SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-088

IN THE MATTER OF

JOSEPH H. NEIMAN

AN ATTORNEY AT LAW

Decision

Argued: June 15, 2000

Decided: November 27, 2000

Joseph P. Rem appeared on behalf of respondent.

Wendy F. Klein appeared on behalf of the District IIB Ethics Committee.

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

This matter was before us based on a recommendation for discipline filed by the District IIB Ethics Committee ("DEC"). The complaint alleged that respondent grossly neglected a lawsuit and failed to communicate with his client for years.

Respondent was admitted to the New Jersey bar in 1985. He maintains an office for the practice of law in Hackensack, Bergen County. Respondent has no prior ethics history.

According to the ethics complaint, respondent violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (a) (failure to communicate with client), RPC 3.2

(failure to expedite litigation) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

* * *

In or about February 1988, Lynn Naik, the grievant, retained respondent to represent her and her husband in a dispute with a business partner. In March 1989 respondent filed a complaint against Iqbal Shafi for damages arising out of Naik's purchase from Shafi of a sixty percent share of a business known as "New Era Tile."

On or about November 3, 1989 the defendant's counsel forwarded interrogatories to respondent. In reviewing the interrogatories, respondent noticed references to a written agreement of which he was unaware and which was damaging to Naik's case.[1] Therefore, in an effort not to disclose its contents, respondent chose as his litigation strategy not to file answers to Shafi's interrogatories. It is unclear if respondent ever conveyed this decision to Naik.

On March 20, 1990 Naik wrote to respondent for a status update on her case. Hearing nothing from respondent, Naik again wrote to him on October 29, 1990. Respondent did not reply to that letter as well. However, respondent testified at the DEC hearing that, in or about late 1992 or early 1993, a letter from Naik prompted him to visit the Bergen County

[1] Respondent would later testify that Naik had a copy of the agreement.

Clerk's Office to inquire about the status of the case. According to respondent, he was told at the time that the case had probably not yet been listed for trial because of a severe backlog in the court docket.

Thereafter, Naik sent letters to respondent in late 1993, 1994, 1995 and on four separate occasions in 1997, all of which went unanswered. At the DEC hearing, respondent acknowledged receiving Naik's numerous letters and did not contest that she went to great lengths to contact him. Moreover, respondent admitted doing nothing to further his clients' case for all of that time. However, respondent claimed that, after receiving Naik's February 1997 letter, he learned for the first time that Naik's case had been dismissed without prejudice in June 1991. According to respondent, he became "paralyzed with fear" and was unable to face Naik or convey that information to her.

Without any information from respondent in over four years and still unaware of the 1991 dismissal, in February 1998 Naik filed the ethics grievance against him. Only then did respondent contact Naik in Norfolk, Virginia, where she and her husband were living at the time. According to Naik, around that time respondent began to call her incessantly, requesting that they meet to discuss the case. Naik reluctantly agreed to meet respondent at the Norfolk Airport.[2]

On March 16, 1998 respondent met Naik and her husband at the Norfolk Airport. According to Naik, during the meeting respondent offered her in excess of $20,000 in cash

---

[2]Naik selected this location because she felt uneasy about respondent's request for a meeting and wanted a very public meeting place.

and legal services, but only if she dismissed the pending ethics grievance. Respondent vehemently denied that assertion, claiming a belief that ethics proceedings could not be dismissed by a grievant. Nevertheless, an agreement written and signed by respondent at the airport stated as follows:

> This will confirm that I will give $15,000 + 5000 in legal fees as follows:
> 1,500 now.
> 3,500 when Grievance complaint is withdrawn and discontinued.
> 5,000 six mos. after that.
> 5,000 six mos. after that.
> In addition legal services are to be provided to you on behalf of New Era Construction and if requested assistance in your stock arbitration.
> [Exhibit P-16]

In addition, respondent agreed to draft a malpractice complaint against himself for the Naiks' use. Two days later, on March 18, 1998, Naik rejected respondent's offer.

With respect to the terms of the agreement prepared at the airport, respondent testified that Naik' husband had literally dictated the terms of the agreement. Respondent claimed that he had no choice but to acquiesce to Naik's demands because he had "dropped the ball" in the case. However, respondent was adamant that he never conditioned the agreement on the dismissal of the ethics grievance.

Thereafter, respondent traveled to Trenton to review the Superior Court file in the matter. He discovered that, although the case had apparently been dismissed, no motion to dismiss the case with prejudice (then required by the rules) had ever been filed and that there was no order dismissing the case with prejudice in the court's original file. Moreover, it appeared that his adversary had not sent him a copy of the original order of dismissal. Based

on that information, respondent filed first a motion to restore the case, then a motion for reconsideration and, finally, a notice of appeal in the Appellate Division, all of which were denied.

