

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-258

IN THE MATTER OF :
 :
ROBERT H. LEVIN, :
 :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 17, 1990
Decided: March 1, 1991

Francis R. Galdo appeared on behalf of the District III-B Ethics Committee.

Respondent appeared pro se.

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 III-B Ethics Committee.

Respondent was admitted to the New Jersey bar in 1980. From 1980 through 1987, he was a private practitioner. In 1987, he began employment with the Office of Legislative Services ("OLS"), a state agency.

The facts of this matter were the subject of a stipulation between respondent and the presenter. In June 1984, respondent was retained by Daniel M. Sabatini, the grievant herein, to represent him in a personal injury action. Between June and December 1984, respondent actively worked on the case, although he did not file a complaint. From December 1984 until April 14, 1986, when grievant

complained to the ethics committee, there was no activity on the file. Finally, after respondent became aware of the grievance against him, he filed a complaint on or about May 1986, a mere few days before the expiration of the statute of limitations. Following the exchange of some items of correspondence with defense counsel and with an expert witness between May and September 1986, a period of thirty-four months elapsed, from January 1987 through November 1989, without any activity whatsoever on the file or any communication with grievant about the status of the matter. It was only after the presenter contacted respondent about the ethics complaint, in November 1989, that respondent called the clerk of the Superior Court and discovered that the suit had been dismissed as a result of his failure to appear before a bar panel in June 1987. Respondent did not inform grievant of the dismissal of the lawsuit.

Respondent had no plausible explanation for his conduct. He admitted that he had failed to keep his client informed of the status of the matter. He contended that, when he first started his employment with the OLS, he intended to try the case by utilizing some vacation days. Subsequently, however, he stopped thinking about the file. It was only after he was contacted by the presenter in November 1989, that he determined to inquire of the court clerk about the status of the matter.

Following the conclusion of the district ethics committee hearing, the panel found that respondent had failed to act with

reasonable diligence and promptness in representing his client, and had failed to keep him reasonably informed about the status of the matter, in violation of RPC 1.3 and 1.4(a). The panel did not find clear and convincing evidence that respondent had violated RPC 8.4 (misconduct) and 1.1(a) (gross neglect).

CONCLUSION AND RECOMMENDATION

Upon an independent de novo review of the record, the Board is satisfied that the conclusions of the district ethics committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence. The Board, however, disagrees with the committee's finding that the evidence did not clearly and convincingly establish that respondent grossly neglected the handling of the matter, in violation of RPC 1.1(a).

Indeed, although the file reveals some initial activity on respondent's part through December 1984, such as obtaining medical records and conducting some investigation and legal research, for the next nineteen months respondent did nothing. He finally filed suit on May 16, 1986, a few days before the statute of limitations expired, but only because of his client's complaint to the district ethics committee. Prodded by the intervention of the ethics authorities, respondent sent some correspondence to defense counsel and to an expert witness between May and September 1986. But

respondent's rekindled interest in the file proved to be fleeting. For a period of thirty-four months, from January 1987 to November 1989, he took no action whatsoever to advance his client's interests, despite his duty to represent him in a competent and responsible fashion. It was only after he was contacted by the presenter, that respondent discovered from the clerk's office that the suit had been dismissed for lack of prosecution on June 18, 1987. The Board's independent review of the record brings it to the conclusion that respondent's treatment of the case was nothing but grossly negligent. The Board was also deeply troubled by respondent's unacceptable method of keeping his clients apprised of his whereabouts after he began employment with the OLS. Rather than fulfill his obligation to remain accessible to his clients' requests for information at all times, respondent left a forwarding telephone number at his old law office. His clients' messages, however, never reached him at the OLS.

The Board further noted that this is not respondent's first brush with the disciplinary system. By order of the Court, on November 19, 1990, the Board issued a letter of private reprimand to respondent for failing to comply with a client's twenty to thirty requests for information about the case, and for failing to return promptly to her the balance of certain escrow funds.

Based on respondent's gross neglect and failure to communicate with his client for an extended period of time, and based further on respondent's prior ethical violation, the Board unanimously recommends that he receive a public reprimand. Two members did not participate.

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

Dated:

3/1/1991

By:



Raymond R. Trombadore
Chair
Disciplinary Review Board