

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-294

IN THE MATTER OF :
PETER J. TOTH :
AN ATTORNEY AT LAW :

Decision

Argued: November 20, 1997
Decided: February 17, 1998

Brian Brodowski appeared on behalf of the District IIIB Ethics Committee.
Respondent waived appearance for oral argument.

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 IIIB Ethics Committee. ("DEC"). Three separate complaints charged respondent with misconduct in eleven matters, alleging violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 8.4(a) (violating or attempting to violate the Rules of Professional Conduct), RPC 8.4(c) (conduct

involving dishonesty, fraud, deceit or misrepresentation), RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority) and RPC 1.1(b) (pattern of neglect).

Respondent was admitted to the New Jersey bar in 1976. At the relevant times, he maintained a law office in Burlington, New Jersey.

Respondent has been under suspension since February 14, 1996 for failure to comply with a fee arbitration determination requiring him to refund a fee to a client. In re Toth, 143 N.J. 309 (1996). In 1988 respondent received a public reprimand for unethical conduct in three separate matters, including gross neglect in the three matters, failure to communicate in one matter and improperly withdrawing from the representation in another case. At the time of this disciplinary matter, respondent was an alcoholic. The Court conditioned respondent's practice to supervision by a proctor for a two-year period and to weekly attendance at AA meetings. The proctorship was vacated on July 10, 1990.

Respondent received a private reprimand in 1985 for withdrawing from representation without giving notice to the client, failing to communicate and failing to carry out the contract of employment.

Three matters (Fabi, Singletary and Jones) were dismissed at the DEC hearing because the grievants did not appear to testify. By consent of the parties, three matters were decided on the written record (Palmer, Nixon and Ryos). Those matters are discussed first.

1. The Nixon Matter - District Docket No. IIB-95-004E

According to the complaint, respondent was retained by Gina Marie Nixon in January 1993 to represent her in a divorce matter. A judgment of divorce was entered in April 1993. Nixon, who had been satisfied with respondent's services, retained him again in June 1994 to have her support payments paid through the probation department. Although respondent agreed to represent Nixon, he failed to take any action in her behalf. After their initial meeting, Nixon telephoned respondent on a number of occasions and left messages on his answering machine, which he did not return. Nixon also went to respondent's office to give him documentation needed for preparation of the pleadings. The complaint does not indicate whether respondent prepared any pleadings or other paperwork. He did not, however, send Nixon any copies, as promised.

According to the complaint, Nixon went to respondent's office on February 23, 1995. Respondent was not there. She left him a message indicating that she had left "over twenty messages" that had remained unanswered.

In his answer respondent claimed that, although he had prepared certain documents, which had been signed, he never filed them with the court. Respondent also admitted that Nixon had left a number of messages to which he had not replied. He claimed, however, that on several occasions he tried unsuccessfully to contact her and that, for the most part, his calls were not returned.

2. The Ryos Matter - District Docket No. IIB-96-09E

The complaint alleged that Bettye J. Ryos retained respondent in February 1995 to represent her in a divorce matter. Ryos paid respondent a \$1,500 retainer. Respondent appeared in court with Ryos on one occasion. Thereafter, Ryos repeatedly called respondent, but was never able to reach him. Her calls were ignored. Ryos also went to respondent's office, but was unable to meet with him. Eventually, Ryos contacted the court to determine the status of her divorce. She was informed that there was nothing "on file" concerning the matter. Thereafter, Ryos was forced to retain new counsel to represent her.

Respondent admitted that he was retained to handle Ryos' divorce and that he appeared in court on only one occasion. Although he claimed that he communicated with Ryos from time to time about the matter, he admitted that there were several occasions when he failed to return her telephone messages.

3. The Palmer Matter - District Docket No. IIB-96-10E

The complaint alleged that, after James A. Palmer filed a pro se complaint for divorce, he retained respondent to represent him in July 1993. Palmer paid respondent \$500 in cash and obtained a receipt. Respondent told Palmer, who was planning to remarry, that the divorce action would be concluded soon.

Thereafter, Palmer made numerous telephone calls to respondent and left messages on his answering machine. Respondent, however, did not return the calls. In March 1995

Palmer learned that respondent's telephone had been disconnected. On April 1, 1995 Palmer went to respondent's office. Respondent was not there. Palmer then left him a written message, but received no reply. On June 12, 1995 Palmer sent a certified letter to respondent. Although the receipt card was not returned, Palmer believed that respondent had received the letter.

