

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket Nos. DRB 00-085 and 00-184

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IN THE MATTER OF  
W. RANDOLPH KRAFT  
AN ATTORNEY AT LAW

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Decision

Argued: June 15, 2000

Decided: November 27, 2000

Gary E. Linderoth appeared on behalf of the District XII Ethics Committee.

Frank R. Gioia appeared on behalf of the District VI Ethics Committee.

Frederick J. Dennehy 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 by way of two disciplinary stipulations. The matter was investigated by the District IX Ethics Committee, but was subsequently transferred to the District XII Ethics Committee ("DEC") because of an undisclosed conflict.

The first complaint charged respondent with various ethics violations. Count one of the complaint was administratively withdrawn by the Office of Attorney Ethics ("OAE") for further investigation by that office. Each of the remaining four counts charged respondent with violations of RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate) and RPC 1.1(b) (pattern of neglect). Count three included a violation of RPC 3.2 (failure to expedite litigation) and count four included a violation of RPC 1.16(d) (failure to turn over client's file upon termination of representation), mistakenly cited as RPC 1.5.

The second complaint charged respondent with violations of RPC 1.1(a) (gross neglect); RPC 1.1(b); RPC 1.3; RPC 1.4; RPC 1.5 (failure to communicate fee in writing); RPC 1.5(a)(1) and (4) (charging an unreasonable fee) and RPC 1.7(a), (b) and (c) (conflict of interest).

Respondent was admitted to the New Jersey bar in 1989. At the relevant times, he maintained a law practice in Middletown, New Jersey. Respondent was temporarily suspended by the Court on October 8, 1999, "pending the resolution of ethics proceedings against him." In re Kraft, 162 N.J. 6 (1999). He remains suspended to date. Respondent was also the subject of a diversion, pursuant to R. 1:20-3(i)(2)(B)(i) (agreement in lieu of discipline), for a violation of RPC 5.5(a), when he failed to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection and practiced law while on the ineligible list.

During the relevant time, respondent's office was located in his home in Middletown, New Jersey. He did not employ a secretary or any other clerical staff. During 1998 and 1999, respondent relied on his answering service, voice-mail and answering the telephone himself to communicate with his clients and other attorneys.

**I - Docket No. DRB 00-085**

**A - The Banks Matter (District Docket No. XII-99-36E)**

In May 1998 Archie D. Banks retained respondent in connection with a retaliatory harassment claim arising from his employment. According to the stipulation, respondent failed to fully communicate with his client or to prosecute the civil litigation "with full diligence."

**B - The Owens Matter (District Docket No. XII-99-35E)**

Valerie J. Owens retained respondent on March 2, 1998 in connection with the prosecution of a civil action for breach of contract, personal injury and punitive damages. According to the stipulation, respondent failed to properly communicate with his client and failed to keep her adequately informed about the status of her case. Respondent also failed to prosecute her claim "with full diligence."

**C - The Wiley Matter (District Docket No. XII-99-33E)**

Respondent was retained by Ronald A. Wiley in March 1998 in connection with an automobile accident that occurred in 1996. The stipulation stated that respondent failed to properly communicate with his client, failed to keep him adequately informed about the status of his matter and failed to prosecute the case with "full diligence."

**D - The Jackson Matter (District Docket No. XII-99-34E)**

The stipulation states that Gloria Jackson retained respondent on June 23, 1995 to represent her in connection with a personal injury matter on behalf of her son, Kieron Jackson. More than a year later, in August 1996, Jackson retained a new attorney to represent her in the same matter. Jackson attempted to contact respondent in order to "effectuate a transition between counsel." Respondent failed to communicate with Jackson or her new attorney, however.

**II - Docket No. DRB 00-184**

**The Lecar Matter (District Docket No. XII-99-53E)**

Miriam Lecar retained respondent in 1996. At that time respondent maintained a practice in Jersey City, New Jersey. According to the stipulation, respondent did not "act with sufficient diligence" in informing Lecar about the status of her matter or otherwise explain to her, in an "unambiguous manner, his legal strategy in the matter to the extent

necessary for her to make an informed decision regarding the course of representation and pursuit of her claims, including the advantages and disadvantages of pursuing her case jointly or independently" of a co-worker also represented by respondent.

