

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 92-486

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IN THE MATTER OF :  
: EDWARD J. GAFFNEY, :  
: AN ATTORNEY AT LAW :  
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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: February 25, 1993

Decided: April 6, 1993

Gordon S. Graber appeared on behalf of the District X 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 the Board based upon a recommendation for public discipline filed by the District X Ethics Committee (DEC).

Respondent was admitted to the New Jersey bar in 1989. He maintains a law office in Newton, Sussex County.

The formal complaint charged respondent with violations of RPC 1.1 (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate) and RPC 3.2 (failure to expedite litigation). An additional count of the complaint charged respondent with a violation of RPC 8.1(b) (failure to cooperate with the DEC). Respondent failed to file an answer to the complaint. During the

DEC hearing, respondent admitted that he had no defense to the allegations set forth in the complaint.

The facts are as follows:

On April 10, 1990, four months after his admission to the bar, respondent was assigned by the Public Defender's Office to represent an indigent defendant in connection with the appeal of a criminal matter. Pursuant to the case scheduling order, respondent was required to submit appellant's brief and appendix by May 30, 1990. Respondent did not comply with the order and provided no explanation for his dereliction.

On August 9, 1990, the Honorable Thomas F. Shebell, Jr., J.A.D., entered an order directing respondent to appear before the court on September 11, 1990, and to show cause why sanctions should not be imposed against him for failure to file the brief in a timely fashion.<sup>1</sup> By letter dated November 23, 1990 to the Appellate Division, respondent confirmed a conversation of November 11, 1990, during which he stated that his brief would be filed within one week of that date. Respondent failed to adhere to his own representation. Accordingly, on November 26, 1990, Judge Shebell entered an order directing that respondent be sanctioned \$200 for his failure to file the brief and ordered that it be filed with the Office of the Public Defender by November 30, 1990. The order stated further that, should respondent not timely file the brief, an additional \$150 sanction would be imposed. Respondent

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<sup>1</sup> Although the record is not entirely clear, it appears that respondent did not appear on the return date of the order to show cause and that he communicated with the court either by letter or telephone.

still did not comply with the order and offered no explanation for his inaction.

By letter dated December 20, 1990, the Office of the Public Defender requested that respondent provide a status report on the assignment and an explanation as to why the assignment was not completed. Respondent did not comply with that request.

On January 8, 1991, Judge Shebell entered an order directing that respondent appear on January 23, 1991 and show cause why he should not be held in contempt of court for his failure to comply with the November 26, 1990 order regarding the brief and his failure to pay the sanction.

On January 23, 1991, Judge Shebell entered an order noting that respondent appeared, but without an explanation for his behavior. Respondent was held in contempt and fined \$500 at that time.<sup>2</sup> However, the order provided that, if respondent filed a brief with the Office of the Public Defender by February 1, 1991, the finding of contempt and all of the sanctions would be vacated. Respondent did not file the brief and did not pay the \$500 sanction. He provided no explanation for his conduct.

By order dated April 10, 1991, Judge Shebell removed respondent as designated counsel and directed that the file in the underlying matter be turned over to the Office of the Public Defender. Respondent was further ordered to begin payments on the \$500 sanction by April 26, 1991. Under the terms of the order, failure to comply therewith would cause the matter to be referred

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<sup>2</sup> The sanction was inclusive of prior sanctions (Exhibit P-6).

to the Office of Attorney Ethics (OAE). Respondent did not comply with that order until one month later.<sup>3</sup>

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By letter dated May 21, 1991 (Exhibit P-8), Judge Shebell referred this matter to the OAE. On June 25, 1991<sup>4</sup>, the DEC investigator, Gordon S. Graber, Esq., served respondent with a copy of the ethics grievance along with a request that he provide a written response to the allegations within two weeks. Respondent failed to comply with that request.

Graber telephoned respondent on October 21 and November 18, 1991, and requested that he respond to the allegations of the grievance. Respondent did not do so.

