

13

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 03-215 and 03-267

IN THE MATTER OF
RUSSELL G. CHEEK
AN ATTORNEY AT LAW

Decision

Argued: September 11, 2003

Decided: October 20, 2003

Carmine Villani appeared on behalf of the District IIIA Ethics Committee.

Respondent appeared pro se.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

Respondent was admitted to the New Jersey bar in 1980. He maintains a law office in Toms River, New Jersey.

In 1996 respondent was admonished for breach of RPC 1.15(d) and R.1:21-6 (recordkeeping violations), for failure to correct recordkeeping deficiencies that were discovered during a 1995 demand audit. In the Matter of Russell G. Cheek, Docket No. DRB 96-100 (May 22, 1996). He was reprimanded in 1999 for violations of RPC 1.1(a)

(gross neglect), RPC 1.4(a) (failure to communicate with client), and RPC 1.15(d) and R.1:21-6 (recordkeeping violations). In re Cheek, 162 N.J. 98 (1999).

Docket No. DRB 03-215

This matter was before us based on a recommendation for discipline filed by the District IIIA Ethics Committee (“DEC”). The 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 a client), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

At the DEC hearing, respondent withdrew his answer to the complaint and stipulated to the facts contained in the complaint, and in the investigative report. The facts gleaned from both documents are as follows:

In February 1987, Sergio Bubic, his wife Katica and daughter, Bruna Modrusan (“the Bubics”) were involved in an automobile accident in New York. A New York attorney, Harlin Budin, represented the Bubics in connection with their injuries. In September 1988, there was a hearing for the assessment of damages and a judgment was entered. The defendant was a New York driver, insured under a New Jersey policy. A default judgment was entered in September 1988.

The Bubics’ options were either to retry the matter in New Jersey or to enforce the New York judgment in New Jersey. Budin suggested pursuing the latter option, utilizing respondent’s services. At a date not specified in the record, the Bubics’ file was turned over to respondent to collect on the judgment.

At least as early as February 1992, Budin wrote to respondent requesting information about the status of the matter and indicating that the Bubics were calling him frequently and intimating that they would retain another attorney. Budin sent additional letters to respondent on July 1 and December 8, 1992, and March 22, 1994, requesting information about the status of the matter. Respondent replied to the March 1994 letter by returning a copy of it with the notation added "Pendency for trial listing – hopefully in May/June."

Budin sent additional letters to respondent requesting a status update on November 2, 1994; January 5, March 3, and August 10, 1995; March 21 and May 20, 1996; February 20, 1997; and May 14 and July 1, 1998. Presumably respondent did not reply to any of these requests. In fact the investigative report stated that Modrusan resorted to "trickery" in her attempts to contact respondent. She telephoned his office from different telephone numbers and at "off hours," because respondent was avoiding her calls. Finally on April 14, 1999, Budin requested that respondent return the Bubics' file. He also threatened to file an ethics complaint. Subsequently, at a July 1999 meeting, respondent informed Budin and the Bubics that a trial was imminent. When Bubic requested the docket number for the case and the court where the case was pending, respondent did not provide the information, but only confirmed that a trial date was approaching.

According to the investigator's report, both Budin and the Bubics continued to call respondent several times per week for an update about the matter, to no avail.

On April 25, 2000, respondent forwarded to Bubic a letter for his signature confirming that he wanted to reject a settlement offer. Bubic requested proof that an offer

was actually made. Respondent did not provide the information. Instead, he informed Bubic that such a letter could not be produced. Bubic, therefore, did not sign the letter.

On May 4, 2001, Budin wrote to respondent requesting information about the efforts that he had undertaken in the matter. Having received no response by May 29, 2001, Budin resent the letter, which stated:

I have been deluged with phone calls and non-scheduled visits by Mr. Bubic over the last two weeks. My attempts to reach you by phone have, as usual, gone unanswered. Mr. Bubic has received documents you sent. They are what used to be my file. He is looking for your work, a copy of a decision from the Court or Arbitration [sic] that you were before. At a minimum he wants the index/docket number, name of the Court Arbitrator that you were before. At this point, he deserves a response. I ask that you please respond to Mr. Bubic directly with a courtesy copy sent to me, within one week, otherwise I will be forced to take steps I am loathed to use.

