SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-131

IN THE MATTER OF	:
WILLIAM E. HOGAN, JR.	:
AN ATTORNEY-AT-LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 20, 1989

Decided: December 8, 1989

Murray J. Laulicht appeared on behalf of the District X Ethics Committee.

Respondent waived appearance.

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 X Ethics Committee.

Clause Matter (X-87-29E)

In June 1980, grievant, Earle Clause, now deceased, retained respondent to pursue possible claims against a tavern located in Lake Hopatcong, New Jersey, where Ms. Clause had been a long time employee. Grievant had resided with the tavernkeeper in an apartment above the tavern from 1969 to the tavernkeeper's death in 1980.

Grievant assumed increased responsibilities in operating the tavern because of the tavernkeeper's illness two years prior to the latter's death. She did not receive a regular salary during this period.

From 1980 until 1986, grievant contacted respondent on several occasions regarding unrelated matters. In early 1986, grievant learned that the tavern was in the process of being sold. She then submitted three checks to respondent totalling $975 for legal fees and "filing costs" in connection with a claim against the tavern for unpaid wages. Thereafter, grievant and her sister were unable to contact respondent to ascertain the status of the case.

In April 1987, grievant's sister telephoned the Clerk of the Superior Court and discovered that no complaint on behalf of grievant had ever been filed by respondent. In May 1987, grievant signed an ethics grievance letter which was prepared by her sister. Grievant died on August 12, 1988, before the ethics hearing took place. Her sister and a friend testified at the ethics hearing. Respondent denied any wrongdoing.

The hearing panel found that "the evidence presented indicates respondent failed in general to communicate with or respond to written and telephone efforts to contact him by persons with whom he was involved (including the presenter in this matter)." The majority of the panel, however, concluded that "without the direct testimony of the [grievant], the charges against respondent, have not 'clearly and convincingly' been proven."

Pitiak Matter (X-87-18E)

In July 1985, respondent filed a personal injury complaint against three defendants on behalf of Steven Pitiak, who was involved in an automobile accident. In February 1986, respondent had the complaint served upon the three defendants. Thereafter, respondent failed to respond to numerous efforts by the defense attorneys to communicate with him.

As a direct result of respondent's failure to reply to the letters, notices, demands and pleadings served upon him by the defense attorneys, three orders of dismissal were entered in September and November 1986, and March 1987. On March 16, 1987, the court notified the Office of Attorney Ethics of the defense attorneys' inability to communicate with respondent.

In July 1988, Mr. Pitiak contacted another attorney regarding his personal injury claim. This attorney wrote to respondent on July 29, 1988, requesting the status of the case. The letter also indicated that Mr. Pitiak was unaware that respondent had filed a complaint on his behalf. Respondent did not reply to this letter. Subsequent attempts by Mr. Pitiak's new attorney to contact respondent were unsuccessful. On August 31, 1988, this attorney wrote to the District X Ethics Committee regarding his inability to contact respondent. Subsequently, Mr. Pitiak's new attorney was able to restore the matter and to place it on the active trial list.

On August 25, 1988, respondent was served with an ethics complaint. Two days later he was notified of a November 17, 1988 hearing date. The day before the hearing, respondent requested an adjournment because of new employment. The adjournment was granted and a new hearing date of January 17, 1989 was scheduled. Respondent's answer, which denied any wrongdoing, was submitted immediately prior to the hearing. Respondent and his attorney appeared at the scheduled hearing. Respondent's attorney requested yet another adjournment since he had been retained only five days prior to the ethics hearing. Although exhibits pertaining to this and the Clause matter were introduced, no testimony was taken, and the matter was adjournment to February 2, 1989.

Respondent's only witness at the ethics hearing was a licensed psychiatrist who testified that respondent suffers from "major depression with suicidal tendencies" and alcoholism. The psychiatrist testified that he began treating respondent in August 1987, but that treatment was terminated by respondent on January 2, 1989. The psychiatrist further testified that respondent was difficult to treat because he continued to deny his problems, including his alcoholism. The psychiatrist indicated that respondent should not practice law on an individual basis given his condition at the date of the ethics hearing.

The hearing panel concluded that respondent acted with gross negligence contrary to RPC 1.1(a), exhibited a pattern of negligence contrary to RPC 1.1(b), failed to act with reasonable diligence contrary to RPC 1.3, failed to adequately communicate

with his client contrary to RPC 1.4, and failed to expedite litigation contrary to RPC 3.2. The panel recommended that respondent immediately be suspended from the practice of law and, upon reinstatement, be required to submit to professional treatment for his depression and alcoholism.

On June 14, 1989, the Office of Attorney Ethics petitioned for emergent relief seeking the immediate temporary suspension of respondent. On July 11, 1989, respondent was transferred to disability inactive status pursuant to R. 1:20-9.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the ethics committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence. The Board further agrees with the committee's finding that the charges against respondent in the Clause matter were not sustained by clear and convincing evidence.

