Book

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-293

IN THE MATTER OF
ROY E. MAHONEY,
AN ATTORNEY AT LAW

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 20, 1991

Decided: January 8, 1992

Paul F. Gilligan, Jr. appeared on behalf of the District IV Ethics Committee.

Respondent did not appear for oral argument.[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 recommendation for public discipline filed by the District IV Ethics Committee ("DEC").

Respondent was admitted to the practice of law in 1973. As of the date of his temporary suspension on March 26, 1991, he maintained a law office in Woodbury Heights, Gloucester County. His temporary suspension stemmed from his failure to comply with a Supreme Court order directing him to file with the Office of Attorney Ethics an annual certified audit report on his trust

[1] Respondent was served with notice of the Board hearing by regular and certified mail. Although the latter was returned as "unclaimed," the regular mail was not.

account records.[2]

Respondent has a prior history of serious ethics offenses. In 1978, he was suspended for three years for (1) the pre-Wilson misappropriation of $1,000 in trust funds (although respondent ultimately turned over the monies to his clients, his bank records showed that, during the period that he was supposed to be holding the $1,000 sum in escrow, the balance had dipped below $100); (2) the pre-Wilson misappropriation of $6,800 in trust funds (respondent retained the monies to pay off an existing mortgage on real property; fourteen months later, the mortgage was still open of record. Bank records revealed that, prior to the satisfaction of the mortgage, the balance had fallen to $134.66); and (3) failure to communicate with his clients and to properly represent them in a real estate transaction; the clients were ultimately forced to appear pro se at the closing of title.

Also, respondent displayed a cavalier attitude toward the ethics authorities in the within proceedings. He did not reply to the DEC investigator's requests, in each of the within matters, for a written response to the allegations contained in the grievances. He did not file an answer to the complaint. He did not appear at the DEC hearing. The day before the hearing, the presenter received a letter from respondent, dated April 30, 1991, notifying

---

[2] Following his temporary suspension, respondent filed a notice of claim for damages with the Office of the Attorney General, seeking redress from the Court's action in causing the "interruption and destruction of his business, loss of income, destruction of his reputation both with his clients and creditors, and in the community. . . . emotional distress and harm, inability to sleep, recurring stomach and digestive tract ailments. . . ."

the presenter that he would not be appearing for testimony. Respondent's illogical explanation was that the OAE had served him with a subpoena duces tecum; that the subpoena cautioned him not to breach the confidentiality of the underlying investigation; and that, accordingly, he had "to demurr [sic] with regard to your proposed hearing on May 2, 1991. Obviously, the Office of Attorney Ethics, the New Jersey Lawyers Fund for Client Protection, and to some extent, the Supreme Court of New Jersey, operate under their own set of rules to which only they are privy. Therefore, I do not take the risk of being found in contempt of the Supreme Court of New Jersey for participating in my defense of these matters at this time." (original emphasis). Exhibit C-1.

At the DEC hearing, the presenter informed the panel that, the night before the hearing, he had contacted the OAE attorney who had issued the subpoena. At that time, the OAE attorney explained to the presenter that the subpoena "didn't interfere with [respondent's] ability to contest the charges that are against him here today." The OAE attorney then telephoned respondent to inform him of that fact, leaving a message on his answering machine. Respondent, nevertheless, did not appear at the May 2, 1991 hearing. On May 9, 1991, respondent wrote to the hearing panel chair, stating that "[i]n order to fully appreciate the matters presented against me, I would require knowledge of the occurrences at this hearing which, in my opinion, I was unfairly prevented from participating in." See attachment to Hearing Panel Report. In response, the panel chair advised respondent that he had not been

prevented in any way from appearing at the hearing, that he was free to order a transcript of the proceedings and that he would make available for respondent's examination, for a period of three weeks from the hearing date, all documents placed in evidence at the hearing. Respondent, nevertheless, failed to avail himself of that opportunity.

* * *

The facts of these matters are as follows:

THE FLENARD MATTER

Marion S. Flenard retained respondent in May 1988 to obtain an expungement of her son's criminal conviction for possession of one amphetamine pill. At that time, Flenard paid respondent a $300 retainer. She also asked respondent to send her copies of all pleadings or correspondence concerning the matter.

Thereafter, Flenard attempted to contact respondent more than ten times, without success. She telephoned his office, only to reach his secretary or an answering machine. She left numerous messages asking respondent to apprise her of the status of the matter, to no avail. On those occasions when Flenard was able to reach respondent's secretary, she was informed that her son's case was proceeding apace. This was not true. Respondent never initiated the expungement proceeding. Finally, "in desperation," Flenard contacted the DEC.

