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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-053

IN THE MATTER OF :
 :
DAVID R. HAMILTON, :
 :
AN ATTORNEY AT LAW :
 :

DECISION

Argued: April 17, 1996

Decided: September 16, 1996

Edward S. Nagorsky appeared on behalf of the District XIII Ethics Committee.

Respondent waived appearance.

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

This matter was before the Board on a recommendation for discipline filed by the District XIII Ethics Committee (DEC). Respondent was charged in a one-count complaint with violations of RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to keep a client reasonably informed about the status of the matter). The complaint was amended at the DEC hearing to add a violation of RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority).

Respondent was admitted to the New Jersey bar in 1974. At the

time of the conduct in question, respondent was in private practice. He thereafter began working for the Office of the Public Defender in Trenton, New Jersey.

Respondent received a private reprimand in 1992 for violations of RPC 1.3, RPC 1.4(a) and RPC 1.16.

* * *

By letter dated October 11, 1995, respondent waived appearance at the DEC hearing and instead chose to rely on his answer and accompanying correspondence.

The complaint charged that respondent was retained by Wil deGroot to represent him as the defendant in a civil action. When respondent failed to file an answer, a default judgment was entered against deGroot. Ultimately, fees were assessed against respondent and the judgment was vacated — presumably when respondent finally filed an answer. Thereafter, when answers to interrogatories were not timely submitted, the plaintiff filed a motion to dismiss deGroot's answer. The motion was denied, however, after respondent submitted answers to the interrogatories.

DeGroot did not hear from respondent from May 1990, when answers to interrogatories were supplied, to December 1991. On a number of occasions deGroot unsuccessfully attempted to contact respondent. DeGroot later learned from one of his acquaintances that respondent had closed his private practice. Finally, deGroot contacted respondent at his home and arranged to retrieve his file.

The file contained a two-page letter by respondent, indicating, among other things, that he had not worked on the file since July 2, 1990.

* * *

Although the formal ethics complaint was filed on February 7, 1994, respondent did not submit an answer to the DEC until September 1, 1994. That answer related to the "amended formal complaint." The record does not reveal the date when the amended complaint was served on respondent.

Respondent admitted all of the allegations of the complaint. He explained, however, that deGroot had contacted him at his home before his case was listed for trial, apparently implying that no harm had come to deGroot. According to respondent, he had explained to deGroot that he could no longer represent him because he had closed his practice. DeGroot, however, could not afford to retain new counsel at the time and requested that respondent advise him of any new activity on the case. Although it appears from respondent's answer that he may have thereafter discussed deGroot's case with him, the record does not establish the ultimate outcome of deGroot's case or whether deGroot was harmed by respondent's conduct.

Respondent admitted the charge of failure to reply to the DEC's requests for information. He explained his failure to cooperate as follows:

The only explanation I do have for my failure to promptly respond before this late date and your recent letter is that the events surrounding and immediately following the closing of my private practice in 1990 are just very difficult for me to revisit from an emotional standpoint. Regardless of any soothing notions about the impact of the recession on my former solo practice which was largely devoted to condominium development, I feel that I failed my profession, my client, myself. Denial is great if it works, but I have clearly shot myself in the foot at this point, complicating matters by irrationally trying to put that chapter of my life behind me by attempting to wish it away, when prompt and responsive compliance was seemingly most of what was required. I meant no disrespect to you or the Committee or the function you are attempting to fulfill. I deeply regret the consternation and additional difficulties I have caused for you and the Committee. I recognize that I have also put myself in additional peril in a matter that needs to be resolved promptly.

Respondent recognized that his conduct warranted discipline and offered to "voluntarily accept a private reprimand and waive his right to appear at a formal hearing".

At the DEC hearing, the presenter explained that the original complaint was filed on February 7, 1994 and sent to respondent under cover letter dated February 14, 1994. The letter instructed respondent to file an answer within ten days. The presenter noted that he had spoken with respondent on a number of subsequent occasions, at which time respondent was always courteous and extremely apologetic, assuring the presenter that the answer was forthcoming. While respondent had no explanation for his conduct, he claimed that he was in a state of denial, that is, he did not want to "face up" to what he had done and realized that his inattention only exacerbated the problem.

* * *

The DEC found that respondent's conduct constituted violations of RPC 1.3, for failing to act with diligence and promptness in representing deGroot, and RPC 1.4(a), for failing to keep deGroot informed of the status of his case, failing to inform deGroot that his private practice had been closed and not working on deGroot's file for approximately seventeen months, during which time deGroot was not made aware of the status of his case. The DEC also found that respondent's conduct violated RPC 8.1(b), for failing to answer the complaint in a timely fashion. Two members of the DEC recommended a reprimand, while the third voted for an admonition.

* * *

Upon a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent's conduct was unethical is supported by clear and convincing evidence.

Respondent admitted that his conduct violated RPC 1.3, RPC 1.4(a) and RPC 8.1(b), as charged in the complaint.

Respondent's conduct in this matter is similar to the conduct for which he received a private reprimand in 1992. There, respondent was retained in 1988 to institute a malpractice case against another attorney. At some later point, he failed to inform his client that he had closed down his practice and had gone to work at the Public Defender's Office. Subsequently, when the

client independently made the discovery, she attempted to contact respondent at that office and left numerous messages there, but respondent never returned her calls.

In imposing a private reprimand in the earlier matter, the Board considered respondent's candor, admission of wrongdoing and the fact that he had retained an attorney to help him close his law office. Here, respondent did not attend the DEC hearing and, therefore, the panel could not personally assess the sincerity of his remorse.

Similar cases have resulted in either a reprimand, In re Williams, 115 N.J. 667(1989) (gross neglect in one matter, failure to communicate in one matter, failure to file an answer and lack of cooperation with the DEC) or an admonition, In the Matter of Richard J. Carroll, Docket No. DRB 95-017 (June 26, 1995) (lack of diligence, failure to communicate, failure to turn over a file and lack of cooperation with the DEC).

Based on the fact that respondent's earlier disciplinary infraction involved similar conduct and indeed resulted from the same circumstances, the Board unanimously determined to impose a reprimand.

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

Dated:

9/16/96



LEE M. HYMERLING
Chair
Disciplinary Review Board