

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-368; 97-404 & 97-405

IN THE MATTER OF
FREDERIC H. BROOKS
AN ATTORNEY AT LAW

Decision

Argued: February 5, 1998

Decided: September 28, 1998

Stanley M. Varon appeared on behalf of the District VB Ethics Committee.

Respondent waived appearance.

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 1982 and maintains a law office in East Orange, Essex County. Respondent has no prior ethics history.

Three separate complaints charged respondent with various acts of misconduct in eight matters.

DRB 97-368

The Cadogan Matter - District Docket No. VB-93-59E

The complaint alleged a violation of RPC 8.1(b) (failure to cooperate with the disciplinary authorities) after respondent failed to cooperate with the DEC investigation. Apparently, the DEC investigator had already determined that there was no substance to the grievance but brought the complaint on the basis of respondent's lack of cooperation with the investigation.

The Trent, a/k/a Bradshaw Matter - District Docket No. VB-93-54E

The complaint alleged a violation of RPC 8.1(b)(failure to cooperate with the disciplinary authorities). Here, too, it appears that the DEC investigator determined, during the investigation, that there was no merit to the grievance. However, because of respondent's alleged failure to cooperate in any way with the investigation, the DEC filed a complaint against him.

The Sammie Lee Silas Matter - District Docket No. VB-93-02E

Following his criminal conviction, Silas retained respondent to represent him at sentencing and on appeal. The complaint alleged violations of RPC 1.1(a), RPC 2.4(c), RPC 1.5(a) and (b) and RPC 1.16(d) for respondent's alleged failure to file written objections to the pre-sentence report or to request a hearing, thereby foreclosing Silas from calling

witnesses, and for his alleged failure to timely file a brief on appeal, resulting in the dismissal of the case. The complaint also charged respondent with a violation of RPC 8.1(b)(failure to cooperate with disciplinary authorities).

At the DEC hearing, the presenter advised the panel that he had been unable to locate Silas. The presenter requested a dismissal of all charges, save the alleged failure to cooperate with the DEC.

DRB 97-404

The Parrish Matter - District Docket No. VB-94-58E

Louise S. Parrish retained respondent to represent her in connection with a tax foreclosure matter and a claim for outstanding water charges. The complaint alleged that respondent violated RPC 1.1(a), RPC 1.3 and RPC 1.4(a).

Apparently, no testimony was taken in this matter. The only reference to the underlying case is in the transcript of the DEC's decision, which mentions a dismissal. The only remaining allegation was the violation of RPC 8.1(b)(failure to cooperate with the disciplinary authorities).

The Shorter Matter - District Docket No. VB-94-69E

Marguerite Shorter retained respondent on behalf of her son to represent him in connection with personal injuries allegedly sustained in a beating by prison guards. The complaint alleged violations of RPC 1.2(a) and (c) for respondent's alleged failure to pursue

the personal injury action. Instead, respondent defended Shorter's son against certain criminal charges. The complaint also alleged a violation of RPC 1.4(b) for respondent's failure to adequately explain the matter to Shorter.

Seemingly, there was no testimony in this matter. As with the Parrish matter, the only mention of this case is in the incomplete transcript of the DEC's decision, which refers to a dismissal.

The Linda Ross Matter - District Docket No. VB-94-88E

The DEC also refers to this case as the Daniels matter. The complaint alleged violations of RPC 1.2(a), RPC 8.1(b) and RPC 8.4(b) and (d) for respondent's handling of a criminal matter for Ross' son, Brian Daniels.

Here, too, it appears that no one testified. The transcript of the DEC's decision makes only a passing reference to a dismissal of the underlying case.

The Mehta Matter - District Docket No. VB-94-54E

Sudesk K. Meta retained respondent to represent him in a dispute with the City of Jersey City over his rehabilitation of certain property. The complaint alleged violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a) and RPC 8.1(b). The complaint also alleged the following facts:

Respondent filed a complaint and worked on the case. Yet, by letter dated December 20, 1993, Mehta formally discharged respondent as counsel, requested an itemized bill and instructed

respondent to hold Mehta's file until contacted by substituted counsel. Mehta copied the court, all counsel of record, the parties to the litigation and others. Thereafter, Mehta retained new counsel, Mr. Ghandi. On February 7, 1994, Mehta attended a hearing regarding the litigation with Ghandi. Mehta and Ghandi signed a stipulation of settlement and respondent, who happened to be at the courthouse on an unrelated matter, also executed the stipulation on behalf of Mehta. In March 1994 Mehta moved for an order to proceed pro se, which was granted.