Finally, Palmer retained the services of another attorney, who attempted to contact respondent, to no avail. The attorney sent a certified letter to respondent, which was returned marked "refused." According to the complaint, Palmer's new attorney requested that respondent sign a substitution of attorney, but respondent did not do so. The complaint does not indicate how the request was made or whether respondent actually received the request.

Respondent admitted that he was retained by Palmer in the divorce action, that he communicated with Palmer from time to time, and that there were numerous occasions when he did not reply to Palmer's inquiries. Respondent denied that his conduct violated any of the rules cited in the complaint.

The DEC heard testimony in the matters listed below.

4. Hendrickson Matter - District Docket No. IIIB-95-014E

Catherine Hendrickson retained respondent in February 1995 in connection with a divorce case. On February 16, 1995 Hendrickson paid respondent a \$600 retainer. Respondent gave Hendrickson his business card with some notations on the back as a receipt.

It appears that respondent obtained the information necessary to proceed with the matter and informed Hendrickson that he would get back to her about her case. When Hendrickson telephoned respondent about the status of the matter, respondent informed her that he was getting the papers together to serve the complaint through the sheriff's office. After some time had passed, Hendrickson telephoned her husband, only to learn that he had not been served with the complaint. Hendrickson then contacted the sheriff's office and was informed that it had not received any documents from respondent in connection with her case. When Hendrickson telephoned respondent to confront him with this information, respondent stated that the sheriff's office was "a mess" and assured her that he would either forward another copy to the sheriff's office or that he would himself serve her husband with the complaint.

Hendrickson testified that she spoke with respondent only a few times and that the majority of her telephone calls to respondent were not returned. She added that, after a while, respondent's telephone was disconnected.

Eventually, Hendrickson obtained a "divorce kit" and finalized her own divorce. She never got her retainer back from respondent. Hendrickson testified that she had filed a grievance because she did not want respondent "to get away" with what he had done to her.

5. The Randolph Matter - District Docket No. IIIB-95-015E

Randolph retained respondent in January 1995 to file a bankruptcy petition. Randolph gave respondent \$800 in cash as a retainer. In return, Randolph was given a receipt on the

back of respondent's business card. During their initial meeting, respondent told Randolph to bring all of his bills to respondent's office. Randolph did so in February 1995, but respondent was not present at that time. They met again in April 1995, at which time respondent informed Randolph that eventually there would be a hearing in federal bankruptcy court.

Randolph had given respondent several numbers where he could be reached, including his mother's telephone number and his "beeper" number.

At some unknown point, respondent informed Randolph that he had filed a bankruptcy petition. Later, however, Randolph telephoned the bankruptcy court in Trenton and Camden and learned otherwise. That prompted repeated telephone calls to respondent, which went unreturned. Randolph also went to respondent's office twice, but respondent was not there on either occasion.

Randolph testified that he received only one telephone call from respondent, in February 1995, when he was assured that everything was "going smoothly."

Although respondent told Randolph that a bankruptcy petition had been filed, Randolph was never asked to sign any documents. Eventually, Randolph retained another attorney to file a bankruptcy petition in his behalf. Randolph never recovered his retainer from respondent.

6. The Rizzo Matter - District Docket No. IIIB-95-16E

Joseph Rizzo retained respondent after being sued in small claims court for withholding partial payment for work done to his house. Rizzo paid respondent \$250 in cash, for which he obtained a receipt. Respondent filed a counterclaim in Rizzo's behalf and apparently had the matter transferred to Superior Court, Special Civil Part. According to Rizzo, first the hearing in the matter was postponed and then the complaint was dismissed. Rizzo attempted to contact respondent on a number of occasions, leaving messages on his answering machine. None of his calls were returned. Respondent wrote to Rizzo in August 1992 to inform him that his case had been dismissed because of "miscommunications" in the clerk's office, as well as opposing counsel's office. Respondent assured Rizzo that he would have the case restored by filing a motion in September.

In March 1993 Rizzo wrote to respondent inquiring about the status of his case. Respondent never replied to the letter. Eventually, respondent agreed to return Rizzo's retainer by November 1, 1993, but failed to do so. Rizzo gave respondent several extensions and even threatened to file a grievance. By September 10, 1994 respondent still had not refunded the retainer or returned Rizzo's telephone calls.