This is not the first time that respondent's unethical behavior has come to the attention of this Board. On July 19, 1989, the Board considered two presentments (DRB 86-270 and 88-279) which described numerous cases of misconduct and concluded that respondent was guilty of several ethics violations. Most significantly, respondent exhibited a pattern of neglect contrary to DR 6-101(A)(2). While the Board acknowledged that respondent's life was in turmoil because of a dissolution of his law partnership, there was no evidence submitted regarding either

respondent's alcoholism or psychiatric problems. The Board's recommendation for a one-year suspension was adopted by the Court on September 19, 1989.

In the case currently before the Board, respondent failed to prosecute the Pitiak personal injury complaint. Respondent's inaction caused the court to notify the Office of Attorney Ethics after respondent failed to respond to various pleadings and communications from the defense attorneys. Respondent's frustrated client finally retained a new attorney to pursue the claim three years after the original complaint was filed by respondent. This new attorney was also unable to contact respondent.

The record overwhelmingly supports a finding that respondent was guilty of gross negligence contrary to RPC 1.1(a); failed to act with reasonable diligence contrary to RPC 1.3; failed to adequately communicate with his client contrary to RPC 1.4; and failed to expedite litigation contrary to RPC 3.2. Moreover, respondent's unethical behavior is further evidence of his previously established pattern of negligence in violation of RPC 1.1(b).

Given the clear and convincing evidence of respondent's continuing unethical conduct, this Board must determine the appropriate measure of discipline. The purpose of discipline is not to punish the attorney, but to protect the public from the attorney who does not meet the standards of responsibility required of every member of the profession. Matter of Templeton, 99 N.J. 365, 374 (1985). In recommending discipline, the interests of the

public, the bar and the respondent must all be considered. Matter of Kushner, 101 N.J. 397, 400 (1986). The quantum of discipline must accord with the seriousness of the misconduct in light of all relevant circumstances. In re Nigohosian, 88 N.J. 308, 315 (1982). Mitigating factors, including personal, emotional, and mental problems, may be considered. Matter of Tuso, 104 N.J. 59, 65 (1986).

Attorneys who have exhibited a pattern of negligence in conjunction with other misconduct have received long-term suspensions. See, e.g., Matter of Templeton, 99 N.J. 365 (1985) (attorney received de facto five-year suspension for exhibiting a pattern of negligence involving eleven matters, failure to carry out contracts of employment, and failure to cooperate with the ethics committee); Matter of O'Gorman, 99 N.J. 482 (1985) (attorney received three-year suspension for a pattern of negligence involving five matters, failure to carry out contracts of employment, and failure to communicate with clients).

Respondent is currently serving a one-year suspension as a result of the Board's previous recommendation. The Board is now confronted with evidence of additional improprieties, together with testimony regarding respondent's difficulties with alcohol and mental depression. The Court stated in Matter of Templeton, supra at 374:

> 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. An inquiry into such possible causes of ethical misconduct not only can be instructive and

> enlightening, it may also hold the promise of a resolution of the disciplinary charges in terms of personal rehabilitation, which will serve to protect the public interest without ruining a lawyer's career and life.

The Court concluded that a psychiatric evaluation did not "provide us with a plausible explanation for respondent's transgression." Id. Here, however, the testimony of a psychiatrist, who treated respondent for over two years, is very persuasive regarding respondent's continuing problems with alcohol and mental depression, and the adverse effects that those problems had on respondent's practice of law.

Unlike the attorney in Matter of Willis, 114 N.J. 42, (1989), respondent has not shown significant signs of rehabilitation. Respondent terminated treatment with his psychiatrist two weeks prior to the hearing before the ethics committee. He has clearly not come to grips with the alcohol and mental problems that have contributed to so much turmoil in his life, and in the lives of his clients.

The Court in Willis considered the attorney's "remarkable recovery" from alcohol and drug abuse and imposed a six-month suspension rather than a one-year suspension. The attorney in Willis was guilty of exhibiting a pattern of neglect encompassing six matters, conviction for failing to file an income tax return, a misrepresentation to a client, and overreaching. In determining appropriate discipline, the Court noted that "alcoholic lawyers are a threat not just to themselves, but to the clients who rely on them. We believe we best serve the public and the bar by rendering

a decision that encourages lawyers to seek help to avoid inflicting continuing harm on their clients." Matter of Willis, supra, at 49.

In the wake of repeated appearances before the ethics committee, respondent has yet to fully acknowledge his problems. Accordingly, this Board unanimously recommends that respondent be suspended from the practice of law for an additional six months with the hope that he resume appropriate treatment. This suspension is to be served at the conclusion of the current one-year suspension. Thereafter, respondent should be returned to disability inactive status and reinstated only upon a showing of fitness to practice law.

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

Dated: 12/5/1989

Raymond R. Trombadore
Chair
Disciplinary Review Board