Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-212

IN THE MATTER OF	:
GEORGE W. DePIETROPOLO,	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 25, 1991

Decided: December 9, 1991

Robert B. Kurzweil appeared on behalf of the District IV Ethics Committee.

Respondent did not appear.[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 IV Ethics Committee. The formal complaint involved six matters, including the Komody matter which was dismissed without prejudice by the committee. The presenter was unable to secure the grievant's testimony at the hearing, and therefore no evidence was presented on that count of the complaint.

Respondent was admitted to the practice of law in New Jersey in 1984. He was temporarily suspended by order dated July 9, 1991 for his failure to pay a Court-ordered sanction of $500 that

[1]At the Board hearing, Chief Counsel advised the Board of attempts to notify respondent, which included a message left on his telephone answering machine and proof of hand-delivery of the entire file, via Comet Messenger and Delivery Service, to respondent's address.

stemmed from non-payment of a fee arbitration award. He remains under suspension.

The facts are as follows:

The Atras Matter (District Docket No. IV-90-64E)

In April 1988, Lynn Atras retained respondent in connection with her deceased father's estate. Atras was the executrix of her father's will. At their initial meeting, respondent informed her that his fee would be $500 to handle various matters involving the estate, including changing the deed to her father's house to reflect ownership by his three children.[2] At that meeting, Atras gave respondent the documents she had accumulated concerning the estate. Atras had approximately three meetings with respondent, during one of which they discussed the changes to be made to the deed to the house. Although Atras signed the deed to the house and completed all the paper work respondent gave her, the deed was never recorded. Respondent also failed to draw up an agreement dealing with specific arrangements with regard to the house, which Atras had requested.[3] Respondent did some work on the estate, preparing an inheritance tax return form, which apparently was

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[2]Respondent did not ask for the $500 at that time and Atras did not pay him the fee until January 1989. Atras testified that she wanted to see that respondent had done work on her behalf before she paid the retainer and, accordingly, she waited until after she signed the deed to the house, which deed she believed he would record.

[3]The agreement involved the division of bills in connection with the house as well as who would remain in it and for what time period.

filled out incorrectly (T/4/19/91 18, 20-21). During the months following their initial meeting, Atras obtained information respondent had requested and telephoned his office to provide it to him. Respondent did not promptly return her calls, once waiting several months to contact her. In addition, he did not respond to letters she sent to him.[4] Although she made numerous calls to respondent, Atras was never able to speak with him and had to leave a message on his machine each time she called. When respondent did return the calls, he would leave a message on Atras' home telephone answering machine, even though she had provided her daytime telephone number to him. Atras testified that, after January 1989, when the $500 retainer was paid, respondent never spoke with her again (T4/19/91 15).

In July 1990, Atras retained John Mulderig, Esq., to assist her in the matter. According to Atras' testimony, Mulderig wrote three or four letters to respondent, sent one letter by messenger and made numerous telephone calls to him, attempting to find out the status of the estate matter and to obtain Atras' documents. Respondent never contacted Mulderig or complied with his requests.[5]

During the course of her testimony, Atras stated that, at the time she retained respondent, she was unaware that he worked as an

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[4]Atras testified that she believes that, in response to one certified letter, respondent did leave a message on her answering machine, in which he stated that he would take care of the matter.

[5]As of the date of the ethics hearing, respondent had not returned the documents pertaining to the estate or the $500 retainer fee.

attorney only at night and was employed full-time during the day by the United States Postal Service. She stated that, had she known his practice was only part-time, she would not necessarily have hired him.

The Chirico Matter (District Docket No. IV-90-50E)

In November 1989, Tony Chirico retained respondent to represent him in a divorce proceeding. Chirico signed a retainer agreement, at which time he paid respondent $500. At the time that the retainer was signed, respondent told Chirico that he would draft the appropriate documents and "forward them to Trenton," at which point the matter would be docketed. It was Chirico's understanding that respondent would be pursuing the divorce as well as child support and custody.

Approximately four to five weeks later, respondent telephoned Chirico, in response to a message from the latter. During the conversation, respondent stated that the matter was progressing, telling Chirico specifically that a complaint had been filed, even though during the four-to five-week period prior to the telephone call, respondent had not provided any documents to Chirico for his signature (T4/19/91 38).[6] Although Chirico had no further contact with respondent, he left messages on respondent's answering machines. The calls were returned by respondent's secretary. During one conversation, the secretary told Chirico that respondent

[6]Respondent neither initiated telephone contact with Chirico nor did he ever send any written communications to him.

was having matrimonial problems and that, although a complaint had not yet been filed on Chirico's behalf, it would be filed in the future. Four to five weeks later, Chirico again telephoned respondent's office, at which time the secretary told Chirico that the complaint still had not been filed.

