

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket DRB Nos. 87-170,
88-57 and 88-280

IN THE MATTER OF :
:
JOHN GEORGE :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: April 19, 1989

Decided: July 19, 1989

James E. Stahl, Esq., appeared on behalf of the District VIII Ethics Committee.

John George, Esq. 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 three Presentments filed by the District VIII (Middlesex County) Ethics Committee.

I-DRB 87-170

THE FRITZE MATTER (VIII-84-26E)

In February 1976, grievant, Donald Fritze, retained respondent to expunge certain disorderly person charges and to assist him in obtaining a firearms permit. In the summer of 1976, grievant retained respondent in a separate matter to recover a truck which, grievant alleged, had been improperly

repossessed. In 1977, grievant retained respondent to recover certain firearms which had been confiscated by town police. Finally, in 1983, grievant retained respondent to recover three months' rent from a tenant.

Despite assurances to grievant, respondent did little to advance grievant's claims from 1976 to 1985. In 1985, grievant filed an ethics complaint against respondent. Subsequently, respondent signed a contract prepared by grievant, dated January 21, 1985, which reaffirmed respondent's obligations. Thereafter, as a result of the ethics complaint and the contract, respondent paid grievant \$10,000 to compensate grievant for respondent's inability to recover the repossessed vehicle. In addition, respondent lent grievant \$1,200 and advanced him \$1,800 for the value of the confiscated guns. Respondent also had grievant's charges expunged and resolved the tenancy dispute to grievant's satisfaction.

At the ethics hearing, respondent admitted that he was grossly negligent in the handling of grievant's matters. He did not recall being retained to recover the repossessed truck and explained that his attempts to expunge grievant's criminal record and recover the confiscated guns were fraught with difficulties.

The hearing panel concluded that respondent did not exercise reasonable diligence, in violation of RPC 1.3, and was grossly negligent in his handling of the truck repossession and tenancy dispute, in violation of RPC 1.1(a). The panel also concluded that respondent did not keep grievant reasonably informed about

the status of the matter, in violation of RPC 1.4.¹ The panel did not find any ethics violations with respect to the expungement and firearms matters.

THE PIERSON MATTER (VIII-83-73E)

In December 1979, grievant, Nancy Pierson, retained respondent to sue a home improvement contractor who did not complete contracted work. By letter dated December 11, 1979, respondent gave the contractor a ten-day grace period to finish the work before filing suit. After the contractor failed to complete the work, respondent failed to file suit, despite his numerous subsequent representations to grievant that the complaint had been filed. When grievant contacted the courthouse, sometime in 1982, she discovered that there was no docket number or listing for her case. She confronted respondent with this fact. Finally, in November 1982, respondent filed a complaint on grievant's behalf. Thereafter, grievant retained a new attorney and the case was finally resolved in 1984. At the ethics hearing, respondent admitted that he was grossly negligent in this matter.

The hearing panel concluded that respondent was grossly negligent, contrary to RPC 1.1, that he failed to exercise reasonable diligence, contrary to RPC 1.3, and that he

¹The Rules of Professional Conduct replaced the Disciplinary Rules effective September 1984. Respondent's actions occurred both before and after that date. Hence, both the Disciplinary Rules and the Rules of Professional Conduct apply.

misrepresented to grievant that suit had been filed when he knew it had not, contrary to RPC 8.4.²

DRB 88-57

THE CARBLEY MATTER (XIV-87-38E)

Late in 1984, grievant, James Carbley, sent respondent \$600 to represent him in a divorce action that had been instituted against him in New Jersey. Grievant, a resident of Wyoming, was referred to respondent by another attorney. This attorney, who had filed an answer and counterclaim on grievant's behalf, forwarded the file to respondent in February 1985.

On September 6, 1985, the attorney wrote to respondent as a result of correspondence received from plaintiff's attorney. The letter noted that respondent had neither entered an appearance in the matter nor invested proceeds from the sale of the marital home on grievant's behalf. The attorney requested assurance that respondent was representing grievant.

Sometime in 1986, respondent made an appearance in the matter. On October 15, 1986, he forwarded a property settlement agreement to grievant for his signature and review. This agreement had been prepared by plaintiff's attorney and provided for child support payments by grievant in the amount of \$300 per month. The agreement did not reflect grievant's financial condition, which had been affected by a work-related accident

²Since respondent's conduct took place before September 1984, the Disciplinary Rules were in effect and not the Rules of Professional Conduct.

that occurred in April 1986. The accident left grievant almost totally disabled.

