SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 01-149

IN THE MATTER OF

WILLIAM F. ARANGUREN

AN ATTORNEY AT LAW

Decision

Argued: July 19, 2001 and October 18, 2001

Decided: January 25, 2002

Rene Riverol appeared on behalf of the District VI 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 us based on a recommendation for discipline filed by the District VI Ethics Committee ("DEC"). The three-count complaint charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with client) and RPC 1.5(b) (failure to provide client with a written retainer setting forth the basis or rate of the fee).

This matter was scheduled for oral argument before us on July 19, 2001. Minutes before the oral argument, respondent telephoned Office of Board Counsel to request an adjournment, based on illness. Since the presenter was ready to proceed, the Board determined to hear his oral argument and to allow respondent to appear at a later date, if he wished to be heard. Respondent appeared before us on October 18, 2001. Because the presenter's presence was not required, respondent was given a copy of the transcript of the presenter's argument made on July 19, 2001.

Respondent was admitted to the New Jersey bar in 1981. He maintains an office in Jersey City. In 1997, respondent was admonished for lack of diligence and failure to communicate with a client in one matter and failure to promptly turn over funds to a client in another matter. In the Matter of William F. Aranguren, Docket No. DRB 97-101 (June 30, 1997). In 2000, respondent was suspended for a six-month period, effective June 2, 2001, for misconduct in several matters, including gross neglect, lack of diligence, failure to communicate with clients, failure to expedite litigation, pattern of neglect, misrepresentations, failure to return files to clients and failure to cooperate with ethics authorities. In re Aranguren, 165 N.J. 664 (2000).

The grievant, Carlos Jorge, testified at the DEC hearing through an interpreter. According to Jorge, he retained respondent in October 1996 because he was experiencing financial difficulties. During that initial meeting, respondent informed Jorge that filing a

bankruptcy petition was the solution to his problems. Respondent quoted a $1,200 fee[1] and agreed to accept a payment plan: a $300 deposit to open the case, paid on October 7, 1996, and $150 every two weeks. After payment in full, Jorge was to pay the filing fees of $175. Only then would respondent file the bankruptcy petition. Respondent did not give Jorge a retainer agreement.

Jorge testified that he delivered the cash installments of $150 every two weeks. Introduced into evidence were six receipts mailed to Jorge: an initial $300 receipt, dated October 7, 1996 and subsequent receipts of $150 each, dated October 21, November 1, November 15, November 27 and December 27, 1996. Jorge claimed that he never received a receipt for a payment made before the December 27, 1996 installment. Thus, according to Jorge, respondent's fee had been paid in full as of December 27, 1996. For his part, respondent testified that, whenever his clients made cash payments, they received receipts on the spot. Therefore, he asserted, there was a missing receipt because Jorge had failed to make a payment. In fact, respondent testified, his secretary had told him that Jorge had not made the payment.[2]

During their initial meeting, respondent told Jorge to bring him all of his bills. According to Jorge, he brought them two days later. He stated that, one year later, he saw those same bills sitting in a file on top of respondent's desk. Jorge claimed that, other than the

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[1] Jorge explained that his grievance mistakenly listed respondent's fee as $1,300.

[2] Respondent stated that he subpoenaed his secretary to testify at the DEC hearing, but that she was unavailable because she had recently had a baby.

receipts for the installment payments, he received no other correspondence or telephone calls from respondent. He also contended that, after making the final payment to respondent, it became impossible to either see or discuss the case with him. According to Jorge, he went to respondent's office on a number of occasions, but was unable to see him. Jorge testified that, at their initial meeting, respondent told him that the petition would be ready approximately three months after the final fee payment. Jorge calculated that to be around mid-March. It was Jorge's understanding that, after the preparation of the bankruptcy petition, respondent would contact him to review it.

When Jorge did not hear from respondent, he went to respondent's office, but respondent was not there. Jorge testified that several of his calls to respondent were not returned. At some undisclosed point, Jorge was able to discuss the matter with respondent, who assured him that everything was progressing. Respondent, however, did not inform him about the status of the matter.

