

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket Nos. 89-190,  
89-233, 90-022, 90-023

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IN THE MATTER OF :  
DAVID BRANTLEY, :  
AN ATTORNEY AT LAW :

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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: November 29, 1989 and March 21, 1990

Decided: November 14, 1990

Sheldon Schiffman appeared on behalf of the District VB Ethics Committee on November 29, 1989 on Docket Nos. DRB 89-190 and 89-233.

Peter A. Forgosh appeared on behalf of the District VB Ethics Committee on March 21, 1990 on Docket Nos. 90-022 and 90-023.

Respondent appeared pro se at both Board hearings.

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

This matter is before the Board based upon four presentments filed by the District VB Ethics Committee. Respondent was admitted to the practice of law in New Jersey in 1970, and is in a partnership with another attorney. The facts are as follows:

DRB 89-233

The Purcell Matter (District Docket No. VB-87-7E)

On May 14, 1980, Sharon Purcell was involved in an automobile accident in which she sustained personal injuries and property damage. On May 15, 1980, Purcell contacted respondent's

law firm and met with respondent's partner (hereinafter, "the partner"), who agreed to pursue this matter on Purcell's behalf. No retainer agreement was signed. Purcell was instructed to provide a copy of the police report, insurance information, and the names of her treating physicians. Because the identity of the individual who struck Purcell's automobile was uncertain, the partner conducted an investigation to determine his identity and his insurance information. The partner was unable to obtain this information. Throughout this time, Purcell was inquiring as to the status of her case. She experienced difficulty in reaching the partner. In March 1982, the partner requested \$93.10 to cover filing fees and long distance telephone tolls in the matter. Purcell provided the funds, which were deposited in the firm's operating account. In late March 1982, she visited the office and met with the partner, who was unable to locate Purcell's file.

In the spring of 1982, Purcell spoke with respondent by telephone. Respondent indicated to her that he would now be handling her case. Respondent requested that Purcell come into the office and fill out documents. In July 1982, Purcell received a copy of a complaint, dated May 28, 1982, which arrived with no cover letter.

Two years later, in July 1984, Purcell received a copy of a demand for arbitration by the American Arbitration Association (AAA) dated May 30, 1984. Purcell had been told earlier that the matter would probably be resolved through arbitration. Purcell called AAA, which had no record of her case. She noted that there

was neither an AAA date stamp on the document nor was there a reference on it. Purcell went to respondent's office and inquired about the omissions. Purcell testified that approximately two weeks later she received a second copy, this time stamped by AAA, indicating that the demand was received on August 15, 1985, but still with no reference number. <sup>1</sup>

Respondent testified that the delay in the arbitration proceeding was due to the fact that he had utilized outdated forms when he filed a demand form, which was ultimately returned to him. A correct demand form was apparently never filed. In response to pressure from Purcell to take action on her case, respondent gave her a letter dated August 6, 1985, advising her of an arbitration hearing date of August 16, 1985. Respondent later advised Purcell that the hearing had been adjourned.

In the fall of 1986, Purcell asked for proof that an arbitration demand had been filed and that the funds she provided had been utilized for filing fees. In response, Purcell received a check stub, respondent's secretary having indicated that respondent's accountant could not find the canceled check. At the hearing before the committee, respondent testified that he had not prepared the stub, and he did not know who in his office had prepared it.

In 1987, Purcell contacted another attorney, who pursued a legal malpractice action on her behalf. The matter was settled in

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<sup>1</sup> The record is unclear as to why the document, which was received in 1984, was stamped 1985.

1987 for \$6,000. The settlement was to be paid to Purcell in three installments, the last being due on March 6, 1988. As of the date of the committee hearing, the sum had not yet been paid, and the respondent's law library had been confiscated by the sheriff.<sup>2</sup>

The committee found that there was no arbitration filed, and therefore, no hearing could have occurred when respondent represented that there was to be a hearing. The committee found the check stub Purcell received in connection with the filing fees was a misrepresentation. The committee also found that there was no evidence that the complaint dated May 28, 1982 had ever been filed and that it was apparently created to lead Purcell to believe that some work was actually being done on her case.

The committee concluded that respondent violated RPC 1.3, in that he failed to act with reasonable diligence in his representation of Purcell, by failing to pursue her claim; RPC 1.4(a), by failing to advise Purcell of the status of her arbitration claim; and RPC 8.4, by misrepresenting to Purcell the pending status of the arbitration proceedings, arbitration hearing, and the use of the funds she had tendered for filing fees. The committee also found a violation of RPC 1.1(b), in that respondent exhibited a pattern of neglect or negligence in his handling of legal matters generally.<sup>3</sup>

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<sup>2</sup>The record is unclear as to whether Purcell has received any or all of the \$6,000.

