

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 98-466

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IN THE MATTER OF  
SIDNEY S. KANTER,  
AN ATTORNEY AT LAW

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Decision

Argued: February 11, 1999

Decided: June 9, 1999

William D. Sanders appeared on behalf of the District VB Ethics Committee.

Respondent appeared pro se.

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

These matters were before the Board based on a recommendation for discipline filed by the District VB Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1972. At the time of the alleged ethics infractions, he maintained a law office in Irvington, Essex County.

The eight-count complaint alleged misconduct in seven personal injury matters, charging respondent with abandonment of his clients. The individual counts of the complaint alleged combinations of RPC 1.16(d) (failure to turn over client files upon termination of the representation), RPC 1.3 (lack of diligence) and RPC 1.4(a) (failure to communicate with clients). Separate counts alleged violations of RPC 1.1(b) (pattern of neglect) and RPC 8.1(b) (failure to cooperate with disciplinary authorities) in all seven matters.

On September 27, 1995 respondent was temporarily suspended from the practice of law for failure to comply with a demand for a random audit. See In re Kanter, 142 N.J. 470 (1995). The suspension remains in effect to date. On June 3, 1997 respondent was suspended for two years for misconduct in eleven matters, including gross neglect, lack of diligence, failure to communicate, failure to turn over files upon termination of the representation, failure to expedite litigation, conduct involving dishonesty, deceit or misrepresentation and failure to cooperate with disciplinary authorities. See In re Kanter, 149 N.J. 396 (1997).

In addition there is a matter pending Board decision alleging gross neglect, failure to communicate, lack of diligence and failure to utilize retainer agreements in six matters. In the Matter of Sidney S. Kanter, DRB Docket No. 98-172.

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The Jackson Matter

In or about December 1993 William W. Jackson retained respondent to represent him in a personal injury action. Jackson did not testify at the DEC hearing because he could not be located.

Subsequently, in 1995, Jackson retained new counsel. According to counsel's testimony, Jackson had consulted with him as early as August 1994 to help him ascertain the status of his case. On August 16, 1994 counsel sent a letter to respondent requesting Jackson's file. Hearing nothing from respondent, counsel wrote additional letters on September 6 and September 20, 1994. Finally, by letter dated September 30, 1994 counsel advised Jackson that respondent had not complied with his repeated requests for the file. He also recommended that Jackson file an ethics grievance against respondent. Finally, counsel testified that, due to respondent's failure to turn over the file, he was forced to reconstruct it from other sources.

There is no evidence or testimony in the record with regard to the status of Jackson's case when counsel took over the representation. However, counsel testified that the case was ultimately settled.

The complaint alleged a violation of RPC 1.16(d) for respondent's failure to turn over Jackson's file upon termination of the representation.



Respondent elected not to testify about the Jackson matter. In a blanket statement to the DEC, however, respondent admitted not forwarding the files to new counsel in all of the within matters. Respondent had no recollection of communicating the status of any of these matters to his clients.

### The Green Matter

In or about August 1994 Michele Green asked the same new attorney involved in the Jackson matter to assist her in obtaining information from respondent about her personal injury action. Green did not testify at the DEC hearing. The attorney testified that he sent a series of letters to respondent on August 4, August 30 and September 20, 1994, none of which prompted a response. On September 30, 1994 the attorney wrote to Green and recommended that she file an ethics grievance against respondent. According to the attorney, in October or November 1995 he obtained Green's file from the "trustee," Robert Abromowitz.<sup>1</sup> The attorney then learned that the statute of limitations had expired prior to Green's initial contact with him. Respondent had not filed a complaint. The attorney then notified Green that her only remedy was a malpractice claim and that she should consult with another attorney in that regard.

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<sup>1</sup> Although the record is not clear on this issue, reference is made in several of these matters to a "trustee" assigned to oversee respondent's files, presumably after he was temporarily suspended.



The complaint alleged violations of RPC 1.4(a) (failure to communicate with the client) and RPC 1.16(d) (failure to protect clients' interests upon termination of the representation).

