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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 95-286

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IN THE MATTER OF :  
:   
STEVEN F. HERRON, :  
:   
AN ATTORNEY AT LAW :  
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Decision of the  
Disciplinary Review Board

Argued: October 26, 1995

Decided: February 26, 1996

Peter J. Boyer 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 on a recommendation for discipline filed by the District IV Ethics Committee (DEC). Two complaints were filed against respondent (District Docket No. IV-93-83E and IV-94-07E). Both complaints charged respondent with identical violations: RPC 1.1(b) (pattern of neglect); RPC 1.3 (failure to act with diligence); RPC 1.4 (failure to keep a client reasonably informed about the status of the matter and to comply with requests for information regarding the status of the matter);

and RPC 8.1(b) (failure to respond to a lawful demand for information from disciplinary authorities).

Respondent was admitted to the New Jersey bar in 1978. At the time of the conduct in question, respondent was working on a full-time basis for WSR Corporation in South River, New Jersey. It is not clear from the record whether he was serving as in-house counsel at the time or whether he was acting in a non-legal capacity. He also maintained a sole practice at his home in Cherry Hill, New Jersey.

By Order of the Supreme Court dated May 18, 1995, respondent received a one-year suspension, effective June 12, 1995, for misconduct in seven matters involving violations of RPC 1.3, RPC 1.4, RPC 1.1(b), RPC 1.15(b) (failure to promptly notify client of receipt of funds and to promptly turn over funds), RPC 8.1(b), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit, or misrepresentation), and RPC 1.16(d) (failure to protect client's interest by surrendering papers).

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Neither grievant appeared to testify at the ethics hearing. The presenter's case was based solely on the submission and explanation of exhibits. Respondent was given the opportunity to reply to that presentation and to testify in his own behalf. He did not deny the allegations in either complaint.

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Trachtman Matter - District Docket No. IV-93-83E

At an undisclosed date, grievant, Julia Trachtman, and her husband retained respondent to assist them in recovering damages in a breach of contract action involving the sale of their house. They did not pay respondent a retainer. Respondent filed a complaint in the Trachtmans' behalf in Camden County, on February 3, 1993. Exhibit P-2. Respondent failed to take any further action to prosecute his clients' claim, and the complaint was thereafter dismissed for lack of prosecution on or about November 18, 1993.

Thereafter, respondent failed to reply to Trachtmans' telephone calls about the status of their claim. In July 1993 and September 1993, grievant sent two certified letters to respondent, presumably seeking the return of the file. Although the letters are not a part of the record, the return receipt cards are. Exhibit P-4.

As of October 19, 1993, grievant still had not heard from respondent and her file had not been returned. She, therefore, filed a grievance with the DEC. In a letter dated October 28, 1993 from the DEC, respondent was asked to reply to the grievance within ten days. Exhibit P-4. When respondent failed to do so, a second letter was sent on November 18, 1993, requesting his reply within five days. The letter further advised respondent that, if he failed to reply, the matter could be assigned to a DEC

investigator. Exhibit P-5. The Trachtmans' civil complaint was dismissed on November 18, 1993, the same date of the DEC's second letter. Respondent was notified of the dismissal by letter dated November 23, 1993. He failed to notify his client of the dismissal or to take any action to have it reinstated. He also failed to file a response to the grievance.

By letter dated December 3, 1993 from the DEC investigator, respondent was once more requested to reply to the grievance. In that letter, respondent was notified that his failure to comply with the request within ten days might constitute unethical conduct and subject him to disciplinary action. Exhibit P-6.

Respondent did not reply to the letter and did not file an answer to the formal complaint. Moreover, it appears that, as of the date of the DEC hearing in this matter, respondent had not returned the file to grievant.

