

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket Nos. DRB 85-223 and 88-95

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IN THE MATTER OF :  
:   
ROBERT D. CARROLL :  
:   
AN ATTORNEY-AT-LAW :

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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: December 21, 1988

Decided: October 11, 1989

Robert M. Sanderford appeared on behalf of the District XIII Ethics Committee.

Noel Schablik appeared on behalf of the District X Ethics Committee.

Respondent waived his appearance.

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

This disciplinary action is based upon two separate presentments filed by the District X Ethics Committee and the District XIII Ethics Committee.

Respondent was admitted as a member of the New Jersey Bar in 1960. A sole practitioner, respondent maintains his office in Oxford Township, Warren County, New Jersey.

The Minkler Matter, DRB 85-223

In October 1978, respondent represented Jan Minkler ("grievant") in a workers' compensation claim arising from a car accident that occurred during the course of grievant's employment.

The formal complaint charged respondent with failure to produce a copy of the fee agreement, in violation of DR 9-102(C) and R. 1:21-6; improperly executing a jurat, in violation of DR 1-102(A)(4); waiving his fee in exchange for an employment referral, in violation of DR 2-103(C); and advancing financial assistance to a client, in violation of DR 5-103.

Respondent testified that, while grievant was still in the hospital, she signed a contingent fee agreement. However, respondent was unable to produce a copy of this agreement. Grievant, in turn, testified that a written agreement never existed. Although the fee arbitration committee has already addressed the merits of the fee dispute, the ethics committee now charges respondent with failure to produce a written fee agreement in violation of the recordkeeping obligations of DR 9-102(C).

In February 1979, respondent filed a workers' compensation petition on behalf of grievant. Grievant claimed the signature on the petition was not hers. Although respondent denied the falsification of the signature, he admitted that grievant did not sign the petition in his presence. Rather, he mailed the petition to her home and later acknowledged it when it was returned by mail, in violation of the requirements for the execution of a jurat (2T48, 49).<sup>1</sup>

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2T denotes the transcript of the January 7, 1985 ethics committee hearing.

Both before and after the instant matter, respondent represented grievant in a variety of cases. Subsequent to the workers' compensation claim, respondent filed a third-party action against the driver of the car, which action was settled in May 1982. Before the action was settled, respondent lent grievant \$1,000 for the purchase of food and heating fuel. Respondent also performed legal services to prevent foreclosure on grievant's home. Respondent never charged grievant for the foreclosure representation. Earlier, respondent represented grievant in municipal court in contesting the traffic summons she received for the car accident. She was exonerated of that charge. Again, respondent did not charge a fee for his municipal court appearance.

When respondent initially visited grievant in the hospital, he was introduced to grievant's roommate, a minor, who had been injured in an unrelated automobile accident. Subsequently, the roommate's family engaged respondent as their counsel. When that matter settled, respondent received a \$29,000 fee.

The hearing panel found that respondent did not charge legal fees for either the municipal court appearance or the foreclosure matter in return for grievant's referral of her roommate. Although he later recanted, respondent stated in his answer, "[t]o be truthful, lingering somewhere in the back of my mind was gratitude to the grievant for introducing me to [the injured roommate's family]....It is impossible to trace the percentage of my

benificence [sic] to such gratitude but, if I were asked to guess, I would say about 20%." C-1 in evidence, p. 8. The panel found that this failure to charge legal fees violated DR 2-103(C).

Finally, although the complaint charged respondent with violating DR 5-103 in lending \$1,000 to grievant, the panel found insufficient evidence that the loan had been made with the intent to acquire a property interest in the proceeding. The testimony of both parties convinced the panel that respondent was motivated by simple generosity.

In summary, the panel found that respondent had failed to produce the fee agreement for the ethics investigation, in violation of DR 9-102; had inappropriately executed a jurat, in violation of DR 1-102(A)(4), and had failed to charge for legal services because of an employment referral, in violation of DR 2-103(c).

#### The Contempt Matter, DRB 88-95

On September 20, 1984, respondent was sentenced to 40 days in jail for civil contempt of court. Respondent's wife, who was seeking a divorce, had obtained a restraining order against respondent in June 1983, pursuant to the Domestic Violence Act. Respondent's sentence resulted from his willful violation of that order by telephoning, writing letters, and visiting his wife at her place of work.

The formal complaint in this matter charged respondent with violating DR 1-102(A)(3), engaging in illegal conduct which adversely reflects upon his fitness to practice law; DR 1-102(A)(5), engaging in conduct prejudicial to the administration of justice, and DR 1-102(A)(6), engaging in any other conduct which adversely reflects on his fitness to practice law.

At the committee hearing, respondent argued that the restraining order was an unconstitutional restraint on his First Amendment rights to speak to his wife in an effort to reconcile and that, therefore, the ethics committee could not use such a conviction as a basis for finding an ethics violation. Respondent did not appeal the contempt conviction and served his sentence. The panel found that the contempt judgment was proper and final given respondent's decision not to appeal it, and used the judgment as the basis for their recommendations.

Admitted into evidence at the hearing was the presentence report on the contempt charge, respondent's prior criminal record, a psychiatric evaluation, a drug evaluation, a medical record from an in-patient alcoholism treatment program, and other correspondence. P-1 and P-2 in evidence. The record reveals that respondent had experienced an alcohol problem which was in remission at the time of the restraining order violation. At the Board hearing, respondent denied any present problems with alcohol.

The panel found that respondent had violated DR 1-102(A)(3) and DR 1-102(A)(5) by failing to comply with the restraining order. Further, after considering the documents introduced into evidence and respondent's rationalizations at the time of the hearing, the panel found that respondent had exhibited other aggressive and irresponsible behavior which adversely reflected on his fitness to practice law, in violation of DR 1-202(A)(6). The panel suggested that respondent undergo periodic psychiatric evaluations to determine his fitness to practice law and recommended that he receive a public reprimand.

#### CONCLUSION AND RECOMMENDATION

Upon a review of the full record, the Board is satisfied that the conclusions of the committees in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence.

In the Minkler matter, respondent's inability to produce a copy of the fee agreement violated DR 9-102(C) when he failed to keep a copy of the compensation agreement for seven years after the event recorded. R. 1:21-6. Additionally, as admitted during his testimony, respondent was not present at the signing of the workers' compensation petition. He mailed the petition to his client for her signature and executed the jurat thereafter. The Court has made it clear that the requirements of the proper

execution of jurats must be satisfied in all respects. In re Surgent, 79 N.J. 529 (1979); Matter of Friedman, 106 N.J. (1987). One of the indisputable requirements is that a jurat be executed by the attorney in front of the signing party. The Board finds that respondent violated DR 1-102(4) when he improperly executed the jurat.

Further, respondent admitted to waiving his fee in exchange for an employment referral. The disciplinary rules explicitly forbid this conduct:

A lawyer shall not compensate or give anything of value to a person...as a reward for having made a recommendation resulting in his employment by a client. DR 2-103(C).

See also Matter of Weinroth, 100 N.J. 343 (1985).

In the contempt matter, the Board finds that respondent willfully violated a restraining order of the Superior Court. Respondent intentionally contacted and harassed a person under a protective order of the court. As an attorney and an officer of the court, respondent exhibited unacceptable disrespect for the court issuing the order as well as for the legal system it represents. Harassment of others involved in the legal process will not be tolerated. In re Vincenti, 92 N.J. 591 (1983). Therefore, the Board finds that respondent violated DR 1-102(A)(3), by engaging in illegal conduct which adversely reflects upon his fitness to practice law, and DR 1-102(A)(5), by exhibiting conduct prejudicial to the administration of justice.

In all disciplinary matters, public confidence in the bar requires the acknowledgement of the ethical infractions. The quantum of discipline must accord with the seriousness of the misconduct in light of all circumstances. In re Nigohosian, 88 N.J. 208, 315 (1982). Aggravating and mitigating factors are part of the circumstances surrounding a violation, and are, therefore, relevant and may be considered. In re Hughes, 90 N.J. 32, 36 (1982).

In the contempt matter, the Board is aware that respondent's conduct did not occur in the context of an attorney-client relationship but, rather, arose from respondent's personal relationship with his wife during a divorce action. While the emotions underlying the divorce action do not justify respondent's misconduct, they were considered as a mitigating factor in determining appropriate discipline in this case. The Board also considered that respondent has had an unblemished disciplinary record for a period of over 25 years. The Board held as an aggravating factor that respondent has not acknowledged the wrongful nature of his acts.

Because the violation of the restraining order took place in 1983 in the midst of respondent's divorce, and because there have been no further ethics complaints in the intervening years, the Board believes that no further psychiatric evaluation is necessary.

After balancing the foregoing mitigating and aggravating factors with respondent's ethical transgressions, a requisite



majority of the Board recommends that a public reprimand be imposed. One member would recommend a six-month suspension. One member did not participate.

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

Dated: \_\_\_\_\_

10/11/89



Raymond T. Trombadore  
Chair  
Disciplinary Review Board