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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 97-107

IN THE MATTER OF

ANGEL OJEDA

AN ATTORNEY AT LAW

Decision

Argued: May 15, 1997

Decided: December 14, 1998

Susan Thal appeared on behalf of the District IIB Ethics Committee.

Respondent did not appear, despite proper notice.[1]

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 IIB Ethics Committee ("DEC").

Respondent was admitted to the New Jersey bar in 1989. At the time of the alleged misconduct he maintained a law office at 61 Hudson Street, Hackensack, Bergen County.

[1]Respondent was personally served with the file in this matter on May 2, 1997, at his home.

He has no prior ethics history.

On October 21, 1996 respondent signed a consent order transferring him to disability inactive status ("DIS"), pursuant to R. 1:20-12(b). The order was entered by the Court on February 6, 1997.

According to respondent, and as evidenced by medical records supplied by him at the time of the DEC hearing, he has long suffered from the effects of a debilitating brain tumor. The medical records indicate that the tumor was diagnosed in 1990, after respondent experienced a series of seizures. Respondent underwent surgery, radiation and chemotherapy. Initially, the tumor was somewhat reduced in size. It was not completely removed, however, and may have since increased in size. Since 1990 respondent has exhibited unusual behavior, hallucinations, slurred speech, forgetfulness, unresponsiveness and confusion. He has been admitted to Valley Hospital on numerous occasions since 1990, suffering from those and other effects of the tumor.

Although respondent was unable to produce a medical witness to testify about the contents of the medical records entered into evidence at the DEC hearing, the presenter did not contest the veracity of the documents or object to their admission into evidence. One such document, dated June 28, 1995, was a report from K. Citak, M.D., from Valley Hospital. It reads, in part:

> Mr. Ojeda is a 38-year-old man with a history of an astrocytoma of the right occipital lobe. This was diagnosed five years ago. He underwent biopsy and was then treated with radiation therapy and chemotherapy.

> Follow-up MRI scans done over the years have shown no change in the lesion. There has been enhancement with contrast and it is uncertain whether there is any inactive tumor remaining.
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> * * *
>
> For the two days prior to admission he was having intermittent episodes of staring, diminished responsiveness, facial flushing, twitching and repetitive purposeful movements. His wife refers to these as 'anxiety attacks'. She says that he feels very nervous and breathes heavily during these episodes.
>
> On the day of admission he had one or two more episodes in the morning. He was unable to go to a meeting and went to serve on jury duty. He came home and had several more severe episodes. After one of these episodes he continued to be poorly responsive, was not speaking well. His wife called an ambulance and brought him to the hospital.

The medical records revealed a disorder that appeared to be a contributing factor in respondent's general behavior since 1990 and that the DEC believed carried over into his practice of law. The hearing panel report makes specific reference to respondent's brain tumor:

> . . .throughout all of the foregoing periods, respondent had, and continues to suffer from the effects of the tumor with which he was diagnosed and the chemo and radiation therapy which he has undergone as a result. His physical and mental condition have affected his ability to practice law and has contributed to the conduct which forms the basis of the complaints;
>
> The panel notes that it observed the Respondent throughout the two days during which the hearing was conducted. His demeanor and appearance confirmed to the Panel members that he continues to suffer from the effects of his illness.

* * *

> The panel has concluded that the respondent's medical condition and the effects which it produced are the cause of the conduct which resulted in the grievances with which he has been charged and must be considered in mitigation.

When the Board first heard this matter in May 1997, it expressed concern that respondent, who appeared pro se below and did not appear at the Board hearing, might not have been competent to represent himself at the DEC hearing. Therefore, the Board held the disposition of the matter and directed the Office of Attorney Ethics to have respondent examined by a psychiatrist in order to resolve the competency issue. By letter dated April 2, 1998 Stanley R. Kern, M.D., F.A.P.A., rendered his opinion that, based on his review of respondent's medical records and an examination of respondent, he was competent to represent himself at the DEC hearing.

THE YOUNG MATTER

The complaint alleged violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); and RPC 1.4(a) (failure to communicate). In May 1992, the grievant, Lorenzo Young, retained respondent to represent him in a workers' compensation case resulting from a job-related injury sustained in January 1989.

According to Young, he first consulted another attorney, John Kemenczy, about the case. Because of a conflict of interest, however, Kemenczy recommended that Young hire respondent.