<sup>3</sup>The Rules of Professional Conduct replaced the Disciplinary Rules, effective September 1984. Respondent's conduct occurred both before and after that time. Therefore, both the Rules of Professional Conduct and the Disciplinary Rules apply.

DRB Docket No. 89-190

The Strong Matter (District Docket No. VB-84-40E)

In August 1981, Jacqueline Strong retained respondent to represent her in a divorce action. Although no written retainer agreement was executed, Strong was told that the fee would be approximately \$300. On October 16, 1981, she gave respondent a check for \$100. At that time, respondent informed Strong that, because she was unaware of her husband's whereabouts, certain steps needed to be taken to demonstrate that he could not be located and to justify notice to Mr. Strong of the divorce proceeding by publication. Thereafter, there was a considerable delay in the matter. Strong testified that she tried on numerous occasions to contact respondent by telephone through December 1982, but that none of her calls were returned. Strong did receive a letter dated April 2, 1982, requesting that she get information about her husband's location from his mother, Harriet Shivers. Strong received a second letter, also dated April 2, 1982, and addressed to Shivers, requiring Shiver's signature. In July 1982, a statement from Shivers indicating that she did not know her son's whereabouts was sent to respondent, along with a check from Strong, for \$50. In September 1982, Strong gave respondent an affidavit, in anticipation of service by publication. In addition, Strong sent respondent a letter in December 1982. She testified that she did not recall if she received a response to that letter.

Respondent argued that the delay in the handling of Strong's matter was due to Strong. Respondent produced a witness who

testified that he was told numerous times by respondent to contact Strong and was repeatedly unable to do so.

In early 1983, the partner accepted a call from Strong. He informed her that there was no file on her matter, and that he had no knowledge of the case. In early March 1983, Strong sent the partner a letter, along with copies of the canceled checks she had given respondent. In April 1983 and August 1983, Strong sent the partner documents relevant to her matter, with an additional \$50.00 sum being forwarded in August. On September 21, 1983, Strong sent the partner a letter inquiring as to the status of the matter, and referring to a conversation she had had with him two weeks earlier, wherein he told her that she would be receiving information about her court date by September 13, 1983.

On November 23, 1983, the partner filed a complaint in this matter. On March 8, 1984, Strong filed a grievance with the district ethics committee. The partner ceased his involvement in this case in the fall of 1984, whereupon respondent resumed the handling of the matter.<sup>4</sup> The complaint in the divorce action was dismissed for lack of prosecution.<sup>5</sup>

On or about November 18, 1985, respondent filed a second complaint for divorce. Several letters were exchanged between

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<sup>4</sup>Although charges of ethical misconduct were brought against respondent's partner, the hearing committee dismissed the allegations against him (District Docket No. VB-87-41E).

<sup>5</sup>The date of the dismissal of the divorce complaint is unclear in the record. The panel report states that the dismissal occurred on August 23, 1985. However, during the committee hearing, references made to the complaint in this matter indicate that the dismissal was in August 1984.

Strong and respondent and, shortly before the filing, an affidavit was received from Shivers indicating that she did not know where her son was. The affidavit had been prepared by respondent's office, and was notarized on November 14, 1985. Thereafter the divorce matter proceeded along the normal course, a final judgment of divorce being entered on October 15, 1987. Strong had contacted the district ethics committee a second time, in August 1986, while the divorce was proceeding.

Respondent testified that, during the time in question, he was going through a personal divorce action and, in addition, had been appointed as a municipal court judge, which caused him to divert time from his practice.

The committee determined that the delay in this matter, until July 22, 1982, was Strong's fault. After that time, the delay was due to respondent.

The committee found that respondent had violated DR 6-101 and 6-101(A)(1) and (2), in that he displayed gross neglect in the handling of the matter, failed to act with reasonable diligence and promptness in representing his client, and did not handle the litigation in an expeditious manner. The committee also determined that respondent exhibited a pattern of neglect when this matter was considered together with the Purcell matter, supra.<sup>6</sup>

DRB Docket No. 90-023

The Hannah Matter (District Docket No. VB-89-19E)

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<sup>6</sup>See footnote 2.

In early November 1988, Andrea Hannah retained respondent to represent her in a divorce action. A formal retainer, dated November 17, 1988, was signed, and respondent was paid \$500.<sup>7</sup> Hannah was assured that the divorce action would be filed promptly. In December 1988, Hannah met with the partner, and filled out a Case Information Statement. In January 1989, Hannah spoke with the partner, and was led to believe that the necessary papers had been filed. Between the December meeting and the January telephone conversation with the partner, Hannah's numerous telephone calls requesting information went unanswered. Hannah testified that, during February 1989, she called respondent's office at least five times a week, requesting information. These requests went unanswered. In early March 1989, respondent telephoned Hannah to inquire as to the best time to serve her husband with the divorce complaint. In mid-March 1989, Hannah met with respondent and reviewed the Case Information Statement. On April 10, 1989, Hannah spoke with the partner who informed her that respondent was out of the office filing papers on Hannah's behalf. The complaint for divorce was filed on April 11, 1989.

