B-1

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-174

IN THE MATTER OF

AUGUSTINE U. UZODIKE,

AN ATTORNEY AT LAW

Decision

Argued: July 8, 1999

Decided: February 22, 2000

Thomas S. Weinstock appeared on behalf of the District VB Ethics Committee.

Respondent did not appear, despite proper notice of the hearing.

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

This matter was before us based on a recommendation for discipline filed by the District VB Ethics Committee ("DEC"), following a finding of misconduct in two separate cases. Two complaints alleged violations of RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to communicate with the client), RPC 8.1(b) (failure to cooperate with the ethics authorities) and RPC 1.1(b) (pattern of neglect). A third matter alleging a violation of RPC 1.3 (Lindore), was dismissed due to the unavailability of the grievant to testify.

Respondent was admitted to the New Jersey bar in 1990 and maintains an office for the practice of law in East Orange, Essex County.

On July 16, 1999, the Court suspended respondent for six months for violations of RPC 1.1(a) in four matters, RPC 1.3 in two of the matters, RPC1.4(a), RPC1.15(a) (safekeeping property) in two of the matters, RPC 1.1(b), and RPC 1.15 (d) and R. 1:21-6(a) (negligent misappropriation) in two of the matters. Those matters proceeded on a default basis, pursuant to R. 1:20-4(f)(1). In re Uzodike, 159 N.J. 510 (1999).

* * *

I. The Mosley Matter

In or about 1992 Terran Mosley retained respondent to represent him in a police brutality case against the City of Newark Police Department. According to Mosley, respondent filed a complaint, which was later dismissed for respondent's failure to provide answers to interrogatories. Thereafter, Mosley moved to South Carolina in 1993. Mosley recalled numerous telephone calls to respondent's office between 1993 and June 1997 when, according to Mosley, respondent first contacted him about certain problems with the case.

Mosley testified that, in June 1997, respondent told him for the first time that, through respondent's own fault, Mosley's case had been dismissed. Respondent also told Mosley that he had a claim against respondent for the mishandling of the case and suggested that Mosley consult with another attorney about a possible malpractice claim against respondent.

Mosley further testified that he sent two letters to respondent during the summer of 1997. The first letter, dated June 6, 1997, requested information about the case. The second letter, dated July 7, 1997, demanded that respondent pay him $20,000 to settle his claim against respondent. Mosley's letter also demanded $30,000, in the event that Mosley was forced to initiate ethics proceedings against respondent (mistakenly cited as action taken by the American Bar Association.) Mosley further testified that he filed his April 1998 grievance because he received no further information from respondent about the case or the settlement after their July 1997 communication in that regard.

Mosley also testified that, in July 1998, he and respondent discussed a settlement of the malpractice claim. Mosley testified that respondent prepared a draft agreement settling all claims for $7,500. Although neither party signed the agreement, respondent sent three installments of $500 each to Mosley on August 11, 1998, September 24, 1998 and November 3, 1998.[1]

---

[1]It is clear from Mosley's testimony that he believed that $7,500 was insufficient to settle his claims against respondent. He also mistakenly believed that the DEC was in a position to review that amount and award him a larger settlement. Apparently, the DEC did not inform Mosley that it had no such authority.

For his part, respondent admitted that he mishandled Mosley's case. Respondent did not refute the charge that the case was dismissed for his failure to provide answers to interrogatories. Likewise, respondent admitted that he did not advise Mosley of the August 1995 dismissal until almost two years later, during the June 1997 meeting at respondent's office.

With regard to settling the malpractice claim with Mosley, respondent stated that no agreement was ever reached, despite his three 1998 payments to Mosley totaling $1,500.

Finally, respondent denied that he failed to communicate with Mosley, claiming that he kept Mosley informed about the case up until the time that it was dismissed. However, respondent had no explanation for the two-year communication gap between the dismissal and June 1997, when he finally notified Mosley of that fact.

II. The Elefant Matter

In or about October 1994 Carolyn Elefant, a Washington, D.C. attorney, asked two friends, respondent and David Feinberg, Esq., a New York attorney not licensed to practice in New Jersey, to assist her with a claim to be asserted by her mother, Eleanor Elefant, for injuries sustained in a New Jersey supermarket slip-and-fall incident. Eleanor, respondent and Feinberg executed a retainer agreement in October 1994. Although Feinberg's role in the representation is unclear, there is no question that respondent was the only New Jersey attorney of record in the action, which was later filed in New Jersey.

In or about March 1996 a mandatory arbitration hearing was held. When respondent did not appear, the case was dismissed on March 28, 1996.