Over the next two and one-half years, Young called respondent several times for information about the case, but was unable to ascertain what steps respondent had taken in his behalf. Young testified as follows:

> Well, I don't know what he did. He really didn't like keep up with me, but I keep calling him and asking him if everything is okay, whatever, and he said yes.
>
> Then when he moved up here he did send me a letter saying he moved his office from Jersey City to 61 Hudson Street. So I came up here and I saw him and I asked him, I said, I mean this about five years or almost, I don't want the statute limitation [sic] to run out on the case. And so he said to me that, you know, the case is filed. Even if the five years is up the case is still in progress so I leave it at that.
>
> * * *
>
> Well, I called several times and I couldn't get no [sic] response. So I get back to Mr. Kemenczy and I asked him what happened to Mr. Ojeda. I told him I called the office and he told me himself he couldn't get no [sic] response from Mr. Ojeda.

Finally, in February 1995 Young met respondent at his office to discuss the case. According to Young, respondent told him that he had been ill. Respondent apparently advised Young to take the case to another attorney, if he so wished. Respondent added, however, that he was capable of moving the case forward. Young testified that, because respondent already knew the file, he decided to leave the case with respondent. Respondent allegedly promised to report back to Young in two to three weeks with more information about the case.

Young then visited the claims department at his workplace to review its file on his

pending workers' compensation claim, only to discover that his case had been dismissed for lack of prosecution.

Young could not recall if respondent had notified him, at their February 1995 meeting, that the case had been dismissed. However, Young remembered that respondent had assured him that, even if the case had been dismissed, it could be reopened. Respondent, however, never filed a motion to restore the case to the active calendar.

Young ultimately retained the services of another law firm to represent him. At the time of the DEC hearing, Young had not been advised by the new attorney whether or not the case could be reopened.

Young also testified that respondent did not correspond with him from May 1992 to February 1995, did not send him to a medical doctor for an evaluation of his injury (claiming that the defendants had sent him to their doctor) and did not keep him advised about events in the case, despite his attempts to obtain that information.

For his own part, respondent contended that he did send Young to a doctor and introduced a two-page report to substantiate that claim. Respondent testified that the matter was dismissed for lack of prosecution because of his inability to locate Young, despite at least three separate attempts to contact him by telephone. Respondent had no record of those calls. His best recollection was that he had made one such call to Young in late 1992 to apprise him of a hearing scheduled for October 23, 1992. Respondent could not recall, however, if he had talked to Young or to someone else on that occasion. In fact, respondent

could not recall many aspects of the case, including the number of court appearances.

Finally, respondent admitted that his only written communication with Young was an August 1992 letter acknowledging that he had recently received Young's file from the previous attorney, that he had received the notice of dismissal in the case but had not forwarded it to Young, and that he had taken no action to reinstate the complaint.

THE PEREZ MATTER

The complaint alleged violations of RPC 1.1(a) (gross neglect); RPC 1.3 (lack of diligence); RPC 1.4(a) (failure to communicate); and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In September 1990 Segundo Perez had a finger partially amputated by a machine at his workplace. Mr. and Mrs. Perez, the grievants in this matter, testified at the DEC hearing. Because Mrs. Perez handled substantially all of the couple's dealings with respondent, the majority of the testimony was hers.

According to Mrs. Perez, in early 1991 they retained the law firm of Kemenczy & Sinatra to represent them in the workers' compensation aspects of their case. John Kemenczy referred them to respondent for the product liability portion of the case.

Shortly thereafter the Perezes met with respondent at his office and retained his services for the filing of the product liability action against the manufacturer of the machine that injured Mr. Perez. At that time the Perezes and respondent discussed respondent's fee

and the case. Respondent took pictures of the finger and filed a complaint on their behalf.

Mrs. Perez testified that after that initial meeting, she called respondent on numerous occasions and also wrote numerous letters to him. She recalled only one communication generated by respondent from early 1991 to 1995, forwarding medical authorization forms for signature. The Perezes promptly complied with that direction.

Mrs. Perez testified as follows about the difficulty experienced in obtaining information about the case:

> Question: To your knowledge did he, in fact, file a lawsuit with regard to your husband's injury?
>
> Answer: Mr. Ojeda?
>
> Question: Mr. Ojeda.
>
> Answer: Yes, I believe so.
>
> Question: Subsequent to your meeting with Mr. Ojeda in early 1991 what other contact did you have with Mr. Ojeda?
>
> Answer: The only other contact we had with him was this, was in 1991. And between 1991 and 1995 we contacted him via mail, via phone calls. We heard from him, I believe, it was only one time that he sent us an authorization to release hospital documentation, which we did sign and return to him.
>
> Every time we would call his office he said the file was working, it was working. I think it was early, it was late 1992 early 1993 that he called us and said the company had offered us a settlement at $15,000, and at which point we said that wasn't going to be satisfactory. He went back for a demand of $125,000 and that was the last we ever heard from him.
>
> Question: When was that?