Jorge also testified that, in or about December 1997, more than one year after his meeting with respondent, he started getting letters from his creditors. One of the creditors told Jorge that it was impossible to contact respondent. In January 1998, almost two years after he retained respondent, asking for a reply within three days. Jorge met with a new attorney about his financial problems. The attorney wrote to respondent asking for a reply within three days. When respondent did not reply within the stated time, the attorney agreed to handle Jorge's case. According to Jorge, he paid her an $800 legal fee, as well as filing

fees. The new attorney filed a bankruptcy petition and concluded the case within three months.

Respondent submitted into evidence a February 11, 1997 letter addressed to Jorge, stating as follows:

> This will confirm that you were unable to keep your appointment to meet with me at my office on February 3, 1997, to review the draft of the Voluntary Petition, with reference to the above matter.
>
> Please contact my secretary to re-schedule the appointment at your earliest convenience. In addition, kindly remit payment of the balance of the counsel fee retainer.
>
> [Exhibit J-1]

According to Jorge, he never received the above letter and did not recall receiving a telephone call from respondent's office scheduling an appointment to review the petition. Jorge conceded that he might have gone to respondent's office on February 3, 1997, but did not recall an appointment that had to be rescheduled. Respondent later admitted that, contrary to his February 11 letter, it was he who was not available on that date.

Jorge explained that there was no reason for him not to sign the petition, if it had been completed. He claimed that respondent never told him to send a filing fee and that he waited for respondent to contact him. Jorge acknowledged that his new attorney eventually received a letter from respondent, stating that he had already prepared a bankruptcy petition.

For his part, respondent claimed that he had spoken to Jorge on numerous occasions, including dates after February 3, 1997, to make him aware that he had to come in to sign the bankruptcy petition and pay the balance of the retainer and court costs. Respondent,

however, was unable to provide any evidence of such calls. Moreover, when given the opportunity to obtain telephone records to substantiate these calls, respondent claimed that he could not obtain the information from the telephone company for "technical reasons" that he did not understand.

Respondent explained that he did not file the bankruptcy petition because Jorge had not finished paying his counsel fees. According to respondent, his fee was $1,300. He claimed that he had told Jorge that his fee had to be paid in full, before the petition was filed, because he did not want to become Jorge's creditor. Respondent contended that Jorge had missed making an installment payment and owed him an additional $100 toward his fee, as well as the filing fee.

Notwithstanding respondent's excuse for not filing the petition, he stated that he could have filed the petition with a notation that some fees were still due.

Respondent testified that he continued to communicate with Jorge's creditors and wrote them letters. Although the letters indicated that copies were sent to Jorge, Jorge denied receiving them. Several of Jorge's creditors wrote to respondent in an attempt to compromise the amounts owed by Jorge. Respondent admitted that he never contacted Jorge about the offered compromises, because Jorge was unable to pay the compromised amounts.

Respondent conceded that he did not provide Jorge with a written fee agreement. However, he claimed that his fee was listed in the voluntary petition drafted in Jorge's behalf. He also claimed, contrary to Jorge's testimony and even to his own testimony, that Jorge had

signed the voluntary petition. Lastly, respondent admitted that he never wrote to Jorge, other than the February 11, 1997 letter, which Jorge denied receiving.

* * *

The DEC findings are not clear. It appears that the DEC found only a violation of RPC 1.3 for respondent's failure to timely file Jorge's bankruptcy petition. The DEC found that Jorge made numerous payments to respondent, totaling $1,200, and was waiting for respondent to inform him that the bankruptcy petition was ready and that an additional $175 for the filing fee was needed. The DEC noted that respondent never contacted Jorge.

Because, at the time of the ethics hearing, respondent had been suspended for a six-month period, beginning January 2001, the DEC deferred to us the issue of the appropriate form of discipline. The DEC recommended, however, that respondent return the sum of $500 to Jorge and that he enroll in an ICLE course dealing with "similar matters," presumably bankruptcy cases.

