

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 97-198

IN THE MATTER OF :
: :
DANIEL B. JACOBS :
: :
AN ATTORNEY AT LAW :
:

Decision

Argued: July 17, 1997

Decided: October 15, 1997

Stephen Menaker appeared on behalf of the District VI Ethics Committee.

Avram B. Segall appeared on behalf of respondent.

To the Honorable Chief Justice and Associate Justices of the Supreme Court of New Jersey.

This matter is before the Board based on a recommendation for discipline filed by the District VI Ethics Committee ("DEC"). The complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (lack of communication), RPC 1.15(b) (failure to promptly deliver funds to client), R. 1:20-3(g)(3) (failure to cooperate with disciplinary authorities), R. 1:21-6 (failure to

properly designate law office business account), R. 1:21-6(a) (failure to place settlement funds in a trust account) and R. 1:21-6(c) (failure to maintain financial records at attorney's principal office).

Respondent was admitted to the New Jersey bar in 1976. He maintains a law office in Union City, New Jersey. Respondent received a private reprimand on November 29, 1988 for lack of competence, negligence in handling a file, lack of diligence and failure to expedite a matter. In that case, seven months after respondent accepted a retainer fee to obtain a name change, he filed the complaint, which was subsequently dismissed for failure to prosecute.

* * *

At the ethics hearing, the presenter introduced into evidence a stipulation in which respondent admitted many of the allegations of the consolidated complaint. Other evidence was adduced through the testimony of clients.

The facts are as follows:

The Schneider Matter - District Docket No. VI-95-10E

Kelly Schneider ("grievant") retained respondent to represent her in a personal injury action. After respondent settled the case, he sent grievant a settlement check for her endorsement. Having received the endorsed settlement check from grievant on February 23,

1995, respondent deposited the funds in his trust account. He then transferred the funds to his business account, designated as "Proffessionalist [sic] Account", issuing a net settlement check from that account to grievant on March 30, 1995, five weeks after the receipt of the endorsed check. In the interim, grievant had contacted the DEC and the Hudson County Prosecutor's Office complaining that respondent had not sent her the settlement funds. In fact, respondent did not send the funds to grievant until the prosecutor's office threatened to bring criminal charges against him.

After the DEC investigated the matter, it was discovered that respondent maintained his trust account ledger sheet for the Schneider matter at the office of his accountant. Despite repeated requests by the DEC investigator, respondent failed to produce copies of the trust account ledger sheet. It was also discovered that, at various times, respondent maintained a checking account for business purposes with the following titles: "Proffessionalist [sic] Account", "Professional [sic] Account" and "Regular Account".

Respondent stipulated that (1) he delayed disbursing the settlement funds to grievant for five weeks and did so only after he was threatened with criminal prosecution; (2) he deposited the settlement funds in a business account; (3) he maintained his trust account ledger sheet at the office of his accountant; (4) he improperly designated his business account; and (5) if the investigator had testified at the ethics hearing, he would have asserted that, despite five requests, respondent had failed to produce a copy of the attorney trust account ledger sheet for the Schneider settlement.

The Aurelus Matter - District Docket No. VI-95-19E

In December 1994, Jean R. Aurelus ("grievant") retained respondent to represent her in the purchase of real property in Union City, New Jersey. Following the closing, respondent failed to record the deed and to obtain title insurance. Upon request of the investigator, respondent failed to produce copies of the real estate closing documents, including the RESPA statement, contending that the records had been lost or misplaced. At the ethics hearing, respondent's counsel asserted that the file had been located and delivered to his office. Counsel represented that he had recorded the deed and mortgage and that he had also obtained and forwarded to grievant the title insurance policy. The deed was recorded in July 1996, eighteen months after the closing. Respondent's explanation for the delay was that he could not locate the file and that his real estate paralegal had left unexpectedly at the time of the Aurelus closing.

Respondent stipulated that he failed to keep, maintain or safeguard grievant's records and to file the deed. Respondent further conceded that, if the DEC investigator had testified, he would have asserted that respondent had failed to produce requested records.

