

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-215

IN THE MATTER OF :
:
CARL C. BOWMAN :
:
AN ATTORNEY AT LAW :
:

Decision

Argued: September 12, 2002

Decided: November 12, 2002

Mary C. Brennan appeared on behalf of the District IV Ethics Committee.

Respondent did not appear for oral argument, despite notice by publication.

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 IV Ethics Committee (“DEC”). The four-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 1.4(b) (failure to explain a matter to extent reasonably necessary to permit the client to make an informed decision about the

representation), RPC 1.5 (failure to provide client with a written fee agreement), RPC 1.5(a) (charging an unreasonable fee), RPC 1.16(d) (upon termination of representation, failure to take steps to protect the client's interests), RPC 8.1(a) (knowingly making a false statement of material fact in a disciplinary matter) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1962. At the relevant times, he maintained a law practice in Westville, New Jersey.

Respondent was temporarily suspended from the practice of law by order of the Court on November 6, 2002. Respondent received a private reprimand in 1971 for lack of diligence in a divorce matter. In the Matter of Carl C. Bowman, (December 27, 1971).¹

A report from the New Jersey Lawyers' Fund for Client Protection indicates that respondent has been ineligible to practice law since September 2001.

* * *

Respondent filed an unverified answer to the formal ethics complaint. Thereafter, despite proper notice, including telephone messages, letters and personal service, he failed to appear at the December 12, 2001 DEC hearing. Prior thereto, the DEC chair had

¹ The docket number is unavailable.

already adjourned one scheduled hearing, because of respondent's failure to appear. Respondent was then provided with an additional opportunity to defend himself against the ethics charges. When he again failed to appear, the DEC hearing proceeded in his absence.

Count One

The Waldemar Matter - District Docket No. IV-00-093E

On February 2, 1998, Eric Waldemar filed a pro se complaint with the Equal Employment Opportunity Commission (EEOC) alleging that his employer, the Internal Revenue Service (IRS), had engaged in race, age and sex discrimination in conducting his performance evaluation. In July 1998, Waldemar retained respondent to pursue the matter. Pursuant to a retainer agreement, Waldemar paid respondent \$2,500. The agreement provided that respondent would not bill Waldemar for additional fees until the conclusion of the case.

At some point before January 1999, Waldemar had also discussed with respondent the possibility of filing a discrimination suit in federal court. Procedurally, Waldemar had the option of pursuing one of two avenues, after the rendering of a final decision by the EEOC: either file with EEOC an appeal from its final decision (within thirty calendar days of receipt of the EEOC's decision) or file a civil action in federal court (within ninety days of receipt of the EEOC's final decision).

On September 21, 1999, the EEOC administrative judge issued a decision recommending the entry of a finding of no discrimination. The parties' comments to the judge's decision had to be filed on or about October 15, 1999.

On October 6, 1999, respondent wrote Waldemar a letter asking him to schedule an appointment before October 20, 1999 to review the EEOC administrative judge's decision. They met on or about October 16, 1999. According to the ethics complaint, at that meeting Waldemar asked respondent to discontinue the EEOC matter and to pursue the civil suit in federal court. At the DEC hearing, however, Waldemar denied having told respondent to discontinue the EEOC claim.

It is undisputed that, at their October 1999 meeting, respondent asked Waldemar for \$7,500 before proceeding further. The record is unclear as to whether this sum represented past fees for the EEOC matter or a new retainer. According to Waldemar, he asked respondent for an installment payment plan; respondent agreed to prepare a payment plan and to handle the federal suit on a contingency basis. In his answer, respondent denied both contentions.

It is undisputed that Waldemar did not receive a payment schedule from respondent and that respondent did not file comments to the EEOC administrative judge's decision.

On November 2, 1999, the EEOC issued a final decision of non-discrimination. If Waldemar wished to file an appeal, he would have had to do so by approximately December 8, 1999. It is not known when Waldemar received a copy of the EEOC final

decision, but it must have been after November 5, 1999 because, on that date, he wrote to respondent asking for a status update. Respondent did not reply to that letter.

On November 5 and 15, 1999, Waldemar again wrote to respondent, this time conveying some information that, in his view, would be helpful in the federal suit. Although respondent did not reply to the letters, on November 16, 1999, he sent Waldemar a final bill for services (ostensibly relating to the outstanding bill for the EEOC matter).

In a February 25, 2000 telephone conversation, respondent informed Waldemar that he would not pursue the civil suit. By then, the time for the filing of a federal suit had most likely expired.² As noted earlier, respondent received the final decision on November 8, 1999.

