

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-021
District Docket No. IIA-06-026E

IN THE MATTER OF :
CLIFFORD B. SINGER :
AN ATTORNEY AT LAW :
:

Decision

Argued: April 16, 2009

Decided: July 8, 2009

Frank La Rocca appeared on behalf of the District IIA Ethics Committee.

Scott Piekarsky appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District IIB Ethics Committee ("DEC"). The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client),

and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). We agree with the DEC that a reprimand is the appropriate form of discipline for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1984. He was admitted to practice in Georgia and the District of Columbia in 1981 and 1982, respectively. He has no history of discipline.

In October 2000, Kellie Ash, the grievant in this matter, retained respondent in connection with a July 2000 automobile accident. Respondent successfully pursued an insurance arbitration against Ash's carrier, Lancer Insurance. In July 2002, respondent received an award, by way of an August 13, 2002 check, that included \$2,500 in counsel fees and a \$237.60 reimbursement to Robert Wood Johnson University Hospital. The check bore a notation that it was void if not presented within 180 days of its issue. The original check was in respondent's file when he presented it to disciplinary authorities in February 2007.

In July 2002, respondent filed a complaint seeking damages for Ash's personal injuries. Respondent received a track assignment notice, advising of a discovery end date of 300 days from the first answer or ninety days from service on the first defendant, whichever came first.

In August 2002, Liberty Mutual denied a claim that respondent had filed on Ash's behalf and referenced respondent's failure to reply to their two prior requests for documentation supporting the claim.

Respondent failed to serve the complaint filed on Ash's behalf, which was later dismissed for lack of prosecution.¹ Respondent received notice of the dismissal, but did not disclose it to Ash.

Respondent testified that there were "tactical reasons" for not accelerating the resolution of Ash's claim. He explained that it was difficult to know the long-term extent of her injuries and that he did not want to resolve the claim too quickly, in case her condition worsened. He conceded that there was no strategy in not serving the complaint.

During the course of the representation, Ash and her parents contacted respondent for information about her claim. Respondent advised them that he was working on the case. Respondent also told Catherine Ash, Kellie Ash's mother, that he would provide her with a copy of her daughter's file. He did not do so.

Respondent testified that, when he advised the Ash family that he was working on the matter, he believed that he was,

¹ The date of the dismissal is not revealed in the record. The hearing panel believed that it was dismissed in late 2002 or early 2003.

meaning that he was organizing it in his mind. He denied any intent to mislead his client and her family.

As to his failure to inform Ash and her family that the complaint had been dismissed, respondent claimed that he did not think that he was misrepresenting the status of the case because he believed that he was going to pursue it. The following exchange took place between respondent and a panel member:

Ms. Blake-Smith: And so, by around mid-2003, you were aware that the matter had been dismissed?

[Respondent]: Yes.

Ms. Blake-Smith: And so, when you — you spoke to Ms. Ash and her family through 2006, am I correct?

[Respondent]: Yes.

Ms. Blake-Smith: And so, for a period of about four years, you were working on it in your head and addressing the dismissal in your head?

[Respondent]: Yes.

Ms. Blake-Smith: And for all of those four years or so, you truly believed that you were working on it in your head?

[Respondent] Yes I did.

[T93-19 to T94-9.]²

² T refers to the transcript of the DEC hearing on October 31, 2008.

Ash retained another attorney to pursue the personal injury claim, which was reinstated in February 2008. The case was consolidated with a malpractice claim that Ash filed against respondent.

Respondent testified that he has significant experience in personal injury matters and clearly had the ability to pursue Ash's case. He acknowledged his derelictions in this matter and expressed his remorse. He stated that, at some point, he began thinking of ways to resolve the matter, including, in 2006, considering saving his own money to give to Ash. He added that he intended to restore the complaint and move the case forward, but did not do so because he went into "a tailspin" when he became overwhelmed and "paralyzed" by physical and psychological problems.

Specifically, respondent's two children have had disabilities since birth. One suffers from cerebral palsy and the other has Asperger syndrome. Respondent testified that raising the children placed both financial and mental strains on him. In addition, his wife has also had physical problems and he suffers from continuous pain, due to back and neck injuries from a 1994 automobile accident. The condition apparently flares up from time to time. According to respondent, there were intervals

when the problem interfered with his ability to practice law. Respondent also suffers from diabetes.

Respondent testified that he first sought treatment for his psychological problems in the early 1990s. He has been in counseling for one to two years. He currently takes Wellbutrin.

Robert T. Latimer, M.D., a psychiatrist, testified on respondent's behalf. Dr. Lattimer met with respondent for approximately three hours, roughly one week before the DEC hearing. Dr. Lattimer testified that respondent suffers from a chronic and recurrent major depressive disorder. In Dr. Latimer's opinion,

at the time that these events took place, [respondent] was functioning at a relatively severely impaired level of functioning, because of the severe depression, his fatiguability [sic], his amotivational syndrome, and his lack of energy to set forth the necessary and required behavior of a competent lawyer to meet the needs of the clients.

