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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-308

IN THE MATTER OF :
BYRON R. KING, :
AN ATTORNEY AT LAW :

Decision
of the
Disciplinary Review Board

Argued: October 26, 1996

Decided: February 26, 1996

Ellen Clarkson appeared on behalf of the District VIII Ethics Committee.

Respondent failed to appear, despite notice by publication in the New Jersey Law Journal and The New Jersey Herald.

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 VIII Ethics Committee (DEC). In a two-count complaint, respondent was charged with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence and promptness in representing a client), RPC 1.4 (failure to keep a client reasonably informed about the status of a matter), RPC 1.5(a) (failure to charge a reasonable fee for services rendered)(count one); and RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation)(count two).

Respondent was admitted to the New Jersey bar in 1983. At the time of the conduct in question, respondent maintained a law office

in his residence in Highland Park, New Jersey, and was of counsel to a firm in Plainfield, New Jersey. In 1994, respondent received a private reprimand for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 1.5 for failure to prepare a written retainer agreement, to pursue his clients' interests and to communicate with his clients.

* * *

The grievant in this matter, Lynnwood Warren, first retained respondent to recover damages arising from the theft of his automobile. In or about June 1993, respondent settled the claim with grievant's insurer, the New Jersey Full Insurance Underwriting Association (JUA), for the sum of \$6,000.

At some point not disclosed in the record, but presumably around the time of the JUA settlement, respondent also agreed to represent grievant in connection with divorce proceedings.

Apparently, grievant received only \$4,354.65 from the above settlement because respondent deducted his expenses and fees from the settlement and also withheld an additional \$635 as a retainer for the uncontested divorce matter. The breakdown of fees and expenses was memorialized in an undated sheet of paper. Exhibit J-5. There was no retainer agreement prepared in connection with grievant's divorce action and the record is silent as to whether

there was a retainer agreement in the insurance matter.

Grievant claimed that he attempted to contact respondent about his divorce case on numerous occasions, both at respondent's office/residence in Highland Park and at the Plainfield office. Grievant claimed that he left messages on the Highland Park answering machine and at the Plainfield office. He contended that, at one point, when he called respondent's Highland Park telephone number, a woman answered and informed him that the number no longer belonged to respondent. Grievant did not recall speaking with respondent about the divorce proceedings after August 1993.

Respondent testified that, due to a number of factors, he could not recall whether he had taken any action in connection with grievant's divorce matter. He recalled, though, that he could not locate grievant's wife to serve her with the complaint. Respondent, therefore, put the case aside and never looked at it again. Respondent claimed that, in preparation for the DEC hearing, he was unable to find grievant's file. Respondent explained that, when he moved from Highland Park in December 1993, some of his files had accidentally been thrown away or misplaced and that grievant's case had "fallen through the cracks." According to respondent, he did not intend to neglect the case; he simply forgot about it. Respondent added that, because he did not see grievant thereafter, there was nothing to remind him that he had forgotten the case. Respondent also believed that grievant had forgotten about the case, at least for a period of time.

After the DEC hearing, respondent located grievant's complaint

for divorce. Attached to the complaint was an affidavit of verification and non-collusion, which purportedly was signed by grievant. The affidavit was notarized on July 15, 1993. Exhibit R-1. Thereafter, the DEC obtained a certification from grievant indicating that, while he did not recall going over the complaint with respondent or signing the affidavit, the signature on the affidavit appeared to be his. Exhibit C-1.

On July 15, 1993, the same date that the affidavit was executed, grievant loaned respondent the sum of \$500. There was no document memorializing the loan and its terms. Respondent did not deny that he requested the loan. He claimed, however, that it was a personal matter, unrelated to the representation of grievant. Grievant testified that respondent orally agreed to repay the loan within thirty days.

As of the date of the DEC hearing, January 24, 1995, respondent had not repaid the \$500. Respondent did not believe that borrowing the money from grievant while providing him with legal representation created a conflict of interest or compromised his legal services to grievant. Respondent, however, did not render any legal services after he obtained the loan.

At the DEC hearing, respondent testified that he currently does not maintain a law office and does not intend to practice law again. He added that he was just winding down his practice at that time and had only a couple of cases left. He was finishing the work on those cases at a friend's office. Respondent's decision to discontinue his law practice was made around the same time he was

retained by grievant. Respondent opined that this decision, in conjunction with several other factors, probably caused him to forget grievant's file.

At the DEC hearing, respondent indicated that he would rely on the defenses raised in his answer. Exhibit J-4. Some of the factors set forth therein, which respondent claimed contributed to his failure to pursue grievant's divorce, included the move from his residence, which also entailed moving his law practice. As a result, respondent's telephone number and address changed and grievant may have encountered difficulties in contacting him.

Respondent also claimed that, during that time period, he was suffering from serious depression, which required his hospitalization. At some unspecified point, his newborn son needed brain surgery less than a day after his birth, because of complications during the delivery. Respondent also claimed that his mother had been institutionalized, apparently for mental problems, and that his younger brother had disappeared and could not be located. It is unclear when these problems occurred. Respondent contended that he suffered from alcohol and substance abuse, but did not specify the time period of these addictions. Finally, respondent alleged that he was suffering from financial problems, as well as personal problems with the mother of his newborn son. Respondent did not establish a precise time frame for any of these difficulties.

Respondent claimed that he did not deliberately ignore grievant's affairs. He stated that, although he had intended to

proceed with the case, the above intervening factors contributed to his inaction.