The Nunez Matter - District Docket No. VI-95-11E

In February 1995, Felix Nunez ("grievant") retained respondent to represent him in a mortgage refinance. Although the refinance closing took place on February 23, 1995,

respondent did not send the net mortgage proceeds to grievant until October 19, 1995¹, well after the grievance had been filed. In addition, despite the DEC investigator's repeated requests, respondent failed to produce copies of the trust account ledger sheet for the Nunez refinance.

According to the stipulation, respondent conceded that he had failed to transmit the mortgage proceeds until "on, about or after September 26, 1995" and that, if the DEC investigator had testified, he would have asserted that respondent had failed to produce a copy of the attorney trust account ledger sheet for the Nunez refinance, despite five requests.

At the ethics hearing, respondent contended that he had not disbursed the proceeds in the amount of \$17,751.39 because the title search had disclosed a judgment owed by grievant in the amount of \$4,400. Apparently, although respondent explained to grievant that he had to withhold those funds to pay the judgment, grievant did not authorize respondent to satisfy the judgment. After the creditor obtained satisfaction of the judgment by execution on rents due and owing to grievant, respondent transmitted the proceeds to grievant. Respondent had no explanation for his failure to escrow the judgment amount and remit the balance to grievant.

¹ The date of the transmittal of funds to grievant is unclear. The formal complaint alleges that the funds were sent on October 19, 1995, the stipulation contains a date of September 26, 1995, the check itself is dated September 28, 1995, and a letter from the investigator declares that, as of October 25, 1995, grievant still had not received the funds.

The Detres Matter - District Docket No. VI-96-8E

The complaint alleges that in 1993 Angel Detres (“grievant”) retained respondent to file an appeal from an adverse decision by the Social Security Administration denying a disability claim. Respondent failed to file the appeal, failed to respond to grievant’s request for information about the status of the appeal and failed to reply to the Detres grievance. In his answer to the complaint, respondent admitted that he had failed to file the appeal. However, respondent stipulated only that, if the investigator had testified, he would have stated that respondent had failed to reply to the grievance or to provide any information about the matter.

Grievant testified that he retained respondent to represent him in an appeal involving social security benefits. He claimed that respondent failed to keep an appointment with him, failed to meet with him when he stopped by respondent’s office and failed to talk to him by telephone, even “hanging up on him” on one occasion. Grievant observed that the only letter he received from respondent was in answer to grievant’s request for proof of the pending appeal so that he could obtain municipal welfare.

Respondent did not dispute grievant’s testimony and agreed that, at a minimum, he should have replied to the grievance.

The Malave Matter - District Docket No. VI-96-7E

On July 26, 1993, respondent entered into a retainer agreement to represent Ana Malave² ("grievant") in a personal injury action. Respondent failed to file a complaint and allowed the statute of limitations to expire. He also failed to return grievant's telephone calls inquiring about the status of the matter, to forward the file to her new counsel and to reply to the grievance. In his answer to the complaint, respondent admitted that he had failed to file a complaint and that the statute of limitations on grievant's personal injury cause of action had expired. At the time of the ethics hearing, a malpractice action filed by grievant was pending.

Respondent stipulated that he had failed to forward the file to grievant's new attorney and that, if the DEC investigator had testified at the ethics hearing, he would have asserted that respondent had failed to reply to the grievance or to supply information about the matter.

At the ethics hearing, Ana Malave testified, through an interpreter, that she retained respondent on July 26, 1993 and that, although she did not change her address or telephone number, there was very little communication from respondent. Angel Detres also testified that, every time he tried to talk to respondent about his social security appeal, he also attempted, without success, to discuss his mother's personal injury case.

Respondent did not contradict the testimony presented by Malave and Detres. He had no explanation for his failure to deliver the Malave file to the new attorney. Respondent's

² Ana Malave is the mother of Angel Detres, the grievant in Docket No. VI-96-8E.

counsel represented that the file was in the process of being copied and that it would be delivered to grievant's current attorney.