On October 21, 1991, a second letter requesting a written response to the grievance was served on respondent. Respondent failed to reply to that letter. Letters were also sent on January 10 and February 11, 1992, requesting a response to the allegations of the grievance. Again, no reply was forthcoming.<sup>5</sup>

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<sup>3</sup> The DEC's report states that the file was delivered on April 11, 1991. This date is incorrect. The correct date, according to exhibit P-8, is May 11, 1991. Respondent had not made any payments on the \$500 sanction as of that time.

<sup>4</sup> The DEC report mistakenly indicates that the date was June 25, 1992.

<sup>5</sup> The two later letters also advised respondent that his failure to respond was a violation of the disciplinary rules.

On March 16, 1992, respondent spoke with Graber and informed him that a reply to the grievance would be forwarded within one week. Respondent did not provide the promised written reply.<sup>6</sup>

On May 11, 1992, respondent was served with a copy of the formal complaint in this matter. He failed to file an answer. By letter dated May 28, 1992, respondent was directed by the DEC secretary to file his answer within five days. Respondent did not do so.

Respondent testified before the DEC that he had not filed an answer in this matter because he had no defense to the allegations contained in the grievance and in the complaint. He also testified that

[e]ssentially, what happened is I'm a sole practitioner and this did not take precedent [sic]. That's the truth. It didn't. I work seven days a week. Saturdays and Sundays, nights, in the morning, early mornings, and I have a pile of paper and certain things get put on the bottom and certain things on top, and what had occurred in particular with this investigation is this was always something that I was going to take care of which essentially never got taken care of because I was doing something else, doing something else on behalf of a client and essentially saving everyone else's neck except my own. I didn't really take the time to really look and say look, you have to really put all of this aside and concentrate on this. I essentially did not do that and there is really no defense and I knew that eventually there would be a hearing held or whatever and that's when I would essentially present the mitigating circumstances, but as far as allegations in the Complaint, they're simply true.

[T7/28/92 9-10].

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<sup>6</sup> Respondent testified that, during that conversation, he told Graber what had happened and that he had no defense. Graber told him to put the information in writing. Respondent failed to do so (T7/28/92 25-26).

Respondent also testified about his large caseload. According to his testimony, he took steps to reduce the caseload, which is now at approximately 125 cases, a cut-back from his caseload at the time of the events in question (T7/28/92 19). He also testified about the steps he has taken to organize his practice. Respondent inquired as to whether the DEC can establish a monitoring or a "mentor program," explaining his inability to ask assistance of other attorneys (T7/28/92 22).

With regard to the underlying criminal appeal, respondent testified that he did confer with his client on two occasions, but that he did not feel it was necessary to discuss the matter with him further because this was an appellate matter (T7/28/13). Respondent also testified that the underlying matter was too complicated for him and should have been assigned to someone else. He explained that he was unable to admit to himself that he could not handle it (T7/28/92 11). He further testified that he did, in fact, work many hours on the case. He stated that he appeared in front of Judge Shebell, at which time they discussed the case and respondent told him that it was complicated. However, instead of explaining to Judge Shebell that he was unable to complete the matter, respondent assured him that he would submit a brief as soon as possible (T7/28/92 12).

Respondent also explained that his practice is in disability rights and civil rights litigation, which has had an impact on his personal life. He described incidents in which he has been involved due to the nature of his practice, including difficulties

with the police, threats against himself and his family, a high-powered pellet gun shot to his car windshield, and a card from the Klu Klux Klan (T7/28/92 27-28).

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The DEC determined that respondent was guilty of the charged violations.<sup>7</sup> The DEC found that respondent's testimony regarding his failure to cooperate with the ethics system did not constitute mitigation. On the other hand, the DEC noted that there is no evidence suggesting that respondent's client in the underlying criminal matter was harmed due to respondent's conduct. The criminal appeal was ultimately denied and respondent's client remains in prison.

The DEC recommended that respondent be publicly reprimanded, with a "strenuous suggestion" that respondent be compelled to submit to psychological evaluation and supervision of his law practice (Hearing Panel Report at 7).