Waldemar testified that he was surprised by respondent's statement, because he understood that respondent would file the suit and would get his fee at the conclusion of the case. Respondent, in turn, asserted in his answer that, at their October 16, 1999 meeting, he had made it clear to Waldemar that he would not go forward without an additional \$7,500 payment.

On February 28, Waldemar filed an appeal with the EEOC, pro se, which was rejected as untimely.

² Equal Employment Opportunity Commission 29 CFR § 1614.408, which appears to have been in effect at the time of the alleged violation, provided in pertinent part:
A complainant who has filed an individual complaint . . . is authorized . . . to file a civil action in an appropriate United States District Court:
(a) within 90 days of receipt of the final decision or an individual or class complaint if no appeal has been filed.

The complaint also alleged that respondent failed to reply to Waldemar's letters and to return his phone calls. At the DEC hearing, however, Waldemar testified that, in the period between October 1999 and September 2000, he and respondent talked on the telephone (T33-34)³.

Count Two

The Murphy Matter - District Docket No. IV-00-096E

Michele Murphy retained respondent in connection with a personal injury claim against the Academy of Culinary Arts (the Academy) and her instructor, as well as in connection with a disorderly persons complaint (assault) that she had filed against her instructor. Respondent did not provide Murphy with a retainer agreement. According to Murphy, she understood that, once the personal injury case was settled, respondent would get his one-third fee from the settlement. Murphy also believed that one of the results of the proceeding would be that the Academy would pay her tuition for two years.

Respondent wrote a couple of letters to the Academy in Murphy's behalf. One letter objected to the instructor's reinstatement and requested a meeting with the Academy to avoid litigation. A meeting with the Academy's officials occurred in January 2000. At that time, respondent was informed that the instructor's contract would not be renewed. The record is silent as to whether there were any discussions about the payment of Murphy's tuition.

³ T denotes the transcript of the December 21, 2001 DEC hearing.

In February 2000, the disorderly persons complaint was heard. Respondent and Murphy appeared at the hearing. Respondent met with the prosecutor and worked out an agreement whereby, in exchange for the instructor's letter of apology, Murphy would dismiss the complaint.

Ultimately, the instructor never gave Murphy a letter of apology and the Academy did not pay her tuition. Murphy, therefore, wrote to respondent on March 2, 2000, inquiring about the status of her case and the possibility of any further action against the defendants. Respondent failed to reply to Murphy's letter, prompting her to send him another letter on March 30, 2000. Respondent failed to reply to that letter as well.

According to Murphy's mother, either she or her daughter attempted to reach respondent ten or eleven times, before they finally filed a grievance against him. She also testified that respondent told them eventually that he was no longer representing Murphy because her case was not worth pursuing.

Count Three

The Richards Matter - District Docket No. IV-00-102E

Karen Richards retained respondent to pursue a discrimination action against the Boy Scouts of America on behalf of her son. Richards and respondent corresponded via "e-mail" about the fee. According to Richards, respondent told her that, within ten days of receiving the retainer, he would file a complaint. On January 24, 2000, Richards sent respondent \$2,500 and signed a retainer agreement.

On February 7, 2000, Richards “e-mailed” additional information to respondent and requested a status report. The next day respondent replied that he had not yet filed the complaint. On February 20, 2000, Richards “e-mailed” respondent with additional information and again requested a status report. Respondent did not reply and did not file a complaint. Richards sent two additional “e-mails.” In one of them, Richards stated that, during their last telephone conversation, respondent had indicated that the complaint had been filed and that he would get in touch with her in two weeks. Finally, on June 23, 2000, respondent “e-mailed” Richards stating that he wanted to meet with her to review the complaint and answer interrogatories. In fact, the complaint had not been prepared and interrogatories had not been served. Moreover, respondent did not reply to Richards’ attempts to schedule a date for their meeting.

From mid-July through September 2000, Richards telephoned and “e-mailed” respondent at least five times, asking about the status of the case and specific information on the filing of the complaint. She also requested a meeting with respondent. Respondent did not reply to her requests. Finally, on September 6, 2000, almost eight months after retaining respondent, Richards terminated his services and asked for the return of her retainer. Respondent did not comply with her request.

During the Office of Attorney Ethics’ (“OAE”) investigation of the matter, respondent told the investigator that he had not returned the retainer to Richards because he had earned it. Although respondent did not maintain a time sheet in his file, he subsequently produced an invoice to the OAE, dated April 15, 2001. The invoice

reflected charges of \$3,330 for accessing and downloading caselaw, researching and reviewing caselaw and researching and preparing a complaint.