At the conclusion of the DEC hearing, the panel found that respondent had (1) grossly neglected the handling of the matter, in violation of RPC 1.1(a); (2) failed to act with due diligence, in

violation of RPC 1.3; (3) failed to keep his client informed about the status of the matter, in violation of RPC 1.4(a); (4) failed to expedite litigation, in violation of RPC 3.2; (5) acted with dishonesty by taking his client's money for legal services that he never performed, in violation of 8.4(c); (6) failed to cooperate with the DEC, in violation of 8.1(b); and (7) displayed a pattern of neglect, in violation of RPC 1.1(b).

THE K & L MATTER

John O. Benson is an accountant who had Elite Dining Services (Elite) as his client. When Elite expressed its desire to form a new corporation by the name of K & L, its principals approached Benson, who recommended respondent to Elite. Following a meeting between Elite and respondent, at which time the latter was retained, Elite instructed Benson to pay respondent a $650 fee for the incorporation. In Benson's words, he was the "go-between fellow" in the matter.

Therafter, Benson attempted to obtain a federal and state tax identification number, unsuccessfully. According to Benson, he telephoned respondent "every morning for a month and every noon for a month and every afternoon for a month." T23.[3] He only reached respondent's answering machine. Only once did respondent return his telephone call, at which time respondent informed him that "everything was working."

Eager to obtain information about the status of the matter and

[3] T denotes the transcript of the DEC hearing on May 2, 1991.

frustrated with respondent's unavailability, Benson even went to respondent's residence. According to Benson, on several occasions, no one answered the door. Then, the last time Benson stopped by respondent's house, Benson discovered that "things were being packed up like [respondent] was being moved but [respondent] wasn't there. No one was there. I never found anyone there." T24.

Thereafter, Benson requested that the Secretary of State conduct a name search to determine whether K & L had been incorporated. It had not. Respondent never returned the unearned $650 fee to his client.

The DEC found that respondent had violated (1) RPC 1.3, by his acceptance of $650 fee without "proof of any work being done to incorporate the business," (2) RPC 1.4(a), by his failure to communicate with his client; (3) RPC 8.1(b), by failing to cooperate with the DEC investigator and failing to file an answer to the formal complaint; and (4) RPC 1.1(b), by demonstrating a pattern of neglect. The DEC also concluded that, by accepting "a legal fee without performing the services as agreed," respondent had displayed dishonest and fraudulent conduct, in violation of RPC 8.4(c).

THE HIBBS MATTER

In March 1988, Thomas C. Hibbs retained respondent to file a declaratory action against Hibbs' insurance company seeking coverage for property loss incurred in a serious accident in which Hibbs' car had been totalled. According to Hibbs, immediately

following the accident, he contacted the insurance company, at which time he was informed that his insurance premium payment had not been received. Hibbs, however, had a cancelled check cashed by the company two weeks before the accident. Hibbs turned over that check to respondent. Hibbs also paid respondent $150 and $260 in March and June 1988, respectively. At their initial meeting, respondent assured Hibbs that he had handled numerous similar matters and that Hibbs' was a "cut-and-dry" case.

After Hibbs gave respondent the cancelled check, he was never able to meet or discuss the case with respondent again. Hibbs testified that he telephoned respondent "close to one hundred times," reaching only an answering machine. On one occasion, respondent's secretary answered the telephone. She informed Hibbs that respondent was in Florida working on another matter and that, upon his return, he would take care of Hibbs' case. Hibbs, however, never heard from respondent again. Hibbs even went to respondent's home office, where he stood outside for six hours, waiting for respondent to go in or come out. Respondent never came out of the house, although his car was parked outside.

Hibbs then wrote respondent two letters, complaining about his failure to return Hibbs' telephone calls and demanding the return of the cancelled check for the premium payment, so that he could retain another lawyer. That lawyer also wrote to respondent asking for the return of Hibbs' file. Respondent, however, ignored both Hibbs' and the lawyer's requests. Respondent never returned the cancelled check to Hibbs.

Ultimately -- and fortuitously -- the insurance company for the other driver involved in the accident assumed responsibility for the $9,000 loss sustained by Hibbs.

The DEC found that respondent had (1) failed to act with diligence, in violation of RPC 1.3; (2) failed to expedite litigation, in violation of RPC 3.2; (3) failed to communicate with his client, in violation of RPC 1.4(a); (4) failed to return the file to Hibbs or his new counsel, in violation of RPC 1.15(a) and (b); (5) failed to cooperate with the DEC, in violation of RPC 8.1(b); and (6) exhibited a pattern of neglect, in violation of RPC 1.1(b). The DEC did not find that respondent had grossly neglected the handling of the matter, in violation of RPC 1.1(a).