Answer: It was either late 1992 or early 1993.

Question: Between the time you first met with him — you said you met with him twice early in 1991?

Answer: Yes.

Question: And between then and the offer?

Answer: We heard just that one time about the authorization for medical release. We have phone bills because we were in Somerset County and he's in Bergen County, so all our phone documentation that we did attempt to call him, we have registered receipts that we sent him certified letters.

Finally, frustrated by their inability to reach respondent, the Perezes recontracted Kemenczy, who had originally referred them to respondent. Kemenczy wrote to respondent on December 23, 1994 requesting information in the Perezes' behalf. According to Mrs. Perez, who received a copy of the letter, respondent never replied to Kemenczy's request for information.

Mrs. Perez testified that she left further messages at respondent's office after that date, indicating her intention to file disciplinary charges against him if he did not reply to her requests for information. Thereafter, in the early Fall of 1995, respondent set up a meeting in his office to discuss the case. According to Mrs. Perez, the following took place at that time:

Answer: He came out to the lobby to greet us. He looked like he, he verbally said to us and he looked like he didn't know who we were and he went back to his office and told us to come in. We sat down and he was fumbling through the files and when we started questioning him as to what he was doing with

our case he said I think I have you mixed up with someone else.

Then he got the file out and started looking through it, and it was obvious to me he didn't know what he was doing or what was going on. He obviously was confused about the case or about us. I said to him let me see the file. And I started looking through the file and I saw papers, letter after letter from the other side that he never responded to. I saw that the case had been dismissed in 1994.

Question: So you saw a piece of paper which indicated to you that the case had been dismissed in 1994?

Answer: Yes.

Question: Was that the first time that you understood that the case had been dismissed?

Answer: Yes and I was livid.

* * *

Question: Did you ask Mr. Ojeda about why the matter had been dismissed?

Answer: Yes.

Question: What did he advise you?

Answer: He really didn't respond to me. He was so confused at that point. I don't even know if he realized the case had been dismissed. But as I read through the letter I realized it was dismissed because he never answered the interrogatories and I at that point said to him why haven't you called us in for interrogatories? Why haven't you sent us anything? You didn't give us an opportunity to do what they are asking. Why? I had your case mixed up with someone else, that was the only answer we got.

According to Mrs. Perez, respondent assured them at that time that the dismissal was

a minor problem and that the complaint could be reinstated. He promised to call them in two weeks. After three weeks passed with no word from respondent, the Perezes contacted the court to confirm that the case could, in fact, be reinstated. They also consulted with two attorneys about this issue. Both attorneys turned the Perezes away because, according to Mrs. Perez," . . .the case was too old, the witnesses would forget, the trail was too old. . . . "

For his own part, respondent's account of the Perez matter was confused, at best. Respondent recalled having been retained for the workers' compensation aspect of the case, but not the product liability suit. When questioned by the presenter on this issue, respondent testified that, approximately one week before the DEC hearing, his secretary found a file containing a complaint, a stipulation extending the time to answer interrogatories and defendant's initial interrogatories. According to respondent, that was the first time that he realized he was handling the product liability suit for the Perezes.

Respondent presented no evidence or testimony to counter his alleged failure to communicate with the Perezes, contending simply that he did not recall being unresponsive to their requests for information.

THE BROCKMAN MATTER

The complaint alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent stipulated the following facts:

Julie Brockman, the grievant in this matter, retained respondent on or about July 2, 1992 to represent her in a personal injury action. Apparently, Brockman cut her finger after placing her hand in a bag in the defendant's store. Respondent attempted to settle the matter with the defendant, but was unsuccessful. Thereafter, respondent prepared a complaint, which he received back from the court unfiled. Respondent took no further action in the case. Respondent also stipulated that he failed to adequately communicate with Brockman over the course of the case.

In addition to the stipulated facts, Brockman testified that from 1992 to 1995 she talked to respondent a mere three times. On one occasion, respondent allegedly told her that the defendant's insurance carrier had made a settlement offer, but refused to disclose the terms of that settlement, claiming that the amount was too low and that he could obtain more.

