

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-045

IN THE MATTER OF
THOMAS M. MURRAY, JR.
AN ATTORNEY AT LAW

Decision

Argued: April 17, 2003

Decided: June 19, 2003

Steven Pontell appeared on behalf of the District IIB 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 us pursuant to R.1:20-6(c)(1).¹ Two of three hearing panel members failed to appear at the DEC hearing. Respondent, however, notified the panel

¹ That rule states, in relevant part:

A hearing should 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.

chair that he intended to admit all of the allegations of the complaint. He did so under oath and withdrew his answer, with the exception of the personal statements advanced in mitigation of his conduct. In its cover letter to us, the Office of Attorney Ethics ("OAE") stated that the hearing panel report would be of no effect because there had not been a hearing. The OAE noted, however, that this matter could be reviewed as a stipulation, pursuant to R.1:20-6(c)(1). We agreed.

Respondent was admitted to the New Jersey bar in 1971. He maintains a law office in Hackensack, New Jersey. He has no history of discipline.

* * *

The complaint charged respondent with violations of RPC 1.1, presumably (a) (gross neglect), RPC 3.2 (failure to expedite litigation), RPC 1.4 (failure to communicate with client), RPC 8.4, presumably (c) (misrepresentation) and RPC 1.1(b) (pattern of neglect) in two matters. Both matters were previously before us as separate defaults. They were vacated, remanded to the DEC and consolidated for hearing.

The first count of the complaint alleged that, in or about 1990, respondent was retained by Maria and Jose Ruiz in connection with a work-related accident that occurred on December 17, 1989. Respondent was to pursue a workers' compensation action against the Tetley Tea Corporation and a third-party action against the American Can Company. Although respondent filed suit against American Can Company, he failed to timely complete discovery, leading to its dismissal for failure to prosecute. According to

the complaint, "during the years that passed since the dismissal of the action," respondent misrepresented the status of the matter to his client.

The complaint charged respondent with gross neglect, failure to expedite litigation, failure to keep his client adequately and accurately informed about the status of the matter, misrepresentation and pattern of neglect.

The second count of the complaint alleged that, in or about February 1998, respondent was retained by Joan Smith in connection with the administration of an estate and "an appeal of a post-judgment notice of motion" in her divorce action. Respondent, however, neglected the administration of the estate, failed to adequately represent Smith's interests and failed to adequately prosecute the appeal of the post-judgment motion, leading to its dismissal.

The complaint charged respondent with gross neglect, failure to expedite litigation, failure to keep his client adequately informed, misrepresentation of facts and pattern of neglect.

According to respondent, he experienced serious emotional problems at the time of his misconduct. Those problems were compounded by a divorce after thirty-five years of marriage.

The panel report underscored respondent's problems, including his major depression, coronary artery surgery, complications associated therewith, his son's suicide² and his divorce.

² According to the panel report, respondent had informed the panel chair and the presenter that his nineteen-year old son had committed suicide. The report stated that "it was agreed" that

The DEC recommended that respondent compensate the grievants, if appropriate, and submit to an appropriate examination to determine whether he should be placed on disability inactive status.

* * *

Following a de novo review of the record, we determined that there is sufficient evidence to support a finding of unethical conduct.

Respondent admitted violations of RPC 1.1(a), RPC 3.2, RPC 1.4, and RPC 8.4(c) in both the Ruiz and Smith matters. He also admitted a violation of RPC 1.1(b) (pattern of neglect). Generally, however, such a finding is reserved for gross neglect in at least three matters. Therefore, we did not find a pattern of neglect here.

Respondent advanced compelling circumstances in mitigation of his conduct, including reports from his treating physicians. A report from his cardiologist advised him to refrain from returning to work until April 16, 2001 and a March 30, 2000 report from his psychiatrist stated that he had been treated for major depression since January 1998. According to this report, respondent's symptoms of depression included, among others, poor concentration, inability to function on both a professional and personal level, loss of motivation and energy and decreased appetite with significant weight loss. The report also stated that respondent had undergone psychotherapy, was taking antidepressant

the personal reasons affecting respondent's conduct should be revealed to us for consideration. The report also made reference to the demise of respondent's law practice.

medication, and that his professional and personal responsibilities had been severely affected by his depression.

Generally, reprimands are imposed in matters involving similar violations. See In re Onorevole, 170 N.J. 64 (2001) (reprimand for gross neglect, lack of diligence, failure to communicate with client and misrepresentation of the status of the matter to the client); In re Rein, 164 N.J. 563 (2000) (reprimand for gross neglect, lack of diligence, failure to communicate with client and misrepresentation); and In re Porwich, 159 N.J. 511 (1999) (reprimand for misconduct in four matters, including gross neglect, lack of diligence, failure to communicate with client and failure to cooperate with ethics authorities; in one of the matters, the attorney misrepresented the status of the case).

The DEC suggested that respondent might be a candidate for disability inactive status. R.1:20-12(b) states as follows:

(b) Request for Medical Examination. Whenever the [OAE] Director presents evidence which reasonably brings into question the capacity of an attorney to practice law, whether by reason of mental or physical infirmity or illness . . . the Board shall direct that the attorney submit to such medical examination as may be appropriate to enable the Director to determine whether the attorney is so incapacitated

There is insufficient evidence in this record to justify this action. However, based on the contents of respondent's psychiatrist's report, issued in March 2000, we were concerned about respondent's current ability to practice law. We, therefore, determined to require him to submit, within thirty days, proof of fitness to practice law, as attested by a mental health professional approved by the OAE.

Although respondent has advanced strong mitigating factors, we determined that the nature of his conduct still requires a reprimand. Indeed, his misrepresentations alone require the imposition of a reprimand. See In re Kasdan, 115 N.J. 472, 488 (1989) (intentionally misrepresenting the status of lawsuits warrants a public reprimand). Two members did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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

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

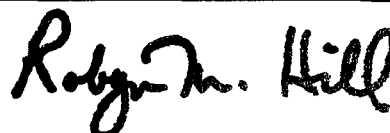
In the Matter of Thomas M. Murray, Jr.
Docket No. DRB 03-045

Argued: April 17, 2003

Decided: June 19, 2003

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>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				
<i>Total:</i>			7				2



Robyn M. Hill
Chief Counsel