SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-172

IN THE MATTER OF

SIDNEY S. KANTER

AN ATTORNEY AT LAW

Decision

Argued: September 23, 1998

Decided: May 10, 1999

George J. Mazin appeared on behalf of the District V Ethics Committee.

Respondent appeared pro se.

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

These matters were before the Board based on a recommendation for discipline filed by the District V Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1972. At the time of the alleged misconduct, he maintained a law office at 1064 Clinton Avenue, Irvington, Essex County.

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By Supreme Court Order dated September 27, 1995 respondent was temporarily suspended from the practice of law for failure to comply with a demand for a random compliance audit. See In re Kanter, 142 N.J. 470 (1995). The temporary suspension has not been lifted to date. By Supreme Court Order dated June 5, 1997 respondent was suspended for two years for misconduct in eleven matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to turn over files upon conclusion of the representation, failure to expedite litigation, conduct involving dishonesty, deceit or misrepresentation and failure to cooperate with the disciplinary authorities. That suspension remains in effect until June 5, 1999. See In re Kanter, 149 N.J. 396 (1997).

The matters resulting in respondent's two-year suspension came to the Board on a default basis, pursuant to R. 1:20-4 (f) (1). In its decision, the Board noted that the DEC then had thirteen matters pending against respondent. The within six matters were among those pending matters.

Both in his answer and his testimony before the DEC, respondent argued that these six matters should have been considered with the earlier default matters. At the Board hearing, respondent briefly alluded to the same argument.

I. The Pridgen Matter

The complaint alleged violations of RPC 1.1 (a) (gross neglect), RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), RPC 1.4(a) (failure to communicate with

the client), RPC 1.5 (c) (failure to utilize retainer agreement) and RPC 8.1(b) (failure to cooperate with the disciplinary authorities) cited as a violation of R. 1:20-3(g)(3).

In or about December 1992 Margaret Pridgen retained respondent to represent her for injuries sustained in an automobile accident in which she was a passenger. Apparently, Pridgen's automobile, driven by a friend, had struck a highway divider near Newark Airport. Pridgen was critically injured and hospitalized. Even though Pridgen claimed that her friend, not she, was driving the car at the time of the accident. She was issued a summons for driving under the influence of alcohol. She retained respondent to defend her against that charge, as well as to file a complaint against her insurance carrier, Prudential, under the uninsured motorist provisions of her automobile policy.

According to Pridgen, respondent adequately handled the DUI matter. Indeed, that matter was ultimately dismissed by the Newark municipal court.

With regard to the complaint against Prudential, Pridgen testified that respondent filed a complaint in her behalf and told her that her case would take approximately two years to reach trial. After 1992, Pridgen periodically called respondent's office seeking information about her case. She testified that initially her calls were answered by a secretary, who counseled her to be patient. At some point, according to Pridgen, respondent utilized an answering machine to take office calls. Pridgen testified that, on numerous occasions, she left messages on respondent's answering machine. On other occasions, she attempted to leave messages on the answering machine, but could not because the tape was full. Pridgen

stated that, beyond a copy of the complaint, which did not contain a docket number, respondent gave her no further information about her case. Finally, Pridgen testified, she learned on her own that her claim against Prudential had been dismissed. According to Pridgen, respondent never notified her of this or any other events in the case.

For his own part, respondent testified that he represented Pridgen in the DUI aspect of the case. According to respondent, the matter was adjourned approximately ten times before it was finally heard. Respondent was successful in having the case against Pridgen dismissed and charged her $500 for that matter.

Respondent further testified that the most serious problem with Pridgen's case was her inability to sue the passenger of the vehicle because that passenger had stated in a sworn statement that Pridgen was the driver. Respondent testified as follows:

> When she told me that she had been able to get the passenger of her car who was going to come forward, okay, and now say, 'I was the passenger on his hundred-thousand-dollar scenario,' I said to her, 'I'll file the action for you, but if you don't get that person to come in here and give me a statement, okay, I'll protect, get the claim filed so your time doesn't, whatever, lapse, but if you don't get the person in here, I will not prosecute the matter further.'

