Brooke

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-165

IN THE MATTER OF :
STEVEN F. MILLER, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: July 21, 1993

Decided: January 28, 1994

Michael J. Powers appeared on behalf of the District IIB Ethics Committee.

Respondent did not appear, despite proper notice of the hearing.

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

This matter was before the Board based upon a recommendation for public discipline filed by the District IIB Ethics Committee (DEC). The formal complaints charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.4(a) and (b) (failure to communicate), RPC 8.4(c) (misrepresentation), RPC 8.4(d) (conduct prejudicial to the administration of justice) and R.1:20-3(f) (failure to cooperate with the DEC and to file an answer). Respondent neither filed answers to two formal complaints nor appeared before the DEC.

Respondent was admitted to the New Jersey bar in 1983 and is engaged in practice in Hackensack, Bergen County. On May 12, 1992, he was temporarily suspended for failure to appear for a demand

audit. The suspension was continued on June 10, 1992. Respondent remains suspended.

Respondent was privately reprimanded, by letter dated February 4, 1991, for failure to act on a client's behalf and failure to pay a fee arbitration award until threatened with a motion for temporary suspension.

The DEC considered three matters, two of which involved the same grievant.

The Sieradski Matter (District Docket No. IIB-91-24E)

In October or November 1990, Philip Sieradski requested that respondent review a file pertaining to a potential insurance claim. The file, comprised of all of the documentation Sieradski had, including original documents, was provided to respondent. Approximately one to two weeks later, respondent advised Sieradski that his claim had merit, but that respondent was too busy to represent him and could not take the matter on a contingent fee basis. Sieradski requested that his file be returned to him. Respondent told Sieradski that the file had been misplaced and that he would look for it and contact Sieradski shortly. Beginning approximately one month later, Sieradski went to respondent's office on more than one occasion to obtain his file. The file was never returned to him.

Over the course of the next four to six months, Sieradski made numerous attempts to obtain his file, all to no avail, and despite statements by Sieradski to respondent concerning the expiration of

the statute of limitations. Respondent continued to advise him that he was still looking for the file.

Respondent never provided anything to Sieradski in writing regarding this matter. Sieradski retained another attorney, who also communicated with respondent in an attempt to obtain the file. Sieradski's last contact with respondent was in May or June of 1991. As of the DEC hearing on April 20, 1992, Sieradski had not received the file and the statute of limitations had run on his claim.

Michael Powers, Esq., the DEC investigator and presenter herein, made numerous attempts to communicate with respondent via telephone and writing. Respondent never replied to Powers' requests for information and never filed an answer to the formal complaint. Further, respondent failed to appear for the DEC hearing.

The DEC concluded that respondent's conduct constituted gross neglect, in violation of RPC 1.1(a). The DEC found further that his failure to cooperate with the disciplinary authorities and to file an answer violated R.1:20-3(f). Lastly, the DEC found that his failure to return Sieradski's file constituted conduct prejudicial to the administration of justice, in violation of RPC 8.4(d).

The Scott Matters (District Docket No. IIB-91-23E)

In late 1987 or early 1988, Sheldon Scott hired respondent to represent Marshall Young & Lewis, Inc. (Marshall Young), personnel consultants, in a dispute with Schering Plough Corporation involving a claim for an employment agency fee. Scott was an officer of Marshall Young. According to Scott's testimony, the disputed fee was between $11,000 and $13,000.

Although the proceedings are somewhat muddled, respondent apparently pursued the matter on Marshall Young's behalf. According to the testimony of Peter Hughes, Esq., attorney for Schering Plough, respondent filed a complaint in Morris County and, in early 1989, Schering Plough filed a motion for summary judgment. That motion was granted and respondent appealed that determination. Hughes went on to explain that

> while the matter was pending, we, on behalf of Schering Plough, filed a motion for summary disposition by the Appellate Division. While that motion was pending the Supreme Court reversed the Appellate Division decision on which Judge D'Ambrosio had relied in granting Schering Plough summary judgment, and so the Appellate Division granted summary disposition, but on behalf of the plaintiff and remanded the matter.
> [T4/20/92 46].

The matter was never relisted in the Law Division. The record does not provide any explanation for this failure.

Throughout the course of the litigation, Scott had difficulty obtaining information from respondent about the matter (T4/20/92 15). In 1989, Scott was advised by respondent's associate that an appeal of the dismissal had been taken and lost (T4/20/92 16).

That associate subsequently left respondent's employ; respondent did not communicate with Scott thereafter for a period of more than one year. Between January and August 1990, Scott made numerous attempts to obtain information form respondent about the status of the matter. When Scott was finally able to contact respondent, he was advised by respondent that there were ongoing settlement negotiations with Schering Plough and that respondent hoped to settle the matter for between $7,500 and $8,500 (T4/20/92 17). Respondent assured Scott that he should not be concerned about the case. Scott contacted the court and learned that the case had been dismissed.