With respect to the alleged violation of RPC 1.4(a), the attorney testified that Green sought his counsel as a result of respondent's failure to keep her informed about her case. The attorney also testified that his review of the underlying case, which included extensive medical treatment for Green's injuries, suggested that she had lost a valid claim through respondent's failure to prosecute the case.

Respondent offered no testimony or evidence that he kept Green informed about the case, prosecuted the case or turned over the file to the attorney upon termination of the representation.

#### The King Matter

In or about June 1990 Gwendolyn King retained respondent to represent her in an action arising out of injuries sustained in an automobile accident. King testified at the DEC hearing that, approximately three months after the accident, she experienced difficulty contacting respondent. She stated that she called his office every three weeks for some time beyond 1990, leaving messages on his answering machine. King recalled that, in her final meeting with respondent, he advised her that either he or the judge in her case had a backlog of drug cases that took precedence over her matter. King was unsure if respondent intended

to mislead her in this regard. In fact, respondent met with King on approximately ten separate occasions, according to King. However, King testified that, during those meetings, respondent never advised her about the actual status of her case. The record is unclear as to what respondent told King about the status of her case on those occasions.

Furthermore, according to King, respondent never served her with interrogatories or advised her of any specific measures undertaken to prosecute her claim. At some unspecified point in time, King resorted to visiting respondent's office unannounced, approximately once every two weeks. Sometime in 1992 King found the office closed and padlocked.

Thereafter, according to King, she called several other attorneys about her case. She testified that no attorney would represent her because the statute of limitations had expired. Finally, King simply abandoned the matter until the DEC contacted her in 1995. She then filed her grievance on February 24, 1995.

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

Respondent presented no evidence or testimony to refute King's version of events.

#### The Sessoms Matter

The record in this matter is not well-developed. Respondent's successor attorney testified that on September 12, 1994 Arthur Sessoms retained him to pursue a personal injury action previously handled by respondent. According to the new attorney, he prepared and

sent to respondent a letter signed by Sessoms, requesting the file. On September 30, 1994 the attorney sent his own letter to respondent, again requesting the file. The attorney testified that respondent never acknowledged that letter and never sent him the file.

In or about December 1995 the attorney obtained the file from the trustee. According to the attorney, it contained no police report or correspondence with Sessoms regarding the case. The attorney recalled securing a police report on his own and determining that the statute of limitations had expired. Respondent had not filed a complaint.

The complaint alleged violations of RPC 1.4(a) (failure to communicate with the client) and RPC 1.16(d) (failure to protect client's interests upon termination of the representation).

For his part, respondent did not deny receiving Sessoms' and the new attorney's letters requesting the file. He presented no evidence to refute the allegations that he had failed to turn over the file upon termination of his representation or that he had failed to file a complaint.

### The Kitchen Matter

In or about 1989 Luella Kitchen, James Kitchen and their grandson, Kareem McClay, were involved in an automobile accident. They retained respondent to represent them shortly thereafter. As none of the three grievants testified at the DEC hearing, little is known about the events that took place up until April 1994, when they met with new counsel.



According to the new attorney, the Kitchens were anxious to determine the status of their case and could not obtain answers from respondent. Therefore, the attorney helped the Kitchens prepare and send to respondent an April 11, 1994 letter requesting their file. On April 13 and November 7, 1994 the new attorney sent his own letters to respondent requesting the files. According to the new attorney, those letters went unanswered.

The new attorney also testified that, after he received the file from the trustee in late 1995, he noticed that respondent had filed a complaint in the Kitchens' behalf. The complaint had been dismissed for lack of prosecution. However, after four notices of dismissal had been sent to respondent between January and May 1993. The dismissal was dated May 21, 1993.<sup>2</sup> Finally, the attorney testified that he was successful in reinstating the Kitchens' complaint in August 1996.

The complaint alleged violations of RPC 1.3 (lack of diligence) and RPC 1.16(d) (failure to protect client's interests upon termination of the representation).

