

Berk

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-215

IN THE MATTER OF
MARK H. JAFFE,
AN ATTORNEY AT LAW

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Decision

Argued: September 18, 1997
Decided: November 18, 1997

Joan D. Van Pelt appeared on behalf of the District XII Ethics Committee.

Respondent appeared pro se.

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 XII Ethics Committee ("DEC"). The consolidated seven-count complaint charged respondent and Donald W. Rinaldo, for whom respondent was employed on a per diem basis, with misconduct in connection with litigation in a contract matter. The matter was bifurcated for hearing. The complaint charged respondent, in counts four through seven, with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate) and RPC 1.7 (conflict of interest).

Respondent was admitted to the New Jersey bar in 1988. He maintains an office in Princeton, New Jersey.

* * *

Donald W. Rinaldo retained respondent to work for him on a per diem basis from 1990 through approximately the spring of 1992. Rinaldo had in the past helped Ben Buontempo with some legal problems and they were either acquaintances or friends. Angela Perun was also acquainted with Rinaldo. Rinaldo had drafted a contract concerning Buontempo's renovation of Perun's residence. After problems developed, Perun did not pay the contract amount, prompting Buontempo to file suit against her. Buontempo sought Rinaldo's assistance. Apparently, because of Rinaldo's involvement with both Perun and Buontempo, he believed that he could not represent Buontempo. He, therefore, asked Theresa Roskowski, Esq., who occasionally performed per diem work for him, to handle the matter for Buontempo. The record does not clearly establish who drafted the Buontempo complaint. However, after Roskowski had some involvement in the matter, she turned over the file to Rinaldo, requested that he find another attorney to handle the matter and executed a substitution of attorney. Once Roskowski stopped doing per diem work for Rinaldo, respondent replaced her. According to respondent, he viewed Rinaldo as his mentor and hoped to establish a steadier work relationship with him.

Respondent claimed that, in February 1992, Rinaldo had given him a number of documents to sign and that Rinaldo had not reviewed the documents with him at that time. Respondent asserted that, because of the way Rinaldo was holding the documents, he could not tell what they were or to which matter they related. He was aware, though, that they were pleadings. According to respondent, Rinaldo assured him that he would explain the matter to him later. Respondent had signed a substitution of attorney and an answer to a counterclaim filed by Perun.

The substitution of attorney, naming respondent as the attorney of record, was filed with the court on February 18, 1992. Respondent contended, however, that he had not signed the cover letter accompanying the form. The answer to the counterclaim was filed on March 24, 1992. Respondent added that, even though he had signed the documents, they had been prepared and filed by Rinaldo's office.

The matter was listed for trial in October 1993. Perun's attorney, Catherine White, contacted respondent to request an adjournment. Respondent informed White that the court had probably made a mistake listing him as Buontempo's attorney. He had never met the client, had no knowledge of the cause of action and had no recollection of his involvement in the matter. While respondent and White did not discuss the substance of the matter at that time, respondent apparently agreed to the adjournment. Thereafter, between the time of that telephone call and the trial date in January 1994, respondent did not investigate why he was listed as the attorney of record or find out about the details of the case.

In January 1994 respondent received a notice of a calendar call. He did not contact the court, but instead went to the January 10, 1994 calendar call. Because respondent arrived late and White apparently failed to appear, the complaint and the counterclaim were dismissed. On learning of the dismissal, respondent explained to the court clerk that he had been improperly listed as the attorney of record. Respondent allegedly did not want to prejudice the parties and, thus, asked that the case be relisted. Respondent also requested a status conference with the judge to explain about the mistake, but his request was denied.