Respondent further failed to set forth his reasonable hourly rate in the retainer agreement. Respondent had accepted a \$2,500 retainer from Lecar at the time he was retained. The stipulation notes that, while the retainer was not unreasonable at the time of its receipt, respondent was subsequently suspended from the practice of law and was unable to pursue the matter in Lecar's behalf. According to the stipulation, respondent offered to refund \$2,000 of the retainer to Lecar.

In mitigation, both stipulations state that respondent was engaged in an extremely "bitter and vitriolic" divorce from his wife. These proceedings spanned the later part of 1996 through March 1999. According to the stipulations, respondent would have testified that, during the period of his divorce litigation, his ex-wife

made direct threats on his life and physical safety, engineered acts of violence on him as well as his arrest for failure to pay child support, threatened to take his children away from him and promised that he would be professionally ruined, and, in addition, that his wife interfered in his business by threatening the members of his staff and by ransacking his home and office and by destroying his property.

The stipulations state that, as a result of the foregoing events, respondent was treated for trauma by Dr. Luis Nieves, a clinical psychologist. According to the stipulations, the doctor would have testified "that [respondent's] divorce resulted in severe traumatic stress

which impaired his cognitive functioning in judgment and comprehension, emotion and behavior particularly during 1998 and early 1999."

\* \* \*

Following a de novo review of the record, we find that the stipulations contain sufficient evidence of respondent's unethical conduct.

Based on stipulated facts, respondent's violations in these matters include failure to communicate with his clients in the Banks, Owens, Wiley and Jackson matters (RPC 1.4(a)); failure to explain a matter to the extent reasonably necessary to permit the client to make an informed decision about the representation in the Lecar matter (RPC 1.4(b)); lack of diligence (RPC 1.3) in four matters, Banks, Owens, Wiley and Lecar; failure to communicate the basis or rate of the fee in writing (RPC 1.5(b)) in one matter, Lecar; and conflict of interest in Lecar (RPC 1.7(b)). The stipulation does not reveal whether respondent ultimately failed to turn over the file to Jackson. Therefore, there is no evidence of a violation of RPC 1.16(d).

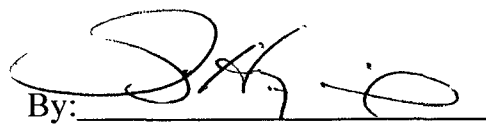
The stipulation cites, as mitigation, that respondent's ex-wife's threats during the course of their divorce proceedings caused him to suffer from severe traumatic stress. In fact, the stipulation states that respondent was being treated for the trauma by a clinical psychologist.

Respondent's conduct included, among other violations, conflict of interest. It is well-settled that, absent egregious circumstances or serious economic injury to the clients involved, a reprimand constitutes appropriate discipline. In re Berkowitz, 136 N.J. 134, 148 (1994). Reprimands have also been imposed in cases involving multiple ethics violations in several matters. In re Muller, 162 N.J. 120 (1999) (reprimand for gross neglect, lack of diligence, failure to communicate with client and conduct involving dishonesty, fraud, deceit or misrepresentation; in a divorce matter, attorney failed to prosecute case resulting in its dismissal and failed to advise client of its dismissal or to communicate the status of the case; attorney had prior private reprimand); In re King, 152 N.J. 380 (1998) (reprimand where in three matters attorney's conduct included gross neglect, lack of diligence, failure to communicate with the client, refusal to return unearned retainer and failure to turn over a file); In re Rosen 139 N.J. 387 (1995) (reprimand where in three cases attorney exhibited lack of diligence, failure to communicate with clients and engaged in a conflict of interest).

Based on the foregoing violations, counterbalanced by the compelling mitigating circumstances presented, we unanimously determined to impose a reprimand.

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

Dated: 11/27/00

By:   
LEE M. HYMERLING  
Chair  
Disciplinary Review Board

**SUPREME COURT OF NEW JERSEY**

**DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

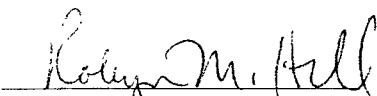
**In the Matter of W. Randolph Kraft  
Docket No. DRB 00-085 and 00-184**

**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				
<b>Total:</b>			9				

  
Robyn M. Hill  
Chief Counsel

3/29/01