

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 91-150

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IN THE MATTER OF  
MARK A. MINTZ,  
AN ATTORNEY AT LAW

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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: July 17, 1991

Decided: October 3, 1991

James C. Orr appeared on behalf of the District VA Ethics Committee.

Respondent did not appear.<sup>1</sup>

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter was before the Board based on a recommendation for public discipline filed by the District V-A Ethics Committee ("DEC"). The formal complaint charged respondent with unethical conduct in seven matters through lack of diligence, failure to communicate with clients, gross neglect, pattern of neglect and failure to maintain a bona fide office.

Respondent was admitted to the New Jersey bar in 1980. The 1991 New Jersey Lawyer's Diary and Manual lists his address as 807 Washington Street, Hoboken, New Jersey, supposedly his home address.

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<sup>1</sup> Respondent was served with notice of the Board hearing by publication in the The Record and the New Jersey Law Journal.

By letters dated May 4, July 13 and August 16, 1989, the DEC investigator wrote to respondent's home and office addresses, enclosing copies of one of the grievances (Roberts) filed against respondent and requesting a prompt reply. Although respondent signed a return receipt acknowledging delivery of the August 16, 1989 letter, he ignored all three. On July 18, 1989, the investigator sent respondent a copy of another grievance (Mincey) filed against him, requesting a written response. This letter, too, went unanswered. In similar fashion, respondent ignored four subsequent letters from the investigator. In them, the investigator enclosed copies of Davies, Knott, Drew, and Zola grievances and urging respondent to furnish a prompt reply.

Moreover, on October 4, 1989, the investigator successfully caused respondent to be served personally with three subpoenas, commanding him to appear at the investigator's office on October 9, 1989, and to produce all documents and/or files concerning grievants Knott, Mincey and Roberts. Respondent did not comply with the subpoenas.

On January 2, 1990, the DEC filed a formal complaint against respondent. On January 24, 1990, he was served therewith by certified mail, return receipt requested, addressed to his office, then listed as 24 Commerce Street, Newark, New Jersey. The mail was returned as unclaimed. On February 15, 1990, a copy of the formal complaint was forwarded to respondent's office by regular mail. It was not returned. On August 2, 1990, a copy of the amended complaint was mailed to respondent's office by regular and

certified mail, return receipt requested. The certified mail was returned as unclaimed; the regular mail was not returned. Respondent did not file an answer to either the complaint or the amended complaint.

On October 4, 1990, respondent was served with notice of the DEC hearing by publication in the New Jersey Law Journal. On the date of the hearing, October 17, 1990, the presenter notified the panel that he had spoken by telephone with respondent on that morning and that respondent had announced his intention not to appear at the hearing. According to the presenter,

[p]rior to the commencement of this proceeding I engaged in a telephone conversation with Mark Mintz who is at the office of Jeffrey Press, new counsel for one of the complaining parties, Louise Davies. This was the first conversation I've ever had with Mr. Mintz.

During the conversation he indicated first that he had received notices from me, some of which he read today for the first time.

Secondly, he was aware of the proceeding and had elected not to appear.

Thirdly, he has indicated to me that he will present himself at my office tomorrow, October 18, at 3 p.m. to surrender the files of the seven complaining parties for use of the Ethics Committee and the litigants.

I've agreed to make an application on his behalf to postpone this proceeding. And having made that application on the record, the panel has advised that we should take the testimony of the three witnesses who have appeared and preserve that testimony in the event that there are further proceedings.

Mr. Mintz had indicated a willingness to discuss a resolution of this problem on a voluntary basis; and,

nonetheless, I am prepared to proceed at the panel's request.

[T6-7]<sup>2</sup>

The panel chair indicated that, at the conclusion of the grievants' testimony, a decision would be reached but held in abeyance pending " . . . what happens tomorrow whether Mr. Mintz shows up and whether this matter is resolved in some other fashion" (T8). Respondent never appeared at the presenter's office.

#### THE ROBERTS MATTER

In 1986, Paul Roberts retained respondent's father, also an attorney, to represent him in a lawsuit against Roberts' landlord for failure to provide adequate security in the building where Roberts resided. Roberts' claim had arisen from severe physical injuries sustained during a break-in of his apartment, at which time he had been beaten up by three burglars.

