SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-457

IN THE MATTER OF

RUPERT A. HALL

AN ATTORNEY AT LAW

Decision

Argued: March 13, 2003

Decided: May 19, 2003

Jeffrey Appell appeared on behalf of the District IIIB Ethics Committee.

Mark J. Molz 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 IIIB Ethics Committee (ADEC@).

Respondent was admitted to the New Jersey bar in 1984. He has no prior discipline.

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to communicate with the client) and RPC 1.16(d) (failure to return papers to the client upon termination of representation).

In 1992 Helen Douglas and her daughter Marian made a $3,000 down payment on the purchase of a house in Mercer County. After a title search revealed an encroachment, Helen rescinded the contract and demanded the return of her deposit. The sellers refused. Before respondent's involvement in the case, two attorneys had attempted, unsuccessfully, to resolve the dispute for Helen.

On January 5, 1994 Helen retained respondent to secure the return of her deposit. By written agreement dated January 7, 1994, respondent received a $1,000 retainer. On March 24, 1994 respondent filed a complaint against the sellers and the two real estate agencies involved in the transaction.

According to Helen's testimony, respondent soon thereafter sent her interrogatories from one of the defendants, Rader Realty, which she completed by hand and returned to respondent about a week later. She testified that her answers were in draft form and that respondent never gave her a typed version for her signature. She further testified that, on February 6, 1996, she appeared at respondent's office for her scheduled deposition, but was told by his receptionist that it had been cancelled. The deposition was never rescheduled.

Helen also recalled that, after the cancelled deposition, she periodically contacted respondent to inquire about the status of her case. Respondent assured her that the matter was proceeding apace. Helen complained, however, that, beginning in or about 1997, respondent became unresponsive to her requests for information. Finally, on March 30, 2001, seven years after she retained respondent, she sent him a certified letter demanding a status update. Respondent failed to reply to her request.

According to Marian Douglas, she, too, periodically contacted respondent for information about the case. Respondent told her that he was "working on it" and promised to get back to her with an update, but never did so. She also recalled her final meeting with respondent in 1999. On that occasion, she testified, respondent advised her that the case would settle by the end of that year. In fact, the court had dismissed the complaint against the sellers on November 30, 1995. The complaint against Rader Realty had been dismissed without prejudice on March 15, 1996 and with prejudice on August 26, 1996. Included in the record is a letter from respondent's adversary in the matter, enclosing a copy of the March dismissal order. Respondent never served the third defendant, De Paola Realty.

Although present at the ethics hearing, respondent elected not to testify. His counsel blamed Helen and Marian for their predicament, pointing to respondent's April 7, 1995 letter to them, stating that the sellers were willing to settle the matter by returning the $3,000 deposit. Neither Helen nor Marian recalled that settlement offer, even though the copy of respondent's letter presented to the DEC came from Helen's file. Respondent's counsel suggested that their testimony was generally not credible for that reason.

Respondent produced no evidence that he took any action in the case or contacted the Douglases after 1997. In fact, the matter was left unresolved. The down payment, which had been deposited with the New Jersey Real Estate Commission by the listing real estate agency, pending a resolution of the controversy, was still being held by the Commission at the time of the ethics hearing.

Finally, respondent acknowledged that he had "misplaced" the original file and had no copy of it.

* * *

The DEC found respondent guilty of gross neglect, in violation of RPC 1.1(a). It dismissed the charge of a violation of RPC 1.4(a) as subsumed in its finding of a violation of RPC 1.1(a). The DEC also dismissed the charge of a violation of RPC 1.16(d), on the basis that the representation had never been terminated. The DEC recommended the imposition of a reprimand.

* * *

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.

Unquestionably, respondent mishandled this case. It appears that initially he gave it considerable attention. However, beginning in 1995, he allowed the case to unravel. The complaint was dismissed with prejudice against the sellers and one of the real estate agencies, after no fewer than five motions by his adversaries. Respondent did not contend that he was unaware of those motions. He also failed to serve the complaint on the other real estate agency.

Respondent sporadically attended to the matter until 1997, when he tried unsuccessfully to obtain a default against De Paola Realty, which he had never served. Thereafter, he simply walked away from the case. He took no action to vacate the dismissals or to serve the remaining defendant with the complaint. His actions in this regard constituted gross neglect, in violation of RPC 1.1(a).

Respondent also failed to communicate the status of the matter to his clients. His last correspondence to Helen was in 1995. From 1997 onward, he ignored his clients' repeated requests for information, in violation of RPC 1.4(a).

On those rare occasions when respondent spoke to Helen or Marian in the years that followed, he told them that the case was proceeding apace. For example, at a 1999 meeting at his office, he told them that the case would be finalized by the end of the year. Yet, the complaint had been dismissed in 1996 against two of the defendants, due to his neglect. Although respondent received a copy of the March 1996 dismissal order, he never informed the Douglases of the dismissal. We, therefore, found that respondent's behavior in this context amounted to misrepresentation by silence, in violation of RPC 8.4(c). "In some situations, silence can be no less a misrepresentation than words." Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984). Although respondent was not specifically charged with a violation of RPC 8.4(c), the record developed below contains clear and convincing evidence of a violation of that rule. Respondent did not object to the admission of such evidence in the record. In light of the foregoing, we deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

The allegation that respondent violated RPC 1.16(d) was intended to address respondent's admitted loss of the original file. Because respondent's carelessness in this regard was, more appropriately, part and parcel of his overall gross neglect toward the case, we dismissed the charge of a violation of RPC 1.16(d).

Ordinarily, an admonition or reprimand is sufficient discipline for a single instance of gross neglect, lack of diligence and failure to communicate with the client, if misrepresentation is not present. See, e.g., In the Matter of Steven Lustig, DRB 00-003 (2000) (admonition for gross neglect and failure to communicate with the client in a matrimonial matter); In the Matter of Onorevole, DRB 94-294 (1994) (admonition for gross neglect, lack of diligence and failure to communicate in an insurance matter); 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 a failure to communicate in two matters). Here, a reprimand is the appropriate discipline because of the extraordinary length of time (seven years) that respondent allowed the case to remain adrift and also because of the misrepresentation component. Misrepresenting the status of the case to clients warrants a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). We, thus, determined to impose a reprimand. Two members did not participate.

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

Disciplinary Review Board
Rocky L. Peterson, Chair

By: Robyn M. Hill
Robyn M. Hill
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Rupert A. Hall
Docket No. DRB 02-457

Argued: March 13, 2003

Decided: May 19, 2003

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:			7				2

Robyn M. Hill 5/22/03
Robyn M. Hill
Chief Counsel