On November 5, 1986, in grievant's absence, a final judgment of divorce was entered, incorporating the property settlement agreement. Grievant subsequently requested respondent to reduce his support obligations by one-third because of grievant's continued disability and negative financial position. In addition, grievant's son moved to Wyoming in November 1986 to reside with him. On May 27, 1987, grievant's ex-wife filed a motion to fix support arrearages and to execute against grievant's income. The accompanying certification noted that the settlement agreement provided for an increase in support payments, beginning on February 1, 1987, to \$500 per month. The certification also stated that respondent had failed to return withdrawal slips to grievant's ex-wife for access to grievant's account, despite numerous requests.

On April 12, 1987, grievant filed an ethics complaint against respondent, claiming that his numerous attempts to contact respondent had been unsuccessful and that respondent had failed to address grievant's requests for a reduction in support payments. In addition, grievant claimed that respondent's inaction had caused him a substantial loss of money in insurance and pension matters related to the divorce.

On June 6, 1987, grievant wrote to respondent complaining about respondent's failure to attempt to reduce his support obligations, as previously requested. The letter set forth

grievant's depressed financial and employment situation and requested that respondent "please do something to get this mess in perspective and under control."

In June 1987, respondent, without grievant's authorization, executed a consent order in connection with his ex-wife's motion seeking support arrearages. Finally, grievant wrote to respondent on August 27, 1987, indicating that respondent, despite previous promises, had failed to send him papers regarding a reduction in the support payments. In addition, grievant stated that he had called the courthouse on August 13, 1987, at which time he had been advised that a judgment had been entered against him on June 26, 1987. The judgment provided for arrearages in the amount of \$1,500 and for continued support payments of \$500 per month. Grievant also complained to respondent that he had never been informed of the judgment and that he had not received a copy of the divorce decree.

At the ethics hearing, respondent testified that it was difficult to contact grievant and that his delay and inability to effectively handle the divorce matter were due to lack of information from grievant.

Grievant was financially unable to attend the hearing and wrote to the committee on January 9, 1988. This letter indicated that grievant had still not received copies of the final divorce decree or the June 1987 judgment against him. Grievant also stated that it was not until August 1986 that respondent informed him that the divorce had been finalized.

The hearing panel found that respondent was grossly negligent, contrary to RPC 1.1; failed to act with reasonable diligence, contrary to RPC 1.3; and failed to adequately communicate with his client, contrary to RPC 1.4. The panel recommended a public reprimand.

II-DRB 88-280

The hearing panel recommended that respondent be publicly disciplined for his ethics transgressions in each of the following three matters. The panel noted that respondent failed to file answers to any of the ethics complaints and that he "generally failed to cooperate in even the smallest way with the committee," in violation of RPC 8.1(b).

SELECTIVE AUDIT (XIV-88-5E)

On August 12 and October 1, 1986, an audit of respondent's books and records was conducted by the Office of Attorney Ethics ("OAE"), as a result of an earlier ethics grievance. The audit revealed the following deficiencies that were set forth in a letter by the OAE, dated March 3, 1987:

1. A trust and/or business receipts book is not maintained. [R. 1:21-6(b)(a).]
2. A trust and/or business disbursements book is not maintained. [R. 1:21-6(b)(1).]
3. Deposit slips are not maintained in accordance with generally accepted accounting practice. [R. 1:21-6(c).]
4. A running cash balance is not kept in the trust account checkbook. [R. 1:21-6(c).]

5. Clients' trust ledger sheets are not fully descriptive. [R. 1:21-6(b)(2).]
6. A schedule of clients' ledger accounts is not prepared and reconciled to the bank statement. [R. 1:21-6(c).]
7. A separate ledger sheet is not maintained for each trust client. [R. 1:21-6(b)(2).]
8. Business bank account designation improper. [R. 1:21-6(a).]
9. Trust bank account designation improper. [R. 1:21-6(a).]

The letter made various requests of respondent regarding these deficiencies. Respondent failed to reply to this letter and to a September 10, 1987 follow-up letter as well. Respondent was subsequently advised, by letter dated November 6, 1987, that disciplinary proceedings would ensue, unless he provided written confirmation that his recordkeeping deficiencies had been corrected. Respondent's reply to this letter was incomplete. Finally, the OAE, by letter dated December 29, 1987, gave respondent three weeks to provide a proper written response to its requests. Respondent, again, failed to reply.

