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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 96-266

IN THE MATTER OF :
RONALD S. SAMPSON :
AN ATTORNEY AT LAW :
:

Decision

Argued: September 18, 1996

Decided: October 17, 1996

Leonard A. Weitzman appeared on behalf of the District VB Ethics Committee.

Respondent waived appearance for oral argument.

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 VB Ethics Committee (DEC). The charges embodied in the complaint are: RPC 1.1(gross neglect); RPC 1.4(b) (failure to explain the matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation); RPC 8.4(a) (violation of or attempt to violate the Rules of Professional Conduct); RPC 8.4(c) (misrepresentation) and RPC 8.1(b) (failure to cooperate with the disciplinary authorities).

Respondent was admitted to the New Jersey bar in 1981. At the time of the alleged misconduct, he was an associate of the law firm of Love and Randall, East Orange, New Jersey. Respondent has no prior ethics history.

In or about 1991, respondent was engaged to represent Russell Holloway ("Grievant") and his business, the Irvington Manor, in a personal injury action pending in Essex County. Grievant and Irvington Manor were defendants in an action arising out of a slip-and-fall incident that occurred on the premises of Irvington Manor. When the matter went to non-binding arbitration, grievant was found liable to plaintiff in the approximate amount of \$12,000. Unsatisfied with the award to plaintiff, grievant had respondent challenge the award by taking it to trial.

The case was scheduled and re-scheduled for trial during the final months of 1992 and was finally set down for trial on January 11, 1993. Respondent was due in Bergen County on a different matter that day and requested that the trial be scheduled for the following day. On January 12, 1993, respondent sent an associate of the firm, Thomas Bell, to appear at the "trial call." At Bell's request, the matter was marked "ready-hold" for a 1:30 P.M. trial that afternoon. Plaintiff's attorney, Ralph Sussman, Esq., also had a conflict on January 12, so he hired a per diem attorney, Peter Guarino, Esq., to handle the trial. Despite the fact that Bell requested that the trial be set down for 1:30 P.M., respondent failed to appear or to notify the court that he was unable to appear. Guarino called respondent's office three times during the early afternoon and was told each time that respondent would be appearing. At 3:30 P.M., Assignment Judge Carol Ferentz entered an order of default against grievant, in respondent's absence. At the DEC hearing, respondent

stated that he had another trial in Bergen County on that day but did not explain his failure to appear or to otherwise advise the court that he could not appear.

Thereafter, a proof hearing was scheduled for February 24, 1993, of which respondent received notice. When he again did not appear, judgment was entered against grievant on March 3, 1993, in the approximate amount of \$30,000. At the DEC hearing, respondent had no explanation for his failure to appear, other than to state that there was no reason for him to file anything for the proof hearing. According to grievant, respondent did not inform him of these developments.

In March 1993, respondent made a motion to vacate the default judgment. The motion was granted on March 19, 1993, subject to the payment of \$900 to plaintiff's attorney for costs associated with hiring the per diem attorney for the January 12, 1993 trial date. The order is silent as to whether respondent or grievant was to pay the \$900.

Respondent did not disclose to grievant the court's instruction about the \$900 and did not pay it, whereupon plaintiff's attorney moved for reinstatement of the judgment in or about October 1993. Respondent did not object to the motion and an order reinstating the judgment was entered on October 22, 1993. Respondent did not make grievant aware of these events.

In May 1994, plaintiff served grievant directly with a post-judgment subpoena designed to elicit information on grievant's assets. After grievant did not comply with the subpoena, in June 1994 plaintiff's attorney served grievant with a warrant for his arrest.

Over the course of these events, respondent and grievant had at least several telephone conversations and personal meetings regarding this matter. According to grievant,

respondent did not apprise him of the unfavorable course the suit had taken. Grievant testified that, upon receipt of the arrest warrant, he went to respondent's office to question him about it and that he spoke to someone regarding it. He could not recall with whom he spoke. Grievant testified that he left specific instructions that respondent contact him immediately in order that steps be taken to avoid his arrest. Grievant further testified that respondent did not contact him. A few days later, grievant sought new counsel. Respondent, in turn, contended that he had met with grievant after the arrest warrant, at which time he had advised grievant to comply with the suspension to avoid being arrested.