Brockman also testified about her final conversation with respondent in 1995:

> In 1995 I spoke to him, and I said, 'What about my case?' Have you heard anything?' He in turn says to me, 'What case?' I said, 'Mr. Ojeda, if you are not going to proceed with my case, the time is going by. I'd like to know what's going on.' I said, 'just send me my evidence that you took from me.' He said, 'Mrs. Brockman, I don't remember taking any evidence.' I said, 'When you were at my house at 44 West 12th Street,' He said, 'Mrs. Brockman, I don't remember being at your house at all.'
>
> That was the end of the conversation and that's when I got in contact with Mr. Carluccio, and he went to Mr. Ojeda, and Mr. Ojeda in turn said that as soon as he found the files or cross

> them [sic], he would send them to him. I didn't hear anything after that, and I got in contact with the Ethics Committee.

Robert J. Carluccio, Esq. also testified at the DEC hearing. Carluccio stated that he had represented Brockman in a number of personal injury cases and that she had contacted him with regard to a matter that respondent was handling for her:

> . . . [a]nd I called him a number of times just to find out whether he had started suit before the statute of limitations had run and I was nervous about it and didn't receive calls back.
>
> However, when I was out here in court, I decided to come over and see Mr. Ojeda and on June 27[1995] I stopped by. . . . Mr. Ojeda's door was open and I spoke with him and he assured me that the complaint was filed and within the time of statute of limitations. I asked him for a copy of it. He said he couldn't get it, his secretary — he had a lot of work and everything like that.
>
> And then what I did is I confirmed it with a letter, this will confirm the conversation with you.

Carluccio testified that he never received a copy of the complaint.

For his own part, respondent offered no evidence or testimony to refute Brockman's assertions and did not cross-examine Brockman or Carluccio about their respective testimony.

* * *

In Young, the DEC found a violation of RPC 1.3 (lack of diligence) for respondent's failure to adequately prosecute the case, RPC 1.4(a) (failure to communicate) for his failure to keep grievant reasonably informed about the case and RPC 1.1(b) (pattern of neglect) for

ignoring the dismissal of the case and failing to restore the matter. In concluding that respondent had exhibited a pattern of neglect, the DEC combined this misconduct with the neglect found in the matters below.

In Perez, the DEC found violations of RPC 1.1(a) (gross neglect) for respondent's conduct in allowing the matter to be dismissed, RPC 1.3 (lack of diligence) for his failure to prosecute the matter and RPC 1.4(a) (failure to communicate) for his failure to keep the Perezes informed about the case. The DEC did not discuss or find a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

In Brockman, the DEC found violations of RPC 1.3 (lack of diligence) and RPC 1.1(a) (gross neglect) for respondent's failure to timely file the complaint, and RPC 1.4(a) (failure to communicate) and (b) (failure to explain a matter to the extent necessary to permit the client to make informed decision regarding the representations) for respondent's failure to divulge to Brockman the contents of the settlement offer. The DEC did not mention or find a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

The DEC recommended that respondent be suspended for a period of three months. At the DEC hearing, respondent agreed to be placed on disability inactive status. In fact, an order was entered on February 6, 1997 transferring him to disability inactive status. The DEC also recommended that respondent be required to prove his fitness to practice, prior to reinstatement.

* * *

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

In Young, it is apparent that respondent did not adequately handle the case, allowing it to be dismissed for failure to prosecute. While respondent claimed that he attended the hearing, at which time the case was dismissed, he could not recall talking to Young beforehand. Respondent admitted that he did not correspond with Young beyond the initial letter indicating his receipt of the file from the previous attorney. Respondent did not produce any evidence of his work in the case beyond a document indicating that Young had seen a doctor regarding his injury. Respondent admitted that he did not notify Young of the dismissal even after Young visited his office in 1995 to question respondent's handling of the case. Finally, respondent admitted that he did nothing to restore the case after its dismissal.

Respondent's unsubstantiated claim that he was unable to contact Young prior to the hearing is of little consequence. Even assuming that that was the reason for the dismissal, it does not explain respondent's failure to reinstate the complaint following Young's visit to his office in 1995. Respondent's initial failure to adequately prosecute the case constituted a violation of RPC 1.3. His failure to prevent the dismissal of the case and to take action to restore the case after its dismissal violated RPC 1.3 and RPC 1.1(a). Also, respondent's lack

of communication was evidenced by the total lack of documentation of contact with Young beyond August 1992 and, indeed, respondent's inability to recall or memorialize any telephone conversations with Young. Respondent's misconduct in this regard constituted a violation of RPC 1.4(a).

