

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 03-117

---

IN THE MATTER OF  
ELLIOTT D. MOORMAN  
AN ATTORNEY AT LAW

---

:  
:  
:  
:  
:  
:  
:

Decision

Argued: May 15, 2003

Decided:

Steven A. Weiner appeared on behalf of the District VB 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 VB Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1977. He has an extensive ethics history. In 1990, he was publicly reprimanded for failure to maintain proper time records and to preserve the identity of client funds. In re Moorman, 118 N.J. 422 (1990). In 1994, he was suspended for three months for gross neglect, lack of diligence, failure to keep a client informed about the status of the matter and failure to explain the matter to the extent

reasonably necessary to permit the client to make informed decisions. In re Moorman, 135 N.J. 1 (1994). In 1999, he received another reprimand for lack of diligence, failure to provide a written retainer agreement, failure to comply with attorney recordkeeping requirements and failure to cooperate with disciplinary authorities. In re Moorman, 159 N.J. 523 (1999). On January 28, 2003, the Supreme Court suspended him for three months, effective February 28, 2003, for filing a grievance against a judge in order to pressure the judge or the court clerk to take action on behalf of respondent's son/client, engaging in a conflict-of-interest situation, releasing escrow funds without the consent of the parties, withdrawing fees without the client's consent and failing to utilize a retainer agreement. In re Moorman, 175 N.J. 154 (2003). On June 20, 2003, the Supreme Court suspended respondent for three months, effective May 28, 2003, for forging a client's name on a settlement check, deceiving the client's prior attorney about the attorney's portion of the fee and improperly calculating his own fee in a tort action. In re Moorman, N.J. (2003).

\* \* \*

In or about February 1996, Michael Balogun, the grievant, retained respondent to represent him in an immigration matter. At the time, Balogun was representing himself in a petition for asylum, pending in the Immigration and Naturalization Service's ("INS") immigration court. Balogun sought the assistance of counsel at the court's urging, because he was facing immediate deportation for having exceeded his stay in this country.

Respondent first appeared in the case on February 29, 1996, the adjourned date for Balogun's deportation hearing, which had originally been scheduled for November 1995. At

respondent's request, the court adjourned the matter to May 2, 1996, so that he could review the petition and file a new application, if necessary. On the return date, respondent requested another adjournment for two to three months, in order to prepare the case. That request, too, was granted, with a new hearing set for June 20, 1996.

On June 20, 1996, respondent requested yet another adjournment, on the basis that he had prepared, but not yet filed, a new asylum application for Balogun. The court rescheduled the hearing for February 5, 1997.

Balogun testified at the DEC hearing that, several days before the February 5, 1997 hearing, he and respondent discussed the case at respondent's office. At that meeting, respondent told Balogun that he would meet him at the hearing. Respondent did not appear, however. According to Balogun, the judge told him that respondent had just called and could not appear because of an appearance in another matter "...someplace, I don't know where."

A précis, or summary of the immigration court's tape-recorded hearings, was included in the record before us. It confirmed respondent's failure to appear at the hearing. The judge told Balogun the following:

...we will go ahead next time, even without a lawyer. Tell your lawyer he has to be here. If he has another court appearance somewhere else, he has to change it because I am not changing my hearing again.

The judge adjourned the matter to February 28, 1997. Respondent, in turn, sent a letter to the court apologizing for his absence and stating that an appearance in family court prevented him from appearing at Balogun's deportation hearing.

Several days before the February 28, 1997 hearing, Balogun went to respondent's office to discuss his case. Respondent told Balogun that he would meet him in court on the return date. Once again, respondent did not appear. The judge heard the matter and issued an order for Balogun's deportation. The deportation date was set for one year later, to allow Balogun time to put his affairs in order, finish school and prepare to leave voluntarily. The judge also told Balogun that he had thirty days to appeal his determination and that he should consider retaining another attorney "who is more reliable" than respondent.

The next day, Balogun stated, he went to respondent's office to give him a copy of the court order. Shortly thereafter, Balogun terminated the representation and retained another attorney to handle the matter. With the assistance of a new attorney, Balogun successfully obtained permanent residency.

For his part, respondent acknowledged that he had been retained to handle the asylum aspects of Balogun's case. He attempted to downplay the significance of his inaction, however, by saying that Balogun himself was attempting to ensure his continued stay here by other means, such as a petition filed by a relative.

Respondent acknowledged that he had failed to appear at two court hearings. He stated that, several days before the return date on Balogun's matter, he accepted a custody case scheduled for a hearing in the Essex County family court. He was aware at the time that the custody matter, scheduled for 1:30 p.m., conflicted with his required appearance at Balogun's deportation hearing, which was scheduled for 1:00 p.m. in a different building. Respondent's only justification for his failure to appear for Balogun's hearing was his belief

that, “[where] a family court matter [] conflicts with an immigration matter, the family matter takes precedence.” He never informed Balogun, the immigration court or the family court of the conflict, nor attempted to resolve it before the Balogun hearing date.

