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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 90-296

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IN THE MATTER OF :  
: :  
MELVIN D. LuSANE, :  
: :  
AN ATTORNEY AT LAW :  
\_\_\_\_\_

Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: November 28, 1990

Decided: January 29, 1991

William A. Cambria appeared on behalf of the District VA Ethics Committee.

Richard F. Thayer 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 1972, and maintains his office in Essex County. The facts of the matter were stipulated at the hearing before the district committee.

In 1985, respondent was retained by Laymon Glover in connection with an automobile accident. Glover's car was struck by a rented car, driven by a resident of Great Britain. On February 14, 1986, respondent filed a complaint, naming the driver of the rented car and the rental agency as defendants. On October 28, 1986, the summons and complaint were served on the rental agency.

The driver was never served, although N.J.S.A. 39: 7-2 et seq. allows service on the Director of the Division of Motor Vehicles.

On June 6, 1986, the complaint was consolidated with a complaint filed by a passenger in Glover's car. On August 1, 1986, the consolidated complaints were submitted to arbitration. Glover was awarded \$14,500, and his passenger, \$8,500. Glover was not satisfied with the award and wished to proceed with the litigation (TR 6/14/90 at 8). Respondent proceeded with issuance and service of the summons.

In December 1986, the car rental agency filed an answer. On January 5, 1987, a substitution of attorney was filed on behalf of the defendant. On January 15, 1987, respondent filed a new complaint. The rental agency was served with this new summons and complaint on February 22, 1987.

On May 2, 1988, the rental agency filed a motion for summary judgment, which was granted on June 10, 1988. On June 17, 1988, respondent filed a motion for substituted service on the driver by publication. Respondent's motion was denied on July 8, 1988.

On August 28, 1988, Glover was involved in a second automobile accident and retained Miriam R. Rubin, Esq., in connection with this new matter. Glover signed a retainer agreement with Rubin on August 31, 1988. At that time, Glover was unaware that the litigation on the 1985 accident had failed. In early 1989, Glover determined that he wished to have Rubin represent him in connection with the first matter. On February 21, 1989, Glover wrote to

respondent, requesting that his file be sent to Rubin. Respondent did not comply with Glover's request.

On March 16, 1989, Rubin telephoned respondent, to follow up on Glover's request. She was unable to reach respondent, and sent him a letter dated March 22, 1989. Neither the letter nor several subsequent telephone calls induced respondent to forward the file to Rubin.

On May 9, 1989, Glover filed his grievance with the district ethics committee, still unaware that his complaint had been dismissed. Rubin ultimately contacted respondent who stated he had received a \$14,900 settlement offer which was pending.<sup>1</sup> Respondent did not turn Glover's file over to Rubin until August 1989, after Rubin threatened to contact the court.

Respondent admitted and the committee found, that he violated RPC 1.4(a) by failing to keep Glover informed about the status of his case. In May 1989, Glover believed his case was coming to trial, when in fact it had been dismissed one year earlier. The committee also found that respondent failed to turn Glover's file over to Rubin until September 1989, and gave her misleading information about the status of the case.

Respondent also admitted, and the committee found, a violation of RPC 1.16(a)(3) in that Glover instructed respondent to withdraw from the case and to turn his file over to Rubin in February 1989,

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<sup>1</sup> The record is unclear as to when respondent received the settlement offer.

and respondent failed to comply with Glover's wish until September 1989.

In addition, the committee found a violation of RPC 8.1(b) in that he failed to answer the complaint filed in the ethics matter.<sup>2</sup>

#### CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record the Board is satisfied that the conclusions of the committee are supported by clear and convincing evidence.

The Board finds that respondent failed to keep Glover reasonably informed about the status of this matter, in violation of RPC 1.4(a). 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 violation of RPC 1.16, the Board agrees that respondent violated this rule when he failed to comply with Glover's wish that he cease his representation of him. Respondent further violated this rule by failing to turn Glover's file over to him, or to his new attorney, in a timely fashion.

Respondent's unethical behavior in this matter was aggravated by his failure to file an answer to the ethics complaint filed against him, as required by R. 1:20-3(i). An attorney has an obligation to cooperate fully with ethics committees and

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<sup>2</sup> The allegation of gross negligence, in violation of RPC 1.1(a), was withdrawn by the presenter.

proceedings. Matter of Smith, 101 N.J. 568, 572 (1986); Matter of Winberry, 101 N.J. 557, 566 (1986). In Matter of Macias, \_\_\_ N.J. \_\_\_, (1990), the Court determined that the attorney's failure to cooperate with the ethics committee, including failure to file an answer to the complaint, in and of itself warranted a public reprimand.

The purpose of discipline, however, 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, 75 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, 315 (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 respondent's evidence that he suffers from depression. The Board has reviewed letters from respondent's physician indicating that he is undergoing treatment and is currently capable of competently practicing law.

Respondent's disregard of his ethical responsibilities to his client, however, cannot be countenanced. The board is concerned by the fact that respondent has received three prior private reprimands.<sup>3</sup>

In determining the appropriate quantum of discipline, the following cases are instructive. In Matter of Stewart, 118 N.J. 423 (1990), the Court held that a public reprimand was appropriate discipline for a respondent who grossly neglected an estate matter, and failed to keep his client informed of the status of the case.<sup>4</sup>

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<sup>3</sup> The first private reprimand, dated May 21, 1981, was issued after respondent failed to attend a pre-trial hearing on his client's behalf in February 1977, and subsequently failed to appear on April 11, 1977, the return date of an Order to Show Cause in the same matter. Further, respondent took no action to have the suit restored and failed to communicate with his client after April 11, 1977.

The second letter of private reprimand was issued on July 27, 1988. Respondent had been retained to represent a woman who alleged that a drug had been negligently dispensed, causing her to lose sight in both eyes. Over an eleven-year period, at the end of which respondent did file a complaint, he failed to communicate with the client by not keeping her reasonably informed as to the status of the matter, or responding to her reasonable requests for information. Respondent also failed to expedite the litigation on her behalf.

The third letter, which also was issued on July 27, 1988, concerned respondent's representation of a client in connection with a personal injury action, stemming from an automobile accident. Over a period of several years, respondent failed to initiate the appropriate legal action, did not communicate with his client, failed to keep him reasonably informed as to the status of the matter, failed to promptly respond to his reasonable requests for information, and failed to expedite the litigation.

<sup>4</sup> Stewart had received a private reprimand in 1980, for offering to pay money toward the settlement of an insurance claim, and toward the settlement of a matrimonial matter. The prior discipline was considered an aggravating factor in that matter.

In Matter of Williams, 115 N.J. 667 (1989), the Court publicly reprimanded the attorney for grossly neglecting a paternity case, failing to communicate with his client in another matter, failing to cooperate with the ethics committee and not filing an answer to the ethics complaint.

The Board sees little distinction between Williams and Stewart and the case at hand. The Board therefore unanimously recommends that respondent be publicly reprimanded, subject to his continuing treatment with a therapist until discharged by the therapist. In addition, the Board recommends that a two-year proctorship be imposed.

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

Date: 1/29/1991By: Raymond R. TrombadoreRaymond R. Trombadore  
Chair

Disciplinary Review Board