

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 95-413

IN THE MATTER OF :
RAYMOND T. PAGE, :
AN ATTORNEY AT LAW :

Decision of the
Disciplinary Review Board

Argued: January 31, 1996

Decided: June 19, 1996

Jane A. Kenney appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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

This matter is before the Board based upon a recommendation for discipline filed by the District IV Ethics Committee (DEC). In a four-count complaint, respondent was charged with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence) and RPC 3.2 (failure to expedite litigation consistent with the interests of a

court. Zander contended that, at some point, he was even unable to get in touch with respondent's secretary. Respondent, in turn, explained that he had instructed Zander to stop calling him because their conversations always ended in arguments. As a result, Zander began sending facsimile transmissions ("faxes") to respondent, requesting information about the progress of the foreclosure proceedings.

More than one and one-half years after their initial meeting, Zander sent his first fax, requesting information on the status of his case. Almost one year later, by fax dated September 3, 1992, respondent updated Zander on the status of the Reinsfelder foreclosure. It is not known whether Zander and respondent had had any meetings in the interim. Respondent informed Zander that he had filed the complaint and that, if respondent were able to locate a deed transferring the property to certain heirs, the matter could be resolved "early next week." Exhibit C-5. Between September 1992 and March 1993 Zander sent respondent approximately fifteen additional faxes either requesting information on the status of his case, inquiring whether specific actions had been taken or notifying respondent that he could not stall the mining company much longer.

Finally, on March 5, 1993, Zander "faxed" a letter to respondent indicating that the taxes on the Reinsfelder land had increased by one hundred percent and that he could not appeal the taxes because he did not hold the deed to the property. Moreover, the mining company had "backed off" and lost interest in purchasing

the property, apparently because it had obtained an easement on another property. Zander requested that respondent return the "other" foreclosure papers on the second piece of property as soon as possible. Exhibit-20B.

Respondent then "faxed" a letter to Zander on March 10, 1993, asking for the "amount of the purchase of the property" and the amount of taxes that Zander had paid for the last three years. Exhibit C-21. Zander responded the same day indicating that his total expenditure had been \$14,515.87. It was respondent's intention to reimburse Zander and "make him whole" by purchasing the tax certificate on the Reinsfelder property. Zander explained, however, that he was not looking to be made whole, as he had intended to purchase the property for recreational purposes. T58. Zander noted that, even if respondent had reimbursed him, it would not have compensated him for his aggravation.

The "faxes" from Zander to respondent continued in April, May and June 1993. Respondent abandoned the first complaint filed because of his alleged inability to locate or serve the defendants (the Reinsfelder heirs). Thereafter, although respondent filed a second complaint, he failed to complete the foreclosure proceedings on Zander's behalf.

Finally, on September 27, 1993, Zander "faxed" the following note to respondent:

I'm writing this Fax to let you know I'm very disappointed in your performance. You never answer my phone calls or Faxes. It would make me feel a little better if you would let me know what is happening with my jobs. After three years of waiting and excuses you leave

me with no choice but to put in a [sic] attorney grievance to the District IV ethics committee.

[Exhibit C-36]

At the DEC hearing respondent explained that he was unfamiliar with such cases and that during 1992 he had spent a great deal of time trying to resolve the matter. He had drafted an affidavit of inquiry and had problems tracking down the owners of record of the property. He claimed that, because of his heavy workload, he had asked Zander whether he wanted another attorney to complete the matter; Zander had declined the offer on the basis that it would have taken another attorney too long to start over again. Respondent added that, initially, when he had agreed to represent Zander, he believed that the matter would be simple; instead, it turned out to be a "nightmare." T79.

Respondent testified that, when he offered to reimburse Zander for monies spent to date, he intended to retain another attorney, one of his friends, to finalize the foreclosure. Respondent claimed that he did not intend to violate the disciplinary rules. T80-81. He explained that he was the testamentary trustee of a trust fund for his sister, who was mentally retarded; he had intended to use the monies from the trust fund to purchase the tax lien from Zander. He claimed that he wanted to purchase the property not for his own benefit, but for that of his sister. Respondent added that, in the past, he had purchased property at a sheriff's sale for his sister's benefit and had made "income" for the trust from that transaction. T80.

