SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Number DRB 88-271

IN THE MATTER OF	:
BARRY L. KANTOR	:
AN ATTORNEY AT LAW	:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: April 19, 1989

Decided: October 11, 1989

Donald M. Malehorn appeared on behalf of the District X Ethics Committee.

Barry L. Kantor appeared pro se.

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.

Respondent was admitted as a member of the New Jersey Bar in 1963 and maintains an office in Morristown, New Jersey.

In the spring of 1982, respondent began representing the grievant in a law suit against his former employer, Bell Telephone Laboratories, concerning grievant's employment. In May 1985, a summary judgment was granted Bell Laboratories.

After the granting of the summary judgement, respondent agreed to handle the appeal. The dismissal of this appeal is the foundation of this disciplinary action. Grievant gave respondent

Grievant's testimony directly contradicts respondent's on almost every point. Grievant stated that respondent had visited his home in June 1986 for several hours and never told him he had filed a brief in January. Instead, respondent discussed the cases he planned to include in the appellate brief as though the brief had not yet been written (T12-T14)[1]. Grievant stated that the moment respondent claims to have called to inform him of the dismissal was actually the occasion that respondent told him the brief had been filed.

When the committee asked to see the brief, respondent referred to the January 1986 theft to explain his inability to produce the brief. The Clerk of the Superior Court and two paralegals from Bell Laboratories testified that, although they had all the other papers concerning this case, they had no record of ever receiving respondent's brief.

Respondent claimed to have been advised by a court clerk that oral argument would be held in the Fall. However, respondent was unable to produce for the committee any work product prepared by him for oral argument, which would have been generated between the mailing of the brief in January 1986, and notice of the dismissal of the case in the Fall of 1986. He offered no convincing explanation for his failure to request a copy of his brief from either the court or the other litigant after the theft. Finally, although he stated that he reported the theft to a shopping mall

---

[1]T denotes the transcript of the May 2, 1988 hearing of the District X Ethics Committee.

security officer, the Wayne police, and his insurance company, he was unable to obtain written incident reports from any of these three authorities.

The committee asked respondent why he did not petition the court for reinstatement of the appeal in the Fall of 1986, or discuss the situation with his client. Respondent advised that he had accepted a court clerk's word that it is difficult to reinstate an appeal after the passage of almost a year. He admitted he never discussed reinstatement with his client (T160-T161).

In weighing the credibility of the two witnesses the committee stated the following:

> In sum, the committee has concluded that the whole of respondent's testimony was materially false. No brief was written. No brief was filed. The theft never took place, other than in respondent's mind....
>
> Notwithstanding the above discussion and the conclusions of fact and law reached by the Panel, we have concluded that the respondent's testimony, though totally untruthful, may not have been disingenuous. Respondent's demeanor, his reaction when the presenter suggested that his testimony was untrue and the testimony itself, which appears to be an extension of Murphy's Law, convinced the panel that respondent may have believed what he said. Through some mental process, it is likely that respondent has convinced himself that he did nothing wrong, and that circumstances outside of his control prevented him from fulfilling his ethical responsibility [HP10-HP11][2].

The committee concluded that there was clear and convincing evidence that respondent was grossly negligent in violation of R.P.C. 1.1(a), failed to act with due diligence in violation of

---

[2]HP denotes the District X Ethics Committee hearing panel report dated June 6, 1988.

R.P.C. 1.3, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation in violation of R.P.C. 8.4(c).

CONCLUSION AND RECOMMENDATION

Upon review of the full record, the Board concludes that the evidence clearly and convincingly establishes that respondent engaged in unethical conduct.

The record reveals that respondent acted in an inappropriate manner in failing to file the appellate brief, failing to seek reinstatement upon receiving notice of the dismissal, and misrepresenting the status of the appeal to his client. Such conduct falls below the standards of the profession. In re Bloom, 60 N.J. 113, 114 (1972). Respondent's lack of candor with his client violated his obligation, as his attorney, to act with the highest degree of fidelity and good faith. See Matter of Nichols, 95 N.J. 126, 131 (1984).

The purpose of discipline, however, is not the punishment of the offender, but "protection of the public against the attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout, 76 N.J. 321, 325 (1978). The severity of discipline to be imposed must comport with the seriousness of the ethical infraction in light of all the relevant circumstances. In re Nigohosian, 86 N.J. 308, 315 (1982).

The Board, like the committee, is deeply troubled by respondent's lack of candor. This lack of candor continued during his appearance before the Board. All evidence indicates respondent never filed a brief. At the Board hearing, respondent volunteered that he has been treated with a prescription medicine for manic-depressive illness for a long time, but no further psychiatric evidence was offered. While it may be true that his mental condition influenced his behavior, it is not clear that his mental illness is of such magnitude as to excuse his continuing lack of candor. Matter of Templeton, 99 N.J. 365, 375 (1985). Although the Board would like to be able to rely upon respondent's own testimony concerning his mental status, no expert psychiatric evidence was introduced to the committee; therefore, the Board is constrained in its evaluation of this testimony.

This case shares many similarities with In re Introcaso, 96 N.J. 142 (1984), in which the attorney told his client and the ethics committee that he took a case through trial and afterwards lost all documents concerning the case, when in reality he had not even filed a complaint. Like the case at hand, Introcaso involved only one case of neglect, together with a lack of candor to both the client and the ethics system. A one-year suspension resulted.

Although mitigating factors are relevant, In re Hughes, 90 N.J. 32, 36 (1982), there are few such factors present in this case beyond the undetermined mental status of the respondent. Respondent has never returned to grievant the balance of the $1,000.00 retainer despite grievant's request for reimbursement.

Moreover, the Board must consider as an aggravating factor respondent's prior ethics history: he was privately reprimanded in 1985 for his failure to communicate with a client. That letter of private reprimand, cites as a mitigating factor respondent's voluntarily withdrawal from the practice of law. Yet, contrary to his representations, respondent did not withdraw from practice, but rather continued to work on this case from 1982 through 1986.

The Board is of the unanimous opinion that the misconduct in this case, combined with the prior ethics infraction and lack of proven mitigating factors, supports a recommendation that respondent be suspended for one year. In addition, as a condition of reinstatement, the Board recommends respondent be required to produce psychiatric evidence of his fitness to practice law, as well as proof of successful completion of the Skills and Methods and Professional Responsibility courses. Upon reinstatement, the Board recommends the respondent practice law under a one-year proctorship approved by the Office of Attorney Ethics.

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

DATE: 10/11/89

Raymond R. Trombadore, Esq.
Chair
Disciplinary Review Board