While still at the courthouse, respondent telephoned White and asked her to "fax" him some materials from her file. Respondent claimed that, because he was unable to find a "fax" machine

available for his use, he could not give White a "fax" number. Respondent, however, did not call White back to make other arrangements to obtain the file from her. It was not until the next day that he learned that the case had been assigned for trial on January 12, 1994. Respondent did not advise Buontempo of the trial date. Also, he was unprepared to proceed with the trial; he had not obtained the file and was not familiar with the case. According to respondent, he discovered Rinaldo's involvement in the matter on the eve of the trial, when he telephoned White and learned that Roskowski had been his predecessor in the case. It was only then, respondent continued, that he realized that Rinaldo was the link in the matter and that the case was probably related to the documents that Rinaldo had asked him to sign.

Not until the morning of the trial did respondent call Rinaldo in an attempt to obtain the file or to have someone from Rinaldo's office come to the courthouse. When respondent attempted to explain to the court why he was not familiar with the matter, the court showed him several documents that he had executed. Respondent admitted signing the documents at Rinaldo's direction. When the court questioned respondent as to whether he had reviewed the file, the following exchange took place:

MR. JAFFE: Your Honor, I've never presented the file?

THE COURT: Then it is false when it says in paragraph three [of a certification] that I have reviewed the file. Is that correct?

MR. JAFFE: Your Honor, I -- I cannot remember going through this file. I mean, I may or may -- may not. This was back in February of 1992. I don't know. I really can't say.

THE COURT: Which, of course, brings up another point. February '92 is just like two years ago, and -- and since then you have done nothing, from anything I've heard, absolutely nothing to fulfill your obligation as -- the attorney for the Plaintiff in this matter, is that correct?

MR. JAFFE: Your Honor, all work was prepared by Donald Rinaldo's office. This was prepared by him and at his direction. I had no control over the case.

THE COURT: As the attorney of record --

MR. JAFFE: Yes, your Honor.

THE COURT: -- and as an officer of the Court, your responsibility goes beyond that. Your explanation is insufficient. I'm reporting this matter to the proper authorities and let them investigate and take whatever action they want.

[Exhibit R-1 at 12]

The court then dismissed the plaintiff's complaint, deciding to hear proofs on the counterclaim only. The judge admonished respondent, declaring that he had never seen such "flagrant, dereliction of duty by an attorney in [his] life." When respondent attempted to explain to the court that he had not had the opportunity to meet his client, the following exchange occurred:

THE COURT: You never even had the opportunity. You've been his attorney for two years. The case is called in for trial. You were here Monday. It was on the trial calendar. It was marked ready. And you still at this time, after two years, have not seen your client, have not talked to him, and have not reviewed the file at least to the extent that you remember even reviewing the file.

MR. JAFFE: Your Honor, Mr. -- Mr. Rinaldo dealt with him.

THE COURT: What's that?

MR. JAFFE: Mr. Rinaldo, I would assume, had dealt with him, since this was a case prepared by his office.

THE COURT: You -- you look at me as if you could see nothing wrong with you being the attorney of record and having -- and -- and not representing your client for two years, doing nothing about it, relying upon Mr. Rinaldo and not even following up and pursuing the matter to the extent of saying, 'Hey, we've got a notice of trial.'

And that, of course, was several weeks before this past Monday. You didn't do anything when you got the notice of trial. You didn't do anything about it when you were here Monday.

[Id. at 14]

During the proof hearing on Perun's counterclaim, Perun testified that the agreement between herself and Buontempo had been drafted by Rinaldo. Perun expressed shock at respondent's statement that Rinaldo had prepared the pleadings against her and in behalf of Buontempo.

At the conclusion of the proceeding, the court entered an award in favor of Perun. Respondent did not contact Buontempo to inform him of the outcome of the case.

Thereafter the matter was referred to the DEC for an investigation into respondent's and Rinaldo's conduct. The DEC investigator wrote to respondent on February 25, 1994 seeking information about the grievance. On May 31, 1994 "someone" called the investigator in respondent's behalf to inform her that respondent was relocating his office and that he would reply to her letter within one week. No reply was supplied prior to the filing of the formal ethics complaint.