For his part, respondent noted that he had filed two complaints in connection with the foreclosure and had spent a lot of time on the matter without receiving a fee for any of his efforts. At one point, however, respondent admitted that "[i]f you're asking me questions to say did I goof and did I error [sic] the answer is yes." T96.

* * *

Zander filed a grievance with the DEC, to which respondent replied on February 10, 1994. On May 6, 1994, the DEC investigator requested additional information from respondent within two weeks from the date of the letter. Exhibit C-38. By letter dated June 2, 1994, the investigator advised respondent that, if she did not hear from him within ten days of his receipt of the letter, she would assume that he had nothing further to add to her investigation. Exhibit C-39.

The investigator spoke with respondent on June 28, 1994. The substance of that conversation was summarized in her letter of August 29, 1994, indicating that respondent had expressed his intention to forward Zander's file to another attorney to conclude the foreclosure on the Reinsfelder property. Exhibit C-40. Respondent had also informed the investigator that he intended to waive any fees or costs incurred to date and that he would pay any fees charged to Zander by the new attorney. Respondent also agreed to send Zander the file on the tax lien on the second piece of

property. No work had been done in that matter.

On August 3, 1994, the DEC investigator learned that respondent had not complied with the foregoing conditions. She, therefore, unsuccessfully attempted to contact respondent several times by telephone and in writing. Thereafter, in a letter dated September 20, 1994, the investigator forwarded another letter to respondent requesting a complete copy of Zander's file. Exhibit C-41. Respondent failed to timely forward the file, prompting Zander himself to retrieve it. T103.

As of the date of the DEC hearing, respondent had failed to complete the foreclosure actions on both parcels of land. Respondent admitted that he did not act properly because of his inexperience and lack of familiarity with the area of law involved. Respondent also conceded that he failed to return Zander's numerous telephone calls and to reply to the "fax" requests about the status of the matters.

* * *

The DEC found that, while respondent did communicate with Zander on some occasions, respondent did not keep him reasonably informed about the status of the matter. The DEC found that the offer to exchange some of the lands in the Reinsfelder property with that of the mining company was not consummated because of respondent's failure to complete the foreclosure actions.

The DEC also found that there was evidence in the record

(Exhibit C-32) that, although the Reinsfelder property was worth approximately \$25,000, respondent had offered Zander a little more than \$14,000. Respondent claimed that he was purchasing the property for his sister's estate, not for his own benefit. The DEC noted respondent's testimony that, had Zander accepted the offer, he would have referred the matter to another attorney with experience to complete the foreclosure. The DEC concluded that respondent's conduct in this regard was a violation of RPC 1.7 (conflict of interest), because the representation of two clients (his sister and Zander) adversely affected their respective interests. The DEC also found a violation of RPC 1.8(j), based on the conclusion that respondent could ultimately acquire an interest in the property, as he was the beneficiary of his sister's estate.

The DEC also concluded that respondent failed to cooperate with the investigator's efforts, citing a violation of R. 1:20-3(G)(3), instead of RPC 8.1(b). The DEC further found that respondent violated RPC 1.1(a), RPC 1.3, RPC 3.2 and RPC 1.4.

As a result of the foregoing findings, two of the three panel members recommended that respondent receive a reprimand. The public member of the DEC panel filed a dissent to the majority's report. This member was greatly disturbed by respondent's offer to purchase the tax lien from Zander, using the funds from a trust that had been created for the benefit of respondent's retarded sister. That member concluded that, essentially, the offer was to either "cover his incompetence ...OR.... [sic] hoping that the Client had become disinterested over time, felt that the time was

right to relieve his Client of a valuable piece of property for a fraction of its worth." This member, therefore, concluded that greater discipline should be imposed. Apparently, however, he was under the mistaken impression that the majority had recommended a "Public Admonition."

* * *

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 supported by clear and convincing evidence.