Following respondent's father's death, respondent took over the handling of Roberts' case. According to Roberts, respondent hired an investigator, who gave respondent a detailed report about the circumstances of the incident and the conditions of the building. Thereafter, respondent took no action to further the prosecution of the case. He also failed to comply with Roberts' numerous attempts to obtain information about the status of his matter. For a period of one year, Roberts telephoned respondent's office, only to reach an answering machine, on which he left many

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<sup>2</sup> T denotes the transcript of the DEC hearing of October 17, 1990.

messages that respondent ignored. Roberts also wrote to respondent's office and home addresses, went to respondent's office numerous times, slipped letters to respondent under the office door, and made inquiries of respondent's whereabouts to other employees in respondent's office building, all to no avail. Roberts' letter to respondent requesting the return of his file also went unanswered. According to Roberts, the last communication he had with respondent occurred in or about October 1989. He also testified that his case "had been restored"<sup>3</sup> by newly retained counsel.

#### THE ZAYZAY MATTER

Dominic Zayzay retained respondent in 1987 to represent him in connection with injuries sustained in an automobile accident. According to Zayzay, he trusted that respondent would represent his interests in a diligent and responsible fashion. Nevertheless, almost one year after his accident, when he received a letter from the insurance company asking for the name of his lawyer, he discovered that respondent had done nothing to advance his claim. Ultimately, Zayzay's doctors stopped treating him. Although Zayzay informed respondent of this fact and respondent promised quick action to ease Zayzay's predicament, respondent did nothing. Furthermore, Zayzay's efforts to contact respondent were unavailing. On numerous occasions, he telephoned respondent's

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<sup>3</sup> The record is silent as to whether respondent ever filed suit or whether the suit was dismissed for any reason.

office, reaching only an answering machine. The messages left thereon were ignored. Zayzay also visited respondent's office, placed documents under respondent's office door and even telephoned respondent at his mother's house. On one such occasion, respondent's mother counselled Zayzay to "get somebody else to take your case, forget about him" (T43). Notwithstanding this advice, Zayzay still tried to reach respondent a few more times, unsuccessfully. Zayzay then retained another lawyer. The lawyer told Zayzay that respondent had filed suit in Zayzay's behalf just before the expiration of the statute of limitations.

#### THE DAVIES MATTER

In August 1987, Louise Davies sustained a fall at a supermarket when she was in her seventh month of pregnancy. She was hospitalized for three days.

According to Davies, respondent went to her house after she left the hospital:

- A. . . .[s]o he knocked at the door, I didn't know who was that, and he called his name. So I was lying on the living room chair in my apartment in pain. So I told him to hold on because I was trying to get out and I crawled on my knee until I got to the door, and I got to the door I was on my knee. I opened the door and he helped me up and put me back in the living room and introduced himself to me.

He said, 'Well, your friend told me about your accident, Louise.' He said, 'I came to handle your case.' I told him -- so I told him 'I already have another lawyer.' He said, 'I'll plea your case for you. I came over here and I know your condition you're in.' So he says, 'Call the lawyer and tell him not to handle

the case, I would do it.'<sup>4</sup>

Well, I have never be [sic] in an accident before, I didn't know how to proceed. So I said, 'Okay.' He came over to the house and I couldn't get out of my house so I called the man and said, 'Okay.'

Q. You called the other lawyer and told them that you wanted Mr. Mintz to handle your case?

A. So the man took the phone and talked to the same lawyer.

Q. Did you do that while Mr. Mintz was in your apartment?

A. Yes.

Then Mr. Mintz told me, 'I'm going to handle your case and I'm going to write an agreement for you to sign.' I said, 'Okay.' He left.

He went back and brought this paper to my house.

[T51-53]

Beginning in January 1989, Davies was unable to contact respondent. From January through November 1989, Davies attempted to reach respondent approximately twenty times. She telephoned his office, leaving messages on the answering machine; she telephoned his home and his mother's home; she appeared at his office, and even slipped a note under the office door asking for the return of her file. Her attempts to discuss her case with respondent produced no response from him.

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<sup>4</sup> The complaint did not charge respondent with soliciting Davies' case. Hence, the DEC did not pass upon the propriety of respondent's conduct in this regard.

On one occasion, in the winter of 1989, Davies was able to talk to respondent when she telephoned him at his mother's house. Respondent told her to meet him at his office "on Friday." As Davis recounted,

A. I walked to his office with my little daughter, sat there all day outside . . . in the hallway . . .

Q. Was the door to his office locked?

A. The door was always locked.

Q. And you sat in the hallway on the floor?

A. On the floor.

Q. Waiting for him?

A. Right on the floor with my daughter waiting for him. I waited. He didn't come. I left at 5:00. Again, I went back to his office. I didn't see him. I went to the next door, the other offices next door, and I asked them and they told me he was just there five minutes. He just come in [sic] still five minutes. I said -- I went and called him, when I called him I was lucky I got him.

