SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 91-363

IN THE MATTER OF :
WILLIAM L. O'REILLY, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: January 8, 1992

Decided: April 24, 1992

Marguerite M. Schaffer appeared on behalf of the District X Ethics Committee.

Donald S. McCord, Jr. appeared on behalf of respondent.

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 X Ethics Committee (DEC).

Respondent was admitted to the practice of law in New Jersey in 1976. Pursuant to an agreement with the DEC, respondent is engaged in practice with a law firm in Morris Plains, Morris County, under the supervision of other attorneys in the firm. Respondent has been privately reprimanded on two prior occasions, in 1979 and 1985.

The facts of this matter were stipulated as follows:[1]

[1]Paragraphs 1 through 3 of the stipulation have been omitted from this Decision and Recommendation.

4. Respondent is an attorney-at-law licensed to practice in the State of New Jersey, having been admitted to the Bar in 1976. Since his admission to the Bar, Respondent has practiced almost exclusively in the area of personal injury negligence litigation. Respondent's first several years in practice were spent with two firms representing plaintiffs in personal injury negligence matters, namely the law firm now known as Chamlin, Rosen, Cavanaugh and Uliano, located in Long Branch and Julius D. Canter of Jersey City. For the next several years, Respondent was employed by two law firms doing primarily defense work including the office of house counsel for Home Insurance Company. Thereafter, Respondent was associated with O'Donnell, McCord, Leslie and O'Toole of Morristown. While with that firm, Respondent qualified and applied for certification as a civil trial attorney. In approximately September, 1984, Respondent left O'Donnell, McCord, Leslie and O'Toole and joined Einhorn and Harris (now known as Einhorn, Harris, Ascher and Barbarito) in Denville. Respondent then sat for and passed the necessary examination and became a certified civil trial attorney.

5. Upon starting with Einhorn and Harris, Respondent became responsible for the handling of all aspects of the major portion of the firm's personal injury negligence practice; this responsibility continued throughout his years with that firm. Respondent's caseload was large. For his last year or so with Einhorn and Harris, an associate who handled the firm's worker's compensation practice as well as a lesser number of personal injury negligence matters was occasionally made available to him to assist under Respondent's supervision in covering depositions. Respondent had a secretary and occasional access to another attorney's secretary as a backup as well as a secretarial person who functioned essentially as a paralegal during Respondent's last two years with the firm. The firm also hired a young associate in September of 1988 who was in the process of being trained and who also assisted Respondent. In addition, the firm employed an almost full-time private investigator available to Respondent for a wide range of investigative services on matters under his assignment.

6. On numerous occasions Respondent was asked whether his staffing was adequate for his workload or whether he needed more help. It was made known to him that he could obtain more assistance if so desired. At no time did Respondent say to anyone within the firm that his workload was overwhelming, that he could not complete all necessary work, or that a particular problem had occurred.

7. Notwithstanding this support and Respondent's representations that he was able to adequately service his clients, between 1986 and February 1989, Respondent failed to capably handle certain matters assigned to him. He developed a tendency to procrastinate and neglected a certain number of files. As of February of 1989, almost fifty matters entrusted to Respondent's care had been dismissed for various discovery infractions, mainly the failure to serve timely answers to Interrogatories. Motions to restore these matters following the service of answers to Interrogatories were filed and served after Respondent's termination, and almost all dismissals were vacated. Some matters had become time-barred under applicable statutes of limitations. A number of these cases have since been the subject of malpractice actions against Einhorn and Harris and/or its successor in interest. On certain matters, Respondent misrepresented the status of his files to clients.

8. Occasionally, Respondent would receive inquiries from a client or partner with regard to the status of a case which had been dismissed or time-barred. In those instances, Respondent would assure the client or partner that the case was pending and would be coming to trial in the near future. No partner or client was ever made aware of these dismissals until the firm's partners conducted an investigation in February, 1989. Prior to that time, Respondent failed to disclose problems on these cases in the belief that he would get to these files, do the necessary "catch-up work" and rectify the matters.

9. The following five matters were under Respondent's assignment:

(a) Celestine Senkewicz, 1 Glassboro Road, Lake Parsippany, New Jersey 07054. Respondent initiated a PIP suit on behalf of Ms. Senkewicz which was dismissed for failure to answer interrogatories. Respondent represented to Ms. Senkewicz, after her case had been dismissed, that her case was not being reached due to delays in the court system and would come to trial in due course. Also, on a large number of occasions, he scheduled appointments with her and cancelled them at the last minute. On one occasion, Ms. Senkewicz travelled with Respondent to the Morris County Court House. He misrepresented to her that he would be meeting his adversary at the court house regarding settlement of her claim. Later that morning he returned and informed her that no settlement could be reached. In actuality no settlement conference took place. On another occasion he drove Ms. Senkewicz to the court house for a purported

settlement conference but then advised her that his adversary had not appeared. Each of these trips to court were made in October, 1988 after Ms. Senkewicz' case had been dismissed. In this matter Respondent also instructed his client not to pay her medical bills, which bills subsequently went unpaid. He further failed to advise her that she had a duty or obligation to answer interrogatories. Following discovery of Respondent's conduct, a Motion to Restore was denied by the Superior Court, Law Division. This denial was affirmed by the Appellate Division.