According to Hughes, there were in fact no settlement negotiations. Indeed, he testified that on one occasion in the late summer or fall of 1989, after respondent was successful in the Appellate Division, he spoke with an associate of respondent. At that time, Hughes advised the associate that Schering Plough had no interest in settling the case.

Respondent was advised, by letter dated May 29, 1991 from Marshall Young & Lewis, that his services were being terminated. Although Scott requested that the file be returned, respondent never did so. During the summer of 1991, after the statute of limitations had run, and after counsel for Schering Plough advised Scott that the case had been dismissed, Scott, on behalf of Marshall Young & Lewis, personally settled the matter directly with counsel for Schering Plough and accepted the sum of $500 (T4/20/92 18-19).

Sometime after December 1988, Scott retained respondent to represent him in connection with a claim against Fairleigh Dickinson University arising from the theft of Scott's son's personal belongings from a dormitory room. Scott provided respondent with relevant documents. At one point, at Scott's request, the file was sent to another attorney for review. That attorney did not wish to pursue the matter and returned the file to respondent on May 31, 1990. Respondent subsequently advised Scott that a complaint had been filed. Scott later learned, when he telephoned the university, that the complaint had never been served. He then telephoned the court and learned that a complaint had not been filed.

By letter dated May 29, 1991, Scott terminated respondent's services. Despite Scott's request for the file, respondent never returned it. Scott ultimately settled the matter, in the summer of 1991, for $500, although he valued the case at approximately $3,000, the amount unpaid by Scott's insurance carrier (T4/29/92 21-24).

As in the Sieradski matter, in both Scott matters, respondent failed to communicate with the DEC investigator, failed to file an answer and failed to appear for the DEC hearing.

In both Scott matters, the DEC found that respondent violated RPC 1.1(a) and RPC 1.4(a) and (b). The DEC further found that respondent misrepresented to Scott the status of the litigation and of the settlement negotiations in the Schering Plough case and of the litigation in the Fairleigh Dickinson matter, in violation of

RPC 8.4(c). In addition, the DEC found a violation of R.1:20-3(f), in that respondent failed to cooperate with the DEC and failed to file an answer to the complaint. The DEC did not find a violation of RPC 8.4(d), for lack of clear and convincing evidence that respondent's conduct in handling the Schering Plough matter was prejudicial to the administration of justice, as alleged in count four of the complaint. However, the DEC found that respondent's failure to turn over Scott's files constituted a violation of RPC 8.4(d).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct was fully supported by clear and convincing evidence. It is clear from the testimony in these matters that respondent was guilty of the violations found by the DEC -- RPC 1.1(a), RPC 1.4(a) and (b), RPC 8.4(c) and R.1:20-3(f). The DEC also found respondent guilty of a violation of RPC 8.4(d). The failure to return a file is more appropriately a violation of RPC 1.16(d) and the Board so finds. In addition, respondent is guilty of violations of RPC 8.1(b). No answer was filed in either case and respondent failed to appear for his own hearing before the DEC and the Board.

Respondent made serious misrepresentations to Scott regarding the status of his matters. The Court has consistently held that

"intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472 (1989).

In prior cases with some degree of similarity, the Court has imposed a public reprimand. See, e.g., In re Chatburn, 127 N.J. 248 (1992) (pattern of neglect in three matters, failure to communicate; previous private reprimand) and In re Clark, 118 N.J. 563 (1990) (lack of diligence in four matters, failure to communicate and failure to return retainer, despite promises to grievant and request by new counsel).

However, respondent is not a newcomer to the disciplinary system. As noted above, on May 12, 1992, shortly after the DEC hearing, respondent was temporarily suspended for failure to appear for a demand audit. His suspension was continued on June 10, 1992, and he currently remains under suspension. Respondent was also privately reprimanded in 1991 for failure to act on a client's behalf and failure to pay a fee arbitration award until threatened with suspension.

Respondent's disciplinary history reveals a complete disregard and disrespect for the disciplinary system. In In re Marlowe, 121 N.J. 236 (1990), the attorney engaged in two cases of neglect (in one case he simply abandoned his client), misrepresented the status of the matters, failed to communicate with his clients and failed to cooperate with the disciplinary system. Marlowe failed to respond to the investigator's requests for information and failed to appear at the Board's hearing. Marlowe, who had a prior public reprimand, received a three-month suspension.

A three-month suspension was also imposed in In re Smith, 101 N.J. 568 (1986). Smith was guilty of neglect in an estate matter, failure to communicate with the client and failure to cooperate with the DEC and the Board.

Given respondent's conduct in the within matters, his disciplinary history and his apparent contempt for the disciplinary system, it is the Board's view that a three-month suspension is warranted for his misconduct. The Board's majority so recommends. The Board further recommends that respondent practice under the supervision of a proctor for a period of one year and that he be examined by a psychiatrist approved by the Office of Attorney Ethics to ensure that he is fit to practice law at the time of his reinstatement. One member dissented from the majority's opinion with regard to the length of the recommended suspension. That member believed that a one-year suspension was appropriate. Two members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 1/28/1994 By: Raymond R. Trombadore
Chair
Disciplinary Review Board