No witnesses, including Mehta, testified at the DEC hearing. In fact, the transcript of the proceedings is totally silent about this case. The DEC found no evidence of a violation of any of the rules cited in the complaint, save the alleged violation of RPC 8.1(b).

DRB 97-405

The McKenzie Matter - District Docket No. VB-95-26E

The complaint alleged that Vansworth McKenzie retained respondent to represent him in the purchase of certain real estate and that respondent showed a lack of diligence in the representation, in violation of RPC 1.3. The complaint further alleged a violation of RPC 8.1(b) for respondent's failure to cooperate with the DEC.

As with all of the within matters, this case was heard on October 30, 1996. No witnesses, including respondent, testified.

* * *

The DEC dismissed all of the allegations arising from these matters with the exception of respondent's admitted failure to cooperate with the disciplinary authorities and of the violations found in McKenzie.

Inexplicably, in that matter, the DEC found violations of RPC 1.3, RPC 8.1(b) and, although not alleged in the complaint, RPC 1.1(b). Nothing in the record, however, supports the DEC's findings, with the exception of the violation of RPC 8.1(b), which respondent admitted. The only reference to this matter appears at page three of the incomplete "decision transcript" placed on the record, presumably at the conclusion of the DEC hearing:

Also, on McKenzie, he's found [sic] failure to cooperate with the investigator. He also admitted to it in his pleadings and on the record.

McKenzie, we find that there was evidence of ethical violation. He violated Rule RPC 1.3, RPC 1.1(a).

The transcript ends there. It is not known on what evidence the DEC relied or what exhibits were entered into evidence in McKenzie. Moreover, no reasons were given for the DEC findings.

In Cadogan and Bradshaw the grievances were apparently dismissed early on, before the formal complaints were drafted, because the grievances were meritless. In Silas, the grievant could not be located. However, no explanation was furnished for absent witnesses, particularly grievants, in Parrish, Shorter, Ross/Daniels, Mehta and McKenzie.

The DEC recommended a reprimand for respondent's misconduct.

* * *

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.

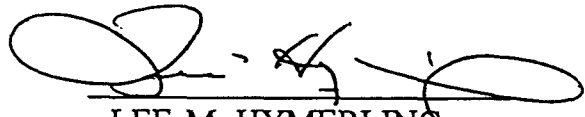
The Board found no evidence in the record, however, that respondent violated RPC 1.3 and RPC 1.1(a) in the McKenzie matter. Accordingly, the Board dismissed those charges. What the record fully supports — and respondent admitted — are eight instances of failure to cooperate with the ethics authorities, in violation of RPC 8.1(b). Although respondent eventually filed answers to each complaint, his repeated failure to cooperate with the investigations hindered the DEC's ability to get to the heart of the matters.

Discipline in cases involving failure to cooperate with the disciplinary system, without more, may range from an admonition to a short-term of suspension. See In the Matter of Robert P. Gorman, Docket No. DRB 94-437 (1995) (admonition imposed on attorney who failed to cooperate with an ethics investigation or to reply to the investigator's requests for information.); In re Macias, 121 N.J. 243 (1990) (public reprimand for failure to cooperate with the ethics authorities during a random audit and failure to file an answer to the complaint); In re Skokos, 113 N.J. 389 (1989) (public reprimand for failure to cooperate with the district ethics authorities during an investigation and at the district ethics committee hearing) and In re Beck, 127 N.J. 391 (1992) (three-month suspension for failure to cooperate with the ethics authorities in the processing of three matters; the attorney had received two prior private reprimands and a public reprimand).

There were no aggravating or mitigating circumstances to consider in this case. The Board found no factors warranting a term of suspension. The Board, thus, unanimously determined to impose a reprimand for respondent's misconduct.

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

Dated: 9/28/98



LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Frederic H. Brooks
Docket Nos. DRB 97-368, DRB 97-404 & DRB 97-405

Argued: February 5, 1998

Decided: September 28, 1998

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Dismiss	Disqualified	Did not Participate
Hymerling			x				
Zazzali			x				
Brody			x				
Cole			x				
Lolla			x				
Maudsley			x				
Peterson			x				
Schwartz			x				
Thompson			x				
Total:			9				

Robyn M. Hill 11/2/98
Robyn M. Hill
Chief Counsel