THE DOYLE MATTER

In late November 1985, Joseph Doyle retained respondent to start proceedings for Doyle's adoption of Kimberly Myers, his wife's nine-year old daughter from a prior marriage. Kimberly had been living with her mother and Doyle since she was two years of age.

At their initial meeting, Doyle gave respondent a $200 "deposit." Respondent assured Doyle that he had done "hundreds" of adoptions and that the entire process should take three to four weeks. When Doyle asked respondent whether the adoption could be finalized by Christmastime, respondent replied that he did not foresee any difficulties. Respondent then assured Doyle that, should a problem develop, he would obtain a temporary document that

Doyle could give to Kimberly as a Christmas present.

Two or three weeks later, Doyle telephoned respondent to ask him about the status of the adoption. Respondent informed Doyle that the case was proceeding apace and that he needed an additional $200 payment. On December 4, Doyle gave respondent a $200 check. On that day, respondent reassured Doyle that the adoption proceedings had been filed and that they should be completed by Christmas. Respondent added that he was waiting for a hearing date.

Thereafter, Doyle telephoned respondent once a week to determine the progress of the adoption. On one occasion, respondent notified Doyle that he needed $65 to publish newspaper notices of the adoption to respondent's natural father. Respondent also cautioned Doyle that, in light of this new development, the adoption might not go through before Christmas. Once again, however, respondent promised Doyle that he would have temporary adoption papers. In Doyle's own words, respondent told him not to "worry about it, I'll take care of it, I'll give you a paper that will be just as which you have [sic]." T47-48.

On Christmas Day, respondent hand-delivered to Doyle a document purporting to be "temporary" adoption papers. Exhibit C-10. At the DEC hearing, Doyle explained his understanding of the document's legal effect:

Q. What did he tell you that that was?

A. Just something to, that I could give the little girl for a Christmas present and the other ones should be along shortly. He would call me just as soon as we had a court date.

Q. Did you give that document to Kimberly?

A. Yes, I did.

Q. What did you tell her, explain to her?

A. I told her that she was being adopted and that this was just a temporary paper, we still had to wait for the Judge but as far as everybody was concerned this was her legal adoption. Her name was now Doyle. So, and she went back to school after Christmas. She told the teachers that her name was Doyle. She was adopted and everything was fine.
[T48-49]

By the end of the school year, when Kimberly's school asked Doyle for the final judgment of adoption, Doyle again telephoned respondent. Thereafter, respondent gave Doyle a series of hearing dates that, for some inexplicable reason, were invariably postponed. This web of deception went on until the end of the following school year, June 1987. Finally, indignant about the extreme delay, Doyle telephoned the court to ascertain the reason therefor. It was then, for the first time, that Doyle discovered that respondent had not filed any adoption papers. When Doyle confronted respondent with his lies and threatened to take action against him, respondent replied, "you can do what you want. I'm doing the best I can." Doyle never heard from respondent again. Doyle's numerous attempts to contact respondent by telephone were unavailing. According to Doyle, he "sat in front of [respondent's] house, 9 o'clock at night, 11 o'clock at night. He's in there. The lights are on. There are two cars in the drive[way] but he would not answer the door, would not return phone calls." T51-52.

Eventually, Doyle asked an attorney who handled a real estate

transaction for him to write a letter to respondent about the adoption matter. One month and one-half later, when respondent failed to reply to the letter, that attorney advised Doyle to contact the DEC. According to Doyle, "[e]ven then going [sic] to his house and phone calls repeatedly and I'm in the communications business. I can call him everyday 50 times it would cost me nothing. I would get answering machines. Never even a live human being." T53.

Subsequently, Doyle discovered that respondent's house, where he maintained his office, had been placed for sale. As Doyle testified, "[l]ast time I went there they had everything packed up in his house and his desk and the secretary's desk was [sic] missing." T53.

Ultimately, in 1990, Doyle retained another attorney, who was able to begin and finalize the adoption proceedings in five weeks, for a $285 fee. Respondent never returned to Doyle the $400 unearned fee.

The DEC found that respondent had violated (1) RPC 1.1(a), by taking a $400 fee without rendering any services; (2) RPC 1.4(a), by failing to communicate with Doyle; and (3) RPC 1.1(b), by exhibiting a pattern of neglect. Although the DEC found that respondent had misrepresented the status of the matter to Doyle and that the "temporary" adoption document was of "no legal effect and fraudulent," the hearing panel report did not cite a violation of RPC 8.4(c).

THE TURNER MATTER

In September 1985, Donna Turner retained respondent to represent her in connection with an automobile accident from which she sustained physical injuries. Turner, a former insurance agent, had handled some of respondent's insurance affairs in the past. At their initial meeting, respondent told Turner that, because of their friendship, he would charge her only a fifteen percent contingency fee. Respondent also promised to send Turner a fee agreement embodying their understanding.

