SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 00-244

IN THE MATTER OF

MICHAEL P. BALINT

AN ATTORNEY AT LAW

Decision

Argued: October 19, 2000

Decided: February 6, 2001

Andrew W. Gruber appeared on behalf of the District VIII Ethics Committee.

Donald S. Driggers 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 based on a recommendation for discipline filed by the District XIII Ethics Committee ("DEC"). The three-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), RPC 1.4(a) (failure to communicate with client), RPC 1.1(b) (pattern

of neglect) and R. 1:20-3(g)(4)[1] (failure to cooperate with a disciplinary authority) (counts one, two and three) and RPC 1.15(a) (failure to properly safeguard client funds) and RPC 1.15(b) (failure to promptly deliver funds to a client or third person) (count two).

Respondent was admitted to the New Jersey bar in 1976. At the relevant times, he maintained a law practice in Cranbury, New Jersey. Currently, he maintains a practice in Lawrenceville, New Jersey. Respondent has no history of discipline.

The Pompliano Matter - Docket No. XIII-98-004E

David Pompliano had negotiated a deal to purchase a piece of land from Alan Danser, the then mayor of Cranbury, New Jersey. Pompliano intended to build a house on the property. Merck & Company, Pompliano's employer, recommended respondent's legal services.

In the fall of 1994, Pompliano retained respondent. Danser was represented by William C. Moran, Jr., who had been respondent's law partner until 1988.[2]

Moran prepared the contract of sale, which respondent reviewed and revised. In accordance with the contract, Pompliano deposited $13,400 with the seller's attorney.

---

[1] More properly RPC 8.1(b).

[2] When respondent and Moran were still partners, their law firm represented the town of Cranbury and Danser. Moran also represented the Dansers individually for a number of years. The complaint did not charge respondent with a violation of RPC 1.7 nor does the record support such a violation.

Around that same time, Pompliano retained the services of an architect to design the construction of a house.

The purchase price for the land was $134,500. However, the lending institution, The Sovereign Bank ("The Bank") appraised the land for only $105,000. The bank, therefore, declined to finance the transaction. The day after Pompliano learned that he could not obtain a loan, he notified Danser; the next day Pompliano notified respondent.

Thereafter, respondent made several requests for the return of the deposit. Respondent hand-delivered to Moran a letter dated December 19, 1994, requesting the release of the deposit. Danser did not return the deposit, however, demanding written notification from the bank that the land had in fact been "under-appraised" and that the loan had been denied.

According to Pompliano, for the next month or two, he and respondent attempted to obtain such a letter from the bank. The letter was not issued until February 1995. It was then given to Moran. After receiving it, however, Moran claimed that the letter was insufficient justification to cancel the contract. Concerned that his deposit would not be returned, Pompliano urged respondent to do whatever was necessary for the return of the deposit. Respondent determined that he had to file suit and requested the filing fee from Pompliano. According to Pompliano, he sent the fee to respondent "post haste" on October 2, 1995.

Realizing that litigated matters take time, Pompliano waited several months before calling respondent about the status of his case. Throughout the process, Pompliano kept notes of how things were progressing and the times he had contacted respondent. Pompliano testified that, in a nine-month period, he did not hear from respondent more than once. Pompliano claimed that, every time he telephoned respondent's office, respondent was either out of the office or had just stepped out. Respondent did not return Pompliano's calls, nor did he reply to Pompliano's certified letters, "imploring" respondent to take action in the matter. Finally, on March 24, 1997, Pompliano called the Middlesex County clerk and learned that the complaint had indeed been filed. He was then told that respondent would have to request an earlier court date to move the matter along and that there would be no further developments for at least a year.

In November 1997, Pompliano called the court again and learned that his case had been dismissed in May 1997. When Pompliano called respondent to discuss this matter, he was told that respondent had "just stepped out." It took more than a week of daily telephone calls to finally reach respondent.

Pompliano testified that he wanted to buy another house, but that, without the return of the deposit, he did not have the necessary funds. It took Pompliano two and one-half years to save enough money to buy another house.