Respondent also testified that he had three matters scheduled for February 5, 1997, one of the rescheduled dates. The first matter was an arbitration, set for 9:00 a.m. According to respondent, that matter was not heard until 11:00 a.m. Thereafter, respondent claimed, he called the immigration court to advise it that his attendance was required in another matter in family court (referring to the matter that he had accepted only days earlier). Respondent admitted that he proceeded directly to the family court from his morning appointment, without attempting to appear, even late, for Balogun’s deportation hearing.

With respect to the February 28, 1997 hearing, respondent had no recollection of his whereabouts that day. He admitted the obvious fact that he had failed to appear at the hearing, but claimed that he could not reconstruct the day’s events because he did not have his file.<sup>1</sup> Without an excuse for his absence, respondent instead blamed Balogun for his predicament, dismissing his own inaction as irrelevant and claiming that Balogun’s case was so weak that the judge would have inevitably ruled against him, with or without respondent’s assistance. Respondent also argued that his failure to attend the hearings was minor and did not constitute gross neglect.

---

<sup>1</sup> Respondent testified that his briefcase, with Balogun’s file inside, was stolen from his car at a church picnic. He stated that neither the briefcase nor its contents were recovered.

\* \* \*

The DEC found respondent guilty of violations of RPC 1.1(a) and RPC 1.3. Without any specific support for its proposition, the DEC recommended a three-year suspension.

\* \* \*

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's activity in the matter was minimal, consisting of his attendance at several hearings between February and June 1996 to request adjournments. It does not appear that he filed any documents in the case.

Thereafter, respondent failed to appear at a February 5, 1997 hearing, even though he had assured Balogun, several days earlier, that he would be there. Respondent did not notify Balogun or the court that he would not appear. Rather than force Balogun to proceed pro se, the court adjourned the matter one more time.

Respondent had no explanation for his failure to appear at the February 28, 1997 hearing. Again, he did not contact anyone beforehand to explain why he would not appear. Furthermore, he made no attempt to reconstruct his whereabouts for the DEC through other means, such as his office diary, calendars and the like.

We rejected respondent's attempt to minimize the consequences of his failure to appear at the immigration hearings. Notwithstanding respondent's bare assertions to the contrary, Balogun's deportation was ordered as a direct result of respondent's failure to appear at and properly represent Balogun at the hearings. Moreover, although this was not a

well-covered issue at the DEC hearing, it appears from the record that respondent did little else in the case beyond appearing at several hearings to request adjournments.

Undoubtedly, respondent's failure to appear at two deportation hearings constituted gross neglect and lack of diligence. Balogun was facing a possible arrest and immediate deportation at the time that he sought respondent's assistance. It was reckless, under the circumstances, for respondent to elect to appear in another matter that he had accepted only days earlier; it was improper for him not to notify his client, the court and his adversary, that he intended to do so; and it was inexcusable for him not to appear at the final deportation hearing. For all of these reasons, we found that respondent grossly neglected the case and failed to act with diligence, in violation of RPC 1.1(a) and RPC 1.3.

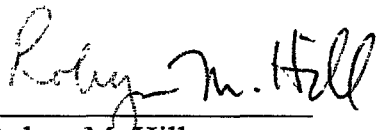
Ordinarily, conduct involving gross neglect in one or a few matters, with or without violations such as lack of diligence and failure to communicate with the client, warrants the imposition of an admonition or a reprimand. See, e.g., In the Matter of E. Steven Lustig, Docket No. DRB 00-003 (April 10, 2000) (admonition for attorney who grossly neglected a matrimonial matter and failed to adequately communicate with his client); 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).

It could be argued that, had this matter been heard with other matters for which respondent recently received a three-month suspension (the Balogun grievance and the formal ethics complaint were filed within a few months of the same filings in some of the

prior matters), no additional discipline would have been warranted for the inclusion of the Balogun infractions. However, given respondent's disciplinary history, which includes two reprimands and three three-month suspensions, we were convinced that additional discipline is required. We, therefore, determined to reprimand respondent. Two members voted for a six-month suspension and one member voted for a three-month suspension. One member recused himself.

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

Disciplinary Review Board  
Mary J. Maudsley, Chair

By:   
Robyn M. Hill  
Chief Counsel



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

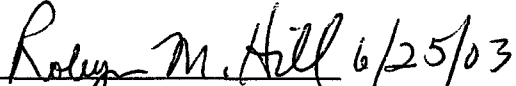
In the Matter of Elliott D. Moorman  
Docket No. DRB 03-117

Argued: May 15, 2003

Decided: June 24, 2003

Disposition: Reprimand

<i>Members</i>	<i>Three-month suspension</i>	<i>Six-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>			X				
<i>O'Shaughnessy</i>			X				
<i>Boylan</i>			X				
<i>Holmes</i>						X	
<i>Lolla</i>		X					
<i>Pashman</i>			X				
<i>Schwartz</i>		X					
<i>Stanton</i>			X				
<i>Wissinger</i>	X						
<b>Total:</b>	1	2	5			1	

  
 Robyn M. Hill  
 Chief Counsel