

order  
5/11/99

m

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 98-162

\_\_\_\_\_  
IN THE MATTER OF :  
 :  
FREDERICK F. FITCHETT, III, :  
 :  
AN ATTORNEY AT LAW :  
\_\_\_\_\_  
 :

Decision

Argued: July 23, 1998

Decided: December 14, 1998

Louis Hasner appeared on behalf of the District IV Ethics Committee.

Saul Steinberg 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 IV Ethics Committee ("DEC"). The one-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit and misrepresentation). The charges stemmed from respondent's inaction in a personal injury and workers' compensation matter.

Respondent was admitted to the New Jersey bar in 1976. He maintains a law practice in Voorhees, New Jersey. Respondent has no history of discipline.

Although the parties entered into a stipulation of facts, testimony was also presented at the DEC hearing.

During the relevant time period, from 1976 to approximately 1989, respondent was employed by the firm of Fratto, Little, Alessi & Abbott. The grievant in this matter, James F. Tate, III, was employed by New York Times Cable Television, Inc. While on the job in September 1983, Tate sustained injuries when he was assaulted by several construction workers at the work site. Tate retained the law firm of Fratto, Little, Alessi & Abbott to represent him in a personal injury matter and a workers' compensation claim. Charles Little, a member of the firm, was representing Tate at that time. In early 1986 Little accepted a judgeship and left the firm. Prior to leaving, Judge Little had filed a workers' compensation claim in December 1983 and a personal injury complaint in August 1985.

Sometime between January and May 1986 respondent assumed responsibility for Tate's cases. In May 1986 respondent executed a stipulation extending the time for the defendant to answer in the personal injury matter. In June 1986 respondent prepared a pre-trial memorandum in the workers' compensation case.

Thereafter, respondent failed to take any action in either of Tate's cases. The workers' compensation case was dismissed in February 1987, based on respondent's failure to appear at the scheduled trial date. Tate, therefore, never received workers' compensation benefits.

As to the personal injury matter, one of the defendant's attorneys, Terry Bruce Stomel, believed that Tate's personal injury claim had been settled for \$5,000 in November 1986. In fact, by letters dated November 17, 1986 and January 5, 1987, Stomel had requested that respondent provide a release and stipulation of dismissal. Respondent, however, failed to comply with either request. The \$5,000 settlement was, therefore, never paid. The record is unclear about the outcome of this matter.

Tate explained that he knew respondent socially. They had met through Tate's mother, who, like respondent, was involved in local politics. According to Tate, once respondent was retained, Tate received very little information about their status. Tate telephoned respondent approximately a dozen times and also saw him in person on approximately twelve occasions. A number of times, Tate had to follow up on his own telephone calls. Each time Tate and respondent talked about the cases, respondent assured Tate that things were progressing or that he was looking into the matters. According to Tate, he believed respondent because he considered respondent to be a friend.

At some point in 1994, eight years after the matters were assigned to respondent, Tate hired another attorney, Jan Evans. It was through his new attorney that Tate learned that respondent had failed to pursue his claims. Evans wrote several letters to respondent, to no avail. When Evans requested that respondent produce Tate's file, respondent stated that he might have misplaced it. Eventually, by letter dated May 2, 1994, Evans threatened to file an ethics grievance against respondent. By letter dated May 11, 1994, respondent acknowledged receipt of Evans' letter:

I have settled a bodily injury case arising out of the same incident as the worker's compensation case you previously mentioned. We obviously had to deal with the worker's compensation lien and litigation costs. The defendants turned out to have no valid insurance and therefore pursuit of the defendants directly was necessitated.

To cover everything I have netted six thousand dollars (\$6,000) for Mr. Tate. By copy of this letter, I am forwarding a draft to him in that amount. I had not yet recovered my fee and costs, but because of Mr. Tate's patience, I am sending the \$6,000 portion owed to him.

[Exhibit 13 to the stipulation]

At the DEC hearing, Tate explained that the \$6,000 check was from respondent's personal account. Tate never cashed the check because, he stated, he had never approved a settlement in any amount. Tate had recalled that, in his initial conversations with respondent, respondent had estimated the value of the case at \$50,000. According to Tate, respondent had never informed him that the case had settled for \$5,000, as evidenced by Stomel's letters.

On a number of occasions Tate requested that respondent give him the docket number of the case to research its status himself. However, respondent would not release the information. In an attempt to obtain the docket number, Tate agreed to execute a handwritten release prepared by respondent. The docket number was, however, illegible.

According to Tate, as a result of his experience with respondent, he felt angry, hurt, disillusioned and disappointed. He felt that a trust or bond had been broken. He believed that his only course of action left was to file an ethics complaint, as recommended by his attorney. Tate felt that respondent had taken advantage of him and had treated him unfairly.

Respondent, in turn, could not recall having any specific conversations with Tate about the matter or being assigned to handle the workers' compensation case. However,

respondent admitted that, since he had signed the pre-trial memorandum in the matter, he must have been involved in that aspect of the case too. According to respondent, he did not recall obtaining notice of a trial date in the workers' compensation matter or having any contact with the workers' compensation carrier.