In fact, respondent admitted that he filed the complaint to protect Pridgen against the statute of limitations and that it was Pridgen's responsibility to bring the passenger to his office in order to sign a new affidavit. Respondent further testified that the complaint had never been served because Pridgen had never brought the passenger to his office. The matter

was later dismissed for failure to prosecute. When questioned by the DEC on this issue, respondent could not explain why he had not taken the deposition of the passenger, with whom Pridgen was friendly. Respondent acknowledged that Pridgen's case turned on that information.

Finally, respondent testified that he had told Pridgen that her matter would be dismissed if she did not bring the passenger to his office. However, respondent admitted that he never memorialized that conversation or notified Pridgen, in writing, that he expected her to take action to prevent a dismissal of her claim.

With respect to his unavailability to take Pridgen's calls, respondent stated that he was often without a secretary during the period of time that included all of the within matters. Respondent testified that he resorted to the use of an answering machine to take office calls. Respondent admitted that sometimes the message tape was full and would not accept further messages. He did not suggest that he had taken any action to correct that problem.

II - **The Mansueto Matter**

The complaint alleged violations of RPC 1.1 (a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with the client), RPC 3.2 (failure to expedite litigation), RPC 1.5 (c) (failure to utilize retainer agreement) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

In or about 1989, Giuseppi L. Mansueto, the grievant in this matter, was involved in an automobile accident while driving a cab. He was referred to respondent by his cab company. Mansueto was again involved in an automobile accident in 1991. Finally, in or about 1993, Mansueto tripped on a sidewalk and injured his head. According to Mansueto, respondent was retained to represent him in all three matters.

Mansueto testified that respondent was supposed to file suit in his behalf for injuries sustained in the first automobile accident. He complained that he heard nothing from respondent about the first accident and that, when he consulted respondent about the second accident, he had also asked respondent about the first case. Mansueto testified that respondent urged him to be patient. According to Mansueto, when he retained respondent to represent him in regard to the slip-and-fall case, respondent told Mansueto that the other two matters were proceeding apace.

Mansueto also testified that respondent never furnished him with any documentation about any of the three matters. Mansueto recalled signing several documents at respondent's office, but did not know what they were. Mansueto testified that respondent took pictures of the slip-and-fall scene. Mansueto was unaware of any other work performed on his behalf, however.

Furthermore, Mansueto testified that he tried on numerous occasions to contact respondent by telephone for information about his case. He also recalled delivering a medical report to respondent's office, only to find it unattended. Therefore, he slipped the

report under respondent's office door. According to Mansueto, respondent never contacted him about that report. Indeed, Mansueto testified that respondent never contacted him about any of his legal matters after the initial meeting about his third case. Finally, dissatisfied with respondent's representation, Mansueto retained another attorney to represent him in the slip-and-fall case. Mansueto did not, however, retain another attorney to represent him with respect to the two automobile cases.

Respondent did not cross-examine Mansueto or testify about the case. Moreover, respondent did not present any evidence to controvert Mansueto's account of the events.

III - **The Gupton Matter**

The complaint alleged violations of RPC 1.1 (a) (gross neglect), RPC 3.2 (failure to expedite litigation), RPC 1.4(a) (failure to communicate with the client) [erroneously cited as RPC 1.4(b)], RPC 1.5 (c) (failure to utilize retainer agreement), RPC 7.2 (c) (improper solicitation of clients), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.1 (b) (failure to cooperate with disciplinary authorities).

On July 20, 1991, Willie Gupton, the grievant in this matter, was struck by an automobile while jogging. Gupton was hospitalized for a fractured leg. Grupton retained respondent shortly thereafter. Gupton did not recall signing a retainer agreement and vaguely recalled going to respondent's office on several occasions to obtain information about the case. According to Gupton, respondent was not at his office on those occasions. Gupton

testified that he also attempted to call respondent, reaching his answering machine instead. Gupton also testified that respondent never furnished him with any documentation or contacted him about the case, despite Gupton's messages on respondent's answering machine. Finally, Gupton testified that he never learned of the resolution of his case.

Respondent, in turn, testified that Gupton was supposed to find a witness to the accident as a prerequisite to filing an action. Respondent offered no evidence either in support of that contention or with regard to any other issue raised in Gupton's testimony. Gupton denied that respondent ever required a witness.