The final count of the complaint alleged a pattern of neglect, in violation of RPC 1.1(b), based on respondent's treatment of the five matters discussed above.

In his defense, respondent contended that, at the time of his ethics offenses, he was diagnosed with depression and anxiety and was taking certain prescribed medications. He argued that he had fallen into a mode of avoidance, as reflected by his failure to communicate with his clients, to file pleadings on behalf of his clients and to respond to the various grievances filed against him.

At the ethics hearing, respondent suggested that a proctor would be beneficial, but opined that it might be difficult to find an attorney to act in that capacity.

* * *

In the Schneider matter, the DEC found that respondent deposited settlement proceeds into a non-trust account, failed to keep his trust account ledger sheet at his office, failed to properly designate his business account as an attorney business account, failed to properly designate an account as attorney trust account, failed to act diligently, failed to issue settlement proceeds to his client for five weeks, failed to produce his trust account ledger sheet to the DEC investigator and failed to cooperate with the investigator.

In the Aurelius matter, the DEC found that respondent failed to safeguard his client's file, failed to file a deed, failed to produce a copy of his attorney trust account ledger sheet, failed to obtain from the seller's attorney copies of the closing documents, including the "RESPA" statement, failed to obtain a "filed" copy of the deed for his client, failed to have a title policy issued to his client and failed to cooperate with the investigator.

In the Nunez matter, the DEC found that respondent failed to send the net refinance proceeds to the client for approximately eight months, failed to produce for the investigator a copy of his attorney trust account ledger sheet and failed to cooperate with the investigator.

In the Detres matter, the DEC found that respondent failed to file a Social Security appeal, failed to keep appointments, failed to communicate with his client by telephone, failed to keep his client informed about the case and failed to cooperate with the investigator.

In the Malave matter, the DEC found that respondent failed to file a complaint within the statute of limitations, failed to forward the client's file to her new attorney and failed to cooperate with the investigator.

The DEC found the following violations: RPC 1.1, RPC 1.3, RPC 1.4, RPC 1.15, R. 1:20-3(g)(3), R. 1:21-6, R. 1:21-6(a) and R. 1:21-6(c). While the panel report does not relate each violation to a particular matter, the DEC found as follows:

RPC 1.3 Diligence. Not only was there testimony that Respondent failed to act with reasonable diligence and promptness in representing a client by both Mr. Detres and Ms. Malave, Respondent stipulated to not filing a Complaint in a timely manner, failing to file a Social Security Appeal, failing to disburse settlement monies in a timely manner, failing to secure closing documents and

filed a Deed on behalf of his clients in a timely fashion, failing to send refinancing monies to a client in a timely fashion, failing to keep his clients advised as to the progress of their cases, and failing to turn over a file to a new attorney. It is clear that Respondent has exhibited a pattern throughout the above consolidated cases of lack of diligence in representing his clients.

Violations of R. 1:21-6, 1:21-6(a) and 1:21-6(c) have been charged against Respondent. Respondent admits that he failed to keep his trust account ledger sheets at his office, that he kept settlement monies in an account other than an attorney trust account, that he co-mingled settlement monies with monies in a general operating account.

R. 1:20-3(g)(3) Respondent's Duty to Cooperate. Respondent stipulated that he failed to cooperate with the investigator in a disciplinary investigation [This charge would more appropriately be designated as RPC 8.1(b).]

RPC 1.15 Safekeeping Property. Respondent was unable to locate and produce a client's file to turn over to a new attorney when originally asked. The file has subsequently been located. Respondent failed to secure closing documents for a client. Respondent stipulated that he failed to keep a client's settlement funds in a trust account and then co-mingled these funds in a business account. He further failed to forward her settlement monies for a period of 5 weeks.

RPC 1.1 Competence. Respondent failed to file a Complaint in time, failed to keep his clients informed about their cases, failed to file a Social Security Appeal, failed to disburse settlement monies in a timely fashion. From the stipulations and testimony it has been shown that Respondent neglected matters entrusted to him by clients and that said conduct constitutes gross negligence, as well as a pattern of negligence and neglect, for some clients.