Respondent testified that his office was closed in September 1995, following his temporary suspension. Thereafter, all correspondence and pleadings were sent to the trustee. Respondent had no recollection of receiving the attorney's various letters requesting the Kitchens' file. Respondent admitted that he took no action to turn over the files to the attorney, prior to his temporary suspension.

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<sup>2</sup> There was some testimony, both from the new attorney and respondent, that respondent filed an opposition to at least one of the notices to dismiss. However, it is obvious that respondent ultimately abandoned the case.

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Respondent made several general arguments in his own behalf. He argued that the within matters should have been heard with those matters for which he had already been disciplined. Respondent also argued that he had already received enhanced discipline in the case involving eleven default matters, for which he received a two-year suspension. Although respondent's argument was somewhat incomplete, presumably he meant that no additional discipline was warranted for the alleged misconduct in these matters because of the harsh discipline already meted out in the default case.

Also, respondent cited a memorandum prepared by Office of Board Counsel (respondent's ethics history), which stated that the within seven matters were placed on "untriable status" by the Office of Attorney Ethics ("OAE") and that the OAE had determined that the matters were "merely cumulative." Respondent argued that the language "merely cumulative" must have meant that the matters were deemed not worth pursuing. Therefore, according to respondent, all of the present matters should be dismissed.

Respondent offered testimony in mitigation of his actions. That testimony mirrored his prior testimony in the matters heard by the Board in September 1998. In essence, respondent urged the DEC to consider his mental state during the time period from approximately 1994 through his temporary suspension in 1995. Respondent claimed that a

series of events had made it almost impossible for him to face life, let alone his legal practice. He claimed that his life began to unravel when he became embroiled in his own divorce in 1994. A simultaneous secret affair produced a child in February 1994. The child later developed brain cancer at the age of sixteen months. Ultimately, the child recovered, but only after intense treatment, which, according to respondent, required significant time away from his practice in the latter part of 1995. Later, respondent learned that the child in fact was not his. Soon thereafter, in September 1995, he was temporarily suspended and sought psychiatric care. Respondent did not support his contentions with any documentation, including a psychiatric report.

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In Jackson, the DEC found a violation of RPC 1.16(d) for his failure to turn over Jackson's file upon termination of the representation. In Green, the DEC found violations of RPC 1.4(a) for respondent's failure to inform Green of the statute of limitations and RPC 1.16(d) for his failure to turn over the file upon termination of the representation. In King, the DEC found violations of RPC 1.3 and RPC 1.4(a), citing respondent's failure to prosecute the case and to reply to King's requests for information about the case. In Sessoms, the DEC found a violation of RPC 1.4(a) for respondent's failure to communicate with Sessoms and RPC 1.16(d) for his failure to turn over the file to new counsel. In



Kitchen, the DEC found violations of RPC 1.16(d) for respondent's failure to forward the Kitchens' file to the new attorney upon his termination of the representation and RPC 1.3 for respondent's failure to prosecute the case.

The DEC also found that respondent's misconduct in all of the within matters constituted a pattern of neglect, in violation of RPC 1.1(b). A separate count alleging failure to maintain a bona fide office was dismissed.

Finally, the DEC found a violation of RPC 8.1(b) for respondent's failure to cooperate with the disciplinary authorities in the investigative phase of the case.

The DEC recommended a one-year suspension, to be served consecutively to any outstanding suspensions, with reinstatement only upon proof of fitness to practice and a proctorship for an unspecified period of time.

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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.

There is no question that respondent neglected the within seven matters in the same fashion that he neglected the prior matters that resulted in two separate suspensions, totaling

three years in duration. Indeed, the seven cases now before the Board are the remnants of respondent's misconduct in the prior disciplinary matters.

The complaint in Jackson alleged a violation of RPC 1.16(d) for respondent's failure to turn over Jackson's file upon termination of the representation. Respondent admitted as much at the DEC hearing. Therefore, the Board found a violation of RPC 1.16(d). However, the record contains additional evidence of misconduct in Jackson, as detailed below.

