

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-183

IN THE MATTER OF
REGINALD JENNINGS
AN ATTORNEY AT LAW

Decision of the
Disciplinary Review Board

Argued: July 17, 1996

Decided: October 15, 1996

Andrew J. Cevasco appeared on behalf of the District IIB Ethics Committee.

Respondent did not appear, despite notice by publication in the New Jersey Law Journal and the Record (Hackensack).

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

This matter was before the Board based on a formal complaint filed with the District IIB Ethics Committee ("DEC"). Service of process was made by mail and by publication, as respondent could not be located. Respondent did not appear at the DEC hearing.

The charges of misconduct embodied in the complaint are: RPC 1.1(a) (gross negligence); RPC 1.3 (reasonable diligence and competence); RPC 1.4(a) (failure to

communicate with client); RPC 1.5(a) (unreasonable fees); RPC 3.2 (failure to expedite litigation) and RPC 8.1(b) (failure to respond to disciplinary authority).

Respondent was admitted to the New Jersey bar in 1973. In early 1993 respondent was retained by Robert and Andrea Larsen (Grievants) to file a complaint in their behalf against numerous builder, partnership and bank defendants for recovery of moneys related to a breach of contract. The grievance alleged that Mr. Larsen did a considerable amount of masonry work at a housing development of defendants and was owed \$123,000. He entered into an agreement to purchase a house in the development, using some or all of the funds owed. The developer's bank (Midlantic Bank) later took the property back by deed in lieu of foreclosure and grievants were evicted. In or about April 1993, grievants retained respondent. They paid him a \$6,000 retainer. Respondent then filed a complaint in Sussex County Superior Court. Since that time, grievants have been unsuccessful in numerous attempts to contact respondent for updates on the litigation.

Grievants were not kept apprised of the status of the litigation. They were finally able to contact respondent only through an accountant/intermediary, who originally introduced them to respondent. On October 3, 1995, the DEC filed a formal ethics complaint. On October 11, 1995, grievants received a check for \$5,000 from respondent, with a handwritten letter bearing a Hollywood, California address. In it, respondent stated:

Enclosed is a refund of retainer provided in the above matter. I'm sorry that I was unable to bring this matter to your desired conclusion or to secure an attorney willing to take the matter over.

[Exhibit P-4]

Testimony of Mr. Larsen, taken at the December 7, 1995 DEC hearing, revealed that he and his wife tried to contact respondent approximately eighteen times over the course of a

six-month period in 1993, after retaining respondent. During that time, grievants were evicted from their home by Midlantic Bank. Possession of the house was allegedly due grievants as part of the agreement with the developer. Evidently, Midlantic also sued grievants for damages.

* * *

For his part, respondent did not reply to any inquiries of grievants or of the DEC. Requests for information regarding this matter went unanswered. The DEC felt strongly, but could not prove, that respondent knew of the instant proceedings. A formal ethics complaint was filed on October 3, 1995. Eight days later, respondent refunded \$5,000 of the \$6,000 fee. Respondent was sent a second notice of the proceedings at the California return address on the refund envelope. Again, respondent failed to answer.

* * *

The DEC unanimously voted for disbarment, after finding violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b). The DEC concluded that respondent's conduct amounted to gross neglect, which was found to be tantamount to abandonment of the client. While abandonment and failure to cooperate with the disciplinary authority are serious violations, the penalty of disbarment for a single act of abandonment is too severe under current caselaw, as discussed below. It is clear from the hearing panel report that the DEC felt that respondent knew of the proceedings and simply did not respond. After all, respondent sent a refund only

eight days after the ethics complaint was filed. But there is no evidence in the record to attribute knowledge of the proceedings to respondent.

The DEC also tried to assess the harm to grievants. The record, however, is devoid of useful information on that issue. Mr. Larsen did not know the status of his case, now handled by the new attorney, and had difficulty expressing the exact nature of the new attorney's retention.

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

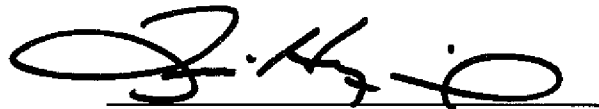
The violations found in this case are similar to those of In re Blake, 126 N.J. 286 (1991), where the attorney received a public reprimand for abandoning one client and where service was made through publication due to the attorney's disappearance. In Blake, the attorney abandoned the client in the midst of a matrimonial matter, closed down his office and disappeared. The DEC found violations of RPC 1.1(a) and (b), by virtue of the fact that he left the client to her own devices with a pending court date, with no notice to her or communication with her regarding the outcome of the matter for which he was retained. Blake's misconduct, however, was the product of a severe alcohol addiction. In fact, Blake was also placed on disability inactive status. Here, there is nothing mitigating respondent's ethics infractions.

A short term of suspension has been imposed for conduct similar to respondent's. See In re Weinstein, 144 N.J. 367 (1996) (attorney suspended for three months for gross neglect and failure to cooperate with the disciplinary authorities in various matters); In re Bernstein, 144 N.J. 369 (1996) (attorney suspended for three months gross neglect, failure to communicate and failure to cooperate with disciplinary authorities in a mortgage refinancing).

After a consideration of the relevant circumstances, including the absence of mitigating circumstances explaining respondent's behavior, the Board unanimously determined to suspend him for three months, with further requirement that respondent take ten hours of professional responsibility courses prior to reinstatement. One member did not participate.

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

Dated: 10/15/96



LEE M. HYMERLING
Chair
Disciplinary Review Board