At one point, Pompliano consulted with several attorneys, who told him that legal fees for a lawsuit would significantly deplete his deposit monies held in escrow. He was

also told that, because of the contract terms, it was not a certainty that he would be awarded the entire fund. As a result, Pompliano hoped to resolve the matter himself. He then discharged respondent and notified Moran of that fact, hoping to settle the matter on his own. He wrote to Moran requesting information about the status of his funds and also called Danser on several occasions, but never received a reply.[3] As of the date of the DEC hearing, the deposit had not been refunded.

Although respondent made several attempts to obtain the release of the deposit, after he filed suit he "dropped the ball." He failed to properly serve the summons and complaint and did not obtain an acknowledgment of service. Respondent testified that, after filing the complaint, he had several conversations with Moran, who told him that he was attempting to resolve the situation. According to respondent, Moran further stated that, if he was unable to get Danser to settle, he would file an answer to the complaint. No settlement was reached and no answer was filed. Nevertheless, respondent did not request an entry of default against Danser. Respondent admitted that the complaint was not served in a manner that would have allowed him to enter a default. Respondent testified that "when you know people for more than twenty years, you trust them and rightly or wrongly you act differently." 2T219[4].

---

[3] Pompliano also filed a grievance against Moran for failure to turn over the deposit. Following an investigation, the OAE determined that Moran was still holding the deposit in escrow.

[4] 2T denotes the transcript of the September 22, 1999 DEC hearing.

Respondent contended that, until Pompliano called him, he was unaware that the complaint had been dismissed. He acknowledged that he was not "on top" of some things and could not explain why he had not seen the notice of dismissal. Respondent offered as an excuse problems he was having with his secretary.

Respondent testified that, in his view, he had kept Pompliano advised of the status of his case. Respondent did not believe Pompliano's testimony that he had called respondent thirty to forty times over a three-year period, but added that he did not "want to be argumentative about that."

Respondent testified that dealing with Moran and Danser was a very degrading experience. He admitted that he should have acted more aggressively with them, instead of taking them at their word. Respondent stated that he was embarrassed because he felt that they had taken advantage of him. He claimed that, if he had been aware of the dismissal of the complaint, he would have taken some action in the matter.

The Walther Estate/Totten Matter - Docket No. XIII-98-001E

George C. Walther died on December 24, 1991. Walther's will had appointed respondent as both executor and attorney for the estate. The three primary beneficiaries of the estate were George's son (Bill Walther), his daughter (Susan Totten) and Walther's second wife (Terry Walther). The will provided for the equal distribution of the estate assets

to the three beneficiaries.[5] Terry, however, challenged the distribution of the proceeds, under a wrongful death statute providing that a decedent's spouse was entitled to fifty percent of the estate. She filed a motion for partial summary judgment against the estate. Respondent did not appear or oppose the motion, which was granted in March 1999. According to respondent, he did not believe that he could present a "meritorious and good faith opposition" to the motion. Respondent testified that, at the time of George's death, George and Terry were separated, pending a divorce. Respondent, thus, allegedly believed that the pending divorce precluded Terry from recovering under the wrongful death statute and that the will provisions would be controlling. Respondent claimed that, during a pretrial conference, however, the judge indicated that he "strongly" believed otherwise and that, if respondent pursued the matter, he would award Terry counsel fees. Respondent testified that, faced with this prospect, he calculated a difference of $6,000 in the two different distributions and made a conscious decision not to pursue the matter. Terry's success on the motion, therefore, resulted in a change in the final distribution of the estate.

Bill Walther testified that, over a seven and one-half year period, it was very difficult to communicate with respondent. Bill stated that, because he was unable to reach respondent at his office, he resorted to calling him at his home on weekends to get an update on the status of the estate. According to Bill, respondent would promise to handle matters

---

[5] The complaint charged respondent with violations of RPC 1.15(a) and (b) for allegedly collecting certain funds on the estate's behalf and not disbursing them. This issue, which was turned over to the Office of Attorney Ethics ("OAE") for investigation, is not part of these proceedings. According to the OAE, the investigation revealed no mishandling of funds.

within a few weeks, but weeks later had not acted. After seven and one-half years, there was no final accounting for the estate.