In Perez, respondent was retained to file suit against the manufacturer of the machine that allegedly caused the partial amputation of Mr. Perez' finger. While it appears from respondent's file that he did file suit, he did nothing beyond that. Indeed, the Perezes met with respondent only twice: when they first retained respondent and in 1995, after the case was dismissed. In the interim, respondent failed to prosecute the case, as evidenced by unanswered interrogatories found in his file less than a week before the DEC hearing. Respondent's inaction resulted in the dismissal of the case. In this regard, respondent's conduct violated both RPC 1.3 and RPC 1.1(a).

Mrs. Perez testified about her numerous attempts to obtain information about the case by letter and telephone. Respondent did not comply with those requests. Finally, a meeting took place at respondent's office in 1995, well after the case had been dismissed. At that time, respondent did not inform the Perezes of the dismissal. Instead, Mrs. Perez discovered that fact while perusing respondent's file in his presence. Respondent's failure to communicate the status of the case to the Perezes from 1992 to 1995 violated RPC 1.4(a).

There are no specific allegations in the complaint with respect to the alleged violation of RPC 8.4. The hearing panel report is silent on the issue and the record does not support

a finding of such a violation. The Board, therefore, dismissed that charge.

In Brockman, respondent admitted that he did no work on the case beyond preparing the complaint. As a result, the statute of limitations ran and Brockman's claim was forever lost. Respondent's misconduct in this matter violated RPC 1.3 and RPC 1.1(a). Also, Brockman testified about her inability to obtain information regarding her case. Indeed, respondent admitted that he failed to communicate adequately with Brockman. That misconduct constituted a violation of RPC 1.4(a).

With regard to the alleged violation of RPC 1.4(b), Brockman testified that respondent apprised her of a settlement offer, but did not disclose its terms, claiming instead that he could obtain a better result. Respondent offered no evidence or testimony to contradict Brockman's assertions. Obviously, Brockman could not have made an informed decision about the settlement without knowing its terms. The Board found that respondent's misconduct in this context constituted a violation of RPC 1.4(b).

Finally, with regard to the alleged violation of RPC 8.4, the record does not support such a finding. Indeed, the DEC did not explore the issue of a violation of that RPC. For these reasons, the Board dismissed that charge.

Recent cases show a range of discipline from a reprimand to a term of suspension where the misconduct has been a mixture of offenses such as gross neglect, failure to communicate with the client and misrepresentation. In some cases, two or three of these violations are present, either alone or coupled with different violations, such as failure to

cooperate with the disciplinary authorities. See In re Gordon, 139 N.J. 606 (1995) (reprimand imposed where the attorney showed lack of diligence and failure to communicate in two matters, with gross neglect and failure to return a file in one of the two matters; the attorney had received a prior public reprimand); In re Carmichael, 139 N.J. 390 (1995) (reprimand imposed where the attorney showed lack of diligence and failure to communicate in two matters; the attorney had received a prior private reprimand); In re Wildstein, 138 N.J. 48 (1994) (reprimand imposed where the attorney failed to communicate in three matters, showed lack of diligence in two of the three matters and gross neglect in two of the three matters); In re Sternstein, 141 N.J. 16 (1995) (where the attorney was suspended for three months for gross neglect, lack of diligence and failure to cooperate with the disciplinary authorities in four matters); In re Saginario, 142 N.J. 424 (1995) (where the attorney was suspended for three months for grossly neglecting a matter by failing to file an appeal after accepting substantial payment); and In re Brantley, 139 N.J. 465 (1995) (where the attorney was suspended for three months for grossly neglecting two matters and failing to cooperate with the disciplinary authorities in a third case).

Respondent's misconduct in these matters included gross neglect, lack of diligence and failure to communicate in three matters. In mitigation, the Board considered that respondent suffers from a brain tumor that has probably affected his ability to practice law. Respondent has no prior ethics history. He consented to be transferred to DIS and remains on DIS to date. In aggravation, the Board took into account that the Perez' claim was forever

lost due to respondent's inaction.[2] There is no indication in the record as to what value that claim held. After a consideration of the relevant circumstances, the Board unanimously determined that a reprimand is sufficient discipline for respondent's ethics transgressions. One member did not participate.

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

Dated: 12/14/98

LEE M. HYMERLING
Chair
Disciplinary Review Board

[2]It is unknown if the Young and Brockman claims were lost due to respondent's misconduct.

SUPREME COURT OF NEW JERSEY

DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Angel Ojeda
Docket No. DRB 97-107

Argued: May 15, 1997

Decided: December 14, 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:			8				1

Robyn M. Hill 12/16/98

Robyn M. Hill
Chief Counsel