For his part, respondent testified that, after graduation from law school, he had been a judicial clerk for a short period and thereafter an assistant prosecutor in the Union County Prosecutor's office for approximately two years. He did not have experience in civil practice. After respondent left the prosecutor's office, he began doing per diem work for several attorneys, including Rinaldo. His per diem work was, for the most part, limited to municipal court appearances and calendar calls.

Respondent claimed that he was brought into the Buontempo matter by Rinaldo; that Rinaldo's office had prepared the pleadings in the matter and that Rinaldo had asked him to sign certain documents; that he did not have an opportunity to read the documents; that Rinaldo had held the papers in such a fashion that he was unable to view them completely; and that Rinaldo had

informed him that they would discuss the matter in the future. Respondent contended that he did not associate the documents that he had blindly signed with the case that was listed for trial until the night before the trial. He admitted, however, that he had done virtually nothing to clarify the situation before trial. He conceded that he was not familiar with civil matters and that he was wrong in signing the pleadings without reading them.

Respondent maintained that his failure to cooperate with the ethics investigation was due to a serious car accident in which he had been involved. He also presented the DEC with a certification explaining how his office practices have been improved to be more responsive to clients' needs.

* * *

The DEC found clear and convincing evidence that respondent failed to contact his client, failed to adequately prepare for trial, failed to apprise his client of the status of the litigation and failed to cooperate with the ethics investigation. The DEC, thus, found violations of RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 8.1(b). The DEC did not find clear and convincing evidence that respondent was aware of the conflict of interest in Buontempo v. Perun. The DEC, therefore, dismissed the charged of a violation of RPC 1.7.

The DEC considered that respondent remedied his deficient practices and that his injuries from the accident contributed to his failure to reply to the ethics investigation. The DEC recommended the imposition of a reprimand.

* * *

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

Respondent, an inexperienced attorney, mistakenly relied on the assurances and direction of a more seasoned attorney, perhaps in the hopes of securing a more permanent work relationship. Respondent's improper course of conduct began with his blind reliance on Rinaldo's request that he sign certain documents in the Buontempo matter, believing that they would discuss the matter later. Respondent, however, never followed up on it. In addition, once he began receiving trial notices, he took no action whatsoever to determine how or why he was involved in the matter. Respondent claimed that he was not aware until the eve of trial that the Buontempo matter was related to the per diem work he was doing for Rinaldo. It is troubling that he waited so long to make such a discovery. As the court noted, respondent was on notice of the matter weeks earlier. Although respondent claimed that he believed that the notices were mistakenly sent to him, he nonetheless owed Buontempo a duty to investigate the matter immediately. Respondent's conduct was compounded by his failure to contact Buontempo and to obtain the file, once he learned that he was the attorney of record. Finally, after the matter was dismissed, he failed to notify Buontempo of that fact. While respondent was not solely responsible for the problems that arose in the case, his total inattention to the matter cannot be excused by inexperience. Respondent's conduct, thus, violated RPC 1.1(a), RPC 1.3, RPC 1.4 and RPC 8.1(b).

In other matters involving similar violations, reprimands have been imposed. See In re Lane, 147 N.J. 3 (1996) (reprimand where attorney grossly neglected a bankruptcy matter and failed to respond to client's numerous inquiries about the status of the matter) and In re Mandle, 146 N.J. (1996) (reprimand for gross neglect in four separate client matters, failure to act diligently and

failure to cooperate with the disciplinary authorities).

Based on the foregoing, eight members of the Board voted to impose a reprimand. One member voted to impose an admonition.

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

Dated: 10/18/97

By: 
LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**

**In the Matter of Mark H. Jaffe
Docket No. DRB 97-215**

Argued: September 18, 1997

Decided: November 18, 1997

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				
Total:			8	1			

By Robyn M. Hill 12/11/97
Robyn M. Hill
Chief Counsel