Jackson's new attorney testified that Jackson sought him out because of difficulty in obtaining information from respondent about the case. Indeed, respondent made a general admission that he did not attempt to inform his clients, including Jackson, about the nature and status of their cases. Respondent's misconduct in this regard violated RPC 1.4(a). Likewise, respondent offered no evidence to rebut the new attorney's testimony that respondent had allowed the statute of limitations in Jackson's case to expire. In fact, respondent chose not to testify or present evidence in the Jackson case. Hence, the record supports a finding that respondent also violated RPC 1.1(a) and RPC 1.3 in this matter.<sup>3</sup> Although respondent was not specifically charged with those particular rule violations, the facts in the complaint gave him sufficient notice of the alleged improper conduct and of the potential violation of both RPC 1.1(a) and RPC 1.3. Furthermore, the record developed below contains clear and convincing evidence of a violation of RPC 1.1(a) and RPC 1.3.

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<sup>3</sup>Although merely overlooking the statute of limitations period, without more, constitutes simple neglect and not an ethics infraction, when the attorney is aware that the statute of limitations is about to expire and neglects to file a complaint, that conduct rises to the level of gross neglect.

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. Rule 4:9-2; In re Logan, 70 N.J. 222, 232 (1976).

In Green, respondent conceded both failing to turn over the file upon termination of the representation and failing to inform Green about the status of her matter, violations of RPC 1.16(d) and RPC 1.4(a), as charged in the complaint. However, according to Green's new attorney, respondent had allowed the statute of limitations to expire without filing a complaint. Respondent did not refute this allegation at the DEC hearing or present any evidence to the contrary. In fact, respondent chose not to testify about that aspect of the case. Therefore, the Board deemed the complaint amended to conform to the proofs and found that respondent violated RPC 1.1(a) and RPC 1.3. In re Logan, supra, 70 N.J. 222, 232 (1976).

In King, which alleged violations of RPC 1.3 and 1.4(a), respondent's admission that he failed to communicate the important aspects of the case to his client, coupled with King's testimony that she was unable to contact respondent on numerous occasions, supports a finding of a violation of RPC 1.4(a). In addition, King testified that she never received interrogatories and did not know if respondent had filed a complaint in her behalf. King also stated that she spoke to several attorneys about her case, after terminating respondent's representation, and only then learned that the statute of limitations in her matter had already expired. Respondent did not rebut King's testimony or offer evidence to the contrary. Under



the circumstances, the Board deemed the complaint amended and found a violation of RPC 1.1(a). In re Logan, supra, 70 N.J. 222, 232 (1976).

In Sessoms, respondent admitted that he did not apprise his client of the important aspects of the case, in violation of RPC 1.4(a). Indeed, Sessoms' new counsel testified that the file obtained from the trustee contained no evidence of written communications with Sessoms. Respondent further admitted that he did not forward Sessom's file to the new attorney, despite the latter's and Sessoms' efforts to obtain it. Respondent's conduct in this context violated RPC 1.16(d). The record also establishes that respondent violated RPC 1.1(a) and RPC 1.3 in this matter. Indeed, the new attorney's review of the file showed that respondent had not filed a complaint within the statute of limitations period. Respondent offered no contrary evidence at the DEC hearing on this issue and chose not to testify about the matter. Under In re Logan, supra, 70 N.J. 222, 232 (1976), the Board found violations of both RPC 1.1(a) and RPC 1.3.

In Kitchen, according to the new attorney, the file obtained from the trustee indicated that respondent had filed a complaint and that the complaint ultimately had been dismissed in May 1993 for lack of prosecution. Respondent did not refute these allegations. Therefore, the Board determined that, in addition to the violation of RPC 1.3 alleged in the complaint, respondent also violated RPC 1.1(a) by allowing the complaint to be dismissed for lack of prosecution and then not filing a motion to reinstate it. In re Logan, supra, 70 N.J. 222, 232 (1976). By his own admission, respondent failed to alert the Kitchens to the events in the

case, including the dismissal, in violation of RPC 1.4(a). Respondent also admitted failing to turn over the file to the new attorney, upon termination of the representation. In this regard, respondent violated RPC 1.16(d).