RPC 1.4 Communication. Respondent failed to keep his clients apprised of the progress of their cases, according to testimony by Mr. Detres and Ms. Malave. It would also be inferred from the record that Respondent failed to keep other clients advised of the circumstances surrounding their cases and that large lapses of time expired without there being any communication between Respondent and his clients.

[Hearing panel report at 7-8]

The DEC recommended that respondent be suspended for three months.

* * *

Following a *de novo* review of the record, the Board is satisfied that the DEC's finding of unethical conduct is clearly and convincingly supported by the evidence. Indeed, respondent either admitted in his answer or stipulated to a large number of the allegations in the complaint. He did not dispute the testimony presented at the ethics hearing. The record supports a finding that respondent committed the misconduct alleged in the complaint.

In the Schneider matter, respondent deposited settlement funds in a business account, designated his business account at various times as a "Professionalist Account", "Professional Account" and "Regular Account", failed to disburse settlement funds for five weeks, failed to maintain the attorney trust account ledger sheet at his principal office, failed to produce the attorney trust account ledger sheet and failed to cooperate with the DEC. In the Aurelus matter, respondent failed to safeguard records, failed to record a deed for eighteen months, failed to produce real estate closing documents and failed to cooperate with the DEC. In the Nunez matter, respondent failed to transmit refinance mortgage proceeds for eight months, failed to produce the attorney trust account ledger sheet and failed to cooperate with the DEC. In the Detres matter, respondent failed to file an appeal from an adverse decision by the Social Security Administration, failed to communicate with his client and

failed to cooperate with the DEC. In the Malave matter, respondent failed to file a personal injury complaint, permitting the statute of limitations to expire, failed to communicate with his client, failed to turn over the client's file to her new attorney and failed to cooperate with the DEC. Respondent's misconduct in the above matters demonstrated a pattern of neglect, as found by the DEC, in violation of RPC 1.1(b).

This leaves only the issue of discipline. Respondent committed numerous infractions of both the *Rules of Professional Conduct* and the recordkeeping rules. He also displayed a lack of attention to the interests of his clients and wilful disregard toward the disciplinary authorities. Similar misconduct has merited a short-term suspension, as in In re Brantley, 139 N.J. 465 (1995), where the attorney was suspended for three months for lack of diligence in two matters, failure to communicate in one of them, failure to cooperate with the DEC in three matters (one of which was dismissed) and a pattern of neglect. Brantley had received a prior one-year suspension and three reprimands. Furthermore, in In re Marlowe, 121 N.J. 236 (1990), the attorney was suspended for three months after engaging in a pattern of neglect in two cases, failing to file a complaint in a personal injury matter and abandoning another case after accepting the representation. He also failed to communicate with the clients and, in one matter, misrepresented the status of the case. Aggravating factors included lack of cooperation with the DEC investigator and a prior reprimand.

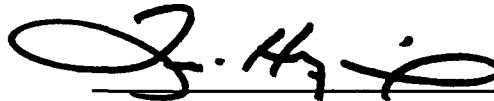
Here, respondent's primary explanation for his misconduct was a reference to depression, anxiety and use of prescribed medications. His attorney referred to a "mode of

avoidance” resulting from respondent's alleged inability to cope with the demands of the practice, such as communicating with clients or even replying to the DEC investigator's request for information.

In light of the foregoing, the Board unanimously determined that respondent should be suspended for three months. Prior to his reinstatement, respondent is to demonstrate proof of his fitness to practice law and satisfactory completion of a course in trust accounting. In addition, respondent is to practice under the supervision of a proctor for one year.

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

Dated: 11/15/87



LEE M. HYMERLING
Chair
Disciplinary Review Board

SUPREME COURT OF NEW JERSEY

**DISCIPLINARY REVIEW BOARD
VOTING RECORD**


**In the Matter of Daniel B. Jacobs
Docket No. 97-198**

Argued: July 17, 1997

Decided: October 15, 1997

Disposition: Three-Month Suspension

Members	Disbar	Three-Month 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
Chief Counsel

11/3/97