Downes Matter - District Docket No. IV-94-07E

On or about August 7, 1993, grievant, Terry Downes, retained respondent to perform routine services for her corporation. She did not pay respondent a retainer. Apparently grievant sought to have respondent prepare incorporation documents. Respondent advised her that he would prepare the documents within a few weeks. Grievant provided respondent with a corporation kit, which included various items needed in the course of business, as well as the corporation's stock certificate. The record does not indicate what other items were included in the kit. It appears, however, that

respondent needed the information in the kit to prepare the requested documents. Respondent failed to prepare the documents.

Grievant did not hear from respondent for a number of months. During that time, she telephoned respondent and left messages at his home and his office. Grievant heard nothing further from respondent and did not receive an explanation for his inaction.

Because grievant needed the corporate kit to conduct the operations of the corporation, on or about November 3, 1993 she sent a certified letter to respondent requesting the return of the corporation's property, including the kit, within five days of his receipt of the letter. The letter also advised respondent that their "relationship" was being terminated and that, if he did not reply within the five days, grievant would submit the letter to the DEC. Despite the certified letter and approximately fifteen telephone messages to respondent, he failed to return the corporate kit to grievant and failed to prepare the draft documents that had been requested. Exhibit P-3 in Docket No. IV-94-07E.

Grievant filed a grievance with the DEC. Thereafter, on December 9, 1993, the DEC sent a letter to respondent requesting a reply within ten days. Exhibit P-4 in District Docket No. IV-94-07E. Respondent failed to comply with the DEC's request. Therefore, on December 30, 1993, the DEC sent a second letter, requesting respondent's reply within five days. The letter further indicated that, if respondent failed to comply with the DEC's request, the matter would be docketed and assigned to an investigator. Exhibit P-5 in District Docket No. IV-94-07E.

Since there was no response, the matter was assigned to an investigator. By letter dated February 7, 1994 from the DEC investigator, respondent was advised that he had ten days from receipt of the letter to reply to the allegations made against him. The letter further advised respondent that his failure to cooperate with the DEC would be deemed unethical conduct. Exhibit P-6 in District Docket No. IV-94-07E.

According to the presenter, respondent ultimately returned the grievant's corporate kit, but only after the grievance was filed and the formal complaint issued. Once the grievant received the kit, she had no further interest in pursuing her grievance.

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The DEC found that, based on the documentary evidence, respondent violated RPC 1.1(b), RPC 1.3(b), RPC 1.4, and RPC 8.1(b) in the Trachtman matter. The DEC noted that respondent did not deny that he had violated the foregoing, that he had not taken a fee and that he eventually returned all of the papers to the Trachtmans.

The DEC remarked that, while respondent alleged that he had been treated for depression and was taking medication, he failed to present any medical proof of his claim at the hearing. The record, however, was held open. Under cover letter dated April 30, 1995, respondent submitted to the DEC a note from Ralph F. Costa, M.D., dated October 20, 1994, indicating that respondent had seen him for

depression and that respondent had been given Prozac for the condition. The DEC further noted that respondent acknowledged that grievant had been frustrated by his inaction, but that no one had been harmed by it.

The DEC also found violations of RPC 1.1(b), RPC 1.3, RPC 1.4, and RPC 8.1(b) in the Downes matter. The DEC found that grievant had retained respondent to assist her in performing routine services for her corporation and that he failed to perform the services. The DEC also found that respondent failed to reply to grievant's inquiries about the status of the matter. Grievant terminated respondent's services in early November 1993. The DEC noted respondent's contention that he had taken no fees from grievant and that he had returned the corporate kit to her. The DEC recommended an additional term of suspension, reasoning that such was required for "control purposes" and not for punitive reasons. The DEC also recommended that consideration be given to a proctorship, subsequent to respondent's reinstatement to the practice of law.

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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 is fully supported by clear and convincing evidence. The DEC properly concluded that respondent's conduct constituted violations of RPC 1.1(b), RPC 1.3, RPC 1.4 and RPC

8.1(b). In addition, the Board found a violation of RPC 1.1(a) in both matters.