Respondent did not submit any documentary evidence to substantiate the foregoing. Moreover, at the DEC hearing he noted that his mother was doing better, his brother had reappeared and his child was recovering after the brain surgery. Apparently, the negative situations in respondent's life were improving. Nevertheless, he continued to maintain his resolve not to practice law.

At the DEC hearing, the presenter testified that she had taken over the investigation of this matter from a prior DEC member. The initial grievance had been forwarded to respondent on June 14, 1994, with a request that he submit a reply to the allegations within two weeks of receipt of the letter. Respondent failed to do so. Thereafter, by letter dated June 22, 1994, the presenter asked respondent to reply to the grievance that had been forwarded to him earlier. Exhibit J-9. Again, respondent failed to do so. Next, the presenter forwarded a letter to respondent on July 25, 1994, requesting once more that he reply to the grievance. This letter was sent by regular and certified mail. Exhibit J-10. The return receipt card containing respondent's signature was returned to the presenter. Respondent failed to comply with the presenter's request. Respondent did, however, file an answer to the formal complaint.

* * *

The DEC concluded that respondent violated RPC 1.1(a) (gross negligence) by the manner in which he handled grievant's divorce matter. Respondent admitted that he forgot about grievant's file and, in fact, could not locate it until after the ethics hearing had been completed. The DEC found that respondent's practice did not have any system to follow up on files or to prevent them from becoming lost, misplaced or ignored. Moreover, respondent's practice was such that his clients were unable to contact him for significant periods of time.

The DEC further concluded that respondent violated RPC 1.3, because, although he prepared the divorce complaint, he failed to pursue the matter. The DEC also found that respondent failed to keep grievant informed about the status of his matter, in violation of RPC 1.4.

The DEC did not find a violation of RPC 1.5 because of insufficient evidence in the record to conclude that the \$635 fee was unreasonable for the services that respondent had performed. Noting that respondent had not been charged with a violation, of RPC 1.5(b) (failure to obtain a written retainer agreement) the DEC did not make a finding in this regard.

Similarly, the DEC did not find a violation of RPC 8.4(c) because of insufficient evidence that respondent intended to

deceive, misrepresent, defraud or otherwise intentionally take advantage of grievant. Finally, the DEC found that respondent violated RPC 8.1(b) by failing to reply to several letters from the DEC investigator.

In light of respondent's prior private reprimand for violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 1.5, the DEC recommended that respondent receive a reprimand. The DEC also remarked that respondent could have been charged with a violation of RPC 1.8(a) (business transactions with clients) because of the loan obtained from grievant. The loan was a business transaction that should have been memorialized in writing to avoid a potential future conflict. While the complaint did not charge respondent with this violation, the DEC made note of it so that respondent would be aware that such conduct is not permitted under the rules.

* * *

Upon a de novo review of the record, the Board is satisfied with the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. The DEC properly found that respondent's conduct in this matter violated RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 8.1(b). While the complaint did not charge respondent with a violation of RPC 1.8(a), the first count specifically alleged that, at respondent's

request, grievant had loaned him \$500 on July 15, 1993. The complaint further alleged that respondent failed to return the money to grievant. The evidence presented at the DEC hearing established to a clear and convincing standard that respondent did, in fact, obtain a \$500 loan from grievant, which remained unpaid as of the date of the DEC hearing. The Board, therefore, finds that respondent also violated RPC 1.8(a). See In re Logan, 70 N.J. 222(1976).

Respondent's conduct in this matter violated RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 1.5, RPC 1.8(a) and RPC 8.1(b). The Court has imposed discipline ranging from a reprimand to a term of suspension where ethics violations have included mixed combinations of gross 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 a client informed of its status; the attorney had received a 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 DEC); In re Rosenblatt, 114 N.J. 610(1989) (public reprimand for gross neglect in a matter spanning four years and failure to respond to client's requests for information for four years; the attorney had been given a private reprimand seventeen years earlier for neglect in two matters); and 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 DRB).

In assessing the proper discipline to impose in this matter, the Board considered respondent's claim of intervening factors leading to his depression and to his inattention to grievant's file. The Board also considered respondent's statement that he no longer intends to practice law, a statement further bolstered by his failure to appear before the Board despite proper notice of the hearing. Notwithstanding the foregoing, respondent's conduct in this matter was irresponsible. It appears that, as of 1984, respondent had no bona fide office. While this was not raised in the complaint, the problems associated with the lack of a bona fide office abound in this matter. Respondent's client had no way to contact him and had no knowledge or notice of respondent's new address and telephone number. He was, therefore, unable to consult with respondent or to obtain information about the status of his case.

Respondent's failure to keep track of his cases was also startling. He did not know where his open files were and apparently had no "tickler" or "diary" system to keep track of what needed to be done and when.

* * *

Based on respondent's prior ethics history and on the fact he was already aware of his ethics problems at the time of his

misconduct in this matter, the Board unanimously deemed that a reprimand is sufficient discipline. The Board also determined that a three-year proctorship is appropriate.

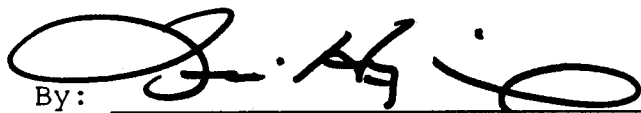
The Board further recommends to the Court that until a proctorship is in place, respondent be temporarily suspended, pursuant to R. 1:20-11(f) and R. 1:20-15(i).

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

Dated: _____

2/26/86

By: _____



Lee M. Hymerling
Chair
Disciplinary Review Board