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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-124

IN THE MATTER OF :
: ANTHONY CABELO, :
: AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: July 25, 1990

Decided: October 5, 1990

William C. Connelly appeared on behalf of the District VA Ethics Committee.

S.M. Chris Franzblau appeared on behalf of respondent.

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

This matter is before the Board based upon a presentment filed by the District VA Ethics Committee.

Respondent was admitted to the practice of law in New Jersey in 1976. In or about April 1986, respondent, who also speaks Portuguese, was retained by Maria Frago, a Brazilian alien, to obtain a green card for her from the United States Immigration and Naturalization Service (hereinafter INS). At the time that Ms. Frago retained respondent she was working as a domestic for Mr. and Mrs. James Wright. Much of the contact between Ms. Frago and respondent was through Mrs. Wright.

As part of the requirements to obtain a green card, in the fall of 1986, Ms. Frago provided respondent with a letter of work

experience, dated June 26, 1986, from her former employer in Brazil. There was little activity by respondent for several months following receipt of that letter. Several months after providing the letter, Ms. Frago telephoned respondent, who informed her that they needed to go to the Department of Labor in Trenton. In January 1987, the two went to the Department of Labor, at which time respondent was told that the letter of employment experience that Ms. Frago had provided was inadequate.

After this visit, respondent apparently told Ms. Frago that the matter was proceeding apace.¹ Thereafter, on two occasions, prior to March, 1987, respondent and Ms. Frago went to INS in Newark. After the second trip to INS, Ms. Frago made numerous calls to respondent, with few replies. On June 4, 1987, respondent wrote to Ms. Frago asking her to phone him. On June 14, 1987, respondent sent a certificate to Mrs. Wright for her signature, establishing her need for Ms. Frago's services. The certificate was signed and returned to respondent. On December 23, 1987, respondent sent forms to Ms. Frago for her review. Also in December 1987, respondent filed a notice of appearance with the INS, and a new letter of experience signed by Mrs. Wright.

By notice to respondent dated July 1988, the Department of Labor pointed out various deficiencies in Ms. Frago's application. Although respondent attempted to correct the deficiencies, a similar letter was sent to respondent dated September 1988.

¹ Ms. Frago testified that, throughout the course of this matter, respondent repeatedly told her that everything was "all right and would be taken care of" (T5,10,11,14).

Between July 1987 and September 1988, Ms. Frago and Mrs. Wright made over seventy telephone calls to respondent. Respondent was seldom able to be reached.

Respondent testified that much of the delay in this matter was due to problems with the letter of work experience. He explained that he believed that the letter from Brazil was insufficient, his belief being confirmed by the INS in January 1987. Respondent testified that, from January 1987, to early summer 1987, he wondered what to do to remedy Ms. Frago's situation. Respondent further testified that, although the Wrights could provide the necessary letter, problems were present in that Ms. Frago had been working without a social security number, her wages were below those required for Department of Labor purposes and her earnings had not been reported for tax purposes. Ultimately, Ms. Frago obtained a social security number. Respondent referred Ms. Frago to an accountant, who prepared a 1986 tax return. Respondent forwarded the return to Ms. Frago in January 1988, and he then filed it. Respondent testified that, after the tax return was filed, he believed he could proceed in this matter, and that by late 1987, all necessary documents had been filed in proper form.

On February 20, 1987, Mr. and Mrs. Wright wrote to respondent claiming that he failed to communicate or provide adequate information to them, and had failed to complete documents that the Wrights knew had to be completed. After receiving no response, Mrs. Wright filed the grievance with the ethics committee on March

4, 1987.

Thereafter, the secretary of the district ethics committee contacted respondent, asking him to get in touch with the Wrights and Ms. Frago to discuss the status of the matter. By letter dated March 27, 1987, the secretary advised the Wrights and Ms. Frago of her contact with respondent and asked the Wrights to advise her if respondent contacted them. This was confirmed in a letter to respondent, dated March 30, 1987. In the same letter, the secretary asked respondent to advise her of the status of Ms. Frago's matter. On April 16, 1987, Mrs. Wright wrote to the secretary, advising her that there had been no communication from respondent, and that their calls had not been returned. The secretary sent a second letter to respondent on April 24, 1987, advising him of the information provided by Mrs. Wright, and advising him to communicate with Mrs. Wright or with Ms. Frago, or the matter would be assigned for investigation. Respondent did not reply to the secretary's letter, and the matter was assigned for investigation. On May 28, 1987, the investigator wrote to respondent requesting information about this matter. This letter, too, went unanswered. Respondent offered no explanation for his failure to respond to the secretary's or the investigator's requests for information.