According to the OAE investigator, however, respondent's file revealed no complaint, no downloaded research, no interrogatories and no time sheet. The file contained only the fee agreement, notes from the initial consultation with Richards and information sent by Richards. In his answer, respondent explained that, although his file did not contain the above information, his computer had "copies" of research, applicable caselaw, the complaint and proposed interrogatories.

The investigator also testified that Richards never received a bill from respondent and pointed out that the time sheet prepared by respondent showed that he had downloaded, read, assessed and digested a seminal United States Supreme Court case before the date on which it had been decided. Respondent was charged with a violation of RPC 8.4(c), presumably both for making a misrepresentation to Richards about the complaint and the interrogatories, and for inflating or fabricating his legal services.

Count Four

The complaint charged respondent with a violation of RPC 8.1(a) for falsely stating to the OAE investigator that he had not received any communications from Waldemar until after the time to file an appeal had already expired, even though respondent's file contained letters from Waldemar proving otherwise. In addition, according to the complaint, respondent told the investigator that he had not filed the Richards suit because first he had to wait for Boy Scouts of America, et al. v. Dale to be

decided and then Richards had terminated his services in September 2000, before the case had been decided. The complaint charged that respondent's statement was false because the case was decided in June 2000, before respondent's representation ended.

In his answer, respondent alleged that his statements to the investigator were not knowingly false, but the product of a mistake on his part.

* * *

The DEC found the witnesses' testimony credible and consistent with the allegations of the complaint.

In the Waldemar matter, the DEC found that respondent did not act with reasonable diligence, in violation of RPC 1.3; failed to keep Waldemar informed about the status of his matter or to promptly comply with his reasonable requests for information, in violation of RPC 1.4(a); and failed to take steps necessary to protect his client's interests once his representation was terminated, in violation of RPC 1.16(d). The DEC did not find a violation of RPC 1.4(b).

In Murphy, the DEC found that respondent did not keep his client informed about her matter and did not reply to her letters and telephone calls requesting information about her case, in violation of RPC 1.4(a); did not communicate with Murphy or give her enough information to make informed decisions about her case, in violation of RPC 1.4(b); failed to give Murphy a written fee agreement, in violation of RPC 1.5(b); and

failed to protect Murphy's interests by terminating the representation without advising her, in violation of RPC 1.16(d).

In the Richards matter, the DEC found gross neglect, lack of diligence, failure to communicate with the client, failure to explain to Richards "what needed to be done" in the matter and lastly, failure to give her ample opportunity to obtain other counsel, all in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b) and RPC 1.16(d), respectively. Apparently, the DEC also found that respondent misrepresented to Richards that he had conducted research on a case that had not yet been decided by the United States Supreme Court. (The DEC referred to it as a violation of RPC 8.) The DEC did not find that respondent charged an unreasonable fee in the Richards matter.

Finally, as to count four, the DEC found that respondent violated RPC 8.1(a) for misrepresenting to the OAE investigator that he had not acted in the Richards matter before September 2000 because the Boy Scouts case had not yet been decided. The DEC made no mention of the charge that respondent lied to the OAE investigator about Waldemar's letters.

The DEC recommended a three-month suspension.

* * *

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.

For the reasons expressed below, we found that, in the Waldemar matter, respondent exhibited a lack of diligence and failed to explain the case to Waldemar to the extent reasonably necessary to permit him to make an informed decision about the representation.

Waldemar testified that he expected respondent to continue representing him in the EEOC matter by filing comments to the administrative judge's initial decision. The DEC found that Waldemar was a credible witness. We, therefore, found that respondent's failure to submit comments to the administrative judge's finding of no discrimination violated RPC 1.3.

As to the federal suit, the evidence clearly and convincingly established, not only through Waldemar's testimony, but also from his contemporaneous letters to respondent, sent on October 1, 1999, November 5, 1999, November 15, 1999 and January 24, 2000, that he expected respondent to pursue a claim in federal court. Respondent's unverified answer, however, stated that he orally informed Waldemar, at their October 16, 1999 meeting, that he would take no further action unless Waldemar paid him \$7,500. Respondent's contention is inadequate. Respondent had a duty to make it clear to his client that he would not represent him, particularly after receiving Waldemar's letters. It was not until Waldemar's claim was time-barred that he learned that respondent would not represent him. Therefore, respondent's conduct in this regard violated RPC 1.4(b).⁴

⁴ Although the DEC found that this conduct violated RPC 1.16(d), the applicable rule is RPC 1.4(b).

