Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. 95-166

IN THE MATTER OF	:
RICHARD ONOREVOLE,	:
AN ATTORNEY AT LAW	:

Decision of the
Disciplinary Review Board

Argued: September 20, 1995

Decided: December 4, 1995

James D. Bride appeared on behalf of the District X 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 an admonition filed by the District X Ethics Committee (DEC), which the Board determined to hear pursuant to R.1:20-4(f)(2). The formal complaint charged respondent with misconduct in his handling of a landlord/tenant matter. Specifically, he was charged with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 8.1(b) (failure to cooperate with the DEC). Respondent did not timely file an answer to either the complaint or the amended complaint. He filed an answer several months out of time, just prior to the DEC hearing.

Respondent was admitted to the New Jersey bar in 1983 and has been in private practice in Lake Hiawatha, Morris County.

Respondent was admonished by letter dated November 2, 1994, for gross neglect, lack of diligence and failure to communicate in one matter.

On May 4, 1993, Carlo Colasuonno, the owner of a rental property, retained respondent to pursue a claim against a former tenant for violating the terms of their lease agreement. Mr. Colasuonno paid respondent $650 in two installments, on May 4, 1993 and June 4, 1993.

Mr. Colasuonno testified that, between May 1993 and February 1994, he contacted respondent approximately five or six times, seeking information on the status of the matter. Mr. Colasuonno spoke with respondent on most of those occasions. According to Mr. Colasuonno, respondent informed him that he had filed a complaint, but did not yet have a docket number or trial date. Respondent did not recall these conversations.

On an undisclosed date in February 1994, a Mr. Chang, an attorney admitted in New York and a friend of Mr. Colasuonno, called respondent and inquired about the matter. The record does not reveal the specifics of their conversation. That exchange, however, prompted respondent to examine Mr. Colasuonno's file. According to respondent, he had already drafted a complaint, which was in the file.[1] Respondent could not recall the date on which he had drafted the complaint.

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[1] Respondent testified at one point during the proceeding: "Quite frankly, upon reviewing the file and seeing that nothing had been done, I tried to in a hurried fashion get a complaint drafted, filed..." [emphasis added] (T12/12/94 78). It is possible, however, that respondent simply misspoke at this point about having to draft the complaint.

Thereafter, by letter dated February 21, 1994, respondent informed Mr. Colasuonno that he had filed the complaint and enclosed a copy. The complaint did not bear a docket number and was neither signed nor dated. Respondent stated in the letter that he was waiting for confirmation of the docket number and of service of the complaint on the defendant and assignment of a trial date. This was, according to respondent's testimony, the first time he advised Mr. Colasuonno that a complaint had been filed. In fact, however, the complaint had not been filed. According to respondent, he did not realize that fact when he drafted the letter. For reasons that he did not clearly explain, he thought that the complaint had already been filed.

On February 23, 1994, Mr. Colasuonno and Mr. Chang appeared at respondent's office to discuss the complaint. (Mr. Colasuonno had not yet received respondent's February 21, 1994 letter). They did not have an appointment and respondent, who was with a client, could not meet with them. By letter dated February 24, 1994, respondent apologized for not being able to meet with Mr. Colasuonno and Mr. Chang. His letter stated:

> As I told you in several phone conferences over the past two weeks, a complaint was filed in Morristown against [the tenant]. The court advised they are backlogged in filing complaints due to the weather, and that is why I do not have a docket number to give you at this time. I will provide that to you as soon as I receive it.
> [Exhibit C-7]

In fact, the complaint still had not been filed, of which respondent was aware. Respondent contended that he "did not

realize until [he] was doing the letter," that the complaint had not been filed. T12/12/94 72-73.

By letter dated March 1, 1994, Mr. Colasuonno acknowledged receipt of respondent's February 21 and 24, 1994 letters and asked respondent for further information on the filing of the complaint and the service on the defendant. Respondent did not reply. Mr. Colasuonno sent a second letter, dated March 8, 1994. That letter states, in part:

> I came to your office on March 3, 1994 and you told me that the complaint was filed a couple weeks [sic] ago. I asked you why did you not file it earlier and you told me that it was for no particular reason. Since last July of 1993 I have called a number of times asking you about the status of my case and each time you told me that the complaint has been filed and you are waiting for the court to notify you of the hearing date. You have been telling conflicting stories. I went to the court this morning and was told by the court's clerk that they have no record of your complaint.
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> [Exhibit C-9]

Mr. Colasuonno's letter went on to demand that respondent refund his retainer fee, lest he contact the "appropriate authorities." On March 9, 1994, respondent refunded Mr. Colasuonno's $650. Ultimately, Mr. Colasuonno pursued the landlord/tenant matter pro se. That case has been settled.