Q. You called him where, at home?

A. Yes.

Q. And got him?

A. Yes. What he did was he changed his voice, so I said 'Mr. Mark, I know that's you, why are you treating me like this?' He said, 'I didn't know it was you.' He said, 'Go to my office.' I go. He said, 'I will see everything from the A&P supermarket and we will go to court.' And I said, 'Okay.' I went to his office, I sat there all day.

Q. Yes, in the hallway?

A. No, I got inside.

Q. Was it unlocked?



A. He was there. He said he didn't do anything, so he looked at the time he said, 'I'm hungry.' My daughter -- he said I'll take you for a dinner and I was angry and he took me and --

Q. When was this?

A. This was in '89.

Q. It was around the end of '89, you mean?

A. November the time he told me.

Q. He drove you to Hoboken in his car?

A. And took me to a restaurant to eat.

Q. Did you talk about the case?

A. Yes, we talked about the case.

He said, 'I'm going to hear about your case pretty soon.' He said, 'I think you're going to get about 7,000 or 8,000. I don't know.' So I said, 'You have never been to the case and you're telling me that?' He said, 'I think that's what the supermarket wants to give you.' So he showed me where he was living and everything.

Q. And where was he living?

A. In Hoboken in a basement in the deli basement. So I looked a long time -- what kind of lawyer you show me because a lawyer don't [sic] live in the kind of places that I saw.

So the next day I called in. From that day I never heard from him again. . . .

I called the office they said the phone is disconnected.

Q. And how about his house?

A. I called his house, answering machine.

[T60-63]

Thereafter, Davies retained another attorney.

THE KNOTT MATTER

Willie Knott was the owner/operator of a fish market in Newark, New Jersey. According to Knott, in 1984, the owner of the building where the business was located closed the market and placed all the equipment and stock on the sidewalk. Knott first consulted with and retained respondent's father. After the latter's death, however, respondent took over the handling of the case.

Although Knott gave respondent a two-page list of the business equipment that he sought to recover from the landlord, respondent took no action whatsoever to protect Knott's interests. According to Knott, respondent never filed a complaint in his behalf, notwithstanding respondent's assurance to Knott that he would institute suit. Knott testified that sometime in 1984 he had a meeting with respondent

A. [to] [c]heck on the case so I knew how it was going, but he kept telling me nothing.

From what I understand he never did file the case in courts [sic]. His father didn't and he didn't either.

Q. Did he tell you why?

A. He never told my why.

- Q. When was the last you saw him in his office?
- A. About maybe four years ago, three years ago. About three years ago when he first moved to 24th, and he told me the case -- well, he wanted to know -- I asked him about filing the case and he wanted to know did I want to settle out of court. I said, 'No, I want a judge. I want the whole works.' I wanted a judge to decide what should be done, and that's the last I talked to him about, and I tried to go to his office all the time.

[T78-79]

According to Knott, after their meeting he telephoned respondent's office and left messages on the answering machine, but received no return calls. In 1988 alone, Knott telephoned respondent fifteen to twenty times. He also went to respondent's office five or six times in 1988; only once was the office open. The last time Knott spoke to respondent was three years before the DEC hearing of October 1990. Moreover, despite Knott's request for the return of his file, as of the date of the DEC hearing, respondent still had not turned it over to him. Knott complained that his new attorney had been unable to file suit because

. . . I couldn't get the records from Mr. Mintz, and [the new attorney] said, 'If you could get the file from him I can take the case, if you can't get the file I have nothing to go with.' So I've been trying for the last three years. I can't get in touch with him. I can't see him. I don't know where he is . . . .

[T83]

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At the conclusion of the DEC hearing, the panel found that respondent had not acted diligently in all four matters, had

grossly neglected their handling, had failed to communicate with his clients and had exhibited a pattern of neglect, in violation of RPC 1.3, 1.1(a), 1.4 and 1.1(b), respectively. The panel also found that respondent had failed to cooperate with the ethics authorities, in violation of RPC 8.1(b). The panel report is silent as to a violation of the bona fide office rule, with which respondent was charged in the complaint.

The panel dismissed three other matters -- Zola, Drew, and Mincey -- as a result of the grievants' failure to appear for testimony at the DEC hearing. The panel remarked, however, that each dismissed matter alleged essentially the same conduct with which respondent was charged in the other four matters under review.

#### CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the DEC that respondent was guilty of unethical conduct are fully supported by clear and convincing evidence. In addition, the Board's independent canvass of the record also persuades it that respondent violated R. 1:21(1)(a), by failing to maintain a bona fide office in New Jersey. The record clearly and convincingly establishes that respondent's clients could not reach him at his office either in person or by telephone during normal business hours. Respondent did not attend his office and did not employ a secretary, a receptionist or a "responsible

person" acting on his behalf, within the meaning of the rule. He clearly violated the mandates of the bona fide office rule.

