IX-94-51E *
IX-95-10E

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 95-163
DRB 95-239

IN THE MATTER OF :
JOHN A. MOORE :
AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: June 21, 1995

Decided: December 4, 1995

Maureen J. Bauman appeared on behalf of the District IX Ethics Committee on the matter under Docket No. 95-163.

Respondent failed to appear, despite proper notice by publication.

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

These matters were before the Board based on a recommendation for discipline filed by the District IX Ethics Committee ("DEC") (DRB 95-163) and on a certification by the chair of the DEC pursuant to R. 1:20-4(f)(1) (admission by virtue of respondent's failure to file an answer to the complaint)(DRB 95-239).

In DRB 95-163 (Nguyen matter), the formal complaint charged respondent with violations of RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to keep client reasonably informed and to promptly comply with reasonable requests for information); RPC 1.16 (failure

to return an unearned retainer upon termination of representation) and RPC 8.1(b) (failure to cooperate with the disciplinary authorities). Similarly, in DRB 95-239 (Melnick matter), the formal complaint charged respondent with violations of RPC 1.3, RPC 1.4(a) and RPC 8.1(b).

Respondent was admitted to the New Jersey bar in 1983. He is currently temporarily suspended by Order of the Supreme Court dated April 7, 1995, amid allegations of knowing misappropriation as well as a myriad of other pending ethics complaints. In addition, on March 15, 1995, the Board heard and granted the OAE's motion for respondent's temporary suspension for failure to comply with a fee arbitration award, which forms the basis of the ethics complaint in DRB 95-163.

The Nguyen Matter - (DRB 95-163)

On or about April 28, 1994, respondent was retained by Thac Nguyen, the grievant in this matter, to represent his son, Long Nguyen, in a criminal matter in Pennsylvania. Respondent was not licensed in that State and the record is silent as to whether respondent ever applied for admission pro hac vice. The complaint did not charge respondent with the unauthorized practice of law. Respondent initially met with Long's brother, Giang Nguyen, as well as several other members of the Nguyen family, at the place of business of Long's aunt, in Philadelphia. Also present at that meeting were respondent and a John Laffer (a/k/a John Laffman and John Ladman), whom Giang characterized as respondent's investigator

or detective. Respondent quoted Thac, through Giang, a fee of $15,000. (Giang served as a liaison between his father and respondent, as Thac did not speak English). At that meeting, Thac made an initial cash payment of $7,500 toward respondent's fee. Respondent provided Thac with a receipt for that payment. Exhibit P-3. At the time Thac retained respondent, his son was already represented by a Pennsylvania attorney, James Markofski.

Approximately two weeks after his initial meeting with the various Nguyen family members, respondent met with Long, who was already incarcerated. After that initial meeting, Long advised Markofski that he no longer required his services, since he had retained respondent. However, because respondent never took any action to substitute in as counsel, Markofski continued to act as Long's counsel, as he was ethically required.

Respondent failed to appear in court on two separate occasions, when Long's matter was listed for trial. On one of those occasions, John Laffer appeared in respondent's stead. At that time, Laffer represented to the judge that respondent was in court in another jurisdiction. After noting that respondent was a "stranger" to the court (he had not filed an appearance), the judge rescheduled the trial for the following day — July 12, 1994. When respondent failed to appear for trial the following day, the judge ordered that the matter be tried immediately. However, no trial judge was available and the matter was ultimately set down for trial on July 18, 1994.

During the midst of all this, the Nguyen family made repeated attempts to contact respondent to discuss Long's matter. However, they always reached respondent's answering machine and only received occasional return calls from respondent's investigator, Laffer. By July 13, 1994, it became clear to the Nguyen family that respondent would not be taking any action to protect Long's interest. The family and Long, therefore, began again to deal with Markofski, who never withdrew from the matter. Markofski was ultimately successful in reaching a favorable plea agreement in Long's behalf. At no time during the course of these events did respondent ever communicate with Markofski in an attempt to either coordinate their efforts or to undertake Long's representation, as he had been retained to do. This was so in spite of many telephone calls Markofski placed to respondent.

Following the entry of the guilty plea, the Nguyen family again attempted to contact respondent for the purpose of obtaining a refund of the $7,500 initial fee payment. Not only did the family members leave several messages on respondent's answering machine, but they also attempted to visit his home and telephoned Laffer. On one occasion, Giang was able to speak with respondent, who promised that he would send him a refund within a week.

Despite the family's repeated efforts, respondent never returned any of the fee payment. The Nguyen family, therefore, filed a petition for fee arbitration. Respondent did not appear at the fee arbitration, whereupon an award for a full refund was

entered in favor of the Nguyens. That award remains unsatisfied to date.

Respondent was also charged with a failure to cooperate with the DEC. Essentially, the DEC Secretary, Jamie S. Perri, made exhaustive efforts to serve respondent with a copy of the formal complaint, to advise respondent of the designated hearing date and to determine whether he intended to file an answer to the complaint. Affidavits of Jamie S. Perri, Exhibits C-1 and C-2. On February 2, 1995, Perri received a telephone call from John Laffer, who identified himself as respondent's "representative." Laffer advised Perri that respondent was in Florida, that he had, indeed, received a copy of the formal complaint and that it was respondent's intention to appear on the designated hearing date. Laffer was unable to say whether respondent intended to file an answer to the complaint. Ultimately, respondent never filed an answer or appeared at the DEC hearing.

