SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 90-031

IN THE MATTER OF :
MARC J. GORDON, :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: March 21, 1990

Decided: July 23, 1990

Harvey Schwartsberg appeared on behalf of the District XII Ethics Committee.

Respondent appeared pro se.

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

This matter is before the Board based upon a presentment filed by the District XII Ethics Committee.

Respondent was admitted to the practice of law in New Jersey in 1959, and is engaged in private practice in Union County.

The Ankudovich Matter (District Docket No. XII-89-27E)

In 1985, Donald Ankudovich retained respondent to represent him in a personal injury matter. Respondent initiated suit in this matter on or about March 3, 1987. On April 22, 1987, defense counsel served respondent with interrogatories. In August 1987, respondent forwarded the interrogatories to Mr. Ankudovich, who

prepared answers to them. Mr. Ankudovich sent these answers to respondent to be put in proper form and sent back to defense counsel. Respondent did not put the answers into final form, or send them back to defense counsel. Defense counsel contacted respondent by mail on July 8, 1987 and August 12, 1987, and by phone on September 9, 1987, requesting the answers to the interrogatories. On October 6, 1987, after failing to receive the answers, defense counsel filed a motion to dismiss the complaint for failure to answer the interrogatories. Respondent did not respond to the motion, and on October 30, 1987, the complaint was dismissed. On November 4, 1987, a copy of the order dismissing the complaint was sent to respondent. Respondent made no attempt to restore the complaint, nor did he inform Mr. Ankudovich of what had occurred.

Mr. Ankudovich testified that during 1987 and 1988, he often telephoned respondent, attempting to find out the status of his personal injury claim. These calls were usually not returned. However, on at least one occasion in respondent's office, respondent told Mr. Ankudovich that the matter was proceeding, and that respondent would contact him.

In March 1989, Mr. Ankudovich retained another attorney to assist him in this matter. That attorney wrote to respondent on March 28, 1989, and respondent telephoned him a few days later. Ankudovich's new attorney asked that his client's file be turned over to him, which respondent said he would do in a few days. Despite numerous subsequent requests, and referral of the matter

to the local ethics committee, respondent did not give the file to the new attorney. In September 1989, through independent investigation, the attorney learned that Mr. Ankudovich's matter had been dismissed. He then wrote to respondent demanding the file, which was thereafter given to him. A motion to restore the complaint was then filed by Ankudovich's new attorney.[1]

The Ellis Matter (District Docket No. XII-89-26E)

In 1981, Sabrina Ellis retained respondent to represent her in a personal injury matter arising out of a fall in an apartment complex in Newark. While preliminary work on the case was done by other members of respondent's law firm, respondent was ultimately responsible for the handling of the claim. Suit was commenced on August 31, 1983, and in June 1984, interrogatories were served on respondent. Ms. Ellis prepared draft answers to the interrogatories which were provided to respondent, who failed to put them into final form to be returned to defense counsel. In April and June 1985, defense counsel requested that respondent provide answers to the interrogatories. On July 31, 1985, defense counsel filed a motion to dismiss the complaint for failure to answer interrogatories. The motion was granted on August 16, 1985, and a copy of the dismissal order was served on respondent on August 21, 1985. Respondent made no attempt to have the complaint reinstated, nor was Ms. Ellis informed that the matter had been

[1]The motion to restore was granted, subject to the condition that any recovery would not exceed the insurance policy limits.

dismissed. Indeed, it was not until the day of the hearing before the ethics committee, November 22, 1989, that Ms. Ellis found out that the matter had been dismissed.

Ms. Ellis often attempted to communicate with respondent to determine the status of her claim. These calls usually went unanswered by respondent. In 1986, Ms. Ellis tried to have another attorney take over this matter, but Ms. Ellis was unsuccessful in her efforts.

In late 1987 or early 1988, respondent spoke with Ms. Ellis. He testified that he told her that the case was probably not practical to pursue due to a welfare lien which could eliminate any actual recovery by her. Respondent testified that he further advised Ms. Ellis of the possibility that the wrong defendant had been named in the complaint, giving rise to difficulties with the statute of limitations and public entity tort claim notice. Ms. Ellis testified that she did not give respondent permission to cease his pursuit of her claim.

The committee found that respondent violated RPC 1.3 in both Ankudovich and Ellis by failing to act with reasonable diligence in pursuing these matters. He also violated RPC 1.4(a) in both matters by failing to respond to his clients' reasonable requests for information. During the proceedings before the committee, the chair informed respondent that, along with the above charges which were alleged in the complaint, other violations would be considered

by the committee.[2] Accordingly, the committee found that respondent was grossly negligent in violation of RPC 1.1(a) by failing to take any action to restore the two complaints after they had been dismissed. The committee found a pattern of neglect, in violation of RPC 1.1(b), in that respondent failed to restore the complaints and failed to communicate with his clients. Respondent violated RPC 1.16(c) by failing to turn over the file in the **Ankudovich** matter to allow another attorney to take steps reasonably necessary to protect the client's interest. In addition, the committee found that respondent violated RPC 8.4(c) in that his failure to advise Mr. Ankudovich and his new attorney that the complaint had been dismissed, as well as his misrepresentation to Mr. Ankudovich that the complaint was proceeding, and his failure to tell Ms. Ellis that her complaint had been dismissed, constituted deceitful conduct.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are supported by clear and convincing evidence. When retained, respondent owed his clients a duty to pursue their interests diligently. See Matter of Smith, 101 N.J.

[2]See transcript of proceedings before the committee, dated November 22, 1989, 23-11 to 24-13.

568, 571 (1968); Matter of Schwartz, 99 N.J. 510, 518 (1985); In re Goldstaub, 90 N.J. 1, 5 (1982). Respondent clearly failed to act with diligence, in violation of RPC 1.3, by failing to provide answers to the interrogatories to opposing counsel even though his clients had provided draft answers to him, which only needed to be placed in final form. The Board finds that allowing the complaints in the Ankudovich and the Ellis matters to be dismissed and taking no action to have them restored constituted gross negligence, in violation of RPC 1.1(a). Moreover, the misconduct in the two matters, taken together, reveals a pattern of neglect, in violation of RPC 1.1(b). In addition, the Board agrees with the findings of the committee that respondent violated RPC 1.16(d) in that, when given an opportunity to protect his clients' interests, he failed to do so.

The Board also finds that respondent failed to keep Mr. Ankudovich and Ms. Ellis reasonably informed about the status of their matters, in violation of RPC 1.4. An attorney's failure to communicate with his clients diminishes the confidence the public should have in members of the bar. Matter of Stein, 97 N.J. 550, 563 (1964). The Board also agrees that there has been a violation of RPC 8.4(c), in that respondent directly misrepresented to his clients that the matters were proceeding on course.

In considering the appropriate quantum of discipline, the Board has considered respondent's lack of contrition before the Board. Respondent apparently continues under the misapprehension that it was neither necessary nor important to advise his clients

that their cases had been dismissed, due to the ease with which their complaints could be restored. The Board would find greater merit in this "theory", had respondent promptly attempted to restore the Ankudovich and Ellis matters.

The purpose of discipline is not the punishment of the offender, but "protection of the public against an attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout, 76 N.J. 321, 325 (1978). The severity of the discipline to be imposed must comport with the seriousness of the ethical infraction in light of all the relevant circumstances. In re Nigohosian, 86 N.J. 308. 315 (1982). Mitigating factors are, therefore, relevant and may be considered. In re Hughes, 90 N.J. 32, 36 (1982).

In Matter of Rosenblatt, 114 N.J. 610 (1989), the Court publicly reprimanded an attorney for displaying gross neglect in a personal injury action and for failing to respond to his client's numerous requests for information over a four-year period. The attorney had received a public reprimand seventeen years earlier for neglecting two personal injury matters. In Matter of Borden, 112 N.J. 620 (1988), the attorney received a public reprimand for gross neglect in a wrongful death action resulting in its dismissal. The attorney repeatedly misrepresented the status of the case to his client. In 1982, he had been privately reprimanded for failing to complete a case and for failing to communicate for a period of over four years.

The Board is of the opinion that the totality of respondent's misconduct merits a public reprimand. The Board unanimously so recommends.

In making its recommendation, the Board has taken into account that the two within cases are the only matters concerning respondent that have been brought to the Board's attention during the over thirty-year span of respondent's career.

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

Dated: 7/23/99

By: _____
Raymond R. Trombadore
Chair
Disciplinary Review Board