Concerned about a possible loss of Ms. Frago's priority date, and unable to speak with respondent, in October 1988, Ms. Frago and Mrs. Wright retained another attorney to pursue this matter. In April 1989, INS notified Ms. Frago that her application had been

approved. Although Ms. Frago's new attorney was responsive, and the matter was satisfactorily resolved after he was retained, there was no evidence presented that the new attorney did anything beyond what respondent had already done to pursue the approval of Ms. Frago's application.

The committee found that respondent violated R.P.C. 1.4, in that he did not communicate with Ms. Frago or with Mrs. Wright, noting that Mrs. Wright's phone bill showed seventy calls to respondent "on a relatively simple matter" (Panel Report at 11). In addition, the committee cited respondent's failure to respond to letters and calls from the secretary, as a further violation of R.P.C. 1.4. The committee noted that respondent was ignoring the secretary at the same time that a hearing was about to begin on similar ethics charges. The committee also found a violation of R.P.C. 1.3, in that respondent displayed a lack of diligence on his client's behalf. The committee considered the charged violation of R.P.C. 1.1(b) in conjunction with the findings against respondent in previous matters. While the underlying subject matter was distinct in the earlier cases, respondent's conduct was similar. The committee, therefore, found a violation of R.P.C. 1.1(b). With regard to the charged violation of R.P.C. 1.1(a), the committee found that no such violation had been found in this matter.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of violations of R.P.C. 1.4 and R.P.C. 1.3 are supported by clear and convincing evidence. However, the Board disagrees with the finding of a violation of R.P.C. 1.1(b).

When retained, respondent owed his client a duty to pursue her interests diligently. See Matter of Smith, 101 N.J. 568, 571 (1986); Matter of Schwartz, 99 N.J. 510, 518 (1985); In re Goldstaub, 90 N.J. 1,5 (1982). The Board finds by clear and convincing evidence that respondent violated R.P.C. 1.3, when he failed to pursue this matter diligently on Ms. Frago's behalf. Although the delay in this matter was partially justified, given the difficulty in obtaining the necessary documents and the difficulties with Ms. Frago's employment situation, respondent was unable to explain the reasons therefor satisfactorily.

The Board also finds that respondent failed to keep Ms. Frago and Mrs. Wright reasonably informed about the status of this matter, in violation of R.P.C. 1.4. An attorney's failure to communicate with his clients diminishes the confidence the public should have in members of the bar. Matter of Stein, 97 N.J. 550, 563 (1984).

With regard to the charged violation of R.P.C. 1.1(b), the Board finds that the record does not support, to a clear and convincing standard, a determination that respondent displayed a

pattern of neglect.

The purpose of discipline is not the punishment of the offender, but "protection of the public against the attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout, 76 N.J. 321, 325 (1978). The severity of the discipline to be imposed must comport with the seriousness of the ethical infraction in light of all relevant circumstances. In re Nigohosian, 86 N.J. 308, 35 (1982). Mitigating factors are, therefore, relevant and may be considered. In re Hughes, 90 N.J. 32, 36 (1982). In mitigation, the Board has considered that respondent candidly admitted his misconduct in this matter.

Respondent's disregard of his ethical responsibilities to his client, however, cannot be countenanced. The Board is disturbed by respondent's failure to communicate with the secretary and the investigator, particularly in light of the fact that, at approximately the same time the committee was attempting to obtain information from respondent, in May 1987, an ethics hearing was being held, in connection with a separate grievance filed against respondent. The Board would hope that respondent would be especially attentive to the committee's requests for information, having been the subject of a prior ethics investigation that resulted in the filing of a formal complaint.

As an aggravating factor, the Board has considered that, on August 31, 1988 following review of this separate ethics matter,

respondent was privately reprimanded for gross neglect, lack of diligence and failure to communicate in two matters.² The Board unanimously recommends that respondent be publicly reprimanded. One member did not participate. One member recused herself.

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

Dated: 10/5/1990

By: 

Raymond R. Trombadore
Chair
Disciplinary Review Board

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Although the matters were heard together, and the recommendation for private reprimand emanated from one panel report, two separate letters were issued for reasons of confidentiality involving the grievants.