

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 98-284

IN THE MATTER OF :
ALAN S. PORWICH :
AN ATTORNEY AT LAW :

Decision

Argued: September 17, 1998

Decided: January 11, 1999

Joseph Talafous, Jr. appeared on behalf of the District VI Ethics Committee.

Gerald Miller appeared on behalf of the 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 VI Ethics Committee ("DEC"). Respondent was admitted to the New Jersey bar in 1979 and maintains a law office in Jersey City, Hudson County. Respondent has no prior ethics history.

Three separate complaints alleged that respondent exhibited gross neglect, pattern of neglect, lack of diligence, failure to communicate with his clients and failure to cooperate with disciplinary authorities in five matters.

The Washington Matter

The complaint alleged violations of RPC 1.4(a) (failure to communicate) and RPC 8.1(b) (failure to cooperate with the disciplinary authorities).

Marie Washington, the grievant in this matter, testified that she retained respondent in or about 1990 to represent her in an action against an automobile dealer from whom she had purchased a new car in 1987. According to Washington, from approximately 1990 through 1997 she attempted to contact respondent regarding her case. She testified as follows:

After years of contacting him after him telling me continuously that he was working on it and just continuously telling me that he was working on the case, maybe years. The case was over seven years, maybe.

Well, I was just totally disgusted and disappointed with him as an attorney. I never knew that you, you know — you know, attorneys could be or do what he did. It had gotten to the point, you know, that I was just like outraged with him because of the constant telling me things that he wouldn't do. He even went as far as to — told me — told me that he filed — filed the paperwork in the courts; and I checked and found out and he sent me a Federal Express docket to my house; and when I checked in the courts, there were never — there was never a docket number or anything given . . .

For his own part, respondent testified that he was retained to file suit because Washington was dissatisfied with the arbitration determination granting a credit for the purchase of a new automobile of the same make and model as the car that she had originally purchased. Respondent recalled preparing a complaint and reviewing it with Washington. Respondent admitted, however, that he did not file the complaint. Respondent further admitted that he failed to reply to Washington's requests for information about her case. Also, respondent conceded that "[e]ither I did not respond or when she asked me what the status was I probably misled her as to what was going on."

The Menquez Matter

This matter was dismissed at the DEC hearing because of an inability to locate the grievant.

The Lopez Matter

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3(lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 8.1(b) (failure to cooperate with the disciplinary authorities).

Raymond Lopez, the grievant in this matter, testified that in March 1992 he retained respondent to file an appeal from a decision by the State of New Jersey Department of Personnel. According to Lopez, respondent filed the appeal in April 1992. Thereafter, he

called respondent "several times" for information about his case. In May 1996 Lopez contacted the Appellate Division and learned that his case had been dismissed for respondent's failure to file a brief. Lopez then contacted respondent, who claimed that he was unaware that the matter had been dismissed. According to Lopez, respondent promised to have the matter reinstated. However, by November 1996 it was clear to Lopez that the matter was not progressing. Therefore, he filed the within grievance.

Respondent testified that he prepared a notice of appeal to the Appellate Division, as well as a case information statement. Respondent admitted that he did not file the required brief, however.

The Gariazzo Matter

In April 1993 Sara Gariazzo, the grievant, retained respondent to file suit for injuries stemming from her exposure to gasoline and exhaust fumes during the years 1991 and 1992. Because Gariazzo did not speak English, the DEC utilized a translator. Nonetheless, Gariazzo's testimony was almost unintelligible. However, in respondent's answer to the complaint, he admitted the following:

On or about April 14, 1993 respondent entered into a contingency fee agreement with Gariazzo regarding her matter. At that time, Gariazzo gave respondent numerous documents regarding her case. Respondent drafted a complaint, but he never filed it. Respondent also admitted that Gariazzo made numerous attempts to ascertain the status of her matter and that

he ignored her requests for information. Respondent admitted violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b).

