

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-352

IN THE MATTER OF
MATTHEW E. SEGAL,
AN ATTORNEY AT LAW

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Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 18, 1992

Decided: December 28, 1992

John McFeeley, III appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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 IV Ethics Committee (DEC). Respondent was admitted to the practice of law in Pennsylvania and New Jersey in 1978. He maintains an office in Cherry Hill, Camden County.

In November or December 1987, Bruce Lippe, Esq. contacted respondent regarding certain collection matters in Pennsylvania. Lippe, who was not admitted to the practice of law in Pennsylvania, was referred to respondent by a mutual friend. Lippe's client, Medical Arts Bureau, had been retained to collect past due bills on behalf of Delaware Valley Anesthesia Associates.

On March 29, 1988, Lippe sent respondent a twenty-eight page computer printout containing information on more than one hundred delinquent accounts. Lippe's letter stated that he had unsuccessfully attempted to collect the funds and that litigation was the next step. The computer printout had the information respondent needed to file complaints in the matters. On June 24, 1988, Lippe sent respondent a letter with information on one of the accounts. By letter dated September 23, 1988, Lippe requested data on the status of the matters, noting that he had to provide information to his client. By letter dated November 22, 1988, respondent sent Lippe forms to be signed by Delaware Valley Anesthesia Associates. Respondent's letter also stated that, due to the costs of filing the complaints, he would be filing approximately ten complaints every other week. Lippe returned the executed forms to respondent on December 7, 1988. In his cover letter, Lippe requested that respondent send him a copy of the complaint form respondent was utilizing. Respondent did not do so. On March 27, 1990, Lippe sent respondent another request for information about the status of the matters. After failing to receive a response, Lippe sent respondent another letter, dated April 27, 1990. In that letter, Lippe indicated that, if he did not receive a reply within the following week, he would be "compelled to take some very drastic action" (Exhibit P-7). Another letter was sent to respondent by Lippe on June 21, 1990. That letter revealed Lippe's frustration and intent to contact the DEC. At some point subsequent to that date, and prior to

January 3, 1991, respondent did contact Lippe, assuring him that he would forward a status report.¹ Respondent however, failed to tell Lippe that he had lost the file and the complaints.² No status report was sent. On January 3, 1991, Lippe wrote yet another letter to respondent, stating that, without respondent's immediate cooperation, Lippe would contact the DEC. When respondent did not reply to Lippe's letter, Lippe wrote to the DEC on March 18, 1991. As of the date of the DEC hearing, Lippe was unaware if complaints had been filed in any of the collection matters (T2/12/92 20-21).

On April 1, 1991, Lippe's grievance was forwarded to respondent. The accompanying letter from the DEC secretary indicated that respondent had ten days to respond. Respondent did not reply. A second letter was sent to respondent on April 12, 1991, granting respondent five additional days to answer. Again, respondent did not reply.³ A formal complaint was sent to respondent on October 14, 1991. The accompanying cover letter indicated that he was required to file his answer within ten days of receipt of the complaint. Respondent submitted a letter to the DEC requesting a thirty-day extension to file his answer.⁴ By

¹ Although in his testimony Lippe was unable to provide a more specific date of the telephone conversation (T2/12/92 19), in his letter of January 3, 1991 (Exhibit P-9) he indicated that the conversation took place in June 1990.

² According to respondent's testimony, he told Lippe that the matter was pending, or that he was working on it (T2/22/92 38).

³ Unaware of the delay in the matter, Lippe wrote to the DEC secretary on July 8, 1991, requesting information about the collection matters (Exhibit P-13).

⁴ Although the letter is undated, it was received by the DEC on October 29, 1991 (Exhibit P-15).

letter dated October 30, 1991, the DEC secretary acknowledged receipt of respondent's letter and stated that he would review the request with the DEC. By letter dated November 21, 1991, respondent was granted an extension to answer until December 9, 1991. On or about December 5, 1991, respondent filed his answer admitting the facts set forth in the complaint, but denying any misconduct.