On July 22, 2001, Budin sent respondent yet another letter threatening that the Bubics would be filing an ethics complaint against him. Respondent still failed to reply. Eventually, respondent returned the file to Bubic. The file contained only the original documents that had been provided to him by Budin.

The record shows, and respondent admitted, that his conduct included violations of RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence). Respondent's failure to take any action in the Bubics' matter was underscored by the lack of documentation in the Bubic file. This inaction was further confirmed by his inability to provide his clients a docket number or the court where their case was pending. This, together with respondent's written and verbal assurances to his clients that a trial was imminent and that a settlement offer had been made were misrepresentations, in violation of RPC 8.4(c). Finally, respondent's

failure to keep his clients informed about the status of their matter and failure to reply to their repeated requests for information about their case violated RPC 1.4(a).

Docket No. DRB 03-267

The Sentinel Lubricant Matter – District Docket No. IIIA-02-021

This matter was before us based on a disciplinary stipulation of facts pursuant to R. 1:20-6 (c)(1).¹

The DEC presenter and respondent stipulated to the following facts:

In November 2001, respondent agreed to represent Sentinel Synthetic Lubricants (“Sentinel”) in a collection matter against a former employee. The employee had received draws on anticipated commissions. Later, when the sales were cancelled, the employee was not entitled to retain the draws. The total amount in dispute was \$10,991.87.

Between November 2001 and June 2002, respondent took no action to pursue the collection matter. Respondent admitted that he did not pursue the matter on a timely basis. He claimed that he had prepared a draft complaint, but that it was never filed. He subsequently advised his client to pursue “other counsel.” On June 25, 2002, the president of Sentinel terminated respondent’s services.

¹ R. 1:20-6(c)(1) states:

A hearing shall be held only if the pleadings raise genuine disputes of material fact, if the respondent’s answer requests an opportunity to be heard in mitigation, or if the presenter or ethics counsel requests to be heard in aggravation. In all other cases the pleadings, together with a statement of procedural history, shall be filed by the trier of fact directly with the Board for its consideration in determining the appropriate sanction to be imposed.

Respondent blamed his inability to satisfactorily pursue the matter on various reasons, including a change in his office staff and a very hectic schedule. Respondent also claimed that his dereliction in handling the matter was not intentional, the client's rights were not prejudiced, and that any problems with the matter were resolved by retaining new counsel.

The stipulation stated that respondent cooperated with the investigation and permitted the investigator to review files at his office on May 12, 2003. However, according to the investigative report, respondent was not at his office when the investigator arrived for their scheduled appointment. The report further stated that the two had had numerous discussions to arrive at a mutually agreeable time for the inspection of files. On that date, though, respondent had left the investigator a memorandum indicating that his schedule prevented him from being present. As to the Sentinel file, the memorandum stated that "no permanent file was ever set up as [respondent] only had a few pages of documents which had been forwarded by the client, and which were subsequently returned to him at his request." Respondent further stated in the memorandum that the temporary folder, which he had misplaced, would have contained only a few pages that were either faxed or mailed to him by the client.

The presenter concluded that respondent's conduct violated RPC 1.3.

The DeRenzi Matter - District Docket No. IIIA-02-028E

In November 1993, respondent agreed to represent Daniel DeRenzi, the minor son of Bruce and Karen DeRenzi, in connection with injuries he sustained at "Squirt Works" in

Beach Haven, New Jersey. In November 1993, the DeRenzis gave respondent six original photographs depicting the injuries to their son and the location of the accident. In March and April of 1996, respondent obtained medical records from Southern Ocean County Hospital and a physician. He did not perform any further investigation and took no action to prosecute the matter.

The DeRenzis made several requests about the status of the matter both orally and in writing. Respondent did not reply to their requests. Finally, on May 3, 2002, the DeRenzis terminated respondent's services and requested the return of their file.

On June 19, 2002, the DeRenzis directed respondent to turn their file over to their new attorney, Robert Ballou. Thereafter, on July 17 and 26, and August 6, 2002, Ballou wrote to respondent requesting the file.

Bruce DeRenzi filed a grievance against respondent. On October 2, 2002, it was forwarded to respondent for a reply. Respondent did not submit a reply to that request or the DEC's second request, sent on November 27, 2002.

On May 12, 2003, respondent permitted the investigator to inspect his file in connection with this and the other grievances. A review of the DeRenzi file revealed no correspondence to the DeRenzis about the status of their matter, despite their repeated requests over a significant period of time. Respondent did not turn the DeRenzi file over to Ballou. Ballou obtained the original photographs and copies of the medical records from the DEC investigator.