[T122-12 to 18.]

The hearing panel asked Dr. Latimer about respondent's belief, for four to six years, that he had been addressing the dismissal of Ash's complaint, when he had not filed any documents. Dr. Latimer replied that it was "wishful thinking, as a result of psychological denial." In his report, Dr. Latimer opined that

[respondent] violated the Canon of ethics by virtue of his pathological procrastination and his inability to communicate the situation to his client. However, in the opinion of this Examiner, the patient did not have a conscious desire to lie or misrepresent but rather a desire to rid himself of unbearable anxiety. It was not his conscious object to deceive or to harm the client. It is my opinion that at the time that he lied to his client, he was not aware of the circumstances and the consequences of such acts inasmuch as they would be hurtful to his client and demeaning to his profession. It is my opinion that he was no [sic] aware that his conduct would result in harm to anyone.

[Ex.R-3 at 5.]

In Dr. Latimer's opinion, respondent "is not very likely to do this again." He suggested that respondent would benefit from practicing under the supervision of a proctor.

The DEC found that respondent violated each of the RPCs charged in the complaint, specifically, RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c). The DEC recommended that respondent be reprimanded and that he practice law under the supervision of a proctor for one year. The DEC further recommended that respondent be required to submit to an independent psychiatric examination, prior to and at the conclusion of the proctorship, to determine his fitness to practice law.

Following a de novo review of the record, we find that the DEC's conclusion that respondent's conduct was unethical is

fully supported by clear and convincing evidence. The proofs amply demonstrate that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b).³ He did not pursue the case with the required diligence, grossly neglected its handling, and did not properly communicate with his client when he failed to advise her of the dismissal of the complaint.

The only questionable charge is the alleged violation of RPC 8.4(c). Respondent was charged with misrepresenting the status of the personal injury case to Ash and her parents by telling them that he was working on it. Respondent testified that, during the time that he represented Ash, he was thinking about the matter; therefore, in his mind, he was pursuing the case.

Recently, we considered a similar matter, In the Matter of David G. Uffelman, DRB 08-355, where the attorney advised his client that he was working on a motion in a litigated matter and never filed the motion. Uffelman suffered from extreme depression. We concluded that, at the time that Uffelman said he would file the motion, he was intending to do so. In our view, if an attorney makes a statement believing it to be true at the

³ In charging respondent with violating RPC 1.1(a), the complaint states that he "essentially abandoned the case." We do not find that respondent's conduct rose to the level of abandonment, when attorneys vacate their offices and cannot be located by their clients.

time that the attorney makes it, that statement does not amount to a misrepresentation. In Uffelman, we did not find a violation of RPC 8.4(c).

The difference between Uffelman and this case is the length of time that respondent represented that work was being done. In Uffelman, for two months the attorney told the client that he was working on a motion. Here, respondent stated that he was working on the case, periodically, for at least four years. At some point, he knew that he was no longer pursuing the case, regardless of how much he thought about it. Indeed, respondent's testimony that he had thought of saving his own money to pay Ash shows that he knew that he would not be reinstating the complaint. In light of respondent's recognition of his own dereliction, his telling his client and her family that he was working on the case was a misrepresentation and, therefore, a violation of RPC 8.4(c).

Misrepresentation to clients requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). At times, a reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions, as here. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf, and did not

inform the client about the status of the matter and the expiration of the statute of limitations); In re Onorevole, 170 N.J. 64 (2001) (attorney made misrepresentations about the status of the case; he also grossly neglected the case, failed to act with diligence, and failed to reasonably communicate with the client; prior admonition and reprimand); In re Till, 167 N.J. 276 (2001) (over a nine-month period, attorney lied to the client about the status of the case; the attorney also exhibited gross neglect; no prior discipline); and In re Riva, 157 N.J. 34 (1999) (attorney misrepresented the status of the case to his clients; he also grossly neglected the case, thereby causing a default judgment to be entered against the clients and failed to take steps to have the default vacated).

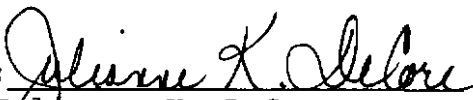
Although we are troubled by the length of time that respondent's misrepresentations to Ash and her family spanned, mitigating factors such as his depression, his and his family's health problems, his acknowledgement of wrongdoing, his expression of remorse, and his clean disciplinary record militate against discipline stronger than a reprimand.

Respondent should be required, however, to practice law for two years under the supervision of a proctor approved by the Office of Attorney Ethics ("OAE"); to provide, within sixty days of the date of this decision, proof of fitness to practice law,

as attested by a mental health professional approved by the OAE;
to continue psychological/psychiatric treatment until
discharged; and to periodically provide proof to the OAE that he
is undergoing such treatment.

We further determine to require respondent to reimburse the
Disciplinary Oversight Committee for administrative costs and
actual expenses incurred in the prosecution of this matter, as
provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

BY: 
Julianne K. DeCore
Chief Counsel