

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 02-051

IN THE MATTER OF :
PAUL W. DARE :
AN ATTORNEY AT LAW :

Decision

Argued: April 18, 2002

Decided: June 20, 2002

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

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 I Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1975. He maintains an office for the practice of law in Avalon, New Jersey. He has no disciplinary history.

The ethics complaint alleged violations of RPC 1.1, presumably (a), (gross neglect); RPC 1.1(b) (pattern of neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to communicate with clients); RPC 1.4(b) (failure to explain a matter to the extent

reasonably necessary to permit the client to make informed decisions about the representation) and RPC 1.15(b) (failure to deliver funds to which the client is entitled).

* * *

The material facts are not in dispute. Respondent admitted most of the allegations of the complaint.

The Hoke Matter (District Docket No. XIV-99-243E)

In October 1990, Linda Hoke sold real property that was subject to a state tideland title claim. At closing, \$7,400 was held in escrow by the title company to cover the costs of clearing title to the property. Shortly after the closing, Hoke retained respondent to obtain a riparian grant from the Tidelands Resource Council. Hoke signed the application that had been completed by respondent and returned it to him. Although the record does not clearly show when Hoke returned the application, apparently it was shortly after October 1990. Respondent did not file the application, however.

Thereafter, Hoke repeatedly telephoned respondent to inquire about the status of the application. Respondent did not reply to most of Hoke's calls and never told her that the application had not been filed. By letter dated February 4, 1992, respondent apologized to Hoke for his failure to communicate with her and stated that he expected that the grant application would take "at least another 1½ years." Hoke also wrote to respondent in December 1991, June 1993, April 1994, January 1996, November 1996,

June 2000 and August 2000, to no avail. Hoke also filed a grievance against respondent in March 1998.

Hoke's closing attorney also wrote to respondent in May 1998. In that letter, the attorney referred to a prior conversation with respondent, in which respondent stated that he had misplaced the file, but "had resurrected it and would attend to the outstanding matter." Apparently, respondent finally filed the application sometime prior to August 29, 2000. As of the October 2001 DEC hearing, the application was still pending.

Respondent had no excuse for his failure to file the application for ten years. He stated that the process takes approximately three years:

Unfortunately it says to the practitioner, ain't no hurry moving this along which is the wrong message because you have to get in the pipeline. It's a frustrating part of my practice and these two, especially Mrs. Hoke's, didn't get to where they were supposed to be on time. Again, I don't offer that as an excuse, but it's always in the back of your head that this is going to take forever, forgetting that to start forever you have to start.

Although respondent testified that he returned some of Hoke's calls, he admitted that he either did not return most of them or did not timely return them.

Hoke testified that respondent returned her telephone calls only once or twice in the ten years that she had been waiting for him to obtain the riparian grant. During those conversations, he simply told her that he would get back to her. She stated that she never asked him whether he had filed the application because she had always assumed he had.

The complaint charged that respondent violated RPC 1.1, presumably (a), RPC 1.3, RPC 1.4(a) and RPC 1.4(b).

The Edmar Corporation Matter (District Docket No. XIV-99-206E)

On March 14, 1998, respondent represented Edmar Corporation (“Edmar”) in the purchase of property in Cape May Point, New Jersey. Respondent received a total of \$225,875 from Edmar for the closing. The purchase price was \$220,000. Respondent did not provide Edmar with a settlement statement or any other accounting of the funds. Between December 1998 and February 1999, representatives of Edmar attempted to speak with respondent, leaving messages with his secretary. Respondent did not reply to the messages. On January 12, 1999, respondent told a representative of Edmar that the “information was lost in a computer file,” but that he “redid it” and would “fax” the information the following day. However, he did not do so.

By letter dated February 25, 1999, Edmar advised respondent that it was terminating his services and requested that he transfer the file to another attorney, along with an accounting of Edmar’s funds and a check for any undisbursed funds. Respondent did not reply to the letter. Nor did respondent reply to the new attorney’s March 17 and April 1, 1999 letters reiterating Edmar’s requests. Edmar then filed a grievance against respondent.

On July 14, 1999, respondent forwarded a \$3,033.75 trust account check to the new attorney, along with an accounting of Edmar’s funds.

On July 15, 1999, the Office of Attorney Ethics (“OAE”) conducted a demand audit of respondent’s books and records. The audit did not disclose any misappropriation of trust or escrow funds.

Respondent testified that he spoke with Edmar's property manager on one occasion and told him that Edmar's funds remained in escrow. He also contended that he had telephoned Richmond Shreve, Edmar's chief executive officer, but had not left messages when Shreve was unavailable. Respondent admitted that he had not replied to the new attorney's letters and had not timely forwarded an accounting and the undisbursed trust funds.