In late February or early March 1990, Chirico retained another attorney, Marie Lihotz, Esq., to represent him in the divorce matter. Chirico sent a letter to respondent informing him of this fact. He also requested that his file be sent to his new attorney and that the $500 retainer be refunded.[7] Respondent never provided the file or refunded the retainer.

The Driscoll Matter (District Docket No. IV-90-77E)

In June 1989, Paul G. Driscoll retained respondent to represent him in connection with the estate of Driscoll's father, who had died intestate.[8] Among the services respondent was to provide was the changing and filing of a deed. Driscoll spoke with respondent by telephone, at which time respondent apparently advised Driscoll about the steps to take with regard to the estate. Respondent indicated that he could pursue these steps for Driscoll or Driscoll could do it himself to save money. In September 1989, after obtaining the necessary documents, Driscoll met with

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[7]Chirico testified that he believed that his second attorney had also written to respondent requesting the file, but he was uncertain as to that fact.

[8]Driscoll, also a post office employee, was referred to respondent through a friend.

respondent at his office. A second meeting between respondent and Driscoll was set up for approximately December 1989. Respondent did not attend the meeting, did not telephone Driscoll about the meeting, and did not return Driscoll's telephone calls. A similar incident occurred in January 1990, when respondent failed to appear for a meeting with Driscoll and failed to return Driscoll's subsequent telephone calls. In June 1990, after becoming frustrated with the situation, Driscoll had a friend who worked at the same post office branch as respondent ask respondent to telephone him. During that conversation, respondent told Driscoll that he was going through a divorce and that he believed that someone had broken into his office and stolen client files, including Driscoll's. Shortly thereafter, when the file was located, respondent and Driscoll arranged to meet at Driscoll's office. Just before that meeting was to take place, respondent's secretary telephoned Driscoll and indicated that respondent could not come to the meeting. The secretary advised that respondent would telephone Driscoll to reschedule the meeting. Respondent did not do so. As of the date of the ethics hearing, respondent had not performed any of the requested services for Driscoll or returned any of his documents.

The Monroe Matter (District Docket No. IV-90-82E)

In March 1989, Doris D. Monroe retained respondent to represent her in connection with an automobile accident that had occurred several days earlier. Respondent had previously

represented Monroe in a divorce matter, in or about July 1988.[9] Also, Monroe's apartment was in the same building as respondent's office.

Monroe signed a contingent fee agreement at her initial meeting with respondent. Thereafter, respondent set up appointments with doctors on Monroe's behalf. Monroe provided respondent with the insurance documents necessary for payment of her medical bills. Respondent, however, apparently never filed the forms because at least some of the bills have not yet been paid. Monroe testified that she would occasionally meet respondent on weekends when he was doing construction work on the property where his office and her apartment were located. Although they would discuss her case, respondent never revealed his inaction in the matter.

Monroe testified that, after she provided the insurance documents to respondent, she made over fifty telephone calls to him, leaving messages on his answering machine.[10] Her telephone calls were never returned. Approximately one year after retaining respondent, Monroe sought the assistance of Howard Batt, Esq. in obtaining her records. Respondent rents office space from Batt. At Batt's suggestion, she wrote a letter to respondent requesting her file, but received no response. She further testified that

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[9]Monroe was satisfied with respondent's representation in the divorce proceeding.

[10]Monroe testified that she telephoned respondent both during the week as well as on weekends. Although she usually placed the calls at night, she did try contacting him during business hours as well, but never reached him.

Batt asked respondent for her records and that, although respondent promised that he would provide the records to Batt, he never did so. At Batt's suggestion, Monroe contacted the ethics committee. As of the date of the ethics hearing, respondent still had not returned Monroe's file. The statute of limitations on her claim has expired.

The Brown Matter (District Docket No. IV-90-81E)

In May 1988, Mabel Brown was injured in a fall in a meat market. She signed a contingent fee agreement with respondent one or two weeks after the accident.[11] During their initial meeting, respondent told Brown that her claim was worth between $3,000 and $3,500. Within the following two months, Brown met with respondent on two other occasions. Brown testified that, after those meetings, respondent left a few messages on her answering machine. Thereafter, Brown attempted to contact respondent approximately fifteen times, leaving messages on his answering machine and speaking with his secretary. At one point, respondent's secretary informed Brown that respondent was having marital difficulties and that he would contact Brown as soon as he could. Brown had no contact with respondent after their third meeting. Brown testified that, although Batt attempted to secure her file from respondent, as he was doing in the Monroe matter, he was unable to obtain it.

[11]Brown's daughter is Doris Monroe, who introduced Brown to respondent.

* * *

In each of the above matters, the committee found respondent guilty of gross neglect, in violation of RPC 1.1(a), lack of diligence, in violation of RPC 1.3, and failure to communicate with a client, in violation of RPC 1.4(a). The committee also found that these five matters, taken in concert, reflected a pattern of neglect, in violation of RPC 1.1(b).