Feinberg testified at the DEC hearing that he followed the case via courtesy copies of correspondence and pleadings from the attorneys for the parties. In April 1996 the defendant's attorney sent him a courtesy copy of the March 28, 1996 dismissal. Feinberg immediately contacted respondent and, on April 17, 1996, drove from New York to respondent's New Jersey office to discuss the matter. It is undisputed that, at that meeting, respondent promised to immediately file a motion to restore the case. Feinberg recalled that he did not specifically ask respondent why he had allowed the complaint to be dismissed. Feinberg was satisfied that respondent would thereafter attend to the case. Feinberg testified that he called respondent several times over the following months, but respondent was unavailable to speak with him. Therefore, in June 1996, Feinberg contacted Carolyn to notify her that the case had been dismissed and that he was uncertain if respondent had taken steps to restore it. Finally, in February 1997 Feinberg wrote to respondent requesting information about the case. Respondent did not reply to that request.

Eleanor Elefant testified that she retained respondent and Feinberg on her daughter's recommendation. She recalled that she did not have much direct involvement in the case until respondent summoned her to his office in the summer of 1996 to tell her about the dismissal. According to Eleanor, by this time her daughter, Carolyn, had already made her aware of the dismissal. Eleanor added that respondent told her at the meeting that he was going to rectify the situation. She did not remember how he characterized the steps to be taken to put the case back on track. Thereafter, according to Eleanor, she called respondent at his office three times to ascertain the status of the case. However, she stated, respondent never returned her calls.

Carolyn Elefant testified that she first befriended respondent in law school and that, after graduation, they remained friends and kept in touch. She recalled assisting her mother in retaining respondent and Feinberg, another personal friend, to handle her mother's slip-and-fall case. Carolyn was not aware of any arrangement between respondent and Feinberg about their separate duties in the case. However, Carolyn was sure that respondent was responsible for the New Jersey litigation at all times.

Further, Carolyn testified that, in or about July 1996, Feinberg told her about the dismissal and respondent's promise to reinstate the case. She immediately contacted respondent, who, she claimed, promised her that he would file a motion to restore the case in August 1996. Carolyn stated that she did not contact respondent for sometime thereafter, confident that he now had the case reinstated. In May 1997 respondent told her for the first time that he had never filed the motion to reinstate the complaint.

In July 1997, according to Carolyn, she and respondent discussed a malpractice claim by Eleanor for respondent's mishandling of the case. Carolyn stated that they agreed to settle the malpractice claim for $3,500.[2] Toward that end, Carolyn prepared a letter

[2]Respondent did not maintain malpractice insurance during the pendency of either of the within matters.

agreement releasing all claims against respondent, upon the payment of $3,500 to Eleanor. Carolyn sent the agreement to respondent for his signature but, according to her, he never returned it.

Respondent presented no evidence to excuse his misconduct. There is no documentation to show that respondent performed any acts in furtherance of Eleanor's case after the dismissal. Respondent had no explanation for the dismissal, beyond denying that he had received the court's notice of the arbitration hearing. Likewise, respondent could not explain his failure to restore the case or to communicate the status of the case to Eleanor, Carolyn and Feinberg. Respondent presented no proof of communications with Eleanor, either written or oral. Respondent admitted not notifying Eleanor that her case had been dismissed.

With regard to the alleged failure to cooperate with the ethics authorities, there is ample evidence in the record of respondent's chronic lateness in replying to the DEC's requests for information about the grievances. In Mosley, in January and March 1998, the DEC sent letters requesting information and requiring a response within ten days. Respondent did not reply until April 30, 1998. In Elefant, the DEC sent a letter on June 25, 1998, requesting information and requiring a response to the grievance within ten days. Respondent did not reply to that letter, but filed an answer to the complaint on September 28, 1998. He would later testify that, because of an unexplained office situation, he did not receive the letter until much later than June 1998, although it was admittedly received in his office on June 26, 1998. Inexplicably, respondent determined that it was in his best interest not to open that correspondence. He presented it to the DEC, unopened, at the hearing. Apparently, respondent's intent was to explain his delay in complying with the DEC's requests for information.

* * *

The DEC found violations of RPC 1.1(a) and RPC 8.1(b) in both Mosley and Elefant and a violation of RPC 1.4(a) in Mosley. In addition, the DEC found a pattern of neglect, in violation of RPC 1.1(b). In recommending the imposition of a six-month suspension, the DEC took into consideration our then-recent decision to suspend respondent for three months and respondent's earlier temporary suspension for failure to cooperate with the Office of Attorney Ethics' ("OAE") review of his records in another pending matter. In addition, the DEC recommended a proctor upon reinstatement, mandatory malpractice insurance and payments to Mosley and Elefant, consistent with his agreements with them.

* * *

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

Although the alleged misconduct in these matters is not complex, respondent's version of the events, his cross-examination of witnesses and his testimony in general were disjointed, difficult to follow and, at times, irrelevant. Through hundreds of pages of testimony, little can be found in the record to contradict the allegations contained in the complaints.