Respondent presented evidence in mitigation of his misconduct. According to respondent, during the years 1993 through 1995 he was beset by stressful family problems, including the death of his father in 1989. Respondent finally sought psychiatric care in February 1996. According to respondent, he continues to see a psychiatrist and takes antidepressant medication to combat his condition. Respondent offered several letters from Patricia M. Brady, ED. D. and Elizabeth K. Senekjian, M.D. about his treatment.

* * *

In Washington, Lopez and Gariazzo, the DEC found violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b). As previously noted, the DEC dismissed the Menquez matter because the grievant could not be located.

The DEC recommended a reprimand, with the requirement that respondent practice under the supervision of a proctor for a period of six months. In addition, the DEC recommended ten hours of continued legal education in the area of professional time-management and stress reduction.

* * *

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

In essence, respondent admitted all of the allegations contained in the complaints in Washington, Lopez and Gariazzo. Respondent's admissions contained in the various answers to the complaints explain the truncated DEC hearing. In Washington, respondent admitted violations of RPC 1.4(a) and 8.1(b), the only charges contained in the complaint. The DEC found violations of RPC 1.1(a) and RPC 1.3, which were not charged in the complaint. Moreover, the DEC did not amend the complaint to include these charges. Nonetheless, Washington's unrefuted testimony was that respondent failed to file or otherwise prosecute her case. She further testified that respondent misrepresented to her that her case had been filed. At the DEC hearing, respondent admitted misleading her. Given these facts, the Board deemed the complaint amended to conform to the proofs, finding a violation of RPC 8.4(c). In re Logan, 70 N.J. 222, 232 (1976).

In his answer to the complaint in Lopez, respondent admitted violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b). Similarly, in his answer to the complaint in Gariazzo, respondent admitted violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC

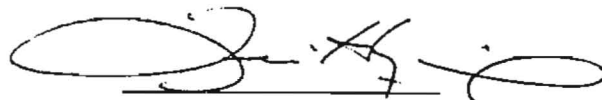
8.1(b). Finally, respondent admitted that his misconduct in these matters amounted to a pattern of neglect, in violation of RPC 1.1(b).

In cases dealing with misrepresentations, often accompanied by gross neglect, lack of diligence and failure to communicate with the client, the appropriate degree of discipline is generally either a reprimand or a short term of suspension. See, e.g., In re Cervantes, 118 N.J. 557 (1990) (reprimand imposed where the attorney failed to pursue two workers' compensation matters, exhibited a lack of diligence and failed to keep the clients reasonably informed of the status of the matters; in one matter, the attorney misrepresented the status of the case); In re Martin, 120 N.J. 443 (1990) (public reprimand imposed where the attorney displayed a pattern of neglect in six matters, in addition to misrepresenting to a client in one of the matters that the case was pending, when the attorney knew that the case had been dismissed.); In re Bernstein, 144 N.J. 369 (1996) (three-month suspension imposed where the attorney exhibited gross neglect, lack of diligence, failure to communicate with the client and misrepresentation, in addition to failure to cooperate with the disciplinary authorities; prior private reprimand for similar misconduct.); and In re Chen, 143 N.J. 416 (1996) (three-month suspension imposed where the attorney engaged in a pattern of neglect, misrepresentation, failure to communicate with the client and failure to cooperate with the disciplinary authorities in two matters; prior reprimand for gross neglect and failure to communicate in two matters).

Here, respondent acted unethically in four matters, including misrepresentation of the status of the case in one matter. In mitigation, respondent presented evidence that, beginning with the death of his father in 1989, he experienced family problems that he described as "crippling" from 1993 to 1995, and has been under psychiatric care since 1996. After balancing respondent's misconduct with the mitigating circumstances in this case, the Board unanimously determined to impose a reprimand, with the further requirements that respondent practice under a proctor approved by the Office of Attorney Ethics for a period of two years and that respondent complete ten hours of courses in the area of law office management, also approved by the Office of Attorney Ethics.

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

Dated: 1/11/99



LEE M. HYMERLING
Chair
Disciplinary Review Board