The committee further found that respondent had violated R.1:20-(3)(f) and RPC 8.1, in that he failed to cooperate with lawful demands for information from the ethics committee.[12] Although respondent was not charged therewith in the complaint, the committee found that, in the Atras, Driscoll and Monroe matters, respondent had violated RPC 1.16(a)(3) and RPC 1.16(d), in that he failed to withdraw from representation after being discharged and failed to return his clients' property to them.[13]

Also, with regard to the Chirico matter, the committee found violations of RPC 8.4(c), in that respondent misrepresented to Chirico that he had filed a complaint on his behalf, and a violation of RPC 1.5, in that respondent charged Chirico an unreasonable fee.

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[12]In the hearing panel report, the violation of RPC 8.1 in the Atras matter is mistakenly referred to as a violation of RPC 1.1.

[13]The panel report refers to RPC 1.16(d) as RPC 1.16(b)(6)(d).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board agrees with the findings of the committee that respondent is guilty of unethical conduct. The Board, however, does not agree with the committee's findings of a violation of RPC 1.16(a)(3) and RPC 1.16(d) in the Driscoll matter. The Board does not find clear and convincing evidence in the record that respondent was informed that he had been discharged. Driscoll did not testify that he communicated to respondent his desire to discharge respondent and, accordingly, the Board cannot find a violation in this regard.

With respect to the Chirico matter, the Board notes that RPC 1.16(d) refers not only to the failure to return documents, but also to the failure to return unearned fees. Therefore, the Board finds an additional violation of RPC 1.16(d) in the Chirico matter.

When retained, respondent owed his clients a duty to pursue their interests diligently. See In re Smith, 101 N.J. 568, 571 (1986); In re Schwartz, 99 N.J. 510, 518 (1985); In re Goldstaub, 90 N.J. 1, 5 (1982). Clearly, in each of the five matters supra, respondent failed to represent his clients in a responsible fashion, evidencing a pattern of neglect of client matters. Respondent also neglected to communicate with his clients regarding the status of their cases. An attorney's failure to communicate with his clients diminishes the confidence the public should have in members of the bar. In re Stein, 97 N.J. 550, 563 (1984).

In addition, respondent failed to withdraw from representation after being discharged, failed to return client property and an unearned fee and charged an unreasonable fee. These violations were compounded by respondent's misrepresentation to his client in the Chirico matter that steps had been taken on his behalf. Given these numerous violations of the disciplinary rules, the only remaining question is the appropriate quantum of discipline.

In In re Getchius, 88 N.J. 269 (1982), the attorney was found guilty of neglect, failure to communicate, failure to act competently, misrepresentation of the status of cases and failure to carry out contracts of employment in six matters. The Court held that a suspension of two years was the appropriate measure of discipline. The Court noted that "[t]he picture presented is not that of an isolated instance of aberrant behavior unlikely to be repeated. Respondent's conduct over a period of years has exhibited a 'pattern of negligence or neglect in his handling of legal matters.'" In re Getchius, supra, at 276, citing In re Fusciello, 81 N.J. 307 310 (1979).

In the matter currently before the Board, respondent's misconduct, like that of the attorney in Getchius, was not an isolated incident. Rather, it constituted a prolonged pattern of misconduct.

In addition, his contumacious attitude toward the disciplinary system is alarming. Respondent violated R. 1:20-(3)(f) and RPC 8.1, when he failed to file an answer to the

complaint and failed to appear before the ethics committee or even to contact the committee regarding his non-appearance. He also failed to appear before, or communicate with, the Board. Further, in a previous matter respondent has displayed his callous attitude toward the disciplinary system. As noted above, he remains under suspension for failing to pay a Court-imposed sanction stemming from a fee arbitration matter.

With regard to any possible mitigation in this matter, testimony before the ethics committee revealed that respondent advanced alleged marital difficulties as an excuse for his derelictions. However, respondent has offered no testimony or evidence of any kind on this score. The Board, therefore, is unable to consider his alleged personal troubles in mitigation of his reprehensible misconduct.

Upon consideration of the relevant facts, the Board recommends that respondent be suspended from the practice of law for a period of two years. The Board also recommends that respondent take the Skills and Methods core courses offered by the Institute for Continuing Legal Education and that, prior to reinstatement, he provide proof that he has satisfactorily completed those courses. In addition, the Board recommends that respondent be required to take and pass the Multistate Professional Responsibility Examination. Moreover, the Board recommends that, prior to reinstatement, respondent be examined by a psychiatrist, approved by the Office of Attorney Ethics, for the purpose of determining

his fitness to practice law. Lastly, the Board recommends that, upon reinstatement, respondent practice under the supervision of a proctor for two years.

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

Dated: 12/9/1991

By: Raymond R. Trombadore
Chair
Disciplinary Review Board