During the course of respondent's representation of the estate, it came to light that there were missing stock certificates for a company known as RIBI. Respondent told Bill that he would try to get the stock certificates replaced. As of the date of the DEC hearing, the certificates had not been replaced. As a result, its proceeds were never distributed.

Respondent, in turn, testified that the RIBI stock certificates were never in his possession and were not a part of the decedent's brokerage account. According to respondent, he did not know when the decedent had purchased the stocks, because RIBI had not been part of the decedent's original portfolio. Respondent stated that Terry had brought the missing stock certificates to his attention.

After respondent learned of the missing certificates, he wrote to the lost securities department of Continental Stock Transfer and Trust Company ("Continental") on April 20, 1993 and, again, on June 3, 1993. Continental replied that there was a charge for issuing replacement certificates and that certain information had to be filed with the company before the certificates could be replaced. Respondent recalled forwarding to the beneficiaries the appropriate forms to be filled out. Respondent also recalled sending affidavits to Continental, but was unable to locate copies. Respondent had no further communications with Continental.

An informal accounting was finally completed in January 1995. The formal accounting is still pending before the court.

The Kellum Matter - District No. XIII-98-076E

Michele Kellum retained respondent in 1997 to represent her in a matrimonial action. Subsequently, respondent also became minimally involved in a foreclosure action on her house.

In May 1997, respondent filed a complaint for divorce in Superior Court, Ocean County. He also filed a case information statement. On April 8, 1998, however, the matter was dismissed for lack of prosecution. Kellum learned of the dismissal only after she was unsuccessful in her attempts to contact respondent and called the court clerk herself.

Respondent had filed for and obtained pendente lite relief for Kellum. On March 22, 1999, the court granted Kellum sole custody of the child of the marriage and ordered Kellum's husband to pay her $200 per week for child support and alimony, as well as child support arrearages. When Kellum's husband moved to Florida and made only periodic support payments to her, she asked respondent to have her husband's wages executed. She gave respondent her husband's address, place of employment and social security number. Respondent did nothing, however, to have the husband's wages executed. According to respondent, he tried to settle the support issue instead.

As justification for his inaction, respondent claimed that a wage execution order would only inure to the benefit of public assistance, if Kellum were ever to apply for such assistance. The existence of the pendente lite order, however, disqualified Kellum from day care assistance, even though she only received sporadic support payments.

Kellum ultimately moved to Gloucester County. Although she asked respondent to have her support order transferred to that county, he failed to do so. She testified about her difficulties in reaching respondent or obtaining any information from him. The divorce was never finalized. Ultimately, Kellum retained a new attorney, who was attempting to enforce the earlier support order.

Kellum testified that she was often unable to reach respondent and that he failed to inform her of the status of her case. Respondent, in turn, claimed that he was unaware of the order of dismissal in the Kellum matter. He denied having seen the order, although he acknowledged that it could have been received by his office. Although respondent accepted ultimate responsibility for the dismissal of the case, he pointed out that he was undergoing problems with his staff, as well as suffering from depression and alcoholism, as will be discussed more fully below.

* * *

In all three counts respondent was charged with failure to cooperate with the ethics investigation. At the DEC hearing, respondent testified that he "assumed" that he had received three letters from the investigator, requesting a reply to the grievances. He admitted that he did not immediately reply to them. Respondent stated that, ultimately, on March 30, 1999, he met with the investigator to discuss the grievances, at which time he explained his position on the three matters and informed the investigator that there were mitigating circumstances for his conduct.