Respondent also displayed a prolonged pattern of misconduct in the matters entrusted to him for legal pursuit. In Roberts, respondent took no action in his client's behalf until just before the running of the statute of limitations. In addition, he failed to keep Roberts apprised of the status of his matter and to respond to his reasonable requests for information. For a period of one year, respondent ignored Roberts' numerous telephone calls and letters, some of which had been placed under the door of respondent's office, which Roberts found closed. Respondent also failed to comply with Roberts' request for the return of his file.

Similarly, in Zayzay, for a period of one year respondent did nothing to advance his client's claim, to the latter's detriment; ultimately, Zayzay's doctors stopped treating him. Zayzay, too, was unsuccessful in contacting respondent through frequent telephone calls and personal visits to respondent's office, which was closed.

In Davies, the record reflects that the client tried to reach respondent twenty times between January and November 1989, to no avail. Although Davies telephoned respondent's home and his mother's home, personally appeared at respondent's office and slipped messages under the door, respondent did not comply with her requests for information on her matter. After one meeting in November 1989, when she was able to discuss her case with respondent, she never heard from him again.

Lastly, in Knott, for three years the client tried to contact respondent, with no success. In 1988 alone, Knott telephoned respondent fifteen to twenty times. He also made many personal visits to respondent's office, which was closed, and was unable to obtain the return of his file, despite his request that respondent do so. As a result of respondent's failure to turn over the file to Knott, his newly retained counsel was precluded from instituting suit in Knott's behalf.

As the foregoing shows, respondent's neglect of his clients' interests was pervasive and indicative of a pattern of serious misconduct. But respondent not only failed to safeguard the interests of his clients; he abandoned them. With the exception of the filing of the complaint in Roberts, there is no evidence that respondent ever undertook any action to advance his clients' claims. Respondent's breach of his clients' trust and his infliction of emotional harm on them are inexcusable. His actions reveal a disturbing lack of concern for the clients' welfare, the likes of which this Board rarely encounters. This is all the more egregious when it is considered that respondent's conduct was wholly unmitigated. There is no explanation whatsoever for his ethics transgressions: illness, personal problems, heavy caseload, inexperience or incompetence. The record is silent.

As to the appropriate measure of discipline, it is unquestionable that respondent's offenses rise to the level compelling a lengthy term of suspension. Indeed, by the abandonment of his clients, respondent's unethical derelictions

transcended those frequently reviewed by this Board, where, due to the burdens of overwork, personal troubles or some other compelling circumstances, an attorney's actions reflect a pattern of neglect of clients' interests. See, e.g., In re Malfitano, 121 N.J. 194 (1990) (one-year suspension for neglecting three matters, misrepresenting to client that motion had been filed, failing to communicate with his clients and failing to cooperate with the ethics system); In re Rosenthal, 118 N.J. 454 (1990) (one-year suspension for neglecting four matters, misrepresenting the status of the matters to clients, failing to return a \$1,500 retainer and failing to cooperate with the disciplinary authorities); In re Hogan, 117 N.J. 672 (1989) (one-year suspension for neglecting five matters and writing trust account checks against uncollected funds).

Respondent's serious misconduct was compounded by his extreme indifference toward the ethics system. In fact, his cavalierism took on the characteristics of contempt. He ignored at least eight letters from the investigator requesting a prompt reply; he did not honor several subpoenas demanding the production of the relevant files; he did not file an answer to the complaint or the amended complaint; he did not appear at the DEC hearing; and he breached his promise to the presenter, made on the morning of the DEC hearing, that he would voluntarily produce the seven files requested on the day following the ethics hearing.

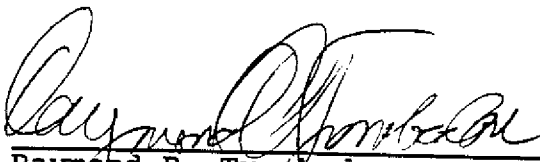
Respondent's disdainful attitude toward the ethics system continued after the conclusion of the DEC proceedings. Although he

confirmed his home address with the presenter on the day of the DEC hearing, the certified mail forwarded to that address by the Office of Board Counsel was returned as unclaimed; that Office's attempts to make personal service on respondent were also unavailing. It, thus, became necessary to notify respondent of the Board hearing by publication. Respondent failed either to appear for oral argument or to waive appearance.

In light of respondent's serious unethical offenses -- of which the most troubling is the abandonment of his clients -- and of his callous disregard toward the disciplinary system, the Board unanimously recommends that he be suspended for a period of two years. The Board further recommends that, upon his reinstatement, respondent be required to 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: 10/3/1991

By:   
Raymond R. Trombadore  
Chair  
Disciplinary Review Board