The DEC properly found that respondent's conduct violated RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 3.2 and RPC 8.1(b).

It is undeniable that respondent exhibited a lack of diligence and gross neglect in handling the matter. He was retained in January 1990. More than three years later, he still had not completed the tax foreclosure, to the detriment of his client, who was unable to conclude the deal with the sand-mining company because of respondent's inaction.

It is also unquestionable that respondent failed to communicate with his client about the status of the matter, ignoring his numerous and persistent requests for information about the progress of the case.

The DEC's conclusion that respondent violated RPC 1.7 and RPC 1.8, however, was not supported by the record. The DEC's finding was grounded on respondent's offer to buy the property from his client with funds from his sister's trust. The DEC perceived a conflict on the basis that respondent would be representing two

clients, his sister and Zander (RPC 1.7) and, at the same time, entering into a business transaction, as trustee, with a client, Zander (RPC 1.8). Those rules, however, are inapplicable. Respondent neither represented two clients with conflicting interests in this matter nor entered into a business transaction with Zander. He attempted to purchase the tax certificate from Zander, but the latter declined. Accordingly, the DEC's finding that he violated RPC 1.7 and RPC 1.8 was premature. It is possible that respondent would observed the safeguards in those rules if Zander had accepted his offer. Finally, it appears from the record that respondent's offer to purchase Zander's tax certificate was made to compensate Zander for respondent's neglect in the matter, not for any improper motive.

Respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4, RPC 3.2 and RPC 8.1(b) in this matter.

In imposing the appropriate discipline in this matter, the Board considered respondent's contrition and sincerity. He undertook the representation of a client in a matter for which he had no experience. Respondent believed that the matter would be easy to resolve. He was wrong. Despite the effort he expended in preparing an affidavit of inquiry and two complaints and in attempting to locate the owners of record of the property, he was unable to resolve the matter. When respondent finally realized he was in over his head he suggested to Zander that he hire another attorney. Zander was unwilling to further delay the proceeding; he wanted respondent to complete the matter as soon as possible. At

least at that point, if not earlier, respondent should have either enlisted the aid of an attorney with relevant expertise, should have explained to Zander his lack of experience and should have persuaded his client to seek new counsel.

Nevertheless, respondent did not accept a fee in the matter, and did offer to reimburse Zander for all of the money he had expended and to pay another attorney to conclude the matter. Moreover, respondent candidly admitted his mistake. The Board, therefore, concluded that respondent's actions, while misguided, did not involve venality.

In other matters with combinations of gross neglect, lack of diligence, failure to expedite litigation, failure to keep a client reasonably informed about the status of a matter and failure to cooperate with disciplinary authorities, absent additional aggravating factors, admonitions have been imposed. See In the Matter of Raymond A. Aslaksen, Docket No. DRB 95-391 (November 27, 1995) (attorney failed to serve answers to interrogatories, to provide an expert witness and to advise his client of the dismissal of the matter, despite requests for information); and In the Matter of Howard M. Dorian, Docket No. DRB 95-216 (August 1, 1995) (attorney failed to take action for fifteen months, failed to restore a client's case that was mistakenly dismissed, failed to reply to requests for information, failed to withdraw as counsel, failed to forward the file to a new attorney for five months and failed to reply to requests for information from the DEC).

Here, too, the Board unanimously determined to admonish

respondent for his conduct. One member did not participate.

The Board also directed that respondent reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 6/19/86



LEE M. HYMERLING
Chair
Disciplinary Review Board

Supreme Court of New Jersey
Disciplinary Review Board

Voting Sheet

IN THE MATTER OF RAYMOND T. PAGE

DOCKET NO. DRB 95-413

HEARING HELD: October 26, 1995

DECIDED: June 24, 1996

	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did Not Participate
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HYMERLING					X		
BUFF					X		
COLE					X		
HUOT					X		
MAUDSLEY					X		
PETERSON					X		
SCHWARTZ					X		
THOMPSON					X		
ZAZZALI							X

Robyn M. Hill 6/25/96
ROBYN M. HILL
CHIEF COUNSEL