

Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-295

IN THE MATTER OF :
:
BASIL D. BECK, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 20, 1991

Decided: January 21, 1992

Mitchell H. Kizner appeared on behalf of the District I Ethics Committee.

Respondent appeared pro se.¹

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 I Ethics Committee (DEC). The formal complaint filed in this matter charged respondent with three instances of violation of RPC 8.1(b) (failure to cooperate with a lawful demand for information from a disciplinary authority) and R.1:20-3(f).

¹During his appearance before the Board, respondent requested that he be granted an adjournment to obtain counsel in this matter. The Board denied respondent's request based upon the fact that although respondent had significant notice of the Board hearing, he waited until the eleventh hour to request the adjournment. The Board was concerned that this was a delaying tactic on respondent's part. The Board noted that respondent also requested an adjournment during his appearance before the DEC in order to have his treating physician testify and then failed to produce him at the second hearing.

Respondent was admitted to the New Jersey bar in 1963. Until his temporary suspension from the practice of law by order dated October 22, 1991, he was engaged in the practice of law in Bridgeton, Cumberland County. Respondent was reinstated to the practice of law by Order dated December 13, 1991.²

The facts of these three matters are as follows:

The Johnson Matter (District Docket No. I-91-01E)

On or about January 28, 1991, Mitchell H. Kizner, Esq., the committee investigator, wrote to respondent requesting a response to a grievance filed by Paul Johnson. A second request was sent on March 1, 1991. Respondent never contacted the investigator in response to either of the two letters. During the investigator's cross-examination, respondent asked him if he recalled receiving telephone calls or messages from him. The investigator denied receiving any such telephone calls (T6/24/91 56-57).

The Russell Matter (District Docket NO. I-90-28E)

On July 20, 1990, the Honorable Richard Russell, J.M.C., contacted the DEC secretary regarding alleged unethical conduct by respondent. The allegations arose out of respondent's behavior in

²Significant conditions were placed on respondent's restoration to practice, namely: 1. He may practice as an employee, shareholder, or of counsel with only one law firm, specified by the Court in its Order; 2. Should respondent's relationship with that firm be terminated, his right to practice would be suspended pending further Court Order; 3. Respondent may not practice alone or with any other member of the bar without prior approval of the Court; and 4. Respondent's reinstatement would not become effective until it was confirmed with the Clerk of the Court that respondent had been included on the errors and omissions policy of the designated law firm.

Ocean City Municipal Court during his representation of a client. On or about November 16, 1990, the committee secretary wrote to respondent informing him that an investigation had been opened in this matter and that Mitchell Kizner had been assigned as investigator. On or about March 1, 1991, the investigator wrote to respondent requesting that respondent contact him "at once" with regard to Judge Russell's allegations.

Respondent never answered the investigator's letter. However, he asserted before the hearing panel that responses to Judge Russell's grievance had been provided directly to David E. Johnson, Jr., Director, Office of Attorney Ethics (OAE) and copied to Richard Bloom, Esq., secretary of the District I Ethics Committee. (The letters, dated August 21, 1990 and September 13, 1990, were attached to respondent's formal answer, designated exhibit R-1). The investigator testified that, although he knew of respondent's correspondence to OAE, he had not received an answer from respondent. At the committee hearing, respondent asked the investigator the following questions:

Q. Do you know that there was an immediate response to the Judge Russell complaint, immediate response in an initial long letter and then a follow-up letter to indicate what happened in that matter? Do you know that?

A. Yes, and part of why I was contacting you was to explore some of the issues that weren't clear for me from either your correspondence or Judge Russell's.

Q. Did you tell me that?

A. No, I just asked you to contact me.
[T6/24/91 62]

The Walker Matter (District Docket No. I-91-03E)

On or about February 4, 1991, Thomas Walker, Jr. filed a grievance against respondent involving respondent's alleged refusal to turn Walker's file over to him. By letter dated February 27, 1991, the assigned DEC investigator, Mitchell H. Kizner, requested information from respondent with regard to this matter. Respondent failed to contact the investigator. During his testimony before the hearing panel respondent admitted that, instead of contacting the investigator, he contacted Walker, hoping to resolve the underlying problem. In response to a direct question as to whether he replied to the investigator, respondent stated: "I thought I did that by trying to reach out to Mr. Walker because when we met in here the other day even he says alls [sic] it is is an issue of going over the files or seeing that it's transferred to somebody else" (T7/10/91 46).

Two days of hearings were held in this matter.³ On the first day, respondent provided a formal answer to the complaint.

³The hearing panel granted respondent a second hearing date, primarily because respondent wished to have his treating physician testify. Respondent apparently did not contact his physician until the day before the second scheduled hearing and the latter was unable to appear. Respondent attempted to submit to the panel four reports prepared by the physician. The panel denied his request since the reports had been prepared independently of the ethics hearing and were a part of respondent's permanent record. Respondent was permitted to read a section of one report into the record. (See discussion, infra).

Respondent's answer was admitted into evidence as R-1.

During the intervening time between the two hearing dates, respondent met with the investigator. At the second hearing, the investigator testified that respondent had, in fact, provided the requested information regarding the underlying matters, although he had still failed to turn over the file in the Walker matter (T7/10/91 79).

The committee found that respondent had violated R.1:20-3(f) (obligation to respond to committee investigator within ten days) in all three matters, as charged in the formal complaint. In addition, the panel determined that respondent had violated RPC 8.1(b), in counts one and three of the complaint. The panel found that, in the second count (Russell), respondent did not "knowingly fail" to respond to a lawful demand for information. Respondent had provided information directly to the OAE, even though the formal complaint had not yet been filed against him. The panel concluded that, given respondent's psychological history, it could not be determined that he had "knowingly" failed to provide the requested information and, accordingly, did not find a violation of RPC 8.1 in that matter.

In its report, the panel noted respondent's evidence of his psychological difficulties and the departure of the other attorneys in his office. The panel found that, while these circumstances contributed to the pressure under which he was operating, they did not excuse his failure to respond to the grievances filed against him.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is convinced that the findings of the DEC that respondent is guilty of unethical conduct are supported by clear and convincing evidence. However, the Board disagrees, in part, with the DEC's findings in the Russell matter. The DEC determined that respondent had not violated RPC 8.1 because he had provided the information to the OAE. However, the timing of the various letters is critical. Judge Russell's grievance was sent to the committee in July 1990. Respondent wrote to the OAE in August and September 1990. The secretary's letter, as well as that of the investigator, is dated several months following respondent's letters to the OAE: November 1990 and March 1991. Given the passing of these several months, respondent could not rely on the letters he had previously written to other parties. Respondent's erroneous belief that his earlier submissions would be sufficient cannot excuse his failure to reply to the investigator's letter. However, respondent's failure to reply to the letter of November 16, 1990 (exhibit C-4) from Ronald Bloom, Esq. has not been considered against him. The letter does not direct respondent to contact the investigator but, rather, states that the investigator will contact him.

During the DEC hearings, respondent attempted to provide testimony that seemed to respond more to the underlying allegations in the grievances filed against him than to his failure to reply to the series of letters sent to him from the committee. Although

respondent often went on at great length about various issues, he never addressed the simple question of why he ignored the investigator's requests for information.

The sole charges before the Board in this matter deal with respondent's failure to cooperate with the DEC investigation. The Supreme Court has held that a failure to cooperate in and of itself is sufficient for public discipline. In In re Macias, 121 N.J. 243 (1990), the attorney was publicly reprimanded for failing to cooperate with the Random Audit Program in correcting accounting deficiencies that would bring him into compliance with the recordkeeping rules. The attorney further failed to file an answer to the formal ethics complaint filed against him.

In In re Skokos, 113 N.J. 389 (1988), the attorney failed to cooperate with the committee investigator. Moreover, he failed to file an answer to the formal complaint filed against him and failed to appear at the ethics hearing. The attorney did appear before the Board. The Court determined that a public reprimand was the appropriate discipline.

With regard to respondent's psychiatric condition, as noted above, his treating physician did not appear. However, respondent was permitted to read a section of one of his psychiatric reports into the record (T7/10/91 59). The report of May 15, 1991 states that respondent showed no further evidence of depression at that time. However, that report was written after the misconduct in question. Other than his general testimony before the DEC regarding his condition and the enormous pressure under which he

was working, respondent provided no direct evidence of psychiatric problems, or the lack thereof, during the time period in question. It is difficult, therefore, to consider respondent's illness in mitigation of his misconduct, as there is no direct evidence that it played a part in his actions.

Clearly the departure of the other two attorneys in respondent's firm, though not respondent's fault, left him with an enormous burden. It is apparent from respondent's testimony before the DEC that he was quite overwhelmed by his workload and by the numerous charges brought against him for his inability to keep up with his court appearances. However, while the Board is sympathetic to respondent's plight and recognizes his psychiatric difficulties, he has never answered the simple question posed to him of why he failed to reply to the requests for information by the DEC investigator.

In determining the quantum of discipline, the Board has considered respondent's history of misconduct, both in aggravation of the within offenses, and, more significantly, as evidence of the fact that respondent knows the workings of the disciplinary system and must have known what was expected of him. Accordingly, the Board, finding that respondent failed to cooperate with the OAE in the three within matters, unanimously recommends that respondent be suspended for a period of three months. The Board further recommends that respondent not be reinstated to the practice of law until such time as all ethics grievances pending against him as of November 20, 1991 are resolved. In addition, the Board recommends

that, prior to reinstatement, respondent be examined by a psychiatrist, approved by the OAE, to determine his fitness to practice law. Further, the Board recommends that respondent be required to practice under the supervision of a proctor for an indefinite period of time.

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

Dated: 1/21/1992

By: Raymond R. Trombadore
Raymond R. Trombadore
Chair
Disciplinary Review Board