SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 93-189

IN THE MATTER OF :
RICHARD B. GIRDLER, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: September 8, 1993

Decided: February 18, 1994

Albert E. Cruz appeared on behalf of the District X Ethics Committee.

Respondent appeared pro se.

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

This matter was before the Board based upon a recommendation for public discipline filed by the District X Ethics Committee (DEC). The formal complaint charged respondent with three counts of misconduct arising from his representation of one client. Specifically, respondent was charged with a violation of RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 1.5(c) (failure to obtain a signed contingent fee agreement).

Respondent was admitted to the New Jersey bar in 1972 and is engaged in private practice in Morristown, Morris County. He was previously privately reprimanded by letter dated April 26, 1991, for misconduct arising from two matters, specifically, gross neglect and failure to communicate.

On or about April 11, 1988, Besa and Gregory Luty retained respondent to represent them in connection with a personal injury action arising from an automobile accident on March 24, 1988, wherein Besa Luty received serious personal injuries (T24).[1] Although the parties agreed to a one-third contingent fee arrangement, they failed to sign a written fee agreement (T11, 27). Respondent testified that, although he explained to the Lutys that they could hire him on an hourly basis, they had no money and, therefore, a contingent fee was the best arrangement. Besa Luty confirmed that respondent discussed an hourly rate option with them, but she did not ask what his hourly fee was (T11, 22). Respondent explained that he agreed to advance costs for the Lutys and collect the funds at the end of the case (T43). In his answer, respondent admitted that no fee agreement was signed (Answer, Exhibit P-2). Respondent did not know why it had not been signed. He surmised that perhaps it was because he had met with the Lutys in their home and not in his office. He contended, however, that the arrangement between them was clearly understood (T51-52).

It appears from the record that respondent began the representation of the Lutys in a diligent fashion. During their first meeting, respondent provided Besa Luty with his own set of interrogatories. She answered them as best as she could and returned them to respondent on April 16, 1988. Respondent testified that he never had the information put into proper form

[1] T refers to the transcript of the hearing before the DEC on February 10, 1993.

because he never received any interrogatories from the defendant. He explained that he used his interrogatories to obtain the information he needed from the Lutys (T21, 61-63). In addition, respondent was able to resolve Besa Luty's difficulties with her PIP coverage, in that medical bills were not being paid on time (T27, 43). Respondent also testified that, although he sent medical bills to the Lutys' insurance company, he did not enter into negotiations with the company because, as of 1991, Besa Luty was still undergoing treatment (T27, 74-75).

On October 17, 1988, respondent filed a complaint in behalf of the Lutys in Superior Court, Law Division, Sussex County. In his answer to the formal ethics complaint, respondent admitted that he failed to cause the complaint to be served on the defendants. Respondent could not explain why the summons was never sent to the defendants (T52). A notice of dismissal was sent to respondent on May 1, 1989, advising him that, on June 12, 1989, the complaint would be dismissed for failure to prosecute. The notice gave him until five days prior to the return date to file an affidavit explaining the delay and why the action should not be dismissed. Respondent took no action to prevent the dismissal. Thereafter, on March 2, 1990, respondent filed a motion to have the case restored to the active calendar. The motion was granted by order dated March 19, 1990. Respondent again failed to serve the defendants with the complaint. Accordingly, by order dated December 17, 1990, the complaint was dismissed a second time for failure to prosecute.

Respondent testified that he was unaware of the second dismissal (T68).

Besa Luty testified that she telephoned respondent on numerous occasions requesting information on the status of her matter. For approximately one and one-half to two years, she spoke with respondent at least once a month, giving him information about her medical treatments - pursuant to his request - asking general questions and frequently inquiring as to whether they had been assigned a court date. Although respondent would usually return Besa Luty's telephone calls, it would occasionally take him one to two weeks to do so. Respondent would then discuss Besa's concerns with her and assure her that everything was proceeding smoothly. Respondent would inform her that they had not yet been assigned a court date, but that the Sussex County docket moved slowly (T15, 31-32). Apparently, respondent would also have his secretary return telephone calls in his behalf (T75-76), a practice of which the DEC disapproved because the secretary was relaying incorrect information, i.e., that the matter was progressing apace (Panel Report at 3-4). Prior to September 1991, respondent did not inform his clients that the complaint had not been served, or that it had twice been dismissed (T12, 16).

Eventually, the Lutys became concerned about the length of time the case was taking and about the absence of a trial date (T39). In September 1991, the Lutys had a meeting with respondent, at his office. At that time, they again inquired about the status of the case. Respondent informed them that part of their file was

in his house and he would have to get back to them with information. Respondent was unable to obtain computer records for the case, because his computer was disassembled at that time (T17-18, 40). The Lutys testified that, during their meeting, respondent suggested that they might want to change attorneys (T26). The Lutys did not believe that they would be able to do so without difficulty and also did not wish to change lawyers mid-stream (T26, 39-40). According to Besa Luty's testimony, respondent telephoned her several days later and informed her that the complaint had been dismissed. She testified that she assumed that that was the first time it had been dismissed (T21). The Lutys then decided to retain other counsel (T19).

Gregory Luty's testimony was in accord with that of his wife with regard to the difficulty in obtaining satisfactory information from respondent on the status of their case. He added that respondent changed his office location twice during the period of his representation. Luty testified that, on the first occasion, respondent informed them of the new address. However, the second time, the Lutys had to track respondent down (T38).