For a period of four years following their meeting, Turner made "hundreds and hundreds" of telephone calls to respondent, only to reach his answering machine. Occasionally, respondent's secretary would answer Turner's calls. The secretary, however, was unaware of the status of Turner's case. On the few occasions that Turner was able to reach respondent, he informed her that her case was progressing satisfactorily.

In March 1989, Turner had a luncheon meeting with respondent and his secretary. At that meeting, respondent explained to Turner that the insurance company was ready to pay her $15,000 in settlement of her claim. Respondent recommended that she accept the offer, but Turner refused to sign a release. When Turner inquired about the possibility of filing a claim based on the underinsured motorist clause in her policy, respondent replied that she had no valid claim thereunder. He assured Turner, however, that he would look into the matter and advise her accordingly. Thereafter, Turner did not hear from respondent again. She then

hired new counsel. Turner's and her attorney's subsequent letters to respondent asking for the return of her file produced no response. A subpoena issued by her attorney demanding the production of the file also went unanswered. To date, respondent has not turned over Turner's file to her or her new attorney.

Through the latter's efforts, Turner was able to collect $15,000 from the other driver's insurance company and $20,000 under her underinsured motorist clause.

The DEC found that respondent had violated (1) RPC 1.3, by failing to act with reasonable diligence and promptness in representing Turner; (2) RPC 1.4(a), by failing to comply with her requests for information about the status of her matter; (3) RPC 3.2, by failing to expedite litigation; (4) 1.15(a) and (b), by failing to return her file; (5) RPC 1.1(b), by showing a pattern of neglect; and (6) RPC 8.1(b), by failing to cooperate with the ethics investigation. The DEC did not find a violation of RPC 1.1(a) (gross neglect).

CONCLUSION AND RECOMMENDATION

Upon a *de novo* review of the full record, the Board is satisfied that the DEC's conclusions that respondent's conduct was unethical is supported by clear and convincing evidence. The Board also finds that, in the *Flenard*, *K & L*, and *Doyle* matters, respondent violated RPC 8.4(c) by misrepresenting the status of each case and, further, in the *Doyle* matter, submitting to his client a phoney judgment of adoption. In addition, the Board

concludes that respondent's failure to return Turner's file was, more properly, a violation of RPC 1.16(d) and not of RPC 1.15(a) and (b), as found by the DEC.

Respondent's ethics offenses in the above matters were serious. In all five matters, he exhibited a pervasive pattern of misconduct, which culminated with the abandonment of his clients. In the aggregate, his conduct reveals an insensitivity to basic ethics principles that is deserving of severe discipline. His fabrication of a judgment of adoption alone was nothing short of outrageous. Coupled with his obstinate disregard of his responsibility toward the disciplinary system and his prior three-year suspension for misappropriation of trust funds, the within offenses merit a recommendation for disbarment.

The preparation of false documents is one of the most serious offenses committed by an attorney. The discipline meted out by the Court in such matters has been severe. In In re Yaccavino, 100 N.J. 50 (1985), the Court suspended for three years an attorney who, like respondent, prepared and submitted to his client two fictitious orders for adoption. The only distinction between this case and Yaccavino is that, there, the attorney superimposed the judge's signature on the orders. Here, the false document bears no signature. It is unquestionable, however, that, when respondent presented to his client the "temporary" adoption paper, his intention was to deceive his client that the document had full force and effect.

Moreover, respondent failed to cooperate with the ethics

system by ignoring the committee investigator's requests for a written reply on each of the five grievances, by not filing an answer to the formal complaint and by not appearing at both the DEC and the Board hearings. The Board gave no consideration to respondent's attempted explanation contained in his letter to the DEC, received the day before the hearing. That explanation at the eleventh-hour was not only untimely, but also irrational and contrived. Respondent's attitude toward the disciplinary authorities was both contemptuous and defiant. Disrespect to those authorities constitutes disrespect to the Supreme Court, inasmuch as they are an arm of the Court. In re Grinchis, 75 N.J. 495, 496 (1978).

Respondent should have been particularly attentive to full compliance with the disciplinary rules, in light of his grievous ethics violations in 1978. Those violations were so serious that, had they occurred a mere one year later, respondent would have been automatically disbarred. See In re Wilson, 81 N.J. 451 (1979). The many violations now before the Board establish convincingly that respondent will not improve his conduct. The Board, therefore, unanimously recommends that respondent be disbarred.

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

Dated: 1/8/1992 By: [signature]
Raymond R. Trombadore
Chair
Disciplinary Review Board