IV - The Monroe Matter

The complaint alleged violations of RPC 1.1 (a) (gross neglect), RPC 3.2 (failure to expedite litigation), RPC 1.3 (lack diligence) and RPC 8.1(b) (failure to cooperate with disciplinary authorities). In addition, the complaint alleged a violation of RPC 1.1 (b) (pattern of neglect) for respondent's alleged misconduct in all of the within matters.

On August 10, 1991, DeNorris A. Monroe, the grievant in this matter, was involved in an automobile accident. Monroe testified at the DEC hearing that he underwent physical therapy for a back injury sustained in the accident and retained respondent to file suit in his behalf.

Monroe recalled signing documents at the first meeting with respondent, conducted at respondent's office. However, according to Monroe, respondent did not give him a copy

of any documents. Therefore, Monroe testified, he was unsure if he had signed a retainer agreement. According to Monroe, respondent told him that he would take the case because "it was worth pursuing." Monroe recalled another meeting with respondent in which he, Monroe, delivered a copy of the insurance policy for the automobile and his x-ray documentation. Monroe also recalled receiving one letter from respondent during the course of the representation indicating that the matter was progressing. He did not recall the date of the letter.

Monroe stated that, during the next year following respondent's letter, he called respondent's office on numerous occasions to obtain information about the case. In each instance, he spoke to respondent's secretary, who, he alleged, told him that respondent was unavailable to speak to him. Therefore, according to Monroe, he was never able to obtain an update regarding the case. Furthermore, Monroe stated that he never received any documentation from respondent about the case and was never called into the office to discuss the matter. Finally, three years later, in or about 1994, he consulted another law firm about his case. According to Monroe, that firm informed him that it could not represent him because the statute of limitations had expired.

Again, with respect to Monroe's matter, respondent chose not to testify and did not introduce evidence to contradict Monroe's testimony.

V - The Johnson Matter

The complaint alleged violations of RPC 1.1 (a) (gross neglect) and (b)(pattern of neglect) RPC 1.3 (lack diligence), RPC 1.4(a) and (b) (failure to communicate with the client and to explain the matter to allow the client to make an informed decision), RPC 1.5 (c) (failure to utilize retainer agreement), RPC 3.2 (failure to expedite litigation) and RPC 8.1 (b) (failure to cooperate with the disciplinary authorities), cited in the complaint as R. 1:20-3 (3)].

On July 12, 1992, Crystal Johnson, the grievant in this matter, was struck by an automobile while a pedestrian. Johnson testified at the DEC hearing that, approximately four months after the accident, she sought the services of an East Orange chiropractor, who promptly referred her to respondent.

Johnson testified that respondent agreed to take her case in the first of their three meetings. She specifically recalled that the meeting lasted thirty minutes. She remembered that respondent took notes while she explained her accident. The record does not reflect the dates of the meetings.

According to Johnson, she heard nothing from respondent for approximately one year after their third meeting. Therefore, she attempted to contact him five or six times; in each instance, respondent's secretary indicated that he was unavailable to speak to her and requested that she call back. According to Johnson, respondent never returned any of her calls. Furthermore, Johnson was certain that she received no documents from respondent

about the case through the entire representation. Finally, according to Johnson, approximately one year after her final telephone contact with respondent's office, she visited the office and found it closed.

Although respondent recalled a brief meeting with Johnson, he denied having taken any notes or opening a file in the matter. Respondent reasoned that, if he had taken notes, he would have opened a file. Despite that assertion, respondent acknowledged maintaining a file in this matter. The file contained the emergency room report, medical bills and correspondence to Johnson from her insurance company. Respondent testified that Johnson's injuries were minimal and that they did not satisfy the "verbal threshold." According to respondent, he told Johnson that she did not satisfy the threshold requirements, that he would not represent her and that she should take back her file and records. Johnson denied that respondent ever so advised her. Lastly, respondent admitted that he did not enter into a retainer agreement with Johnson or notify her in writing that he would not be representing her.

