

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 86-270 and
DRB 88-279

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

Decision and Recommendation
of the
Disciplinary Review Board

Argued: February 19, 1989

Decided: July 19, 1989

Robert Hollingshead, Esq., appeared on behalf of the District X Ethics Committee.

Respondent did not appear.¹

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

These matters are before the Board based upon two presentments filed by the District X (Morris and Sussex Counties) Ethics Committee.

THE BEAVERS, COURTER, MCCARTHY, CANNA, AND RAIMONDO MATTERS

(DRB 86-270)

The Board concurs with the findings and conclusions made by the Hearing Panel in its detailed Presentment and, therefore,

¹Respondent was notified of the hearing by regular and certified mail sent to his address listed in the 1989 Lawyers' Diary. Although the certified mail was returned unclaimed, the regular mail was not.

incorporates the Presentment as part of this Decision and Recommendation. See attached copy. The panel concluded that respondent's conduct constituted either ordinary or gross negligence in each of the five matters and that respondent's conduct adversely reflected on his fitness to practice law in all but the Beavers matter, contrary to DR 1-102(A)(6). In addition, the panel concluded that respondent was in violation of trust fund requirements in the Raimondo matter, contrary to DR 9-102, and failed to carry out his employment contract in the McCarthy matter, contrary to DR 7-101(A)(2). Finally, and most significantly, the panel concluded that respondent's conduct in the five matters constituted a pattern of neglect, in violation of DR 6-101(A)(2). Based upon the totality of respondent's misconduct in the five matters, the panel recommended public discipline.

THE CADDEN MATTER (DRB 88-279)

In June or July 1982, respondent formed a partnership with another attorney. On November 23, 1982, he represented James and Patricia Barry in connection with their purchase of real estate located in Landing, New Jersey. At that time, respondent collected \$424.88 from the Barrys for payment of title search and title insurance fees. Although he deposited the Barry funds in his trust account, he failed to pay the title company fees.

On July 11, 1983, respondent represented Thomas and Marilyn Secula in connection with their purchase of property located in

Byram Township, New Jersey. At that time, respondent collected \$470.25 from the Seculas for payment of title search and title insurance fees. As in the Barry matter, respondent failed to pay the title company fees, despite having deposited the Secula funds in his trust account.

In November 1983, respondent's trust account and the partnership accounts were audited by the Office of Attorney Ethics. This audit indicated that respondent was a poor bookkeeper and that his accounts were not reconciled in a timely fashion.

On January 27, 1984, an attorney for the title company wrote to respondent requesting payment of the title company fees for the Barrys. The attorney wrote a follow-up letter in February 1984, again requesting payment of the fees for the Barrys as well as for the Seculas. Respondent neither answered the letters nor returned the telephone calls made by the title company attorney.

At the ethics hearing, respondent admitted that he failed to forward to the title company funds which he had received from the Barrys and the Seculas. Respondent testified that he kept poor records and that his failure to pay the title company fees was due to his neglect.

The hearing panel concluded that respondent's conduct adversely reflected on his fitness to practice law, contrary to DR 1-102(A)(6); that he failed to carry out a contract of employment entered into with his clients, contrary to DR 7-101(A)(2); and that he failed to maintain proper records,

contrary to DR 9-102(B)(3). The panel noted that respondent, contrary to his assurances at the hearing, made no effort to forward his clients' funds to the title company. The panel recommended that, at a minimum, respondent be suspended for his ethics violations in this matter.

CONCLUSION AND RECOMMENDATION

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

As previously noted, the Board concurs with and incorporates herewith the findings and conclusions made by the hearing panel in its Presentment regarding the Beavers, Courter, McCarthy, Canna, and Raimondo matters. Once retained by his clients, respondent owed each a duty to pursue their respective interests diligently. Matter of Smith, 101 N.J. 568, 571 (1986); Matter of Schwartz, 99 N.J. 510, 518 (1985). In Beavers, respondent delayed in advancing a workers' compensation claim. When he was finally discharged by his client, he refused to forward the file to the client's new attorney, despite numerous requests. In Courter, respondent failed to respond to requests for information by a title company attorney regarding a lien on his former client's property. In McCarthy, respondent failed to promptly apply for an increase in support payments on behalf of a financially distressed client. In Canna, respondent failed to

make or oversee payments of a mortgage even in the face of subsequent requests by the bank. In Raimondo, respondent wrote trust account checks in excess of \$72,000 when there was only \$700 in the account, and told various parties to hold the checks until he could deposit funds received from an earlier real estate closing.

It is clear that, in all of the matters except Beavers, respondent's conduct adversely reflected on his fitness to practice law, in violation of DR 1-102(A)(6). Furthermore, respondent was negligent in each of the five matters. In the Canna matter, his failure to ensure payment of a client's mortgage, after repeated requests by the mortgagee-bank, constituted gross negligence, in violation of DR 6-101(A)(1). In addition, respondent failed to carry out his employment contract in McCarthy, contrary to DR 7-101(A)(2). In Raimondo, he failed to meet the trust fund requirements enunciated in DR 9-102. Moreover, a clear pattern of neglect emerged from respondent's conduct in the above five matters, in violation of DR 6-101(A)(2). Finally, in the Cadden matter, respondent failed to pay title company fees on behalf of his clients. Contrary to his assurances to the hearing panel, respondent made no effort to forward the funds to the title company, despite his duty to disburse client funds promptly. See In re Cosgrove, 108 N.J. 684 (1987). It is clear from respondent's own admissions that he failed to carry out an employment contract, in violation of DR 7-101(A)(2), and failed to maintain proper records, in violation of

DR 9-102(B)(3).² Additionally, respondent's conduct in this matter adversely reflected on his fitness to practice law, contrary to DR 1-102(A)(6) and extended his pattern of neglect, in violation of DR 6-101(A)(2).

Given respondent's unethical conduct, the Board must recommend the imposition of discipline which is commensurate with the seriousness of the infractions, 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 in which a pattern of neglect, in concert 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; Matter of O'Gorman, 99 N.J. 482 (1985). The Board recognizes that there was no evidence of a knowing misappropriation of trust funds and that respondent's life during the period of his

²It should be noted that respondent also violated the spirit of DR 9-102(B)(4) which mandates prompt payment "to the client... of funds ... or other properties in the possession of the lawyer which the client is entitled to receive." Superseding RPC 1.15(b) clarified that this duty extends to third persons.

unethical behavior was in turmoil as he terminated his partnership with another attorney. However, the foregoing factors only mitigate rather than excuse respondent's serious misconduct. The Board therefore unanimously recommends that respondent be suspended from the practice of law for a period of one year. One member 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