It is clear from the record that, during the initial period of the representation, respondent did pursue the matter in Mr. Colasuonno's behalf. By letter dated May 27, 1993, respondent contacted the tenant's attorney, Lucy F. Dowd, Esq., asking that

her client forward funds owed to Mr. Colasuonno for rent.[2] Respondent did not receive a reply from Ms. Dowd. Respondent took no further steps to follow up on his letter. According to respondent, at some point, the file was misplaced for an unspecified period of time.

As noted above, it was Mr. Chang's February 1994 call that prompted respondent to examine the file. Then, on February 24, 1994, he realized that he had not filed the complaint. Respondent stated: "Admittedly I tried to backtrack and cover a mistake, which again did not prejudice the client. I thought I'd be able to get the address for service, file the complaint, and go forward with Mr. Colasuonno's matter." T12/12/94 84-85. Indeed, the record contains a number of documents evidencing respondent's attempts to obtain the tenant's address, the earliest of which is dated February 24, 1994, the date of respondent's second letter to Mr. Colasuonno. Respondent never informed Mr. Colasuonno of his difficulty in obtaining the tenant's address. He also never asked Ms. Dowd, the tenant's attorney, if she had the address or would accept service of the complaint. Respondent testified that he received the tenant's address the day after he had been discharged by Mr. Colasuonno and had returned the retainer. Respondent testified that he misrepresented the status of the complaint to Mr. Colasuonno because he was embarrassed by his inaction.

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[2] Ms. Dowd wrote a letter to Mr. Colasuonno on the tenant's behalf, which letter Mr. Colasuonno delivered to respondent on May 27, 1993. Thus, respondent knew the identity of the tenant's attorney.

By way of explanation for his derelictions, respondent pointed to the overwhelming demands of a sole practitioner. He also noted that this was a contract action with a six-year statute of limitations and that he apparently did not deem it an urgent matter. Further, respondent pointed out that Mr. Colasuonno lost no money as a result of his infractions. Respondent also offered testimony in mitigation about his civic activities and service to the bar. He testified that he feels "very badly over this situation" and "professionally embarrassed." T12/12/94 85.

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By letter dated April 19, 1994, the DEC investigator, Bonnie C. Frost, Esq., requested that respondent reply to the allegations in Mr. Colasuonno's grievance within two weeks. No reply was forthcoming. By letter dated May 18, 1994, the investigator again asked respondent to reply to the grievance, noting that her investigative report was due to be filed in approximately thirty days. She added that, if a formal complaint were to be filed, respondent would be charged with a violation of RPC 8.1(b). Again, respondent did not reply. The investigator filed her report on June 20, 1994. Shortly thereafter, by letter dated June 25, 1994, respondent replied to the allegations in the grievance. (His reply is an attachment to the amended complaint). Respondent did not address the misrepresentations to Mr. Colasuonno in his June 25, 1994 letter. When asked during the hearing why he did not reply earlier to the investigator's letters, respondent stated that he was shocked that Mr. Colasuonno had filed the grievance, thinking

that, when he refunded the $650, the matter was ended. Respondent also explained that he understood the seriousness of the ethics proceeding, but "it's human nature, we try and put bad news behind us." T12/12/94 79.

A formal complaint was filed and served on respondent by letter dated July 22, 1994. An amended complaint was subsequently served on respondent, by letter dated August 2, 1994. Respondent received the complaint and amended complaint on July 25, 1994 and August 8, 1994, respectively. Respondent admitted that he took no steps to reply to the formal complaint until he examined his file on or about November 29, 1994. He met with an attorney to discuss representation on December 2, 1994. That attorney told respondent on December 5 that he had to decline the representation. Respondent met with a second attorney on December 7. That attorney was also unable to accept the representation, unless an adjournment of the DEC hearing was granted. The adjournment was denied. Thus, respondent prepared an answer to the complaint in his own behalf on December 7, 1994, five days before the DEC hearing.