* * *

Following 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.

Even though Jorge testified by way of interpreter, his testimony was more plausible and believable than respondent's. Jorge provided six receipts, showing a total payment of $1,050. Jorge claimed that he had made an additional payment, for which he had not received a receipt. The fact that there was a gap between the November 27, 1996 and December 27, 1996 payments supports Jorge's contention that the bi-weekly payment was made, but that no receipt was mailed to him. Therefore, we found that Jorge paid respondent $1,200, the fee quoted by respondent. Even if that were not the case, respondent should have taken action to have Jorge sign the petition, pay the filing fee or pay the amount that respondent thought was outstanding. Respondent's inaction drove Jorge to hire a new attorney, at an additional expense. Respondent's conduct in this regard was a violation of RPC 1.3 (lack of diligence).

Respondent admitted that he did not give Jorge a written fee agreement. He claimed, however, that his fee was listed in the bankruptcy petition. This cannot be deemed a substitute for the written fee agreement required by RPC 1.5(b). We, thus, found a violation of this rule as well.

As to the charge of a failure to communicate with Jorge, Jorge testified that respondent never contacted him to pay the filing fee or to sign the petition. He claimed that on a number of occasions, he tried to telephone respondent and even went to respondent's office, but was unable to speak to him. Respondent, for his part, maintained that he attempted to telephone Jorge and sent him a letter, dated February 11, 1997, asking him to

reschedule an appointment that was not kept on February 3, 1997. Jorge testified that he never saw the letter and respondent admitted that it was he who was unavailable for the meeting, not Jorge. Respondent also admitted that he never informed Jorge about the letters from creditors attempting to compromise Jorge's debt. Undeniably, thus respondent's failure to communicate with his client was a violation of RPC 1.4(a).

Similar misconduct generally warrants the imposition of either an admonition or reprimand. See In the Matter of Paul Paskey, DRB 98-244 (1998) (admonition where attorney exhibited gross neglect, lack of diligence and failure to communicate with 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 Matter of Ben W. Payton, DRB 97-247 (1998) (admonition where attorney exhibited gross neglect, lack of diligence and failure to communicate with 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 attorney never informed his client of the dismissal); In re DeBosh, 164 N.J. 618 (2000) (reprimand for gross neglect, lack of diligence, failure to communicate, failure to provide client with written fee agreement and failure to cooperate with disciplinary authorities); and In re Cutruzzula, 152 N.J. 153 (1998) (reprimand for lack of diligence, failure to communicate with client and failure to provide client with written fee agreement).

Because of respondent's ethics history — an admonition and a six-month suspension — we unanimously determined that a reprimand is warranted here. Three members did not participate.

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

By: 

ROCKY L. PETERSON
Chair
Disciplinary Review Board

## *SUPREME COURT OF NEW JERSEY*
## *DISCIPLINARY REVIEW BOARD*
## *VOTING RECORD*

In the Matter of William F. Aranguren
Docket No. DRB 01-149

Argued: October 18, 2001

Decided: January 25, 2002

Disposition: Reprimand

| *Members* | *Disbar* | *Suspension* | *Reprimand* | *Admonition* | *Dismiss* | *Disqualified* | *Did not participate* |
|---|---|---|---|---|---|---|---|
| *Peterson* | | | X | | | | |
| *Maudsley* | | | X | | | | |
| *Boylan* | | | | | | | X |
| *Brody* | | | X | | | | |
| *Lolla* | | | X | | | | |
| *O'Shaughnessy* | | | X | | | | |
| *Pashman* | | | | | | | X |
| *Schwartz* | | | | | | | X |
| *Wissinger* | | | X | | | | |
| ***Total:*** | | | 6 | | | | 3 |

Robyn M. Hill 2/4/02
Robyn M. Hill
Chief Counsel