Shreve testified that Edmar purchased the Cape May Point property with the intention of dividing it and reselling it. According to Shreve, the property consisted of two and one-half lots. Edmar intended to demolish the existing building and then sell one lot to Shreve, sell one lot to a third party and transfer the one-half lot to an adjacent property owner. The adjacent property's owner was to pay part of the costs of acquiring the property and demolishing the existing building. Shreve testified that respondent's failure to transmit the closing documents, accounting and funds to Edmar delayed the sales.

The complaint charged that respondent violated RPC 1.3, RPC 1.4(a), RPC 1.4(b) and RPC 1.15(b).

The Mangan Matter (District Docket No. XIV-00-343E)

In March 1997, respondent represented Edmund and Suzanne Mangan in the sale of property in Stone Harbor, New Jersey. He received \$2,500 from the closing proceeds for his fee. At the closing, \$18,000 was placed in escrow with Shore Title Agency, pending a riparian grant from the Tidelands Resource Council. Respondent was to file an

application for the riparian grant within ninety days of the closing. He failed to do so, however.

Beginning in April 1997, the Mangans telephoned respondent on several occasions and sent him letters in April, July and September 1997.¹ Respondent did not reply to their communications. In November 1997, they filed a grievance with the DEC. They also retained another attorney, who sent letters to respondent in March and May 1998, requesting the status of the grant application. Respondent did not reply to the letters.

The new attorney testified that, in June 1998, he prepared another application for the Mangans' signatures. He estimated that it took him between two and three hours to "prepare and review and assemble" the application. He stated that he was finally able to speak with respondent on June 18, 1998 and received the application prepared by respondent on June 28, 1998. By that time, however, he had already forwarded the new application to his clients for their signatures. According to the new attorney, the Mangans' application was filed on July 10, 1998; the grant was issued on July 1, 2001 and recorded on September 20, 2001. The \$18,000 escrow was released to the Mangans shortly before the October 2001 ethics hearing. The new attorney stated that the application was delayed for four months because they had to obtain a new appraisal, due to the age of the existing one.

¹ The Mangans also requested that respondent explain his \$2,500 fee. The DEC referred that issue to fee arbitration. The matter was settled prior to the arbitration. Respondent remitted \$1,500 to the Mangans.

Edmund Mangan testified that the only communication that he received from respondent was a copy of the letter that respondent sent to the DEC in reply to the Mangans' grievance. Mangan stated that respondent's failure to file the application resulted in a sixteen-month delay in the release of the escrow and caused the additional cost for the new appraisal.

The complaint charged that respondent violated RPC 1.1, presumably (a), RPC 1.3, RPC 1.4(a) and RPC 1.4(b).

The complaint also charged that respondent's neglect of the above three matters constituted a pattern of neglect, in violation of RPC 1.1(b).

Respondent admitted that he did not complete the work for which he was retained and apologized to his clients and to the DEC. Respondent contended that his neglect of these matters was aberrational. He pointed out that he had previously enjoyed a twenty-six year unblemished legal career, almost twenty years of those as a sole practitioner.

Respondent testified that, in December 1998, his mother-in-law underwent surgery for a brain aneurysm that resulted in severe memory loss. Respondent's wife and brother-in-law believed that she was incapable of managing her affairs. His mother-in-law and her "significant other" believed otherwise, however. According to respondent, this conflict almost resulted in litigation, created stress in his life and "added to the delay in providing the accounting to Edmar Corporation."

Respondent also stated that, during "the period of the investigation before [the OAE] filed the complaint," he "was sort of burnt out." He consulted his personal

physician and a psychologist. As of the date of oral argument before us, respondent was taking medication for his emotional problems and was being seen by a therapist.

Respondent testified about his service to the bar and to the community. He stated that he has served as the president, secretary and treasurer of the “local bar,” a member of “an advisory committee of the Supreme Court on Bar Commissions,” the treasurer of the Evangelical Lutheran Church of America, a member of the board of managers of the Lutheran Home at Oceanview, a member of the board of governors of Burdette Tomlin Memorial Hospital and the treasurer of two committees serving the local high school.

* * *

The DEC found that, in all three matters, respondent failed to act with diligence, failed to keep his clients informed about their matters and failed to reply to his clients’ requests for information, in violation of RPC 1.3, RPC 1.4(a) and RPC 1.4(b). With respect to the charge that respondent neglected the Hoke matter, the DEC first stated that respondent did not violate RPC 1.1 because “Ms. Hoke continues to retain [respondent] to file the subject application which was done sometime prior to August 29, 2000.” The DEC later stated, however, that respondent did violate RPC 1.1 in Hoke. There was no explanation for this discrepancy.

