honorable Harold Kaplan, J.S.C., which indicated that John Warren, also known as Wolantejus, was deleted from the ownership of the property known as 20 Orchard Drive, Manchester Township, Ocean County, New Jersey. Mr. Gasper showed this order to Richard Wolantejus in an effort to appease Mr. Wolantejus. The order that was marked P-1 did not have any docket number, and the signature line contained the typed name of Harold Kaplan, J.S.C., rather than a signature. The order was not filed, and never used for any other purpose other than to appease Richard Wolantejus. Mary Wolantejus passed away in 1990. Mr. Gasper probated the Will, and Richard Wolantejus was the executor of the estate. Mr. Wolantejus engaged separate counsel within one year of the meeting between Mr. Wolantejus and Mr. Gasper in which the bogus order was produced. Richard Wolantejus appeared at the law offices and spoke with Robert

> Taff, who is Mr. Gasper's partner. Mr. Gasper was on vacation in California. In speaking with his partner, Mr. Gasper told Mr. Taff what had occurred and Mr. Taff, in turn, advised Richard Wolantejus. Thereafter, a malpractice lawsuit was instituted, resulting in a settlement of $62,500. A Chancery Action was filed for partition, and Mr. Wolantejus filed a claim against John Warren for mismanagement. The property was sold and the proceeds deposited in an escrow account. Thereafter, the Court divided the amount of the proceeds taking into account certain charge backs assessed against John Warren. The nature of the malpractice lawsuit was that the real estate market had changed which resulted in a loss of proceeds. Additionally, carrying charges and attorney's fees were incurred as a result of the actions of Mr. Gasper. Prior to the institution of the lawsuits, Mr. Gasper did report his actions to Richard J. Engelhardt, Esquire, Office of Attorney Ethics (P-2).
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> [Hearing panel report at 1-3]

Respondent and his medical expert, Dr. James McMahon, were the only witnesses to testify before the DEC. Respondent had sought psychological counseling from Dr. McMahon for what he believed was the cause of his misconduct in this case, that is, his inability to turn away cases or other work he was not capable of handling. Respondent first sought treatment with Dr. McMahon in December 1991, over one year after respondent wrote to the Office of Attorney Ethics ("OAE") to report his misconduct. As of the DEC hearing on April 29, 1994, respondent continued to be treated by a psychologist. Essentially, Dr. McMahon testified that respondent was a workaholic, incapable of saying "no," and who avoided conflict under any circumstances. He found respondent to be a sincere man who needed to learn to redirect some of his energy into purely social activities in order to avoid an early death. Dr. McMahon found that respondent had made progress in learning to recognize his own limitations and that he was unlikely to repeat this type of misconduct.

* * *

The DEC found that respondent had drawn a fictitious document for the express purpose of misrepresenting to Richard Wolantejus, his client, the status of the lawsuit he was to institute against John Warren. The DEC found that respondent's conduct violated RPC 8.4(c). The DEC declined to find respondent guilty of violations of RPC 1.1, RPC 1.3 and RPC 1.4. The DEC considered several mitigating factors, including respondent's complete cooperation in the Chancery matter brought by the estate and in the legal malpractice action filed by Mr. Wolantejus. The DEC also took into account the fact that respondent himself reported his misconduct to the OAE prior to the institution of either of those actions. The DEC further noted respondent's genuine contrition and complete candor throughout the entire ethics process. The DEC characterized respondent's misconduct as a "one-time occurrence of stupidity." That notwithstanding, the DEC recommended that respondent be suspended for his misconduct.

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Following a de novo review of the record, the Board is satisfied that the DEC's finding of unethical conduct is clearly and convincingly supported by the evidence.

Respondent created a fictitious court order for the express purpose of misleading his client about the status of his case. Conduct limited to verbal misrepresentations to a client would ordinarily result in a reprimand. See, e.g., In re Kasdan, 115 N.J. 473 (1989); In re Dreier, 94 N.J. 396 (1983); In re Rosenthal, 90 N.J. 12 (1982); In re Ackerman, 63 N.J. 242 (1973). The creation of fictitious documents has, however, traditionally been treated more severely. See, e.g. In re Poreda, 139 N.J. 435 (1995) (attorney suspended for three months for fabricating a false insurance identification card

to induce a police officer to dismiss a complaint against the attorney for driving without insurance. The police officer, in the attorney's presence, used the fabricated card in municipal court to justify the dismissal of the charges. Several mitigating factors were taken into consideration); In re Mark, 132 N.J. 268 (1993) (three-month suspension for fabricating two transmittal letters indicating that expert reports had been sent to his adversary in advance of trial and then submitting those letters in opposition to his adversary's motion for judgment N.O.V. In mitigation, the Court considered, among many other things, that the attorney genuinely believed that his original file contained correspondence indicating that the expert reports had been supplied to his adversary); In re Kasdan, supra, 115 N.J. 473 (1989) (three-month suspension where attorney, among other things, prepared and submitted to her client, in pleading form, an "Affidavit in Support of Order to Show Cause" in order to mislead the client that litigation was pending when, in fact, she had not filed suit). See also In re Weingart, 127 N.J. 1 (1992) (two-year suspension where attorney repeatedly lied to client regarding the status of his case over a period of three years and who then prepared a fictitious complaint to mislead his client that a complaint had been filed but that the court had mislaid its file, thereby explaining the court's alleged delay in scheduling trial. The attorney then forwarded the complaint to the Administrative Office of the Courts to support his claim of the court's alleged repeated loss of the file. In suspending all but six months of the two-year suspension, the Court considered compelling mitigating circumstances, including the death of respondent's young daughter, the illness of another daughter and the death of his mother); In re Meyers, 126 N.J. 409 (1991) three-year suspension for preparation of a false judgment of divorce to mislead client into believing that divorce case had concluded, compounded by repeated misrepresentations to the client to conceal the misconduct and, most egregiously, for attempting to induce his client to lie to the court in order to

conceal attorney's wrongdoing); In re Yacavino, 100 N.J. 50 (1985) (three-year suspension for preparation and presentation to his client of two fictitious orders of adoption to cover up his misrepresentations and neglect of an uncomplicated adoption matter for a period of nineteen months. Mitigation included 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 officials).

Mitigating factors abound in this matter. Respondent's actions were not taken for the purpose of self-enrichment. Rather, they were the arguable, but undisputed, result of a personality disorder for which respondent voluntarily sought treatment. Respondent's misconduct was essentially confined to a single act and was aberrational in nature; he has no record of unethical conduct. Also, respondent fully cooperated in both the malpractice and the Chancery actions filed by his client and, in fact, made his client whole by the payment of the deductible amount of his malpractice insurance. Moreover, respondent was genuinely contrite and candidly admitted to all wrongdoing. Finally, and perhaps most significantly, respondent reported his misconduct to the OAE prior to the filing of the malpractice and Chancery actions.

Notwithstanding the above mitigating factors, a suspension for a minimum of three months would have been appropriate. The Board recognizes, however, that nearly ten years have passed since the event in question, and more than six years have passed since respondent reported himself to the OAE. Given these factors, a suspension at this juncture for misconduct that occurred in 1987 would, indeed, be "more vindictive than just". In re Verdiramo, 96 N.J. 183 (1984).

The Board has, therefore, unanimously voted to impose a reprimand. Two members did not participate.

The Board further determined to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 1/6/97

LEE M. HYMERLING
Chair
Disciplinary Review Board