* * *

At the DEC hearing, respondent testified that he was diagnosed with depression and that he is an alcoholic. Respondent also claimed to suffer from a host of medical problems that may have resulted from his alcoholism. According to respondent, his problems started when his eleven-year partnership with the law firm of Huff and Moran ended. Recently, respondent sought assistance for both his depression and his alcoholism. Respondent testified that he regularly attends meetings of "Lawyers Helping Lawyers." He was also referred to a psychiatrist. A June 30, 1999 letter from the Family Guidance Center Corporation states that respondent was first evaluated in February 1999. Thereafter, on February 16, 1999, he was seen for an assessment and was diagnosed with "Dysthymic Disorder; Rule Out Alcohol Dependence." The letter indicated that respondent had been

referred to a psychiatrist for medication and counseling to deal with depression, stress, job performance issues and substance use. Exhibit R-1. Respondent also submitted an August 9, 1999 letter from a psychiatrist, indicating that he was first seen on March 9, 1999. The letter stated, that, among other things, respondent was diagnosed with adjustment disorder with depressed mood. The letter also stated that, during respondent's second consultation, he acknowledged a history of pathological alcohol use and claimed that he had stopped drinking in March 1999. According to the letter, respondent informed the psychiatrist that, after their second meeting, respondent had relapsed to alcohol use. In addition, respondent stated, he had been hospitalized for blood loss, anemia and gallstones. The psychiatrist noted that some of respondent's physical conditions might be medical complications from alcoholism.

The psychiatrist concluded that respondent's psychiatric and medical problems affected the discharge of his professional duties and that alcohol abuse/dependence alone often has such consequences and may play a role in causing depression. The psychiatrist stated that respondent's situation was complicated by serious and debilitating medical conditions that required at least two hospitalizations for angioplasty and blood transfusions. Exhibit R-2.

Respondent testified that, shortly after his secretary of twenty-two years left, he realized that he had a drinking problem; he, therefore, sought help and stopped drinking. After suffering a relapse, respondent testified, he began going to Lawyers Helping Lawyers.

He stated that he is no longer taking medication for his depression because the reaction between his medications made him very lethargic and drowsy. He testified that he is still seeing doctors, however.

Respondent also testified that, during his bout with depression and alcoholism, he was not aware that they were affecting his ability to run his office and do legal work. He claims that he realizes that now.

Although the psychiatrist noted that respondent's problems had developed over the last six to eight months (July to March 1999), respondent testified that his problems began in 1988, when his partners announced that they wanted to dissolve their law partnership. Respondent testified as follows:

> If Bill Moran would have stood up and kicked me between my legs I would have been no more surprised than the day they said to me I want to end the partnership. OK?
>
> It's very difficult to pick yourself up from that and go forward when you don't know what the future holds. We'd just bought a house. My wife was pregnant. So at that point in time, I dealt with it. More recently things just seemed to be collapsing on me, and that's when I – talked to [the psychiatrist] that was the time frame I could isolate where I could see things were happening.
>
> [2T241]

Respondent stated that it took him a long time to admit to himself that he had a drinking problem or weakness. He testified that he had been drinking since he was twenty years old and that his drinking had increased in the last five or six years, to the point where it had become a daily occurrence, not only at night, but also during the day. He testified that

he was with the Moran law firm for eleven years and that economic reasons, rather than his drinking problem, were the cause of his termination from the partnership.

* * *

In the Pompliano matter, the DEC determined that respondent had violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation) and RPC 1.4(a) (failure to communicate). The DEC recommended a reprimand in Pompliano and a proctorship of at least three months. The DEC also recommended that respondent receive treatment for his mental health problems and alcoholism.

As to the Walther estate matter, the DEC did not find clear and convincing evidence of a violation of RPC 1.4(a). The DEC did not consider the charges of RPC 1.15(a) and (b), because that issue had been referred to the OAE. The DEC, thus, found only a violation of RPC 1.3 and recommended the imposition of an admonition for Walther.

In the Kellum matter, the DEC did not find clear and convincing evidence of gross neglect, but concluded that respondent had failed to act with reasonable diligence (RPC 1.3), to make reasonable efforts to expedite litigation (RPC 3.2) and to keep his client adequately and accurately informed about the matter (RPC 1.4(a)). The DEC recommended the imposition of a reprimand for respondent's conduct in Kellum and a proctorship for at

least three months, coupled with care and treatment for respondent's mental health and alcohol problems.

The DEC found that respondent's mental and physical health problems, as well as his alcoholism, mitigated the quantum of discipline. The DEC did not find a violation of RPC 1.1(b) (pattern of neglect), concluding that additional incidents of negligence were necessary to justify this finding. Finally, the DEC did not find a violation of R. 1:20-3(g)(4), which should have been cited as RPC 8.1(b) (failure to cooperate with disciplinary authorities).