In the Edmar matter, the DEC found that respondent “did not return [Edmar’s] money in a timely fashion,” although it is not clear whether it found that he thereby violated RPC 1.15(b).

The DEC did not address the charges that respondent violated RPC 1.1(a) in the Mangan matter and RPC 1.1(b) in his handling of the three matters.

The DEC acknowledged the existence of mitigating circumstances and recommended that respondent be reprimanded.

* * *

Upon a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence.

The DEC correctly found that respondent failed to diligently pursue the three matters, failed to communicate with his clients and failed to reply to his clients' requests for information, in violation of RPC 1.3 and RPC 1.4(a). However, there is no evidence that respondent did not sufficiently explain the matters to his clients. Hoke and Mangan understood that respondent had to file an application for a riparian grant before their escrow funds would be released. Edmar's CEO testified that respondent was supposed to forward an accounting and the undisbursed escrow funds to Edmar. Therefore, we dismissed the charges that respondent violated RPC 1.4(b) in the three matters.

We found clear and convincing evidence, however, that respondent grossly neglected the Hoke and Mangan matters, never even filing the applications for the grants that he was to obtain for his clients. His failure to file the Hoke application for ten years and the Mangan application for approximately sixteen months violated RPC 1.1(a).

Respondent also violated RPC 1.15(b) by failing to return Edmar's escrow funds, despite repeated telephone calls and letters from Edmar and its new attorney. It was not until the OAE scheduled a demand audit of respondent's books and records that respondent finally remitted Edmar's funds and an accounting of the closing proceeds.

Finally, respondent's failure to diligently pursue his clients' interests in the three matters constituted a pattern of neglect, in violation of RPC 1.1(b).

Respondent testified that family problems and personal "burn out" contributed to his failure to remit Edmar's funds and to provide the company with an accounting. He did not, however, offer any reason for his failure to file the applications for riparian grants in the Hoke and Mangan matters. In fact, it is likely that the Mangans' application would not have been filed in July 1998, but for the fact that they retained another attorney. On the other hand, it was obvious that respondent was sincerely contrite about his derelictions. Furthermore, he has enjoyed a previously unblemished twenty-six year legal career and has a history of service to the bar and the community.

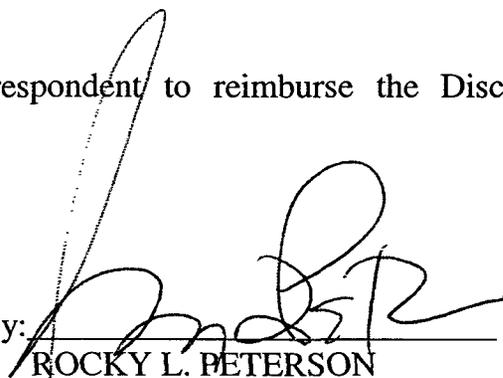
Generally, in cases involving similar violations and the absence of a disciplinary history, a reprimand is imposed. See, e.g. In re Caggiano, 164 N.J. 475 (2000) (reprimand where the attorney grossly neglected two matters, failed to comply with his clients' reasonable requests for information and failed to advise his clients that their cases had been dismissed; in one of the cases, it was not until ten years later that the client learned from another source that her case had been dismissed); In re Bennett, 164 N.J. 340 (2000) (reprimand where the attorney grossly neglected a number of cases that he was handling on behalf of an insurance company and failed to adequately communicate

with the company from 1979 through 1986); In re Zukowski, 152 N.J. 59 (1997) (reprimand where the attorney failed to diligently pursue a workers' compensation claim and to communicate with his client in one matter and grossly neglected a second matter).

We, therefore, unanimously determined to reprimand respondent. We also determined to require him to submit a report from his psychologist to the OAE as to his current status and to continue psychotherapy until he obtains a report from a qualified mental health professional approved by the OAE, indicating that he no longer requires therapy.

One member recused herself.

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

By: 

ROCKY L. PETERSON

Chair

Disciplinary Review Board

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

In the Matter of Paul W. Dare
Docket No. DRB 02-051

Argued: April 18, 2002

Decided: June 20, 2002

Disposition: Reprimand

| <i>Members</i> | <i>Disbar</i> | <i>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 | |

Robyn M. Hill 7/3/02
Robyn M. Hill
Chief Counsel