

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 92-237

IN THE MATTER OF :
:
WILLIAM J. MULKEEN, :
:
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: July 15, 1992

Decided: September 16, 1992

Howard Schwartz appeared on behalf of the District XII Ethics Committee.

Respondent waived appearance for oral argument.

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

This matter was before the Board based on a recommendation for public discipline filed by the District XII Ethics Committee (DEC).

Respondent was admitted to the New Jersey bar in 1974. On October 1, 1990, respondent was suspended for a period of three months. In re Mulkeen, 121 N.J. 192(1990). He has not applied for reinstatement to the practice of law.¹

¹ At the DEC hearing of February 5, 1992, respondent indicated that he does not intend to apply for restoration. In any event, the Office of Attorney Ethics (OAE) has announced its intention to oppose respondent's reinstatement until full compliance with its demands for the production of his attorney records. More of this below.

I. The Mid-State Abstract Company Matter

In 1987, respondent ordered a title policy from Mid-State Abstract Company in connection with the refinancing of a mortgage by his client, Schipani. Although the closing of title took place on February 10, 1987, respondent did not record the deed and the mortgage until April 4, 1987. Mid-State Abstract Company made repeated written and oral requests to respondent that he pay the outstanding bill for the title policy, to no avail, notwithstanding the fact that respondent had segregated sufficient funds at closing for that purpose.

At the DEC hearing, respondent testified that he was under the impression that the bill had been paid. He informed the hearing panel that he would have to examine his bank records, which were in the possession of the OAE, in order to determine whether the obligation had been satisfied. He assured the hearing panel that, if the bill had been paid, he would forward to the panel a copy of the cancelled check and that, if it was not paid, he would pay it forthwith.

Although the record is silent as to whether respondent submitted any proof of payment to the DEC, it must be presumed that he has not. Indeed, the hearing panel found that "[i]t has been approximately five (5) years since the aforementioned closing and respondent cannot affirmatively say that the monies collected from his clients for the payment of the title policy have been remitted." Hearing Panel Report at 3. At the DEC hearing, respondent admitted violations of RPC 1.3 and 1.15(b).

II. The Kilburg Matter

In August 1985, James J. Morahan, respondent's client of long-standing, passed away. Mr. Morahan's sister, Catherine Kilburg, retained respondent to administer the estate. For the next four years, respondent did nothing to conclude the estate administration. He also failed to communicate with Mrs. Kilburg, despite having written her at least ten letters (Exhibits C-1 through C-9, and C-12), apologizing for the delay in completing the matter, advancing excuses for his inaction, and promising that he would proceed with the matter expeditiously. In June 1990, Mrs. Kilburg asked for the return of the file and retained new counsel, who was able to complete the administration of the estate, although not without the payment of penalties and late filing fees.

At the DEC hearing, respondent admitted that he failed to act with due diligence, to communicate with the Kilburgs and to safekeep their property, in violation of RPC 1.3, RPC 1.4(a) and RPC 1.15.²

III. The Schultz Matter

In 1984, Terri Schultz retained respondent to review a property settlement agreement that he and his wife had reached after their separation. Following the execution of the agreement and the equitable distribution of some of the marital assets, the parties continued to live separate and apart, without having filed

² The complaint does not charge respondent with knowing misappropriation of estate funds.

a divorce action.

In July 1987, Mr. Schultz instructed respondent to prepare and file a divorce complaint. Respondent sent Mr. Schultz the proposed complaint for his review and signature, along with a certification of verification and non-collusion. In August 1987, Mr. Schultz returned the complaint to respondent with a handwritten notation that paragraph seven should be amended to reflect that his wife might be unemployed in the near future. Mr. Schultz signed the certification of verification and non-collusion, which was returned to respondent with the complaint (Exhibit C-18). Respondent prepared a corrected complaint, but did not file it, notwithstanding the fact that Mr. Schultz signed the certification of verification and non-collusion and paid \$250 for "initial filing fees and court costs," as requested by respondent (Exhibit C-16).

Thereafter and through the end of April 1990, Mr. Schultz tried to reach respondent several times to obtain information about the status of the divorce matter. Mr. Schultz' attempts to contact respondent were prompted by the latter's failure to keep Mrs. Schultz apprised of any developments in the matter. During that three-year period, respondent communicated with Mr. Schultz on only two or three occasions. According to Mr. Schultz, respondent assured him that "he was working on it," or "it's in progress." T2/5/1992 88. The last contact Mr. Schultz had with respondent was in 1988 or 1989. In April 1990, after Mr. Schultz asked respondent about the status of the matter and obtained no answer, he contacted the DEC. According to Mr. Schultz' testimony, he expected that

respondent would file the complaint for divorce; he never told respondent not to file the complaint and respondent never told him that the complaint had not been filed. Ultimately, Mr. Schultz was forced to hire new counsel, who was able to obtain a divorce decree.

Respondent denied that Mr. Schultz had instructed him to file the complaint. He testified that Mr. Schultz had directed him to wait because Mr. Schultz' wife had been laid off and was looking for another job. Respondent also denied that he had not informed Mr. Schultz that the complaint had not been filed. In addition, he disputed that the \$250 payment had been for filing fees; respondent's explanation was that the monies constituted a retainer.

The DEC did not find respondent's testimony credible. It concluded that respondent had been guilty of lack of diligence and lack of communication with his client, in violation of RPC 1.3 and 1.4(a).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the DEC in finding respondent guilty of unethical conduct are fully supported by the record.