A report from Johnson's treating physician, Leonard Papel, M.D., addressed to respondent and dated April 10, 1993, was introduced in evidence. That report indicated that Johnson's injuries were serious in nature. Respondent did not deny receipt of that letter. Rather, respondent denied ever having spoken to Dr. Papel. Furthermore, respondent denied ever having referred clients to Dr. Papel or accepting referrals from him.

VI - **The Acevedo Matter**

Rosa Acevedo, the grievant in this matter, allegedly retained respondent to represent her in connection with injuries sustained in an automobile accident. Because the DEC was unable to locate Acevedo, it dismissed all charges related to this matter.

* * *

Respondent raised several issues at the DEC hearing. First, respondent argued that the within matters should have been heard together with the default matters that resulted in his two-year suspension. Second, respondent urged the DEC to consider his mental state during the time period from approximately 1994 through his temporary suspension in September 1995. Respondent claimed that a series of events had made it almost impossible for him to face life, let alone his legal practice. He claimed that his life began to unravel upon his discovery in early 1994 that his secretary had been stealing funds from him. Shortly thereafter, respondent became embroiled in his own divorce. A simultaneous secret affair produced a child in February 1994. The child later developed brain cancer at the age of sixteen months. Ultimately, the child recovered, but only after intense treatment, which , according to respondent, required significant time away from his practice in the latter half of 1995. Later, respondent learned that the child was not his. Soon thereafter, in September

1995, he was temporarily suspended and sought psychiatric care. The DEC accepted, without objection from the presenter, respondent's account of what his psychiatrist would have said about respondent's mental condition during this time period. According to respondent, his psychiatrist would have testified that respondent was suicidal and taking antidepressant drugs. Lastly, in the winter of 1996, respondent was apparently mugged, the side window of his car was smashed with a pipe, while in it near his Irvington office. According to respondent, for over a year thereafter he could not drive through Irvington out of fear.

Respondent testified that he is unsure if he will ever seek reinstatement in the future. At the time of the DEC hearing, respondent made a living by answering telephones in a relative's auto body shop and helping another relative with investments.

* * *

In the Gupton matter, the DEC found a violation of RPC 1.1(a) for respondent's failure to file suit in Gupton's behalf, a violation of RPC 1.4 for his failure to communicate with his client and a violation of RPC 1.5(c) for his failure to render a written statement informing Gupton of the outcome of the matter. The DEC dismissed the remaining charges for lack of clear and convincing evidence, noting respondent's cooperation with the disciplinary authorities. In Johnson, Mansueto and Pridgen, the DEC found violations of RPC

1.1(a), RPC 1.3, RPC 1.4 and RPC 1.5(c). In Monroe, the DEC found violations of RPC 1.1(a) and RPC 1.3, dismissing the remaining charges. In Pridgen, the DEC also found a violation of RPC 3.2. As previously noted, the DEC dismissed all charges related to the Acevedo matter due to an inability to locate the grievant. The DEC also found a pattern of neglect, in violation of RPC 1.1(b).

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Following a de novo review of the record, the Board was satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

Respondent presented no documentary evidence to refute any of the charges contained in the complaint. In the several instances when respondent offered testimony, it was akin to the defense to a malpractice action, not an ethics proceeding. For example, in Pridgen, respondent was adamant that his client had no viable cause of action under the set of facts that Pridgen presented to him. According to respondent, only in the event that Pridgen's passenger recanted his testimony and admitted to driving the automobile (that he had previously sworn was driven by Pridgen) would she have had a viable case. Respondent claimed that he told Pridgen that she had to produce the passenger in order for him to proceed on her behalf. Moreover, respondent admitted that, although he knew the name and

whereabouts of the passenger, he did not seek to locate him, let alone seek his deposition to determine the true nature of his client's claims. Respondent could not adequately explain why, then, he filed suit in Pridgen's behalf.

Likewise, in the Gupton, Johnson, Mansueto and Monroe matters respondent did not communicate with his clients or attempt to keep them informed about their respective matters. Instead, the clients were forced to seek him out, only to find him unavailable. Respondent offered no defense to the allegations that he failed to communicate with his clients. To the contrary, respondent admitted that personal problems had kept him away from his practice. Respondent also conceded that he avoided going to his office in Irvington for one year after his mugging incident. However, by respondent's own account, the mugging occurred in the winter of 1996, a full year after he had already been temporarily suspended. In addition, his unethical conduct in these matters took place before his personal problems, which arose in 1994. Respondent had no plausible explanation for his inaction, other than that these cases were not worth pursuing.