With respect to the charge of a violation of RPC 1.1(b) (pattern of neglect), there is no question that respondent's gross neglect in these matters constituted a pattern. In fact, a pattern also emerged in the earlier proceedings for which respondent has already received discipline. Respondent did not refute the allegation of a pattern of neglect. Accordingly, the Board concluded that respondent's conduct in all seven matters violated RPC 1.1(b).

As to respondent's several arguments regarding procedural aspects of his case, first it should be noted that the entire controversy doctrine does not apply to ethics matters. Even if it did, these are entirely separate matters involving separate clients. Secondly, the Board gave no weight to respondent's assertion that the matters should be dismissed because the OAE had placed them on "untriabable" status as "merely cumulative." The OAE made an administrative decision to hold the matters for purposes of efficiency, as it often does, pending future proceedings. R. 1:20-2(b).

As to mitigation, the Board found, as it had in the matter under Docket No. DRB 98-172, that respondent's personal problems occurred largely after he abandoned these clients. Thus, the Board gave little weight to the mitigation advanced by respondent as to his conduct in these matters, with one exception. Respondent's asserted mental condition served to

partially explain and hence mitigate his failure to cooperate with the investigation of these matters. Therefore, the Board determined to dismiss the alleged violation of RPC 8.1(b).

In sum, it is obvious that, as in prior matters, respondent abandoned these clients. Indeed, altogether respondent abandoned clients in twenty-four matters. Eleven of those matters proceeded on a default basis and resulted in a two-year suspension in June 1997. The Board heard six more matters in September 1998 and recommended an additional one-year suspension. At that time, the Board determined that the addition of six matters was not sufficient to warrant disbarment, distinguishing respondent's actions from that displayed by the attorney in In re Spagnoli, 115 N.J., 504 (1989)(disbarment for misconduct in fourteen matters, including defrauding the clients by taking retainers without any intention to pursue their matters; the attorney also failed to appear before the DEC, the Board and the Court.)

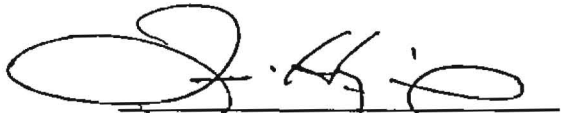
In weighing the discipline to be imposed, the Board considered that, if all twenty-four matters had been heard together, the discipline would probably have been a three-year suspension or disbarment. The Board has determined, however, that disbarment is not required, finding that respondent's misconduct, while egregious, was distinguishable from Spagnoli's. Here, no fraud was involved and, in addition, respondent appeared at the DEC and at the Board hearings. After balancing the considerable number of cases and clients abandoned with respondent's admission of wrongdoing, a six-member majority of the Board voted to impose an additional one-year suspension, to be served at the expiration of the one-year suspension meted out in DRB 98-172. See In re Grossman, 138 N.J. 90 (1994) (three-



year suspension imposed where attorney signed a judge's name to a divorce judgment and gave it to his client to cover up his mishandling of the case. The attorney also abandoned approximately two hundred cases after misrepresenting to the courts and clients that the cases had been settled) and In re Terry, 137 N.J. 4 (1994)(three and one-half year-suspension imposed for abandoning three clients, failure to deliver funds to a third party and failure to cooperate with the disciplinary authorities). The Board further required that respondent furnish proof of fitness to practice from a psychiatrist approved by the Office of Attorney Ethics prior to reinstatement, take the ICLE professional responsibility courses and, upon reinstatement, practice under the supervision of a proctor approved by the Office of Attorney Ethics, until further order of the Court. One member voted for disbarment. Two members did not participate.

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

Dated: 6/9/95

  
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LEE M. HYMERLING  
Chair  
Disciplinary Review Board