During the course of Rizzo's first case, he retained respondent to represent him in an assault matter. Rizzo paid respondent \$200 in cash, but did not obtain a receipt. Rizzo telephoned respondent before the scheduled court date, at which time respondent told him that he would meet him in court. Respondent, however, did not appear. Rizzo testified that

he waited in court all day long and that the judge jokingly suggested that he retain a new attorney. Eventually, Rizzo and the plaintiff settled the matter themselves.

Rizzo did not know why respondent failed to appear in court. He believed, however, that respondent was trying to avoid him. In August 1994 Rizzo saw respondent near his office, at which time a heated exchange occurred between the two. Afterwards, Rizzo sued respondent for the unreturned fee. Respondent, in turn, filed charges against Rizzo for assault and terroristic threats. Rizzo filed a counterclaim charging respondent with assault. Eventually, the matter went to trial and Rizzo obtained the return of the fee.

According to respondent, he performed some services in Rizzo's behalf; in the first matter, he filed an answer and made a motion to transfer the case to the Special Civil Part. Respondent explained that his adversary had requested several adjournments, to which he had consented. Respondent claimed that, months later, he called the court, only to learn that the case had been dismissed; afterwards, he contacted his adversary and informed him that he would make a motion to reinstate the complaint. Respondent testified that it was his intent to obtain his adversary's consent to facilitate the restoration of the case to the active calendar. According to respondent, he tried to deliver the papers to his adversary, but was unable to do so; the attorney had moved and, once respondent learned of the new address, he was unable to locate the office. Respondent claimed that he did not recall whether he had actually filed a motion to reinstate the case.

As to Rizzo's assault case, respondent testified that he had appeared on the scheduled

court date and that the matter had been postponed. He claimed that he had forgotten about the new date. He added that he had called the court several days later and learned that the matter had been resolved.

7. The Denise (Brown) Lee Matter - Docket No. IIIB-96-03E

In February 1994 Denise Lee, formerly Denise Brown, engaged respondent to represent her in a divorce action. Lee paid respondent a \$1,000 fee. During one of Lee's initial meetings with respondent, he asked her to sign some "papers" to be filed with the court. Lee asked respondent to forward copies of the documents to her, but he failed to do so. Lee unsuccessfully attempted to determine the status of her case by going to respondent's office on approximately four or five occasions in 1995. She called respondent at least twelve times and left messages for him to call her about the status of her matter. During one conversation, respondent told Lee that her matter was "on the back burner" because the court's case calendar was backed up. Although Lee ultimately obtained her divorce, the record does not disclose who concluded the matter. Because Lee was able to obtain a full refund of her fee from the Lawyers' Fund for Client Protection ("Fund"), it is not likely that respondent was responsible for completing her case because the Fund reimburses clients only for "losses caused by the dishonest conduct of members of the bar of this State." R.1:28-1(a).

8. The Marks Matter - District Docket No. IIB-96-06E

Jennifer Marks retained respondent in January 1994 to file a motion for an increase in her child support payments. Marks paid respondent \$700. Respondent informed Marks that she needed to fill out certain financial documents. Marks completed the documentation within a month of their first meeting and returned it to respondent. In the interim, she spoke to respondent only once. Respondent assured Marks that he would file a motion in her behalf.

Marks testified that for three or four months she called respondent on numerous occasions, two to three times a week, leaving messages on his answering machine. Respondent never communicated with her. According to Marks, she sent respondent a certified letter in March 1994, requesting that respondent forward a copy of the motion papers; she received no reply. Marks testified that respondent never prepared a certification for her signature.

According to respondent, he had prepared the case information statement and motion and Marks had executed an affidavit. However, he could not recall if he had filed the motion.

Respondent testified that he had done some work in the Marks, Hendrickson and Lee matters and had intended to follow through; however, he had become overwhelmed by the work and had given up his practice in 1995. Respondent claimed that he has not practiced law since then. He blamed his misconduct on personal problems, including the death of his

father.

Respondent maintained that he had every intention to represent his clients' interests promptly and responsibly; because, however, of the way he managed his practice, other matters would "pop-up" and he would overlook things. Respondent explained that, because he did not have a secretary or support staff, he was responsible for all of the typing, mailing and filing.

When questioned whether there were medical reasons that prevented him from practicing, respondent denied any diagnosed problems. He admitted, however, being overwhelmed and depressed. Respondent also acknowledged that, at some point during his years of practice, he had a drinking problem. He testified that he has not had a drink since 1985.