In short, respondent could not refute the charges alleged in the complaints. The witnesses in each case were unsophisticated and trusting of respondent. They all considered respondent to be their attorney. In fact, respondent was their attorney and did nothing to disengage himself from those clients whose cases he considered to be "losers." For these reasons, the Board made the following findings:

In Gupton, respondent violated RPC 1.1 (a) and RPC 1.3 for his failure to institute an action in Gupton's behalf or to otherwise prosecute the case and RPC 1.4(a) for his failure to communicate with his client. The Board dismissed the alleged violation of RPC 1.5(c), as a retainer agreement was utilized. The DEC was correct to dismiss the alleged violations of RPC 3.2, RPC 7.2(c) and RPC 8.4(c). Likewise, the Board dismissed the alleged violation of RPC 8.1(b) as respondent ultimately filed an answer and cooperated with the DEC.

In Johnson, Mansueto and Pridgen, respondent violated RPC 1.1(a), RPC 1.3, RPC 8.1(b), RPC 1.4(a) and, because he did not prepare a retainer agreement, RPC 1.5(c). In Pridgen, respondent violated RPC 3.2 by his failure to expedite the litigation and allowing it to be dismissed.

In Monroe, respondent violated RPC 1.1(a), RPC 1.4(a) and RPC 1.3. Although respondent was not charged with a specific violation of RPC 1.4(a), the facts in the complaint gave him sufficient notice of the alleged improper conduct and of the potential violation of that RPC. Furthermore, the record developed below contains clear and convincing evidence of a violation of that rule. Respondent did not object to the introduction of such evidence in the record. In light of the foregoing, the Board deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

The DEC properly dismissed all charges related to the Acevedo matter due to an inability to locate the grievant in that matter.

Finally, the Board found that respondent's misconduct amounted to a pattern of neglect, in violation of RPC 1.1(b).

Respondent committed numerous ethics infractions in these matters. It is apparent that he essentially abandoned his clients at some point in time.[1] The Board noted respondent's assertion that the within matters should have been considered with the previous matters. However, the discipline meted out previously (two years) most likely would have been enhanced had all matters been consolidated. As to mitigation, as noted earlier, respondent's assertion that his mental condition affected his ability to practice law is, with respect to the within matters, without merit. His misconduct in these matters preceded his personal problems in 1994 and his cry for psychiatric help in September 1995. Under the above circumstances, the Board unanimously determined to suspend respondent for one year, consecutive to the prior two-year suspension imposed in the default matters. See In re Herron, 140 N.J. 229 (1995) (where the attorney received a one-year suspension for lack of diligence and failure to communicate in six matters, gross neglect and pattern of neglect in five of the matters, failure to notify a client of his receipt of funds in a seventh matter and failure to cooperate in all of the matters).

It should be noted that, although some attorneys have been disbarred for mishandling fewer matters than respondent, disbarment was imposed because of additional factors, not

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[1]It is unclear from the record what, if any, damages the various clients in these matters suffered as a result of respondent's inaction.

present here. For instance, in In re Spagnoli, 115 N.J. 504 (1989), the attorney was disbarred for misconduct in fourteen matters. There, however, the attorney also defrauded his clients by taking retainers without any intention to pursue their matters and, in addition, failed to appear before the DEC, the Board and the Court. Despite the significant number of cases involved here, that factor alone is not sufficient to merit disbarment. Disbarment here, thus, merely because of the significant number of cases involved would be unduly harsh.

The Board also required proof of fitness to practice from a psychiatrist approved by the Office of Attorney Ethics and completion of the skills and methods core courses prior to reinstatement. In addition, the Board required that upon reinstatement, respondent practice under the supervision of a proctor until further order of the Court.

Finally, the Board required respondent to reimburse the Disciplinary Oversight Committee for all applicable administrative expenses.

Dated: 5/26/99

LEE M. HYMERLING
Chair
Disciplinary Review Board