(b) Patricia Dawson, 786 Green Pond Road, Rockaway, New Jersey 07866. This client was injured in an automobile accident. Her affirmative claim was settled for $14,500 which was $500 less than the policy limit. Respondent failed to deduct protected fees from Ms. Dawson's settlement proceeds and further failed to inform her that he was submitting protection letters on her behalf. He submitted protection letters to various medical providers well after the settlement proceeds had been paid and failed to process her PIP application. As a result, her medical bills were never paid and the statute of limitations ran.

(c) Carole Ann Campbell, 124 West Munson Avenue, Dover, New Jersey 07801. This client was injured at a health club and spoke to Respondent at an initial client conference. A client intake form was prepared but no file was ever opened. As a result, Respondent never sent demand letters or filed a Complaint on behalf of Ms. Campbell. Notwithstanding the fact that no file was ever opened, he informed Ms. Campbell that the case was ongoing....[2] A malpractice action has since been filed by this client.

(d) William Sundberg, 9 Gates Avenue, Warren Township, New Jersey 07060 (Respondent also represented a Mr. Shaw in this matter). Respondent filed a complaint on behalf of Mr. Sundberg as a result of injuries sustained at a jobsite. The Complaint was filed on August 30, 1985 and interrogatories were served on Mr. Sundberg during October, 1985. Respondent never answered these interrogatories despite the fact that Mr. Sundberg had provided him with handwritten answers and forwarded them to Respondent in a timely fashion. As a result of Respondent's failure to answer

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[2]It was agreed at the DEC hearing on May 14, 1991 that two sentences in this paragraph would be eliminated or rephrased (T5/14/91 4).

interrogatories, Orders of Dismissal were entered against Mr. Sundberg by three defendants. Respondent did not advise his client of these dismissals. Respondent ordered an expert report as to the cause of Mr. Sundberg's injury in May of 1988, two years after the matter had been dismissed. These matters were ultimately transferred to John F. Richardson, Esq. of Somerville (Mr. Sundberg) and Richard J. Levinson, Esq. of Edison (Mr. Shaw), and were restored and settled prior to jury selection.

(e) Rodger Gibbons, 24 Lakeshore Drive, Parsippany, New Jersey 07054. This client was severely injured in a motor vehicle accident which occurred on September 6, 1983. A complaint was filed on January 7, 1985 which was dismissed on April 10, 1987 for failure to provide discovery. On July 20, 1988, Respondent filed a Motion to Vacate the prior Order of Dismissal and restore the matter to the trial list. The matter was restored on October 5, 1988 but was again dismissed on January 20, 1989 for discovery infractions. The matter was again restored after Respondent left Einhorn and Harris. In this case, Respondent never advised Mr. Gibbons of the dismissals in the matter. He scheduled approximately six meetings with his client and cancelled each one of them. With regard to postponement of meetings and Respondent's failure to provide discovery, it is noted that Mr. Gibbons apparently had severe drug and alcohol abuse problems and had near-psychotic episodes in Respondent's office to the extent that Respondent and several members of the firm's staff were frightened of Mr. Gibbons.

10. From late 1986 through 1989 Respondent began consulting on a weekly basis with a psychiatrist, Dr. Jesus Nahmias of Woodcliff Lake (except for a period during the summer and early fall of 1988). Respondent made Dr. Nahmias aware of procrastination as a general problem but did not inform him that he had actually failed to take steps on cases which jeopardized clients' interests or those of the law firm.

11. In September, 1988, Respondent became totally unable to deal with his problem files and worked on new or existing matters on almost a daily basis while ignoring the older cases on which problems existed. The problem files were on Respondent's mind during the day and he had trouble sleeping at night but when it came time to do something about these files he was, for some reason, unable to do so.

12. The procrastination problem as described above was not caused or accompanied by problems with alcohol,

drugs, gambling or Respondent's home life with his wife and children. Respondent's department was profitable, and he was made a partner in the firm in 1988.

