

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-282
District Docket No. XII-04-005

IN THE MATTER OF
MICHAEL BLACKER
AN ATTORNEY AT LAW

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Corrected
Decision

Argued: November 17, 2005

Decided: December 21, 2005

Patricia Mack appeared on behalf of the District XII Ethics Committee.

Stephen Ritz 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 an admonition filed by the District XII Ethics Committee ("DEC"), which we determined to bring on for oral argument.

The day before our scheduled review of this matter, John Paff filed with Office of Board Counsel an application for leave

to submit written argument as amicus curiae, under R. 1:13-9, which we granted.

Respondent was admitted to the New Jersey bar in 1966. He maintains an office in Scotch Plains, Union County. His practice is multi-faceted: family law, criminal matters, municipal court appearances, and real estate closings. In respondent's words, he has "a classic 1960s-1970s kind of general practice." He has no prior discipline.

In November 2002, Anita Crum retained respondent to prepare and file a complaint for divorce and to provide all services necessary for the dissolution of her marriage. Respondent did not file the complaint and, for several months, misled Crum that the complaint had been filed and that her husband had been served. Furthermore, respondent misrepresented to Crum that, if her husband did not file an answer, a hearing could be expected in thirty-five days.

Respondent admitted the above conduct and further admitted that it violated RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to communicate with client), RPC 3.2 (failure to expedite litigation) and RPC 8.4(c) (misrepresentation).

Respondent testified that Crum has not been prejudiced by his actions. He explained that

it was a timeliness situation in terms of urgency. Apparently she was engaged while

married to marry another and wanted to expeditiously terminate her marriage so that she could marry the person that she was betrothed to. But in terms of any irreversible prejudice to her there was none. She subsequently did divorce and at the time that the grievance was filed [December 2003] she was divorced and remarried.

[T14-18 to T15-1.]¹

Respondent advanced numerous mitigating factors: (1) this is the first blemish in his thirty-eight year career; (2) he has served as a volunteer for several legal organizations, including as member of a District Ethics Committee, chair of the District XII Fee Arbitration Committee and president of the Union County Bar Association; (3) he continues to serve the Bar Association as trustee and editor of its newsletter; (4) he has acted as a tutor for the Literacy Volunteers of America for several years; (5) he is remorseful and has apologized to Crum on several occasions; and (6) his conduct was aberrational ("I am at a loss to explain my behavior in this case. I do not believe this represents an accurate picture of how I conduct my practice. I believe I represent my clients in a competent and diligent manner").

¹ T refers to the transcript of the DEC hearing on June 17, 2005.

At the DEC hearing, the presenter urged the hearing panel to impose an admonition:

[Respondent] has been very forthright with the Hearing Panel. He's always been very forthright with me in my communications with him. Never tried to made [sic] any excuse, just essentially acknowledged that it happened, indicated that he had professed - apologized profusely, Miss Crum acknowledged, but certainly she wanted to carry it a step further.

So I think that an admonition . . . should strongly be considered in light of everything that he said that I concur with.

[T16-8 to 20.]

The DEC found that respondent's conduct violated RPC 1.1(a), RPC 1.4(a), RPC 3.2, and RPC 8.4(c). The DEC recommended an admonition, based on the above-mentioned mitigating circumstances as well as others, such as the lack of harm to Crum, who has since obtained her divorce, and the refund of her \$500 fee.

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. We are unable to agree, however, with the DEC's recommendation that respondent be admonished.

The facts are undisputed. Respondent admitted that he misrepresented to his client that he had filed a complaint, that

her husband had been served, and that a hearing could be held in thirty-five days if her husband did not file and answer. The DEC found that such conduct constituted gross neglect, failure to communicate with client, failure to expedite litigation, and misrepresentation.

We agree with the DEC's conclusion that respondent violated RPC 8.4(c) when, for several months, he misrepresented the status of the case to his client. We find, however, that his failure to file the complaint more properly constituted lack of diligence, rather than gross neglect. Although respondent's inaction is not to be condoned, Crum was not prejudiced thereby. We find, thus, that respondent violated RPC 1.3, instead of RPC 1.1(a).

We further find that the remaining RPCs (RPC 1.4(a) and RPC 3.2) cited in the complaint are not applicable. Failure to communicate is subsumed in the misrepresentation charge and, because the complaint was not filed, there was no litigation to expedite.

"[I]ntentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472, 488 (1989). See, e.g., In re Weiworka, 179 N.J. 225 (2004) (reprimand for attorney who took no action in the client's behalf, did not inform the client about the status of the matter

and the expiration of the statute of limitations, and misled the client that a complaint had been filed) and In re Onorevole, 170 N.J. 64 (2001) (reprimand for attorney who grossly neglected a matter, failed to act with diligence, failed to reasonably communicate with the client, and made misrepresentations about the status of the case). But see In the Matter of Joseph M. Clark, DRB 94-302 (November 2, 1994) (admonition for attorney who grossly neglected a personal injury case, lacked diligence in its handling, failed to communicate with the client, ignored new counsel's requests for the file, and did not disclose to the client that her claim against two of the four defendants had been dismissed; no mitigation cited in letter of admonition).

Research did not uncover other matters in which an admonition was imposed for misrepresentation of the status of the case to a client. That offense alone merits a reprimand. Although respondent advanced, and the DEC considered, compelling mitigating factors, established precedent requires the imposition of a reprimand, particularly where, as here, respondent misled his client for several months. We, therefore, determine that respondent should be reprimanded.

We further determine to require respondent to reimburse the
Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Louis Pashman, Esq.

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel