

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 99-017

IN THE MATTER OF
STEVEN T. MULLER,
AN ATTORNEY AT LAW

Decision

Argued: March 18, 1999

Decided: May 10, 1999

James R. Stevens, Esq., appeared on behalf of the District IIA Ethics Committee.

John E. Selser appeared on behalf of respondent.

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

This matter was before the Board based on a recommendation for discipline filed by the District IIA Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1983 and maintains an office for the practice of law in Bergenfield, Bergen County.

The complaint alleged violations of RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with the client) in a divorce action.

ETHICS HISTORY

On February 4, 1991 respondent received a private reprimand for violations of RPC 1.3, RPC 1.4(a) and RPC 8.1(b). In that matter, respondent failed to take action on his client's behalf for five months after accepting a \$500 retainer.

* * *

In or about June 1994 Andreas Lignos retained respondent to represent him in a divorce proceeding. On June 10, 1994 respondent received a \$750 flat fee for the representation. Lignos testified at the DEC hearing about the subsequent events.

According to Lignos, there were no problems with the representation until after he and respondent attended a court hearing in August 1994. At that time, the judge required an updated affidavit of non-military service, prior to entry of the judgment of divorce. Lignos testified that respondent promised the judge that he would forward that document to the court within "a week or two." Lignos had no knowledge if respondent had ever filed the affidavit.

Lignos also testified that his son had retained respondent to represent him in some unrelated legal matters. Lignos stated that, interested in following his son's litigation, he visited respondent's office every other week from September 1994 through approximately October 1996. According to Lignos, whenever possible, he asked respondent about his son's case. Lignos testified that, on those unspecified occasions, respondent promised to ascertain the status of the divorce proceedings, but never did so. Apparently frustrated with respondent's handling of the matter, in October 1996 Lignos warned respondent that, if he did not obtain a judgment of divorce within thirty days, Lignos would file an ethics complaint against him. Shortly thereafter, respondent contacted the court and was informed that the case had been administratively dismissed. According to the ethics complaint, the complaint was dismissed on January 22, 1996 for "lack of subject matter jurisdiction." Lignos testified that he was unaware, until after the filing of his ethics grievance in 1996, that the case had been dismissed.

Respondent admitted that he did not advise Lignos of the dismissal. Respondent asserted that, after learning of the dismissal, he tried to obtain a consent judgment from his adversary. Respondent had no explanation for the additional delay from November 1996 through November 1997, when he reopened the case and obtained a final judgment, with his adversary's consent. Indeed, the final judgment was not entered until December 8, 1997, some three and one-half years after the beginning of the representation.

In admitting a violation of RPC 1.3, respondent stated as follows:

After that, after we appeared [at the August 1994 court hearing], the case got away from me. I made a mistake, there's no two ways about it. I should have followed up on the thing. It was just as I recall, the main times I saw Mr. Lignos in the office, it was about John and about Sol Rosen moving to Fort Lee and going into partnership with somebody else. And those people were about to sell the business and there were numerous meetings and documents that went back and forth and complaints, and I just lost the handle on it.

With regard to the allegation of a violation of RPC 1.4(a), respondent testified that Lignos frequently visited his office to discuss pending legal matters. According to respondent, Lignos had taken a keen interest in his son's legal and business affairs. Respondent had no specific recollection, however, of discussing the divorce with Lignos on any of those occasions that Lignos accompanied his son to respondent's office. Likewise, respondent had no recollection of having informed Lignos about the status of his case after the hearing in August 1994. Furthermore, respondent conceded that he never disclosed to Lignos that his complaint had been dismissed or that there were problems in the case. Indeed, the record contains no evidence that respondent ever contacted Lignos about the case after August 1994.

* * *

The DEC found a violation of RPC 1.3, for respondent's admitted lack of diligence in pursuing the case and RPC 1.4(a), for his failure to keep Lignos adequately informed

about the events in the case, particularly after he found out about the dismissal of the complaint.

The DEC recommended a reprimand, citing respondent's prior ethics history.

* * *

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

Undeniably, respondent violated RPC 1.3. In fact, he admitted that he displayed a lack of diligence in pursuing Lignos' case. To his credit, respondent made no excuse for his misconduct, candidly admitting that the case had "gotten away" from him. In fact, respondent's conduct rose to the level of gross neglect, as evidenced by his failure to move swiftly to restore the complaint, once he learned, in late 1996, that it had been dismissed. Respondent had no explanation for the one-year delay from late 1996 until late 1997, when he finally restored the complaint and obtained a judgment of divorce. Although respondent was not specifically charged with a violation of RPC 1.1(a), the facts in the complaint gave him sufficient notice of the alleged improper conduct and of the potential violation of that RPC. Furthermore, the record developed below contains clear and convincing evidence of a violation of RPC 1.1(a). Respondent did not object to the admission of such evidence in

the record. In light of the foregoing, the Board deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

With respect to the alleged violation of RPC 1.4(a), while it appears that Lignos had substantial contact with respondent at respondent's office during the pendency of his matter and thereafter, it is also apparent that respondent did not communicate to Lignos the true nature of his case during those office visits. Indeed, respondent did not know the status of the case. In addition, once respondent was made aware that the case had been dismissed, he failed to advise Lignos of the dismissal. In fact, respondent kept Lignos in the dark for the better part of four years. Clearly, then, respondent violated RPC 1.4(a) for his failure to communicate the status of the matter to his client, despite Lignos' repeated attempts to gather that information. In fact, respondent violated RPC 8.4(c) (misrepresentation) as well, by failing to disclose to Lignos the true posture of the case, that is, that the complaint had been dismissed. Again, although respondent was not specifically charged with a violation of RPC 8.4(c), the record developed below contains clear and convincing evidence of a violation of that rule. Respondent did not object to the admissions of such evidence in the record. Therefore, the Board deemed the complaint amended to conform to the proofs. R. 4:9-2; In re Logan, supra, 70 N.J. 222, 232 (1976). Respondent admitted that he did not notify Lignos of the dismissal, a critical omission, when he learned of it in late 1996, although he did have subsequent conversations with Lignos. "In some situations, silence can be no less a misrepresentation than words." Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984).

Discipline ranging from an admonition to a reprimand is generally appropriate when an attorney is guilty of gross neglect, lack of diligence or failure to communicate in one or several matters. See, e.g., In the Matter of Paul Paskey, DRB 98-244 (1998) (admonition imposed where the attorney exhibited gross neglect, lack of diligence and failure to communicate with the client by twice allowing a complaint to be dismissed and failing, over a four-year period, to apprise the client of the dismissals or to reply to the client's numerous requests for information.); In the Matter of Ben W. Payton, DRB 97-247 (1998) (admonition imposed where the attorney exhibited gross neglect, lack of diligence and failure to communicate with the client. After filing a complaint four days after the expiration of the statute of limitations, the attorney allowed it to be dismissed for lack of prosecution. Moreover, the attorney never informed his client of the dismissal.); In re Carmichael, 139 N.J. 390 (1995) (reprimand imposed where the attorney showed a lack of diligence and failure to communicate in two matters. The attorney had a prior private reprimand); In re Wildstein, 138 N.J. 48 (1994) (reprimand imposed where the attorney showed gross neglect and lack of diligence in two matters and a failure to communicate in a third matter); and In re Gordon, 121 N.J. 400 (1990) (reprimand imposed where the attorney showed gross neglect and a failure to communicate in two matters). However, where, as here, misrepresentation is present, a reprimand is required. In re Kasdan, 115 N.J. 472 (1989). The Board unanimously determined that respondent should be reprimanded.

Three members did not participate. The Board considered respondent's prior similar misconduct as an aggravating factor.

The Board also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Dated: 5/10/99.



LEE M. HYMERLING
Chair
Disciplinary Review Board