On April 25, 1989, Hannah retained another attorney to pursue the divorce action on her behalf. On April 27, 1989, Hannah's new attorney requested a substitution of attorney and Hannah's file. After repeated attempts to secure the file, Hannah's new attorney filed a notice of motion for an order directing respondent to be

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<sup>7</sup>The \$500 was paid in two installments of \$250, the total being paid by January 1989.



relieved as Hannah's counsel and for the return of the file. An order to that effect was issued on August 10, 1989. The order also directed that respondent to pay \$300 to Hannah's new counsel as attorney fees. The divorce was finally granted on October 12, 1989.

The committee determined that respondent violated RPC 1.1(a) and RPC 1.3, in that he failed to file a complaint for divorce on Hannah's behalf for approximately five months, and failed to transfer the file to Hannah's new attorney. The committee also found that respondent had violated RPC 1.4, in that he received numerous requests for information on the status of the matter from his client and disregarded these requests.

Respondent presented a great deal of testimony concerning his responsibilities as a municipal court judge during the time he was handling Hannah's matter. The committee rejected the notion that respondent's other responsibilities could excuse his lack of attention toward Hannah. RPC 3.2 requires that a lawyer make reasonable efforts to expedite litigation consistent with the interests of his client. The committee found that respondent violated this rule, in that he failed to file a complaint for approximately five months after he was retained to do so. In addition, it was not until faced with an order from the court that he transferred his file to Hannah's new counsel. The committee found that these actions impeded the litigation and were, therefore, inconsistent with his client's interests. The committee also found that respondent violated RPC 8.1, in that he failed to

cooperate in the investigation of the grievance filed against him. Finally, the committee found a violation of RPC 1.1(b), in that respondent's behavior in this matter, combined with his conduct in District Docket Nos. VB-87-7E and VB-84-40E, was indicative of a pattern of neglect of client matters.

DRB Docket No. 90-022

The Abbott Matter (District Docket No. VB-89-12E)

On August 11, 1987, Cynthia Abbott retained respondent to represent her in a divorce action. Respondent was paid \$300 in two payments, the later payment being made on August 14, 1987. At the time respondent was retained, the cause of action for divorce had accrued. Respondent told Abbott that, after receiving the retainer, he would proceed with her divorce action. In August 1987, Abbott met with the partner and filled out a Case Information Statement. The complaint for divorce was not filed until May 11, 1988. A change of venue was necessary because Abbott's residence stated in the complaint was incorrect. On June 13, 1988, an acknowledgement of service was received from opposing counsel. After that time, respondent did little or nothing to pursue this matter on Abbott's behalf.

On August 22, 1988, respondent represented Abbott in the sale of the marital home. Respondent was paid \$2,000 at that time, that figure representing the balance due him in the divorce proceeding, as well as his fee for the real estate transaction. After that

time, Abbott tried on numerous occasions to reach respondent to obtain information about the divorce proceeding. Respondent did not respond to Abbott's requests for information. On February 2, 1989, Abbott mailed a certified letter to respondent demanding a response to her requests. Abbott received no response to this letter. On March 23, 1989, Abbott obtained another attorney to represent her in the divorce proceeding. The divorce was granted by judgment dated August 3, 1989.

On March 20, 1989, Abbott filed her ethics grievance with the committee. On March 23, 1989, the investigator sent a letter to respondent requesting that he contact her. Respondent neither responded to the investigator, nor filed an answer to the complaint in this matter.

The committee found that respondent had violated RPC 1.1(a) and RPC 1.3, in that he failed to file a divorce complaint on Abbott's behalf for approximately eight months after being retained to do so, and failed to enter a default and obtain a trial date with reasonable diligence and promptness. The committee also found that respondent violated RPC 1.4, by receiving numerous requests for information from Abbott and failing to communicate with her. The committee found a violation of RPC 3.2 in that, by not filing a complaint for eight months, respondent failed to expedite the litigation. Further, after filing the complaint, respondent took no action until Abbott filed her grievance.

The committee further found that respondent violated RPC 8.1(b), by failing to comply with a demand for information from the

disciplinary authorities. Finally, the committee found that respondent's conduct exhibited in the Abbott matter, combined with that seen in the Strong and Purcell matters, demonstrated a pattern of neglect, in violation of RPC 1.1(b).

#### CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are supported by clear and convincing evidence.

When retained, respondent owed his clients a duty to pursue their interests diligently. See Matter of Smith, 101 N.J. 568, 571 (1986); Matter of Schwartz, 99 N.J. 510, 518 (1985); In re Goldstaub, 90 N.J. 1, 5 (1982). The Board finds by clear and convincing evidence that in the Strong, Hannah, and Abbott matters, respondent grossly neglected the matters entrusted to him, in violation of RPC 1.1(a) and, in the Strong matter, DR 6-101(A)(1) as well. The Board also finds by clear and convincing evidence that, in each of the four matters, respondent violated RPC 1.3 by failing to diligently pursue these matters on behalf of his clients, and also violated DR 7-101 in the Purcell and Strong matters.<sup>8</sup> The Board agrees with the committee's findings that, in the Hannah and Abbott matters, there were violations of RPC 1.4(a),

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<sup>8</sup>In the Strong matter, the committee did not cite a specific Disciplinary Rule, but referred to respondent's lack of diligence.

and that the Strong matter presents violations of RPC 1.4(a) and DR 7-101(A)(2). An attorney's failure to communicate with his clients diminishes the confidence the public should have in members of the bar. Matter of Stein, 97 N.J. 550, 563 (1984). Moreover, the Board agrees with the finding of the committee that respondent violated RPC 3.2, in that he failed to carry out his contracts of employment with his clients.

The Board further finds that respondent's behavior in these four matters, when taken in concert, clearly demonstrates a pattern of neglect of legal matters entrusted to him, in violation of RPC 1.1(b) and, in the Purcell and Strong matters, in violation of DR 1-102(A)(2). In addition the Board finds that, in the Purcell matter, respondent violated R.P.C. 8.4 and D.R. 1-102(A)(4) by misrepresenting to Purcell that the demand for arbitration had been filed, that a hearing was scheduled, and that her funds were used for filing fees.

The Board is troubled by respondent's failure to cooperate with the committee in the Hannah and Abbott matters, in violation of RPC 8.1. An attorney has an obligation to cooperate fully with an ethics committee. In re Gavel, 22 N.J. 248, 263 (1956). Disrespect to an ethics committee constitutes disrespect to the Supreme Court inasmuch as the committee is an arm of the Court. In re Grinchis, 75 N.J. 495, 496 (1978).

There remains the question of the appropriate quantum of discipline. In Matter of Grabler, 114 N.J. 1 (1989), the attorney was suspended for a period of one year after a finding of gross

neglect in four matters, failure to communicate in two matters, and misrepresentation of the status of cases to two clients, as well as recordkeeping violations. The attorney in Grabler had no prior discipline.

In Matter of Rosenthal, \_\_\_ N.J. \_\_\_ (1990), the attorney was suspended for one year following a finding of a pattern of neglect in four matters, including misrepresentations to clients and failure to cooperate with the ethics proceedings. The attorney had previously received a public reprimand for failure to act competently, and failure to represent clients zealously. In re Rosenthal, 90 N.J. 12 (1982).

In the matter currently before the Board, respondent's misconduct, like that of the attorneys in Grabler and Rosenthal, was not an isolated incident. "The picture presented is not that of an isolated instance of aberrant behavior unlikely to be repeated. Respondent's conduct over a period of years has exhibited a 'pattern of negligence or neglect in his handling of legal matters.'" Matter of Getchius, 88 N.J. 269, 276, (1982), citing In re Fusciello, 81 N.J. 307, 310 (1979). This leads to the Board's conclusion that respondent's actions were not an aberration, but a pattern of behavior.

The purpose of discipline, however, is not the punishment of the offender, but "protection of the public against an attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." Matter of Getchius, supra, citing In re Stout, 76 N.J. 321, 325 (1978).

The severity of the discipline to be imposed must comport with the seriousness of the ethical infraction in light of all the relevant circumstances.

In determining the quantum of discipline to be imposed, the Board has taken into account respondent's three prior private reprimands.<sup>9</sup> In addition, the Board was concerned with respondent's failure to cooperate with the district ethics committee, and his admission of misrepresentations to his client. The Board unanimously recommends that respondent be suspended for one year.<sup>10</sup> The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 11/14/1990

By: 

Raymond R. Trombadore  
Chair  
Disciplinary Review Board

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<sup>9</sup>Respondent received a letter of private reprimand, dated March 29, 1982, for failure to represent his client zealously. A second letter of private reprimand was issued on February 20, 1988 for driving while his license was suspended, failure to pay fines for a moving violation, and illegal parking. On May 25, 1988, respondent received a private reprimand for allowing the statute of limitations to run in a personal injury matter and misrepresenting the status of the case.

<sup>10</sup>Although respondent appeared before the Board twice, this recommendation, made after his second appearance, encompasses all four presentments.