As to the charge of a violation of RPC 1.4(a), the evidence did not establish to a clear and convincing standard that respondent failed to communicate with Waldemar. Although respondent admitted that he did not reply to Waldemar's letters, Waldemar testified unequivocally that, during the course of the EEOC matter, he and respondent had telephonic conversations. Waldemar did not complain that these communications were insufficient or infrequent. Therefore, we dismissed the charge of a violation of RPC 1.4(a).

In the Murphy matter, respondent failed to provide his client with a written retainer agreement, in violation of RPC 1.5(b). As a result, she did not understand the scope or objectives of the representation. Respondent also failed to reply to Murphy's requests for information about her matter and unilaterally terminated the representation because he saw no merit in Murphy's claim. His conduct, thus, violated RPC 1.4(a) and (b) and RPC 1.16(d).

In Richards, respondent accepted a retainer of \$2,500. His time sheets, which were apparently created after the fact, and the contents of his file show that he did little or no work in the matter. Although respondent's answer stated that his computer held the relevant information, he took no steps to produce it during the course of the OAE investigation. We, therefore, found that respondent misrepresented his services, in violation of RPC 8.4(c). He also violated that rule when he misrepresented to Richards that the complaint had been filed and interrogatories had been served. In addition, his inaction in the case violated RPC 1.3 and RPC 1.1(a) and his failure to reply to Murphy's requests for information about the status of the case violated RPC 1.4(a). There was no

clear and convincing evidence, however, of violations of RPC 1.4(b) or RPC 1.16(d). We, therefore, dismissed those charges.

Respondent made misrepresentations to the OAE investigator in both the Waldemar matter (that he received no further communications from Waldemar until after the time to appeal had expired) and the Richards matter (that he had not acted in the matter because the Boy Scouts case had not yet been decided). The circumstances do not allow an inference that respondent might have been mistaken about his statements. We, thus, found that his conduct violated RPC 8.1(b).

Lastly, because respondent neglected three matters, we also found that he displayed a pattern of neglect, in violation of RPC 1.1(b). Although the complaint did not charge him with a violation of that RPC, it gave respondent sufficient notice of a potential finding in this regard.


Generally, in cases involving similar misconduct, a reprimand or a short-term suspension has been imposed. See In re Balint, 170 N.J. 198 (2001) (reprimand where, in three matters, attorney engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with client and failure to expedite litigation); In re King, 152 N.J. 380 (1998) (reprimand where, in three matters, attorney was found guilty of gross neglect, lack of diligence, failure to communicate with client, refusal to return an unearned retainer and failure to turn over a file, in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.5(a) and RPC 1.16(d)); and In re Uzodike, 165 N.J. 478 (2000) (three-month suspension where, in two matters, attorney exhibited gross neglect, pattern of

neglect, failure to communicate with client and failure to cooperate with disciplinary authorities; the attorney also made misrepresentations to the client).

Here, however, respondent's conduct also encompassed a failure to appear at the DEC hearing, misrepresentations to the OAE and, in at least two cases (Murphy and Richards), abandonment of clients' interests. A short-term suspension is, therefore, required. See, e.g., In re Annenko, 165 N.J. 508 (2000) (six-month suspension where attorney abandoned two clients and was guilty of gross neglect, pattern of neglect, lack of diligence, failure to communicate with client, failure to return an unearned retainer, lack of written retainer agreement, failure to cooperate with ethics authorities, failure to maintain a bona fide office and failure to maintain proper trust and business accounts; attorney had two private reprimands).

Based on the foregoing, we unanimously determined to impose a six-month suspension. We further determined to require respondent to submit, prior to reinstatement, proof of fitness to practice law, as attested by a mental health professional approved by the Office of Attorney Ethics. One member recused himself.

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

By: 
MARY J. MAUDSLEY
Vice-Chair
Disciplinary Review Board

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


In the Matter of Carl C. Bowman
Docket No. DRB 02-215

Argued: September 12, 2002

Decided: November 12, 2002

Disposition: Six-month suspension

<i>Members</i>	<i>Disbar</i>	<i>Six-month Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Peterson</i>						X	
<i>Maudsley</i>		X					
<i>Boylan</i>		X					
<i>Brody</i>		X					
<i>Lolla</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>		X					
<i>Wissinger</i>		X					
Total:		8				1	

 11/14/02
 Robyn M. Hill
 Chief Counsel