According to his testimony before the DEC, respondent did, in fact, have complaints drafted in the collection matters.⁵ Respondent purchased the complaint forms and had a word processing company prepare them.⁶ Respondent had handled matters of this type before, although not of this volume (T2/22/92 43). Respondent's explanation for his failure to file the complaints was that, sometime in 1989, he had lost his file containing the information he needed, as well as the box of prepared complaints. According to his testimony, he left the file in the wheel well of a car he sold and the box of prepared complaints in a basement. The file was found in November 1991. Respondent testified that he did not inform Lippe that he had the complaints ready because he did not know if he was permitted to contact him after the ethics grievance had been filed (T2/22/92 44).

⁵ Respondent testified that he did not file the complaints immediately after receiving them because he was waiting to have sufficient personal funds for the filing costs (T2/22/92 33-34).

⁶ Respondent advanced the costs to prepare the complaints. He testified that it was his recollection that the blank complaints cost \$162 and the preparation of the complaints cost \$280. Respondent never requested reimbursement for the expenditures (T2/22/92 30-31).

Respondent conceded that he had failed to tell Lippe that the file had been lost, hoping that it would turn up. He had no explanation for failing to request another copy of the necessary information from Lippe. Apparently, an attempt by respondent to contact the word processing company that had prepared the complaints had been unsuccessful (T2/22/92 35).

Respondent never filed the complaints in any of the collection matters, nor were any funds collected. Respondent admitted that some of the collection matters might be barred by the statute of limitations. Respondent had no explanation for his failure to reply to the DEC.

The DEC determined that respondent violated RPC 1.1(b), in that his conduct constituted a pattern of neglect as well as lack of diligence, in violation of RPC 1.3. The DEC further determined that respondent's conduct was violative of RPC 1.4(a) and (b), in that he failed to keep Lippe, the representative of the clients, reasonably informed about the status of the collection matters and failed to comply with Lippe's reasonable requests for information. In addition, the DEC found respondent's failure to cooperate with the DEC a violation of RPC 8.1(b).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is persuaded that the DEC's findings of unethical conduct are supported by clear and convincing evidence. The record supports the DEC's findings

that respondent violated RPC 1.4(a) and (b) in connection with his communication with Lippe, as well as RPC 8.1(b). The Board also finds a violation of RPC 8.4(c), based upon respondent's failure to tell Lippe that the file and the complaints had been lost. In making this finding, the Board relies on respondent's statement to Lippe that the matters were pending as well as on respondent's failure to admit that he had lost the materials.

There is no question that respondent is guilty of lack of diligence in this matter. However, the twist in this matter is the involvement of a single client with one hundred cases. At least some of these cases may be barred by the statute of limitations; damage to Lippe's client may be extensive. Given the magnitude of respondent's misconduct, the Board also finds gross neglect, in violation of RPC 1.1(a).

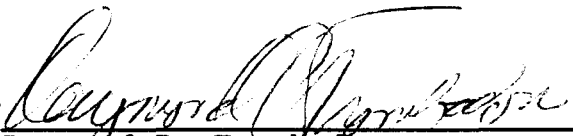
In similar matters, a public reprimand has been deemed sufficient discipline. See In re Serterides, 113 N.J. 447 (1988) (where the Court held that a public reprimand was the appropriate discipline for an attorney who engaged in a pattern of neglect and misrepresentations in four cases. The Court also ordered that the attorney provide 100 hours of pro bono legal services); In re Mahoney, — N.J. — (1990) (where the Court determined that a public reprimand and a one-year proctorship was the appropriate discipline for an attorney who neglected four matters. As in this case, the attorney also failed to communicate adequately with his clients, in violation of RPC 1.4, and violated RPC 1.15 and RPC 8.4(c).)

In mitigation, the Board considered respondent's contrition; he apologized before the Board to the DEC and to Lippe. Although respondent had no explanation for his failure to call Lippe, short of his own embarrassment, he advised the Board that he accepts responsibility for his conduct, which was aberrational. The Board also concluded that respondent's failure to cooperate with the DEC was not prompted by indifference to the system but, instead, by his hope and expectation that he would find the file.

Although respondent's statements do not excuse his misconduct, they tend to explain it. The Board is of the opinion that, although respondent should have informed his client of the loss of the file, he has learned his lesson. Accordingly, the Board unanimously recommends that respondent be publicly reprimanded. One member did not participate.

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

DATE 12/28/1992

BY 
Raymond R. Trombadore
Chair
Disciplinary Review Board