At the ethics hearing, respondent admitted his record-keeping improprieties and failure to reply to the requests of the OAE.

The hearing panel found that respondent failed to maintain proper books and records, as provided by R. 1:21-6 and RPC 1.15(d). In addition, the panel found that respondent failed to cooperate with a disciplinary agency, contrary to RPC 8.1(b).

THE WILENSKI MATTER (VIII-86-61E)

In 1986, grievant, Edward Wilenski, became involved in a dispute with his sister over the disposition of their father's estate. As a result of this dispute, grievant alleged that a deed prepared by respondent in February 1984 on behalf of grievant's mother was a forgery, bearing his sister's signature. The deed conveyed property from grievant's mother to his sister.

On April 29, 1987, an ethics committee investigator interviewed respondent regarding his preparation of the deed. At the interview, respondent stated that he gave the deed to grievant's sister, which deed was then returned to him signed by grievant's mother. Respondent completed the acknowledgment on the deed, even though he had not obtained any proof that the signature was actually that of grievant's mother. Several days after the execution of the deed, respondent met personally with grievant's mother and verified that the signature was, in fact, hers.

At the ethics hearing, respondent, contrary to his admissions to the committee investigator, testified that he completed the acknowledgment after he verified the authenticity of the signature.

Because of the conflicting nature of respondent's testimony, the committee investigator also testified, without objection from respondent. The investigator testified that respondent previously admitted that he completed the acknowledgment before he verified the signature's authenticity.

The hearing panel weighed the credibility of respondent's and the investigator's testimony. In addition, the panel noted various physical aspects of the deed which supported the investigator's testimony. The panel found that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation, contrary to RPC 8.4(c)³, and engaged in conduct prejudicial to the administration of justice, contrary to RPC 8.4(d). The panel did not find a violation of RPC 4.1.

THE POLONYI MATTER (VIII-87-60E)

In April 1986, respondent filed a suit on behalf of grievant, Stephen Polonyi, in connection with the discharge of pollutants into the ground near grievant's property. Thereafter, grievant failed to pursue the matter and to inform grievant about the status of the lawsuit, including its dismissal on October 23, 1987, for lack of prosecution.

Early in 1987, grievant retained respondent to represent him in another matter involving the sale of grievant's ice cream store. A purchase agreement was executed on February 19, 1987. Although respondent received a \$15,000 deposit check from the purchasers, he never cashed or deposited the check into his trust account.

In May 1987, because of his dissatisfaction with respondent's representation, grievant retained a new attorney to handle both the civil and real estate matters. On May 1, May 12,

³The panel report inadvertently cited RPC 8.4(b).

and July 8, 1987, the attorney made written requests to respondent for the return of grievant's files. Respondent neither replied to any of the requests nor signed a Substitution of Attorney in the civil matter until the dismissal of the case on October 23, 1987.

At the ethics hearing, respondent admitted that he did nothing to advance grievant's suit and that he never deposited the \$15,000 check into his trust account.

The hearing panel found that respondent was grossly negligent and exhibited a pattern of neglect, contrary to RPC 1.1(a) and (b), in both the civil and real estate matters. The panel also found that respondent, in the real estate matter, failed to keep his client reasonably informed, contrary to RPC 1.4, and failed to make reasonable efforts to expedite the litigation, contrary to RPC 3.2. Finally, the panel found that respondent, in the real estate matter, violated RPC 1.15(a), (b) and (d)⁴, regarding the safekeeping of client property.

CONCLUSION AND RECOMMENDATION

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

⁴The panel report inadvertently cited RPC 1.3, 1.5(b) and 1.6(d).

At the outset, the Board is greatly disturbed by respondent's lack of cooperation with the disciplinary authorities. He failed to file an answer to any of the ethics complaints. An attorney has a duty to cooperate fully with ethics proceedings. Matter of Winberry, 101 N.J. 557, 566 (1986); Matter of Robinovitz, 102 N.J. 57, 62 (1986).

