

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 94-134 and
DRB 94-287

IN THE MATTER OF :
EDWARD C. THOMAS, Jr. :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: October 19, 1994

Decided: March 10, 1995

Gerard M. Brennan appeared on behalf of the District XIII Ethics Committee.

Respondent did not appear.¹

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

This matter was before the Board based upon two recommendations filed by the District XIII Ethics Committee (DEC). The first, a recommendation for public discipline docketed as DRB 94-287, encompasses three cases. In Callaghan and Gordon, respondent was charged with violations of RPC 1.1(a) (gross neglect), RPC 1.2(a) (failure to abide by a client's decisions), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate) and RPC 8.4(d) (conduct prejudicial to the administration of justice). In Blaustein, respondent was charged with a violation of

¹ Notice of the Board hearing was attempted at respondent's last known addresses via regular and certified mail and via Federal Express Delivery Service. All attempts at delivery were unsuccessful. Thereafter, notice of the Board hearing was made in the New Jersey Law Journal and in The Morning Call.

R.1:28-2 (practicing law while on the ineligible list) and RPC 1.1(b) (pattern of neglect). Respondent did not file an answer to the complaint. Accordingly, by letter dated March 16, 1994 from the DEC secretary, the complaint was amended to include a violation of RPC 8.1(b) (failure to cooperate with the DEC). Respondent did not attend the DEC hearing on those matters. (The record reveals that appropriate notice of the hearing was provided.)

The Board also considered a recommendation for admonition, docketed as DRB 93-134. In the two underlying grievances before the DEC, Cicchetti and Seip, respondent was charged with violations of RPC 1.1(a) and (b), RPC 1.2(a), RPC 1.3, RPC 1.4 and RPC 8.4(d). Respondent was also charged with a violation of RPC 8.4(c) (misrepresentation) in Seip. Respondent did not file an answer to the complaint. Accordingly, by letter dated July 21, 1993, respondent was informed that the complaint had been amended to include a charge of a violation of RPC 8.1(b). Respondent appeared at the DEC hearing on these matters. (The Board had originally considered this matter at its June 22, 1994 meeting, as a recommendation for private reprimand. At that time, the Board determined to remand the matter for more specific findings of fact.)

* * *

Respondent was admitted to the practice of law in New Jersey in 1980. He maintained an office in Clinton, Hunterdon County. By Order dated June 7, 1994, respondent was temporarily suspended and ordered to pay a monetary sanction for failure to pay a fee

arbitration award. The New Jersey Lawyers' Fund for Client Protection reports that respondent has been ineligible to practice law since September 20, 1993.

Docket No. DRB 94-287

The Callaghan Matter

Jeremiah J. Callaghan retained respondent in December 1989 in connection with a matrimonial matter. Mr. Callaghan agreed to pay respondent \$110 per hour and gave respondent a \$1000 retainer. Respondent represented Mr. Callaghan through the final judgment of divorce in March 1991.

Mr. Callaghan testified that, beginning in the later part of 1990, he began to have difficulty contacting respondent. Mr. Callaghan made numerous calls to respondent, usually reaching his answering machine or, occasionally, a secretary. Respondent returned approximately fifty-percent of Mr. Callaghan's calls. It appeared to Mr. Callaghan that respondent was, at that time, making an effort to answer his inquiries. However, as the representation progressed, it became increasingly difficult to contact respondent.

In December 1991, the attorney representing Mr. Callaghan's ex-wife filed a motion to force the sale of the former marital residence. Mr. Callaghan contacted respondent when he received the notice from the court. According to Mr. Callaghan, respondent attempted to represent him during this time. Respondent filed documents in opposition to the motion on Mr. Callaghan's behalf, albeit late. The motion was granted. Thereafter, Mr. Callaghan

paid respondent \$650 to pursue an appeal of the motion. It was Mr. Callaghan's belief that most of that amount was to pay for transcripts and other costs. The appeal was denied and the marital residence was sold.

Closing of title on the former marital residence took place on March 2, 1992. Shortly thereafter, a dispute arose between Mr. Callaghan and the buyers, who claimed entitlement to approximately \$6,100 for several pieces of personal property. Mr. Callaghan retained respondent to represent him in connection with this action. Respondent did not file a responsive pleading to the buyers' demand, although he appeared at the court hearing. In mid-April 1992, the court ordered a reduction of approximately \$6,100 in Mr. Callaghan's proceeds from the sale of the house. Mr. Callaghan stated that respondent had been unprepared during the court hearing and that he, respondent, represented that he would reopen the matter. The April court date, however, was the last time that Mr. Callaghan saw respondent. Mr. Callaghan paid the disputed amount to the buyers in early 1993, pursuant to a judgment.

Subsequently, a proceeding was filed against Mr. Callaghan for \$6,500 - the legal fees incurred by his ex-wife in connection with his attempt to delay the forced sale of the house. Mr. Callaghan unsuccessfully tried to contact respondent for assistance, when he received notice of the proceeding. The court assessed a \$3,000 fee against Mr. Callaghan.

When Mr. Callaghan originally retained respondent, he

maintained two offices, one in East Brunswick and one in Clinton. In late 1990 or early 1991, respondent closed the East Brunswick office, citing financial difficulties. In February or March 1992, respondent closed his Clinton office. Respondent informed Mr. Callaghan that he was establishing a new office in Philipsburg, New Jersey. Mr. Callaghan had been given a number in Easton, Pennsylvania, where he could contact respondent. Between March 2, 1992 and July 1992, Mr. Callaghan was unable to reach respondent, despite attempts several times per month. In fact, respondent was unreachable. In each dispute in which Mr. Callaghan was involved - the divorce action, the forced sale of the property, the action for remuneration by the buyers of the house and the action for legal fees - opposing counsel communicated directly with Mr. Callaghan because of their inability to contact respondent.