Respondent testified that in the 1990s, when Tate had asked him about the case, it was just a blur. Respondent had some recollection that the case might have settled and also that he might have told Tate that he would check on the status of the case. Respondent admitted that he did not pay much attention to the matter, that he was avoiding it. At the DEC hearing, when respondent was questioned about why he failed to take care of the matter in the early 1990s, and why he did not inform Tate that he had either lost the file or neglected it, respondent replied as follows:

Well, probably the best way to describe it was I was kind of floored by it. I was embarrassed by it, terribly embarrassed by it, as it became evident to me that there was a problem here. Again I say to you I don't think in the first conversation [with Tate] that it kind of came to me as a problem, I mean, but at some point after a few contacts it became clear to me it was a problem. When I couldn't locate a file, it became to me [sic] now there was a bigger problem, you know, I blew it. I was embarrassed. I knew his mother real well. I knew Jim. I was friends with his mother. I knew Jim personally, felt there was a level of trust there. . . .

[2T51]<sup>1</sup>

According to respondent, he wanted to make Tate "whole" by giving him the \$6,000. He also felt that by assuming personal responsibility for Tate's monetary recovery, he could

---

<sup>1</sup> 2T denotes the transcript of the January 15, 1998 DEC hearing.

save himself some embarrassment and protect his reputation. Respondent stated that, in retrospect, he realized that he was overextended; he was handling hundreds of files, was involved in political activities and was involved in his church.

Respondent testified that he believed that Tate had authorized him to settle the case with Stomel for \$5,000. Although respondent did not specifically recall discussing the liability aspect of the case with Tate, he claimed that he ordinarily discussed with his clients any problems with the case. Respondent stated that he never informed Tate that the file was missing because he was not sure what to do and the entire matter became an embarrassment to him.

As to his letter to Evans, respondent admitted that it contained misrepresentations about the case. Respondent could not explain why he had failed to reconstruct the file once Tate began calling him and once he realized that he could not locate the file.

\* \* \*

The DEC found that, after numerous inquiries by Tate about the status of his files and after respondent's discovery that the files were either lost or misplaced, respondent took no steps to either reconstruct the files or to contact the court about the status of the cases. The DEC found that respondent's failure to pursue the workers' compensation case and the personal injury case amounted to gross negligence.

The DEC found credible Tate's testimony that he had never authorized respondent to settle his claim. The DEC noted that, when both Tate and his attorney confronted respondent, respondent would not admit that he had mishandled either case. The DEC found that, rather than acknowledge his wrongdoing, respondent attempted to "perpetrate a ruse" on Tate. At the DEC hearing, however, respondent admitted that he had mishandled both cases and that his actions were wrong. Respondent explained that he was embarrassed to admit his wrongdoing and that his actions were motivated by a desire to protect his own situation.

The DEC concluded that both respondent's oral representations to Tate and the contents of his May 11, 1994 letter were dishonest, fraudulent and deceitful, in violation of RPC 8.4(c). In mitigation, the DEC considered that respondent had been active in both public service and church-related activities, that he appeared contrite and that he expressed remorse for his failure to pursue Tate's cases. The DEC noted, however, that respondent's inaction caused financial loss to his client. The DEC recommended a reprimand.

\* \* \*

Following a de novo review of the record, the Board is satisfied that the DEC's finding of unethical conduct is supported by clear and convincing evidence.

Although the specific chronology of events is not quite clear, it appears that respondent's last actions in the matters were the filing of a stipulation extending the time for

answer, in May 1986, and the preparation of a pre-trial memorandum, in June 1986. Thereafter, respondent failed to take any further action. It is unclear from the record when Tate started contacting respondent about the status of the cases. However, in early 1994 Tate retained a new attorney, who attempted to obtain information about Tate's cases. When the new attorney was unsuccessful in his attempts, on May 6, 1994 he threatened the filing of an ethics grievance against respondent. It was then that respondent wrote to the attorney, on May 11, 1994, and sent a check to Tate in the amount of \$6,000. It was only when faced with this threat that respondent took action. All of Tate's and his attorney's earlier requests about the status of the cases did not serve to spur respondent to act. To aggravate matters, even when respondent realized that Tate's files were missing, he did nothing to reconstruct them. Lastly, respondent misrepresented to Tate that the cases were proceeding apace.

Respondent's conduct clearly violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client) and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

It is difficult to understand how respondent ignored Tate's cases. Tate apparently was both a client and personal friend. Moreover, respondent was well acquainted with Tate's mother, through their political activities. Respondent even managed her campaigns. While it is noteworthy that respondent has had no history of discipline in more than twenty years of practice and that he might have been overwhelmed with work and other commitments, these factors do not excuse his neglect of Tate's cases.



Under In re Kasdan, 115 N.J. 472 (1989), a reprimand is warranted solely for respondent's misrepresentations to Tate about settling the matter. See also In re Fitzpatrick, 147 N.J. 285 (1997) (attorney reprimanded for failure to communicate with client in a personal injury matter and then misrepresenting the status of the matter to the client).

Although respondent neglected the matters for a significant period of time and misrepresented their status to Tate, in light of respondent's otherwise unblemished record of more than twenty years and his attempt to make his client whole – although not until being threatened with an ethics proceeding – the Board unanimously determined that a reprimand is sufficient discipline for respondent's misconduct.

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

Dated: \_\_\_\_\_

12/4/98

By: \_\_\_\_\_

LEE M. HYMERLING  
Chair  
Disciplinary Review Board

---

*SUPREME COURT OF NEW JERSEY*

*DISCIPLINARY REVIEW BOARD  
VOTING RECORD*

**In the Matter of Frederick F. Fitchett, III  
Docket No. DRB 98-162**

---

**Argued: July 23, 1998**

**Decided: December 14, 1998**

**Disposition: Reprimand**

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hyerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Thompson			x				
<b>Total:</b>			9				

*Robyn M. Hill 12/21/98*  
Robyn M. Hill  
Chief Counsel