13. On Thursday, February 9, 1989, one of Respondent's clients called while he was out of the office. The client asked to speak with Theodore Einhorn, a partner. Mr. Einhorn reviewed Respondent's file on the matter, which he found incomplete. Upon completing his review he made inquiry and discovered that the matter had been dismissed for almost three years. When Mr. Einhorn confronted him, Respondent admitted that there were other files with similar problems. Over that weekend, the partners reviewed all of Respondent's files and discovered that in almost fifty files, orders had been entered dismissing Complaints as a result of Respondent's neglect. Respondent was dismissed from Einhorn and Harris and was voluntarily admitted to Morristown Memorial Hospital where he remained from February 14 through 22, 1989. He continues to undergo psychological counselling. He has since performed per diem legal work under attorney supervision, and the firm of O'Toole and Couch, 51 Gibraltar Drive, Powder Mill Plaza, Route 10, Morris Plains, New Jersey has expressed interest in employing respondent full time and subject to monitoring.

15. Respondent never made any oral or written misrepresentations to a court. Respondent has assisted Einhorn and Harris in attempting to restore the files which were dismissed due to his conduct and, indeed, Einhorn and Harris has been successful in restoring a large number of these files.

16. Respondent has been charged with violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a), RPC 1.4(b) and RPC 8.4(c). Respondent has admitted to violations of each of these Rules of Professional Conduct, with the exception of RPC 8.4(c).

The formal complaint filed in this matter charged respondent with violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(a), RPC 1.4(b) and RPC 8.4(c). The DEC determined that respondent had violated each rule cited in the complaint, noting that respondent's conduct on behalf of Celestine Senkewicz was the most serious, in violation of RPC 8.4(c).

The DEC concluded that a public reprimand was the appropriate discipline for respondent. In reaching that conclusion, the DEC took into account the following factors:

> 1. Respondent reported his unethical conduct to the [DEC] immediately, cooperated with the committee;[3]
> 2. Respondent never minimized the harm done to clients. He never attempted to conceal his conduct or avoid responsibility for same;
> 3. Respondent sincerely regrets his unethical behavior;
> 4. Respondent is undergoing voluntary therapy with a Clinical Psychologist, Dr. Joan Fitzhugh;
> 5. Respondent was grossly overloaded with personal injury files while at Einhorn & Harris, P.C., specifically, he was handling several hundred cases at a time when the evidence is undisputed that one attorney cannot handle more than one hundred twenty-five personal injury matters. The firm had virtually no managerial or organizational systems or personnel in place to assist [r]espondent and the firm placed unreasonable productivity pressure and demands on [r]espondent;[4] and
> 6. Respondent has successfully practiced for approximately 2-1/2 years under supervision and the Panel sees no useful purpose in interrupting his livelihood with a suspension or disbarment, particularly because the ethical violations occurred under circumstances extremely unlikely to recur.
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> [Panel Report at 4-5]

In addition, the DEC recommended that respondent continue his psychological counseling.

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[3]The Board noted that, while respondent did contact the DEC through his attorney, this occurred after his misconduct had come to the attention of the senior partners at Einhorn and Harris through a conversation Einhorn had with one of respondent's clients. Thus, ethics committee involvement was virtually unavoidable.

[4]The Board is of the opinion that, in fact, the record reveals that respondent did have support staff to assist him and could have requested that additional personnel be hired to assist him.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the DEC in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence. Respondent is guilty of egregious misconduct in the form of numerous violations of RPC 1.1(a) and (b), RPC 1.3, RPC 1.4(a) and (b) and RPC 8.4(c).

Respondent has put forth psychological difficulties in mitigation of his misconduct. Although they do not excuse misconduct, such difficulties may be considered in mitigation if proven to be causally connected to the attorney's unethical actions. In In re Templeton, 99 N.J. 365 (1985), the Court held:

> In all disciplinary cases, we have felt constrained as a matter of fairness to the public, to the charged attorney, and to the justice system, to search diligently for some credible reason other than professional and personal immorality that could serve to explain and perhaps extenuate, egregious misconduct. We have always permitted a charged attorney to show, if at all possible, that the root of transgressions is not intractable dishonesty, venality, immorality, or incompetence. We generally acknowledge the possibility that the determinative cause of wrongdoing might be some mental, emotional, or psychological state or medical condition that is not obvious and, if present, could be corrected through treatment.
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> [Id. at 373-4]

As to whether a causal connection may be made between respondent's acts of misconduct and his psychological problems, the following testimony from Dr. Fitzhugh is relevant:

> Q. ...[respondent] would tell a client on a dismissed case that everything is moving along fine, we're just waiting for a trial step or take steps and do things on dismissed cases while they were dismissed...Is there an explanation for that type of conduct that is a valid explanation from your psychological expertise?
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> A. I think if you look at the, on the one hand, the need to separate the consciousness away from things that are overwhelming and the second need of as the child to show the community at large that everything is normal, he was behaving as if, just as he learned as a child to behave in the community, as if everything was normal at home.
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> [T7/15/91 26-27]

While a connection may be possible between respondent's difficulty and his misconduct, the Board has kept in mind respondent's awareness that he was making misrepresentations to his clients:

> ...Did I misrepresent? Absolutely. I admit that and I think that in that sense certainly, but I think I always had this firm belief in the back of my head that I can fix all these things. I'll fix this and then I'll fix that one and there was always this belief and was it realistic? No, but it was there. Yes, I can fix this....
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> [T6/13/91 134-135]

Another factor on which respondent blamed his misconduct was pressure and his heavy caseload, testifying that the number of cases was "in the 350 range" (T6/13/91 29). In In re Barry, 90 N.J. 286 (1982), the Court addressed the issue of the pressure placed on junior attorneys, noting that they should be given supervision and guidance. In Barry, the attorney performed no work on numerous client files, while misrepresenting that the cases were in various stages of litigation. In addition, the attorney borrowed money from clients and offset legal services against his

indebtedness to them. Further, the attorney gave money to a client to prevent the discovery of the mishandling of his affairs. Although, as the Court noted, Barry's violations ordinarily would call for the imposition of severe discipline, a three-month suspension was adequate discipline due to substantial mitigating circumstances. When his misconduct surfaced, the attorney not only admitted the violations, but brought additional violations to the attention of the disciplinary authorities. The attorney also voluntarily withdrew from the practice of law and sought psychiatric help. It was later determined that the attorney was suffering from psychological difficulties at the time of his misconduct.

As in Barry, respondent admitted his misconduct and sought psychological assistance for his problems. However, although there are similarities between respondent's conduct and Barry's, there are distinguishing factors as well. Barry was a relatively young attorney. He was admitted to the bar in December 1974 and his misconduct took place in late 1974 through June 1979. Respondent, a certified civil trial attorney, was admitted to the bar in 1976; his misconduct took place from 1986 through February 1989. In addition, while his misconduct was taking place, respondent became a partner at Einhorn and Harris.

The Court has recently reviewed conduct similar to respondent's. In In re Alterman, ___ N.J. ___ (1991), the attorney was found guilty of gross neglect, lack of diligence and a pattern of neglect in five matters, misrepresentations in four matters,

callous disregard for his clients' interests, deceitful conduct, failing to decline or withdraw from representation, failing to pay the Client Security Fund fee and then practicing while ineligible. Alterman, like O'Reilly, misrepresented to the partners in his firm that the matters for which he was responsible were progressing apace. Like respondent, Alterman put forth psychological difficulties as a mitigating factor to be considered. But, unlike respondent, Alterman was guilty of making misrepresentations to a tribunal and failing to cooperate with the DEC in its investigation of several of the allegations against him. Based upon the total of these factors, the Court imposed a two-year suspension, to be followed by a transfer to disability inactive status.

As was necessary in Alterman, a distinction needs to be made between an attorney's neglect of cases because of the burdens of over work and between deliberate misrepresentations, made not only to clients, but to senior attorneys who could have provided the necessary assistance. Respondent testified that he was concerned about the security of his position at Einhorn and Harris; yet, he admitted repeatedly during the DEC hearing that he knew that he could have obtained help in handling the large caseload, if he had simply asked for it (T6/13/91 66-68). In fact, respondent testified that, in September 1988, he finally asked for assistance and another attorney was hired (T6/13/91 73).

An additional consideration in this matter is respondent's previous discipline. He was privately reprimanded in 1979 and again, in 1985, for neglect of client matters. Neither Barry nor

Alterman was the subject of prior discipline at the time of their suspension.

Respondent is guilty of serious misconduct. He neglected fifty cases and admitted making misrepresentations to his clients, although it is not clear from the record in how many instances this occurred. Respondent's misconduct is significant and clearly merits a period of suspension. In determining the length of the suspension to be imposed, a great deal of weight has been placed on the fact that respondent is now apparently functioning competently, having found a niche for himself as an attorney. In recognition of respondent's rehabilitation, and the fact that this matter is apparently behind him, the Board majority recommends that respondent be suspended for a period of three months only. Three members dissented. One member believed that the serious nature of respondent's misconduct would ordinarily require a one-year active suspension, but that the significant evidence of reform and other mitigating factors should downgrade that suspension to six-months. One member believed that, while respondent's misconduct warrants the imposition of a suspension of six months, given his apparent ability to function competently now, a suspension of that suspension is appropriate. The third dissenting member believed that a suspended suspension of one-year was appropriate. One member did not participate.

With regard to additional conditions to be imposed on respondent, Dr. Fitzhugh testified that she believes that a work situation similar to that which respondent currently has with Brian

O'Toole, Esq. would be helpful (T7/15/91 74).[5] Accordingly, the Board recommends the imposition of an indefinite proctorship.

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

Dated: 4/24/92 By: Raymond R. Trombadore
Chair
Disciplinary Review Board

[5]Respondent testified that he would have "no problem with proctorship or continuing therapy" (T7/15/91 121).