Shortly after grievant's last visit to respondent's office, he went directly to the Essex County Court records and discovered that his case was no longer on the court's calendar. With the help of new counsel, the default was vacated and the matter was set down for trial. Ultimately, grievant won the case on the merits. Judgment was entered in his favor and the matter was put to rest.

* * *

The DEC found clear and convincing evidence of violations of 1.1(gross neglect); RPC 1.3(lack of diligence) (although RPC 1.3 is not alleged in the complaint, the DEC found sufficient evidence to amend the complaint to include this violation); RPC 1.4(b); (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation) and RPC 8.1(b) (failure to cooperate with

the disciplinary authorities). The DEC dismissed the charges of violation of RPC 8.4(a) and RPC 8.4 (c) for lack of clear and convincing evidence.

* * *

Following a de novo review of the record, the Board is satisfied that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence.

As to respondent's failure to communicate with grievant, respondent admitted that he did not tell grievant about the \$900; did not disclose to grievant his failure to appear at the February 1993 proof hearing scheduled because of his non-appearance on the trial date, January 12, 1993; did not inform him about the order reinstating the default and did not keep grievant apprised of the activities that were taking place in the court at that point. In fact, respondent did not appear to have informed him of any of the unfavorable developments in the case. According to grievant, it was not until he was served with the warrant for his arrest that he learned, for the first time, of the \$30,000 judgment against him. After reviewing the testimony of the witnesses (respondent and grievant), the Board concluded that grievant's testimony in this regard was more believable, therefore finding violations of RPC 1.4(a), and 1.4(b) and RPC 8.4(c).

The Board also determined that respondent failed to act with diligence and grossly neglected the handling of the matter, in violation of RPC 1.3 and RPC 1.1(a), respectively. Indeed, respondent failed to appear at the January 12, 1993 trial; failed to appear at the

February 24, 1993 proof hearing and failed to oppose plaintiff's motion to have the default judgment reinstated, causing a subpoena and an arrest warrant to be issued to grievant.

With respect to the alleged violation of RPC 8.1(b), the record shows that respondent did not answer any of the investigator's three requests for information about this matter and did not file an answer to the complaint. He did, however, appear at the DEC hearing and was cooperative. Accordingly, the Board dismissed the allegations of failure to cooperate with the ethics authorities.

* * *

There remains the issue of the appropriate measure of discipline, as the harm to the client was extensive. The legal fees associated with the work performed by his new attorney are estimated at \$10,000. Respondent's gross neglect, lack of diligence and misrepresentations spanned a long period of time, from January 1993 to October 1994. Although grievant had a rock-solid defense to the action from the outset, it was not until he was about to be arrested that he realized the extent of respondent's poor representation. There are no mitigating factors to be considered.

Recent cases decided by the Court show a range of discipline imposed, from a public reprimand to a term of suspension, where the misconduct has embodied a mixture of offenses such as gross neglect, failure to communicate and misrepresentation. In some cases, two or three of these violations are present, either alone or coupled with different violations, such as failure to cooperate with the disciplinary authorities. After a

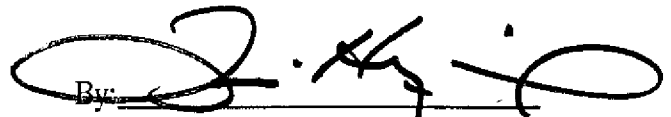
consideration of the relevant circumstances, including the harm to the client in this matter, the Board unanimously determined to suspend respondent for three months. See, e.g., In re Brantley, 139 N.J. 465(1995). (Lack of diligence in two matters; failure to communicate in one of the two matters; failure to cooperate with the DEC in three matters; pattern of neglect, when earlier disciplinary cases were considered; prior one-year suspension and three prior private reprimands); In re Kates, 137 N.J. 102(1994). (lack of diligence and failure to communicate in one matter, extreme indifference toward the ethics system); and In re Weinstein, 144 N.J. 367 (1996) (combinations of gross neglect, lack of diligence, failure to communicate, misrepresentation, pattern of neglect and failure to cooperate with the DEC in four matters).

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

Dated: _____

10/17/96

By: _____



Lee M. Hymmerling
Chair
Disciplinary Review Board