In a supplemental report, the hearing panel Chair provided further details concerning respondent's behavior at the hearing and stressed his concern about his emotional well-being.

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<sup>7</sup> Although the hearing panel report does not specify the subsections of the rules in question, it may be inferred that it is referring to RPC 1.1(a), RPC 1.4(a) and RPC 8.1(b).

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the determination of the DEC that respondent is guilty of unethical conduct is supported by clear and convincing evidence. Respondent was guilty of gross neglect, lack of diligence, failure to communicate and failure to expedite litigation in one matter, in violation of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 3.2. In addition, he failed to cooperate with the DEC, in violation of RPC 8.1(b). With regard to respondent's failure to comply with Judge Shebell's orders, the record is not clear about the extent of his dereliction. It appears that, despite the contempt order, there was some communication between respondent and the court.

The basis of respondent's misconduct was his failure to comply with or respond to various orders of an Appellate Division judge. Respondent thereafter failed to adequately communicate or cooperate with the DEC investigator. He failed to reply to informal requests for information and further failed to file an answer to the formal complaint filed against him. "Such conduct constitutes disrespect to the Supreme Court and the ethics system." In re Skokos, 113 N.J. 389 (1988); In re Winberry, 101 N.J. 557, 566 (1986); In re Rogovoy, 100 N.J. 556, 564 (1985). An attorney has an obligation to cooperate fully with an ethics committee. In re Gavel, 22 N.J. 248, 263 (1956). Disrespect to an ethics committee constitutes disrespect to the Supreme Court inasmuch as the committee is an arm of the Court. In re Grinchis, 75 N.J. 495, 496 (1978). Respondent



did testify before the DEC that his actions were not meant as disrespect for the ethics committee (T7/28/92 9). However, "[a]n ethics complaint should be considered -- as it certainly is by the vast majority of all practicing attorneys -- as entitled to a priority over any other matter the lawyer may have in hand that can possibly be postponed." In re Kern, 68 N.J. 325, 326 (1975).

The Board was troubled by respondent's disregard of court orders and requests for information by the DEC. Respondent ignored a series of orders from the Appellate Court, including a warning that he would be held in contempt and sanctioned for his behavior. As noted above, respondent was ultimately found in contempt of court and sanctioned.<sup>8</sup> Similar conduct has resulted in public reprimand. See In re Russell, 110 N.J. 329 (1988) (where the attorney was publicly reprimanded for failing to file an appellate brief in a civil matter, resulting in dismissal of the matter, and improperly withdrawing from the representation of his client).

The Board considered, in mitigation, that respondent was assigned this complex case shortly after he was admitted to the bar and that he was obviously inexperienced.<sup>9</sup> Nevertheless, the Board was persuaded that the severity of respondent's misconduct warrants the imposition of a public reprimand. The Board, by a requisite majority, so recommends. The Board further recommends that respondent be immediately examined by a psychiatrist approved by

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<sup>8</sup> Respondent paid the \$500 sanction on June 26, 1991.

<sup>9</sup> Respondent was admitted to the bar on December 21, 1989. The underlying matter was, therefore, assigned to him when he had been admitted for fewer than four months.

the Office of Attorney Ethics and that respondent practice under the guidance of a proctor for an indefinite period of time.<sup>10</sup> In addition, the Board recommends that all pending grievances against respondent be expedited.<sup>11</sup> Two members dissented, believing that a one-year suspension was warranted. Those members would require that, upon reinstatement, respondent demonstrate his fitness to return to the practice of law, that he complete the Skills and Methods Courses and that a proctorship be imposed. One member would have imposed a private reprimand. Two members did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for administrative costs.

Dated: 4/6/73

By:   
Raymond R. Trombadore  
Chair  
Disciplinary Review Board

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<sup>10</sup> During his appearance before the Board, respondent agreed that some measure of discipline was warranted for his misconduct and further agreed with the recommendation for supervision.

<sup>11</sup> As of the date of the Board hearing, there were six disciplinary matters pending against respondent.