The DEC did not find clear and convincing evidence of a violation of RPC 1.1(a) and RPC 1.3. It did, however, determine that respondent had violated RPC 1.4(a) and RPC 8.1(b). In addition, the DEC stated that the complaint had been amended to conform to the proofs and found a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), a violation not alleged either in the complaint or in the amended complaint.

The DEC recommended an admonition, but wanted it noted that it had extensively debated recommending more severe discipline based on several factors: the within conduct; respondent's previous discipline; his lack of candor before the panel (it is not clear to what specifically the DEC was referring); and his failure to understand or admit the gravity of his misconduct. The DEC stated in its report that "[respondent] must gain an understanding of the ethical standards of professional conduct and receive assistance in properly handling the demands of a solo practice." Hearing panel report at 10-11.

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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 determined that respondent violated RPC 1.4(a), RPC 8.1(b) and RPC 8.4(c). With regard to the violation of RPC 8.1(b), the DEC noted that respondent's previous disciplinary matter was pending while the within matter was ongoing. A complaint had been filed in the earlier matter on December 21, 1993 and a hearing held on March 31, 1994. As noted above, that case resulted in the imposition of an admonition. (The DEC mistakenly referred to the resulting discipline as a public reprimand). The DEC, thus, viewed respondent's failure to reply timely to the within grievance or the complaint as more serious in light of that other matter. "Although, Respondent was not aware of that punishment prior to the

hearing herein, the process should have heightened Respondent's awareness of the seriousness of the within matter." Hearing panel report at 8-9. The Board agrees. An attorney's initial failure to cooperate with the investigation may at times be excused where an answer to the complaint is ultimately filed and the attorney appears at the hearing. However, given that respondent's other matter was pending during this proceeding, a finding of a violation of RPC 8.1(b) is warranted.

The DEC was unable to find clear and convincing evidence of gross neglect and lack of diligence in this matter. The Board disagrees. By his own admission, respondent did not follow up on his letter to Ms. Dowd and, assuming his testimony is accurate, did not attempt to file a complaint until prompted by Mr. Chang. Had respondent reviewed his file at an earlier date, he would have detected his error and, likely, these problems would not have arisen. The fact that respondent refunded Mr. Colasuonno's money and that the landlord and tenant matter was settled does not lessen his responsibility for neglecting the matter for almost a year. It is true that, when respondent discovered his dereliction, although he clearly tried to cover it up, he also undertook to remedy the situation by obtaining the tenant's address for service of the complaint. Nevertheless, respondent was not diligent in his handling of Mr. Colasuonno's case and violated RPC 1.3. His lack of action on the case for nearly a year also constitutes gross neglect, in violation of RPC 1.1(a).

The DEC stated in its report:

> It appears that Respondent intended to file a Complaint on or about February 24, 1994, but was unable to do so when he realized that he did not have an address for the defendant. Thereafter, he engaged in a scramble to obtain the address through the postal authorities and get the Complaint filed in the hope that Mr. Colasuonno would never learn the truth.
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> [Hearing panel report at 9]

Although this scenario is likely true, it does not explain Mr. Colasuonno's letters and testimony asserting that respondent had previously and, for some time, assured him that the complaint had been filed. Respondent misrepresented the status of the matter to his client for a much longer period than that noted by the DEC. When respondent realized his error, had he simply explained to Mr. Colasuonno that his file had "slipped through the cracks" and that he had forgotten to file the complaint, an admonition might have been sufficient discipline. Unfortunately, respondent lied to his client to hide his mistake. "Intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472, 488 (1989).

Respondent was guilty of a violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 8.1(b) and RPC 8.4(c). As noted above, respondent has been previously admonished. In and of itself, however, respondent's prior ethics record is not sufficient to warrant discipline greater than a reprimand. Accordingly, the Board unanimously determined to impose a reprimand. See In re Girdler, 135 N.J. 465 (1994) (public reprimand for lack of diligence, failure to communicate and failure to prepare a written retainer

agreement in one matter. The attorney had been previously privately reprimanded).

The DEC suggested that a proctor may be required to assist respondent. The Board disagrees. In his letter to the Board dated May 31, 1995, respondent set forth the changes already made in his office practices to eliminate situations such as that involving Mr. Colasuonno.

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

Dated: 12/4/95

By: _____
Lee M. Hymerling
Chair
Disciplinary Review Board