* * *

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.

In the Pompliano matter, respondent filed a complaint in Superior Court to compel the turnover of Pompliano's deposit. Respondent failed to properly serve the summons and complaint and failed to request an entry of default when no answer was filed. Afterwards, respondent allowed the matter to be dismissed and took no action to have it reinstated. Respondent's conduct in this regard violated RPC 1.1(a), RPC 1.3 and RPC 3.2.

Respondent also violated RPC 1.4(a), when he failed to keep Pompliano informed of the status of his case and, more significantly, to apprise him of the dismissal of the complaint.

In the Walther estate matter, respondent never had the final accounting approved by the court. Moreover, he never followed through and obtained replacement certificates for the RIBI stock. Also, when Terry filed a motion for partial summary judgment, respondent failed to oppose the motion, thereby altering the distribution under the decedent's will. Although respondent claimed that he believed that the judge would find in Terry's favor and might assess attorney fees, he still had an obligation to the estate to file a good faith defense, particularly in light of the pending divorce proceeding at the time. Respondent's conduct, thus, included violations of RPC 1.1(a) and RPC 1.3.

The DEC did not find a violation of RPC 1.4(a). We disagree. The record is clear that Bill had great difficulty reaching respondent over a seven and one-half year period. He eventually resorted to calling respondent at his home for updates on the status of the estate. RPC 1.4(a) requires a lawyer to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information. Here, respondent did neither. Therefore, we find a violation of RPC 1.4(a). On the other hand, we found that the charge of a violation of RPC 3.2 is not applicable here and, therefore, dismissed it.

In the Kellum matter, respondent's failure to pursue the divorce action — which resulted in its dismissal — his failure to have the matter reinstated, his failure to pursue wage execution proceedings and his failure to transfer Kellum's support order to her new county

of residence violated RPC 1.1(a), RPC 1.3 and RPC 3.2. Also, respondent failed to notify his client that her case had been dismissed. She learned that information on her own. These factors, coupled with the great difficulty Kellum had communicating with respondent, amount to a violation of RPC 1.4(a). Also, contrary to the DEC's conclusion, we find that respondent's negligence in all three matters constituted a pattern of neglect, in violation of RPC 1.1(b). Finally, because respondent ultimately conferred with the investigator about the grievances, filed an answer to the complaint and appeared at the DEC hearing, we agreed with the DEC's dismissal of the charged violation of RPC 8.1(b).

Generally, in cases involving only a few matters with similar violations, where there is no history of discipline and mitigating circumstances exist, reprimands have been imposed. See In re Ojeda, 158 N.J. 261 (1999) (in three matters, gross neglect, lack of diligence and failure to communicate with client; attorney was, however, transferred to disability inactive status); In re Benitz 157 N.J. 637 (1999) (in two matters, gross neglect, lack of diligence and failure to communicate with client); In re Manns, 157 N.J. 532 (1999) (gross neglect in two matters, lack of diligence in three matters and failure to communicate with client in one of the matters); In re Zukowski 152 N.J. 59 (1999) (gross neglect, lack of diligence and failure to communicate with client) and In re Skokas, 147 N.J. 556 (1997) (gross neglect, lack of diligence and failure to communicate with client).

In assessing discipline, we have considered respondent's depression and alcoholism and the steps he has taken to deal with these problems — he is undergoing psychiatric

care for his depression and attending Lawyers Helping Lawyers sessions for his alcoholism. We, therefore, unanimously determined that a reprimand is sufficient discipline for respondent's ethics infractions. We also determined that respondent should practice under the supervision of a proctor approved by the Office of Attorney Ethics for a two-year period. One member did not participate.

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

Dated: 2/6/2007

By: _____
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Michael P. Balint
Docket No. DRB 00-244

Argued: October 19, 2000

Decided: February 6, 2001

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:			8				1

Robyn M. Hill 6/20/01

Robyn M. Hill
Chief Counsel