Respondent's present whereabouts are unknown. Efforts to serve respondent with a complete copy of the Board file in this matter and notice of the hearing have been unsuccessful. Notice of the DRB hearing was ultimately made by publication in the New Jersey Law Journal and the Asbury Park Press.

* * *

Although the complaint did not charge respondent with the unauthorized practice of law, the DEC found that respondent undertook to represent Long Nguyen in a jurisdiction in which he

was not licensed. The DEC also found that respondent did virtually nothing to protect Long's interest and failed to communicate with Long and/or his family members, in violation of both RPC 1.3 and RPC 1.4. In addition, the DEC concluded that respondent failed to return to the Nguyens the sizeable unearned partial retainer, after several requests by family members and after an arbitration determination ordering him to do so, in violation of RPC 1.16(d). Finally, the DEC found respondent guilty of a violation of RPC 8.1(b) for his failure to file an answer to the formal complaint and to appear at the DEC hearing. The DEC recommended that respondent be suspended for his misconduct.

The Melnick Matter (DRB 95-239)

In or about October 1994, respondent was retained by Christine Melnick ("grievant") to file a motion for reconsideration of sentence in behalf of her fiancé, John Petrie, who was incarcerated. On October 14, 1994, grievant met with respondent's investigator, John Laffman, at her home. At that time, grievant gave Laffman $1,000, the retainer required by respondent. Laffman gave grievant a receipt of sorts for the payment. Laffman ultimately gave the $1,000 to respondent. Several days after grievant's meeting with Laffman, respondent told her that he would first obtain the judgment of conviction and then file the motion for reconsideration of sentencing.

Grievant spoke with respondent on two other occasions, between the end of October and the beginning of December 1994, at which

time respondent advised her that he was still awaiting the receipt of the judgment of conviction. Grievant had no further conversations with respondent. However, in December 1994, Laffman telephoned grievant to provide an update on respondent's efforts. Laffman informed her that respondent still had not received the judgment of conviction, but that he expected it shortly. Laffman also informed grievant that they expected to receive a hearing date sometime in January 1995. In January 1995, Laffman again informed grievant that he had spoken with respondent and that respondent had told him that "the paperwork was in."

When grievant began to suspect that respondent was doing nothing in her fiancé's behalf, she contacted the Criminal Records Division in Hudson County and learned that no motion for reconsideration had been filed by respondent. Her inquiry of the Appellate Division produced a similar response. Subsequently, grievant made several unsuccessful attempts to contact both respondent and Laffman.

* * *

Upon a de novo review of the record, the Board is satisfied that the DEC's findings of unethical conduct in the Nguyen matter were clearly and convincingly supported by the evidence. Respondent's conduct in that matter can be characterized as nothing short of outrageous. Respondent accepted a sizeable retainer and did nothing to further his client's interests. Indeed, respondent

did not even file a substitution of attorney in his client's behalf after receiving the retainer. He also failed to appear on two scheduled trial dates, despite his obvious awareness of them. Moreover, respondent failed to return any portion of the unearned retainer, after promising the Nguyen family that he would do so and, worse, after a fee arbitration award ordering him to refund the entire retainer. In the face of all this, respondent has disappeared. In essence, respondent has stolen grievant's money — thus far without consequence.

Equally disturbing was respondent's utter and complete disregard for his obligations to the ethics system in this matter. He is no stranger to the New Jersey ethics system. Respondent was admitted to the New Jersey bar in 1985. By 1991, a continuous flow of ethics complaints had ensued against him ranging in subject matter from lack of communication and diligence to improper business transactions. His history of responsiveness has fallen far short of acceptable. Respondent's utter disdain for the ethics process cannot be tolerated.

Respondent's conduct in the Melnick mater was similarly appalling. Here again, respondent required and accepted a sizeable retainer and did nothing to protect his client's interests. Moreover, again, respondent made no attempt to cooperate with the disciplinary investigation despite repeated requests from the DEC for a reply to the grievance.

It is unquestionable that this respondent holds no appreciation for his responsibilities as an attorney. He has

repeatedly sported a callous indifference to his clients' welfare, the judicial system and the disciplinary process. Such indifference parallels that displayed in In re Clark, 134 N.J. 522(1993). In that case, the Court disbarred an attorney guilty of misconduct in six matters that was virtually identical to this respondent's.

While respondent's conduct was confined to two matters, he clearly took unfair advantage of his client in the Nguyen matter by charging a sizeable retainer, doing nothing, promising to return the retainer and then ignoring the Nguyen family's repeated requests for their money. Respondent also displayed extreme indifference toward his clients, the judicial system and the ethics process. The Board can draw no other conclusion but that this respondent is not capable of conforming his conduct to the high standards expected of the legal profession. Simply put, he is beyond redemption. The Board unanimously recommends that he be disbarred. Two members did not participate.

The Board also directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 12/4/98

LEE M. HYMERLING
Chair
Disciplinary Review Board