With respect to Mosley, respondent claimed that he did not recall receiving the notice of Mosley's mandatory arbitration hearing. Respondent offered no explanation for his failure to take action in the case either before or after the dismissal of the complaint. He produced no evidence of communications with Mosley to contradict Mosley's testimony that he failed to keep him apprised of important aspects of the case. He had no explanation for his $1,500 in payments to Mosley to avoid a malpractice action. Instead, respondent claimed that he never reached an agreement with Mosley in this regard. Respondent attempted to mitigate his failure to communicate with his client after the complaint's dismissal by claiming that he had communicated effectively with Mosley prior to the dismissal.

As troublesome as respondent's failure to properly handle his client's case was his inability to admit the extent of his misconduct. There is no question, however, that respondent violated RPC 1.1(a) and RPC 1.4(a). In addition, by not telling Mosley for almost two years that his case had been dismissed, respondent misrepresented, by his silence, that the case was proceeding apace. "In some situations, silence can be no less a misrepresentation than words." Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984).

Although respondent was not specifically charged with a violation of RPC 8.4(c), 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 RPC 8.4(c). Respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deem the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976). Therefore, in Wesley, we find violations of RPC 1.1(a) and RPC 1.4(a), as well as of RPC 8.4(c).

In Elefant, three witnesses testified that respondent neglected the case by allowing it to be dismissed. Further, respondent promised each one of them, Eleanor Elefant, Carolyn Elefant and Feinberg, that he would remedy his inaction by filing a motion to reinstate the complaint. Yet, he never did so. Thereafter, he failed to return their telephone calls, as well as letters seeking information about the progress of the matter. Then, after admitting some culpability by agreeing to make Eleanor whole for his malpractice, respondent failed to sign the agreement and to pay the $3,500 settlement. Therefore, we find that respondent violated RPC 1.1(a) and, although the DEC did not find it, a violation of RPC 1.4(a).

With regard to the allegations that respondent failed to cooperate with the ethics authorities in both Mosley and Elefant, there is evidence that respondent was slow to answer the DEC at every turn. Indeed, respondent never turned over his files in these matters to the DEC, despite its repeated requests. In addition, respondent arrived two hours late to the initial DEC hearing, without excuse. Moreover, respondent has a history of indifference to the disciplinary authorities, as evidenced by his temporary suspension for failure to cooperate with an OAE investigation and his recent four default matters. For these reasons, we find a violation of RPC 8.1(b) in each of the within matters.

In cases dealing with misrepresentations to clients about the status of their cases, gross neglect, lack of diligence and failure to communicate, the appropriate degree of discipline is generally a reprimand. See, e.g., In re Cervantes, 118 N.J. 557 (1990) (reprimand imposed where the attorney failed to pursue two workers' compensation matters, exhibited a lack of diligence and failed to keep the clients reasonably informed of the status of the matters; in one matter, the attorney misrepresented the status of the case); In re Martin, 120 N.J. 443 (1990) (public reprimand imposed where the attorney displayed a pattern of neglect in six matters, in addition to misrepresenting to a client in one of the matters that the case was pending when the attorney knew that the case had been dismissed.) Because of respondent's recent default matter, in which similar misconduct was found in four matters, we find that a short term of suspension is warranted. See In re Bernstein, 144 N.J. 369 (1996) (three-month suspension imposed where the attorney exhibited gross neglect, lack of diligence, failure to communicate and misrepresentation, in addition to failure to cooperate with the disciplinary authorities; prior private reprimand for similar misconduct,);and In re Chen, 143 N.J. 416 (1996) (three-month suspension imposed where the attorney engaged in a pattern of neglect, misrepresentation, failure to communicate and failure to cooperate with the disciplinary authorities in two matters; prior reprimand for similar misconduct in two matters). In light of respondent's recent ethics history and his continuing failure to cooperate with the ethics authorities, we unanimously determined to impose a three-month suspension to be served consecutively to the prior suspension. We further require that respondent practice under a proctor for a period of two years upon reinstatement. One member did not participate

We also require respondent to reimburse the Disciplinary Oversight Committee for all administrative expenses.

Dated: 2/22/2002

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Augustine U. Uzodike
Docket No. DRB 99-174

Argued: July 8, 1999

Decided: February 22, 2000

Disposition: Three-Month Suspension to be served consecutively to his prior suspension

Members	Disbar	Three-Month Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling		x					
Cole		x					
Boylan		x					
Brody		x					
Lolla		x					
Maudsley		x					
Peterson		x					
Schwartz							x
Wissinger		x					
Total:		8					1

Robyn M. Hill

Robyn M. Hill
Chief Counsel