Respondent is no stranger to the disciplinary system. He was privately reprimanded on August 29, 1988 for failure to communicate with his client, and to properly pursue a settlement and payment

from the client's insurance carrier. On October 1, 1990, respondent was suspended for three months for lack of diligence, failure to communicate, gross neglect, pattern of neglect, and failure to answer the ethics complaints. Specifically, in one matter, respondent recorded a mortgage three months following the closing of title and never recorded the deed, paid the realty transfer tax or obtained title insurance. In the second matter, respondent mishandled ten closings of title. For a period of eighteen months to two years following the closings, respondent failed to file new mortgages, to pay off old mortgages, and to secure title insurance. In addition to imposing a three-month suspension, the Supreme Court directed that respondent not be reinstated to practice until payment of the outstanding administrative costs incurred with the prosecution of both matters that resulted in the imposition of discipline. As noted above, although the three-month suspension has expired, respondent has neither petitioned for reinstatement nor paid the administrative costs.

The OAE's intention to oppose respondent's reinstatement, alluded to above, is predicated on respondent's failure to fully comply with that office's demands for the production of attorney records. Indeed, in 1989, the OAE served a subpoena on respondent directing him to produce his trust and business account records for the purposes of conducting an audit. Pursuant to the subpoena, respondent submitted certain limited financial records. An examination of those records revealed that his trust account

appeared to be out of trust by at least \$22,000. Accordingly, by letter dated October 2, 1990, the OAE informed respondent of the result of its analysis of the records and demanded the production of additional documents. Despite the OAE's threat to file a petition for his immediate temporary suspension in the event of non-compliance, respondent did not reply to the OAE's letter. In the interim, respondent was suspended for three months in October 1990.³

The Board also considered that the within violations took place either at a time when respondent was on notice of the ethics proceedings that culminated with a three-month suspension, or after he received the private reprimand, or after he received notice of his three-month suspension. Indeed, in the Kilburg matter, the violations occurred between 1985 and 1989, when, for a period of four years, respondent did nothing or very little to complete the administration of the estate. From February 1988 through July 1989 (Exhibit C-1 through C-9), respondent assured Mrs. Kilburg that the matter would be resolved expeditiously, knowing that to be untrue. While he was so misleading Mrs. Kilburg, he received a letter of private reprimand, in August 1988, for failure to communicate with a client for a period of six years and to properly settle

³ At the DEC hearing, respondent testified that the OAE had reviewed his bank account records and that "they had been cleared." Because respondent's testimony directly contradicted the OAE's assertions that respondent had failed to submit the requested records, the Board asked the OAE to either confirm or dispute respondent's claim. See Board letter of July 8, 1992. The OAE's reply was that "Mr. Mulkeen's records were never cleared by the Office of Attorney Ethics, but rather we continued to demand that he produce proper records right up to the time of this three-month suspension from practice [Also], our review of [the] records does not demonstrate that Mr. Mulkeen, in fact, paid fees owed to Mid-State Abstract Company." See OAE's letter of July 14, 1992.

litigation on behalf of that client for a period of four years.

Similarly, Mr. Schultz testified that he was unable to obtain information about his matter from August 1987 through April 30, 1990. During that time, he was under the impression that respondent had filed a complaint for divorce, as instructed by his client, when, in fact, respondent had not. In the midst of his inaction and failure to communicate in the Schultz matter, respondent was privately reprimanded in August 1988 for conduct that occurred from 1979 through 1986. In addition, he appeared at the February 1989 DEC hearing of the matters that eventually ended in his three-month suspension and, in early April 1990, received a copy of the Board's decision and recommendation for a three-month suspension. Accordingly, not only had respondent received a private reprimand for similar conduct in August 1988, but he was also on notice that he might be suspended for three months for misconduct similar to the one that he continued to display towards his clients Kilburg and Schultz.

There remains the issue of appropriate discipline. Taken in isolation, respondent's unethical acts would warrant discipline less severe than the one now recommended. But his numerous prior violations, his serious disciplinary history, and the commission of the current infractions after he had received a private reprimand and was on notice of a recommendation for a three-month suspension cannot be ignored. In fact, so disturbed was the presenter by respondent's within misconduct after his numerous past ethics violations that he urged the Board to recommend respondent's

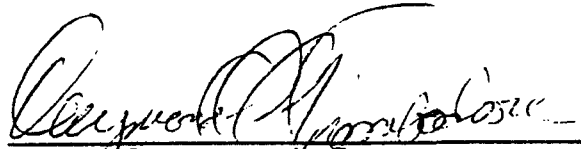
disbarment. See Board transcript of July 15, 1992.

Respondent offered numerous familial and personal problems in mitigation of his conduct. Although those problems evoke sympathy, the Board must conclude that they do not bear a causal connection to respondent's ethics transgressions. It was respondent's unambiguous testimony that his first hospitalization did not take place until 1991, after the occurrence of the events presently under review. In addition, although respondent testified that his wife suffered a series of nervous breakdowns between 1985 and 1988, which deeply affected his practice of law, these unfortunate circumstances might serve to mitigate his conduct in those three years only, and not during the years that followed. The record also suggests that respondent's inattention to his clients' interests was caused less by personal problems than by his decision to increase his teaching responsibilities at Union County College, while at the same time serving as counsel for that college and as assistant attorney for the City of Elizabeth. After a consideration of the relevant circumstances, which included respondent's prolonged pattern of misconduct and his obvious indifference to the disciplinary system, the Board unanimously recommends that he receive a one-year suspension. The Board also recommends that respondent not be reinstated until the resolution of pending disciplinary matters against him, the payment of past and current administrative costs, and the successful completion of the core courses offered by the Institute for Continuing Legal Education. In addition, the Board recommends that, upon

reinstatement, respondent practice under a proctorship for a period of two years. Three members did not participate.

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

Dated: 9/16/92

By: 
Raymond R. Trombadore
Chair
Disciplinary Review Board