Finally, the ethics complaint alleged a violation of RPC 8.4(d), claiming that respondent offered cash and legal services to the Naiks for the dismissal of the ethics grievance. As previously noted, Naik testified that respondent had conditioned the agreement upon the dismissal of the ethics grievance. However, she could not explain why she had previously written to the DEC that respondent "came all the way to Virginia to work on a plan so that the Grievance Committee can either drop the charge or be more lenient with him." Indeed, respondent testified consistently that he had always told the Naiks that it was likely that an ethics grievance could not be dismissed by them, but that, if it was appropriate for them to do so, he would be appreciative. Respondent also stated that he hoped that the ethics authorities might be more lenient if he had made the Naiks whole for his mishandling of their file. Respondent vehemently denied any wrongdoing in this regard.

* * *

The DEC found violations of RPC 1.3, RPC 1.4(a) and, although not cited in the complaint, RPC 3.4(d) (failure to comply with discovery requests). The DEC dismissed the charges of violations of (1) RPC 1.1(a), finding that respondent's misconduct did not rise

to the level of gross neglect; (2) RPC 8.4(d), believing respondent's version of events that he tried only to attain the DEC's leniency and did not demand the dismissal of the grievance, as Naik alleged; and (3) RPC 3.2, concluding that respondent's actions were "consistent with the interests of the client."

The DEC recommended the imposition of a reprimand for respondent's misconduct.

* * *

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Respondent did not deny that he mishandled the Naik matter. Indeed, his misconduct began as early as 1990, when he failed to respond to Naik's first letters requesting information about the case. Thereafter, respondent did nothing to further the Naiks' claim and did not communicate with his clients for years at a time, including a span of over four years, from 1993 to 1998. Although the DEC found that respondent's conduct in not allowing the Naiks to answer interrogatories did not amount to gross neglect, inevitably there would come a time when respondent's litigation "strategy" would cause the dismissal of his clients' action. That occurred in 1991. There is no conceivable scenario under which respondent could claim that a six-year delay in ascertaining the true status of the litigation was acceptable. We find, thus, that, in addition to a lack of diligence, respondent exhibited gross

neglect, in violation of RPC 1.3 and RPC 1.1(a), respectively.[3] Also, respondent's admitted failure to answer his clients' numerous requests for information for five years was a violation of RPC 1.4(a).

Finally, with regard to a violation of RPC 8.4(d), the evidence is in near equipoise. On the one hand, respondent claimed that he never premised his agreement with the Naiks on the dismissal of their ethics grievance. However, respondent made reference to the dismissal of the grievance in his handwritten agreement, drafted at the Norfolk Airport. On the other hand, Naik testified that respondent required the dismissal of the grievance as a condition of payment. However, Naik could not explain why her letter to the DEC included a reference to respondent's hope that an agreement with her might serve only as a mitigating factor in the ethics proceeding. It is likely that the truth lies somewhere between these two versions of the events. In any case, we were unable to find clear and convincing evidence of a violation of RPC 8.4(d).

Discipline ranging from an admonition to a reprimand is generally appropriate when an attorney is guilty of gross neglect, lack of diligence or failure to communicate in one or several matters. See, e.g.,In the Matter of Paul Paskey, DRB 98-244 (1998) (admonition for gross neglect, lack of diligence and failure to communicate with the client by twice allowing a complaint to be dismissed and failing, over a four-year period, to apprise the client of the dismissals or to reply to the client's numerous requests for information.); In the

[3]The finding of violations of RPC 3.2 and RPC 3.4(d) may be subsumed in these findings.

Matter of Ben W. Payton, DRB 97-247 (1998) (admonition for gross neglect, lack of diligence and failure to communicate with the client; after filing a complaint four days after the expiration of the statute of limitations, the attorney allowed it to be dismissed for lack of prosecution and never informed his client of the dismissal.); In re Carmichael, 139 N.J. 390 (1995) (reprimand for lack of diligence and failure to communicate in two matters; the attorney had a prior private reprimand); In re Wildstein, 138 N.J. 48 (1994) (reprimand for gross neglect and lack of diligence in two matters and failure to communicate in a third matter); and In re Gordon, 121 N.J. 400 (1990) (reprimand for gross neglect and failure to communicate in two matters). After consideration of the relevant circumstances, which include the length of time that respondent neglected the case and his clients' requests for information about its status, we unanimously determined that a reprimand, rather than an admonition, more adequately addresses the extent of respondent's unethical acts.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 11/27/00

LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Joseph H. Neiman
Docket No. DRB 00-088

Argued: June 15, 2000

Decided: November 27, 2000

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			X				
Peterson			X				
Boylan			X				
Brody			X				
Lolla			X				
Maudsley			X				
O'Shaughnessy			X				
Schwartz			X				
Wissinger			X				
Total:			9				

Robyn M. Hill 3/29/01
Robyn M. Hill
Chief Counsel