Respondent acted with gross negligence and failed to adequately communicate with his clients in each of the Fritze, Pierson, Carbley, and Polonyi matters.⁵ In Fritze, respondent did nothing to advance his client's claims for almost nine years. Finally, in 1985, as a result of both the ethics complaint and a written agreement with his frustrated client, respondent took action on his client's behalf. In Pierson, respondent failed to file a civil complaint. In Carbley, respondent did almost nothing to represent his client in a complicated divorce matter. His out-of-state client, who was disabled and in financial distress, suffered serious financial and emotional harm as a result of respondent's inaction. In Polonyi, respondent failed to advance a civil claim and a real estate matter on behalf of his client.

⁵Respondent's conduct in Pierson preceded the September, 1984 effective date of RPC's, and therefore DR 6-101(A)(1) and DR 7-101(A)(2) were violated. As to Carbley and Polonyi, RPC 1.1(a) and RPC 1.4 were in effect at the time of respondent's misconduct. The Fritze matter spanned the time covered by both the Disciplinary Rules and the Rules of Professional Conduct. Thus, DR 6-101(A)(1) and DR 7-101(A)(2) as well as RPC 1.1(a) and RPC 1.4 were violated

Respondent breached his duty to pursue his clients' interests diligently. See Matter of Smith, 101 N.J. 568, 571 (1986); Matter of Schwartz, 99 N.J. 510, 518 (1985). Moreover, it is clear that respondent, throughout the Fritze, Pierson, Carbley, and Polonyi matters, exhibited a pattern of neglect, contrary to RPC 1.1(b).

Respondent's ethics transgressions went beyond negligence and failure to communicate with his clients. In Pierson, respondent misrepresented to his client that a complaint had been filed, when he knew it had not, contrary to DR 1-102(A)(4). In Wilenski, respondent completed the acknowledgment on a deed before he had verified the authenticity of the signature, contrary to RPC 8.4(c) and (d). Following the audit of his books and records, respondent was found to have numerous recordkeeping deficiencies, contrary to RPC 1.15(d). Moreover, he failed to cooperate with the OAE in rectifying the deficiencies, contrary to RPC 8.1(b). Recordkeeping improprieties, in violation of RPC 1.15(a), (b), and (d), were also clearly evident in the Polonyi matter, where respondent failed to cash or deposit a \$15,000 check on behalf of his client.

Having determined that respondent was guilty of unethical conduct, the Board must recommend the imposition of discipline, bearing in mind that 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 re Goldstaub, 90 N.J. 1, 5 (1982). 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 are, therefore, relevant. In re Hughes, 90 N.J. 32, 36 (1982).

There are numerous instances where a pattern of an attorney's neglect, in conjunction with other ethics violations, has warranted a suspension from the practice of law. See, e.g., Matter of Gill, 114 N.J. 246 (1989); Matter of Templeton, supra, 99 N.J. 365, 374 (1985); Matter of O'Gorman, 99 N.J. 482 (1985). Moreover, dishonest conduct, such as respondent's improper acknowledgment in Wilenski and his misrepresentations about the filing of a suit in Pierson, warrants a suspension from the practice of law. See, e.g., Matter of Kotok, 108 N.J. 314 (1987); Matter of Friedman, 106 N.J. 1 (1987).

What emerges from respondent's conduct throughout the six matters is:

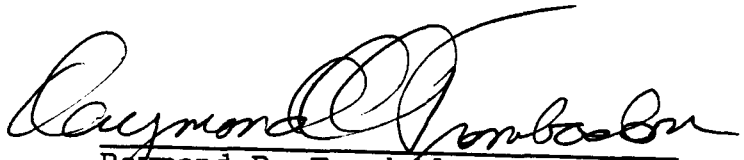
[a] pattern of abandonment of clients, casting adrift of professional responsibilities, neglect of practice, violations of fundamental Disciplinary Rules governing the practice of law, and contumacious and repeated failure to cooperate with the arm of this Court charged with the enforcement of those Disciplinary Rules.

[Matter of Robinovitz, 102 N.J. 57, 62 (1986) (citation omitted).]

The Court, in Robinovitz, deemed respondent's six-year temporary suspension to be appropriate discipline.

In mitigation, the Board considered that respondent admitted the majority of his wrongful acts. Given the seriousness of respondent's numerous ethics violations, however, the Board unanimously recommends that respondent be suspended from the practice of law for a period of one year. Upon reinstatement, respondent should be supervised by a proctor for one year. Three members did not participate.

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

Dated: 7/19/89

Raymond R. Trombadore
Chair
Disciplinary Review Board