Respondent had no disagreement with Besa Luty's testimony about what he did or did not do (T37). Respondent testified that, between June 12, 1989 and March 19, 1990, he knew that the complaint had been dismissed (T60). Respondent explained that the law firms where he worked at that time had an average of five cases a week coming up for dismissal and that he was unable to recall all such cases. He had no recollection of any action he might have

taken after the case was restored, including action to have the complaint served during that time. He saw nothing in the file to that effect (T64). His usual practice was to instruct a secretary to ensure that the complaint was served, but not to follow up unless the complaint was not served (T76-77). He further did not recall the second dismissal of the complaint and had no knowledge of why the complaint had not been served (T64-65). Respondent testified that he had his secretary investigate the status of the Lutys' case after their September 1991 meeting; she told him that the court had no record of the case on its computer. According to respondent, he learned of the second dismissal when he drove to the Sussex courthouse later that week (T66, 73). The following day, he telephoned the Lutys and informed them that the case had been dismissed (T49-50).

During the time of respondent's representation of the Lutys, he changed law firms at least four times (the presenter noted that respondent never filed a substitution of attorney in this case) (T56). When he first joined another law firm, Besa Luty was still able to reach him. After he became associated with a larger firm, however, where he had responsibility for approximately 400 files, Besa could reach only his secretary; that fact, according to respondent, changed his relationship with Besa (T45-47, 51). Respondent testified that, by 1991, he had 600 files. He also testified that he was either in court at least four days a week or taking depositions (T77). He stated, in his answer, that he did not have an adequate diary or computer system and that he did not

physically look at the file to determine its status. He admitted "that he should have" (Answer, Exhibit P-2). Respondent added that he has changed his office practices by "instituting a dual monitoring system for his files."

Respondent was not charged with misrepresentation in this matter. According to respondent, he did not intentionally misrepresent the status of the case to the Lutys but, rather, was unaware of its status. He testified: "I didn't go into the file. I didn't pay attention to my client's interest the way I should have" (T79). Respondent did not even examine the file when he made a motion to have the complaint reinstated; instead, he just signed the supporting certification (T79). In closing, respondent stated:

> . . . Now would I want me for my lawyer? An attorney shouldn't handle the case the way or not handle the case the way I did. It is no defense of somebody to sit here and blame it on other people. The ironic thing was that one of the things that I was charged to do in both these firms was to straighten out similar problems.
>
> My representation in front of the bar, in front of the bench, I'd like to see if somehow you could acquire it to that [sic]. I would suggest Judge Stanton here and Judge Beglin. For twenty years, I've tried to represent my clients the way I told Besa Luty I would represent her. I was as disappointed and shocked and surprised, almost as disappointed and surprised when I found out that it had been dismissed and dismissed for an easy thing to have taken care of.
>
> I apologize and I ask the Committee if they make the recommendation that the idea of a public reprimand is so -- I remember what I used to think of public reprimands when I read them. I thought these attorneys won't learn from their mistakes or they have to have the outside world be told what they do and if you believe that that must be, that you will do that, all I can say is that I won't practice in these big firms like this for this very reason. Attorneys should always be able to say to their client I have looked at your file and I didn't and that's what happened and that's why I'm here today because I didn't look at the file.

> Please don't consider anything that I've said as if I'm trying to weasel out. They were in response to direct questions , what did I do, what did my secretary do. When I physically got in my car and drove up to Sussex and that was probably, other than the ride to here, the longest ride I've taken. Thank you for the fairness that you've all exhibited here today.
> [T84-86]

The Lutys retained another attorney who was able to have their case restored. At that attorney's request, respondent turned over the file to him. At the Board hearing, respondent advised that the case has been restored.

The DEC determined that respondent was guilty of violation of RPC 1.3, RPC 1.4(a) and RPC 1.5(c).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. Respondent failed to act with due diligence, to communicate with his client in a timely fashion and to prepare a written retainer agreement. His conduct in this matter violated RPC 1.3, RPC 1.4(a) and RPC 1.5(c).

In the past, a private reprimand has been imposed for conduct similar to that of respondent in this matter. Indeed, were this respondent's first run-in with the disciplinary system, a private reprimand would be sufficient. However, in April 1991, respondent was privately reprimanded for misconduct in two matters. In one case, the representation occurred in 1983; in the other, the

representation spanned mid-1988 through mid-1989. In the present matter, respondent was retained in April 1988 and the representation continued through September 1991. Respondent's private reprimand was issued during the time of his representation of the Lutys. He should have learned from his mistake and straightened out his practices.

Respondent testified as to the state of his practice at that time, particularly as to the fact that he had 600 files by the end of 1991. However, respondent's workload is not an excuse for neglecting the interests of his clients. In addition, respondent's office practices were deplorable. Respondent was representing 600 clients without any adequate system to control his office procedures.

Caselaw supports a recommendation for public reprimand in this matter. See In re Rosenblatt, 114 N.J. 610 (1989), (where an attorney grossly neglected a personal injury matter for four years, during which time the attorney repeatedly ignored the client's requests for information. The attorney received a public reprimand, having been privately reprimanded seventeen years earlier for neglect in two matters); In re Stewart, 118 N.J. 423 (1990), (where an attorney was publicly reprimanded for gross neglect in an estate matter and for failure to keep his client informed about its status. The attorney had received a private reprimand ten years earlier for unrelated conduct.)

In light of respondent's prior discipline, a five-member majority of the Board is of the opinion that a public reprimand is

warranted. Accordingly, the Board majority so recommends. Four members dissented, believing that a private reprimand is sufficient discipline.

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

Dated: 2/18/1994 By: Raymond R. Trombadore

Raymond R. Trombadore
Chair
Disciplinary Review Board