Respondent explained that he did not reply to the DEC's requests for information about the grievances because "they all seemed to come in at once." He stated that his mental state was such that he "wanted to put [his] head in the sand like an ostrich. . . ." He testified that, although he is not currently practicing and does not intend to practice at any time soon, he does not want to be disbarred. Respondent believed that in his nineteen years of practice he was "a good attorney and served a lot of people."

* * *

The DEC found that respondent neglected the matters entrusted to him, did not act with reasonable diligence, failed to keep his clients reasonably informed about the status of the matters, displayed a pattern of neglect and misrepresented the status of the cases to his clients. The DEC found insufficient evidence of a violation of RPC 8.1(b). The DEC found violations of RPC 1.4(a) in eight matters, RPC 1.3 in all but two matters (Palmer and Ryos), RPC 1.1(a) in four matters: (Marks, Brown, Randolph and Nixon), RPC 8.4(c) in four matters (Marks, Brown, Randolph and Rizzo) and RPC 8.4(a) in all eight matters.

The DEC concluded that respondent's conduct was not prompted by any malicious motives. The DEC believed that respondent was overwhelmed by his practice and his problems stemmed from a lack of support staff. After considering respondent's prior private reprimand, the DEC recommended the imposition of a six-month suspension. Noting that respondent was presently suspended because of his failure to comply with a fee arbitration decision, the DEC recommended that respondent's term suspension begin after he complies with the fee committee's determination. The DEC also recommended that, prior to reinstatement to the practice of law, respondent should submit proof to the OAE that his office practices have been straightened out. Finally, the DEC recommended that respondent be supervised by a proctor for a period of one year.

* * *

Upon a de novo review of the record, the Board is satisfied that the DEC's findings of unethical conduct are clearly and convincingly supported by the record.

Respondent's conduct in the eight cases involved numerous violations, including failure to communicate, lack of diligence, gross neglect, pattern of neglect and misrepresentation to his clients. More seriously, respondent also abandoned his clients. The testimony of his clients revealed that he did nothing to advance their interests, ignored their telephone calls, paid no attention to their written inquiries, made himself unavailable to them and failed to contact them after his telephone was disconnected. Also, he did not return unearned retainers to his clients. Although the DEC found that respondent's misconduct was not the result of evil motives he, nevertheless, showed great insensitivity toward his clients, who suffered considerable emotional harm. The Board also considered respondent's ethics history in assessing discipline.

Cases involving abandonment of clients have merited severe discipline. See In re Mintz, 126 N.J. 484 (1992) (two-year suspension where attorney abandoned four cases and was also found guilty of pattern of neglect, failure to maintain a bona fide office and failure to cooperate with ethics authorities); In re Bock, 128 N.J. 270 (1992) (while serving as both a part-time Municipal Court judge and a lawyer, with approximately sixty to seventy pending cases, the attorney abandoned both positions by feigning his own death; six-month suspension imposed).

In light of his grievous misconduct, the Board determined that a significant term of suspension is necessary to protect the public from this respondent. Accordingly, the Board unanimously voted to impose a two-year suspension to run consecutively to his current temporary suspension for his failure to comply with a fee arbitration determination.

The Board also determined that, prior to reinstatement, respondent shall reimburse the Fund, provide proof of fitness to practice law, and re-take the skills and methods courses offered by the Institute for Continuing Legal Education.

The Board also determined that, upon reinstatement and for a period of two years, respondent shall practice under the supervision of a proctor approved by the Office of Attorney Ethics ("OAE"). For a two-year period respondent shall also provide certifications, prepared by a certified public accountant approved by the OAE, that quarterly audits of his attorney records have been performed.

One member did not participate.

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

Dated: 2/17/88

By: 

LEE M. HYMERLING

Chair

Disciplinary Review Board

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

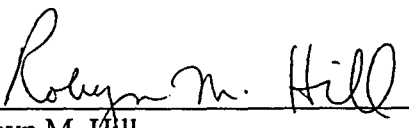
In the Matter of Peter J. Toth
Docket No. DRB 97-294

Argued: November 20, 1997

Decided: February 17, 1998

Disposition: Two-Year Suspension

Members	Disbar	Two-Year 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:		8					


Robyn M. Hill 4/6/98
Chief Counsel