In determining the appropriate quantum of discipline to impose in this matter, the Board took into account respondent's prior disciplinary history and the time period during which the earlier misconduct occurred. As noted above, respondent received a one-year suspension for unethical conduct in seven matters. There, respondent had been retained in one matter in either 1988 or 1989 and in another matter in 1991. Respondent had been hired in the remaining five matters in 1992. Here, the Trachtmans retained respondent sometime prior to February 1993. In the Downes matter, respondent was engaged in August 1993. By the time of his ethics offenses in Trachtman and Downes, which occurred in 1993, respondent was already aware that there were ethics proceedings pending against him. In the seven matters that led to his one-year suspension, a grievance had been filed against respondent as early as October 1992. Moreover, in July 1993, the DEC had forwarded a letter to respondent requesting him to reply to one of the grievances filed against him. Finally, the complaint in the seven matters had been filed against respondent in November 1993. It is obvious, thus, that respondent continued to mishandle client matters despite the fact that he was already on notice that the disciplinary authorities were questioning his conduct in seven earlier matters.

Respondent contended that neither of the grievants was harmed by his inaction. However, while the Trachtman matter was dismissed



without prejudice, the record does not indicate whether they were able to reopen the matter. It is, therefore, unknown whether the Trachtmans suffered any damages.

Respondent was admitted to practice in 1978. It was not until sometime around 1989 - 1990 that he began having problems with his clients. Respondent claimed that he was suffering from depression. He believed he began having problems with depression at some point in the early to mid-1980s. After the DEC hearing, respondent submitted the only medical proof provided: a note from Dr. Costa, dated October 20, 1994, which indicated the following:

Steven Herron was recently seen in this office for depression. He has been started on Prozac for this condition.

[Exhibit R-3]

There is no explanation for the fact that respondent submitted the note after the DEC hearing, when it bore a date of some five months before the hearing. It is possible, however, that respondent obtained this note either in conjunction with his earlier disciplinary matter or in anticipation of the March 1995 hearing. What is clear, though, is that the note is insufficient to establish that respondent was actually suffering from depression, when the condition arose, how long it lasted, how severe his condition was, how long respondent was on medication and the effects of the depression and/or medication, either positive or negative, on respondent's ability to practice law. Clearly, respondent's offer is insufficient to create either a plausible defense for his misconduct or a mitigating factor.

Respondent claimed at the DEC hearing that he was working for WSR Corporation as their legal coordinator and was not handling any legal matters for them.

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The Court has imposed discipline ranging from a reprimand to a term of suspension where ethics violations have included mixed combinations of gross neglect, pattern of neglect, failure to communicate and misrepresentation. See In re Stewart, 118 N.J. 423(1990) (public reprimand for gross neglect in an estate matter and failure to keep client informed of status; prior private reprimand); In re Williams, 115 N.J. 667(1989) (public reprimand for gross neglect in one matter, failure to communicate in one matter, failure to file answer and lack of cooperation with the DEC); In re Smith, 101 N.J. 568(1986) (three-month suspension for neglect in an estate matter, failure to communicate with a client and failure to cooperate with the DEC and Board); and In re Rosenthal 118 N.J. 454(1990) (one-year suspension for pattern of neglect in four matters, failure to refund a retainer, failure to communicate with clients, misrepresentations to clients and failure to cooperate with disciplinary authorities; attorney had received a prior public reprimand).

Respondent is currently serving a one-year suspension for conduct similar to that in the case at hand. Had all the grievances been consolidated and reviewed by the Board at one time,

discipline would not have exceeded a one-year suspension. Under the circumstances, the Board unanimously voted to impose a one-year suspension retroactive to June 12, 1995, the date of respondent's prior one-year suspension. The Board also unanimously voted to require a two-year proctorship upon reinstatement as well as psychiatric proof of fitness to practice law, upon reinstatement.

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

Dated: 2/26/96



LEE M. HYMERLING  
Chair  
Disciplinary Review Board