According to the stipulation, because Daniel DeRenzi is now fourteen years old, there are no statute of limitations considerations with respect to filing a civil action for the injuries he sustained in 1993.

The presenter determined that respondent held on to the DeRenzi file for nearly ten years, and that other than obtaining some medical records, he did not take any further action to investigate or prosecute the matter. His conduct, therefore, violated RPC 1.3. He also failed to keep his clients informed about the status of their matter in violation of RPC 1.4(a); failed to turn over the file in violation of RPC 1.16(d) and failed to reply to the grievance in violation of RPC 8.1(b) and R.1:20-3(g)(3) and (4).

Respondent asserted that, because the statute of limitations will not expire until two years after Daniel's eighteenth birthday, there has been no prejudice to the DeRenzis. He also claimed that his failure to reply to this grievance was inadvertent, inasmuch as he submitted a written reply to the other grievances concurrently under investigation. In addition, he permitted the investigator to inspect the files in each of the matters. Respondent asserted that no discipline was warranted in this matter, but, in the alternative, if a suspension was imposed, it should run concurrently with any other suspension.

In the Sentinel matter, respondent admitted that he did not pursue the collection matter on a timely basis. In fact, respondent did not pursue the matter at all. After seven months of respondent's inaction, his client had to retain new counsel. Respondent's conduct in this regard violated RPC 1.3.

Based on the stipulated facts we found in the DeRenzi matter that, over the course of almost ten years, respondent did little to pursue his client's case. After obtaining a few

medical records he took no further action, in violation of RPC 1.1(a) and RPC 1.3. Respondent failed to reply to the DeRenzi's repeated requests for information about the status of the matter in violation of RPC 1.4(a). He also failed to turn over the file to either DeRenzi or his new attorney after receiving repeated requests from both, in violation of RPC 1.16(d).

We also found a violation of RPC 8.1(b) for respondent's failure to reply to the grievance in this matter. While it is true that he permitted the investigator to review his files in connection with this and the other grievances, he was unable to locate the file in one matter, and in another matter, had only the documents provided by his client. In addition, even though respondent and the investigator agreed on a mutually convenient time to meet, respondent failed to make himself available on that date.

Respondent has provided little explanation for his negligence in the above matters. The fact that there may not have been permanent harm to his clients in the Sentinel or DeRenzi matters, does not negate the fact that respondent is guilty of misconduct.

Respondent's conduct in the three matters constitutes gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to turn over client files, failure to reply to a lawful demand for information from a disciplinary authority and misrepresentations.

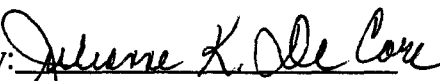
The discipline in matters involving similar violations has ranged from a reprimand to a short-term suspension. See In re White, 150 N.J. 16 (1997) (three-month suspension where in three client matters the attorney engaged in a pattern of neglect, lack of diligence, failure to communicate with clients and misrepresentation to clients); In re Porwich, 159

N.J. 511 (1999) (reprimanded where in four matters the attorney engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to cooperate with disciplinary authorities and in one matter misrepresented the status of the matter to a client); and In re Paul, 137 N.J. 103 (1994) (public reprimand for gross neglect, and misrepresenting the status of the case to the client; attorney had two prior private reprimands).

Respondent has not provided an explanation for his inaction in the three matters or shown any remorse for his misconduct. In the Bubic and DeRenzi matters he led his clients on for years. In addition, in the DeRenzi and Sentinel matters, he excused his conduct by claiming that neither client was harmed. We found respondent's cavalier attitude towards his clients' predicament astonishing. As a result, eight members determined to impose a three-month suspension. One member did not participate.

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

Disciplinary Review Board

By: 
Julianne K. DeCore
Acting Chief Counsel

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

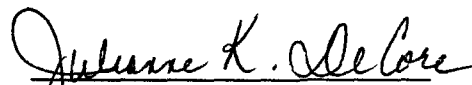
In the Matters of Russell G. Cheek
Docket Nos. DRB 03-215 and DRB 03-267

Argued: September 11, 2003

Decided: October 20, 2003

Disposition: Three-month suspension

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


 Julianne K. DeCore
 Acting Chief Counsel