Mr. Callaghan testified that respondent started discussing his own personal problems with him in the latter half of 1990. Subsequently, respondent began borrowing money from Mr. Callaghan, referring to the funds as an advance on his legal fees. Mr. Callaghan testified that he advanced "fees" to respondent five or six times. The record does not reveal the total amount advanced to respondent in this fashion.

Mr. Callaghan testified that, early in the representation, respondent told him that he would receive a monthly accounting of services rendered. Nevertheless, Mr. Callaghan received only one accounting for fees from respondent in mid-1990, which he described as merely "a list of numbers" (T4/28/94 45). Further, Mr.

Callaghan never received any documentation from respondent or copies of pleadings filed in his behalf. Accordingly, Mr. Callaghan filed a request for fee arbitration with the District XIII Fee Arbitration Committee. By determination dated June 23, 1993, respondent was instructed to return \$1,220.82 to Mr. Callaghan. Respondent failed to make the required payment to Mr. Callaghan. On January 6, 1994, the Office of Attorney Ethics ("OAE") filed a motion seeking respondent's temporary suspension for failure to comply with the fee arbitration award. Following review by the Board, respondent was suspended by Order dated June 7, 1994.

The Blaustein Matter

This matter was considered by the DEC solely on the documentary evidence submitted by the presenter. The grievant, Harvey Blaustein, Esq., did not testify.

By letter dated August 5, 1993, Mr. Blaustein informed the Administrative Office of the Courts that respondent had practiced law while on the ineligible list for failure to pay the annual assessment of the New Jersey Lawyers' Fund for Client Protection. Specifically, respondent represented the husband in a matrimonial matter, in which Mr. Blaustein had been appointed the guardian ad litem of the child of the marriage. Mr. Blaustein stated that he had seen respondent's name on the list of attorneys ineligible to practice law, published in the March 22, 1993 issue of the New Jersey Law Journal. Further, according to Mr. Blaustein, on

February 9, 1993, respondent admitted to him that he did not have an office in New Jersey during at least a portion of the time of his representation in the matrimonial matter.

The Gordon Matter

Karen Gordon was involved in an automobile accident on December 9, 1988. She retained respondent on a contingent fee basis approximately two weeks after the accident.

Early in the representation, respondent pursued the matter on Ms. Gordon's behalf. He applied for PIP benefits as well as income continuation benefits and obtained payment of Ms. Gordon's medical bills.

Ms. Gordon was aware that, during the representation, respondent closed his East Brunswick office and maintained his office in Clinton. Subsequently, however, between late 1992 and June 1993, Ms. Gordon had difficulty contacting respondent. Although she left numerous messages with respondent's secretary and on his answering machine at the Clinton number, with the exception of one or two occasions, he failed to return her calls. Further, although he led her to believe that he was pursuing her claim, she did not receive any status information or copies of any documentation filed on her behalf. The final contact Ms. Gordon had with respondent was in early 1993.

In June 1993, Ms. Gordon consulted with Jac B. Weiseman, Esq. Mr. Weiseman advised her to send a certified letter to respondent requesting information on the status of her matter. Although Ms.

Gordon sent a June 1993 letter to respondent's Clinton address, it was returned as undeliverable. Thereafter, in late June 1993, Ms. Gordon retained Mr. Weiseman, who attempted to contact respondent and obtain Ms. Gordon's file, by letters dated June 28 and July 6, 1993. Respondent did not reply to those letters. The DEC presenter also attempted to obtain the file from respondent, by letter dated February 22, 1994, to no avail.

As of the date of the DEC hearing, Ms. Gordon's matter was pending. By letter dated May 4, 1994, Mr. Weiseman explained to the presenter that, although the statute of limitations in Ms. Gordon's matter had not expired, she had nonetheless been prejudiced by respondent's failure to turn over her file, in that she no longer had original documents and had to reconstruct her file.

* * *

The DEC found that respondent violated the RPCs alleged in the complaint. Specifically, the DEC concluded that, in Callaghan and Gordon, respondent had violated, RPC 1.1(a) and (b), RPC 1.2(a), RPC 1.3, RPC 1.4 and RPC 8.4(d). In the Blaustein matter, the DEC determined that respondent had violated R.1:28-2. Further, the DEC found a pattern of neglect, in violation of RPC 1.1(b), and failure to cooperate with the disciplinary system, in violation of RPC 8.1(b) and R.1:20-3(i).

Lastly, the DEC found that respondent's failure to maintain a bona fide office was in violation of R.1:21-1(a) and RPC 5.5(a), an allegation not charged in the complaint.

The DEC recommended the imposition of public discipline.

Docket No. DRB 94-134

The Cicchetti Matter

Benjamin P. Cicchetti retained respondent in connection with a number of matters beginning in 1988, including a wrongful discharge action, a claim for worker's compensation and a personal injuries claim. According to Mr. Cicchetti, although respondent had kept him informed as to the status of his matters in 1991, he subsequently had difficulty communicating with him. By late 1991 or early 1992, Mr. Cicchetti's calls went unanswered, despite the fact that he left messages for respondent. In the latter part of 1992, Mr. Cicchetti attempted to contact respondent on numerous occasions, calling two or three times per week. He spoke with respondent's secretary approximately one-third of the time. On the other occasions, he left a message on respondent's answering machine. Respondent did not keep him apprised of the status of his cases.

Mr. Cicchetti further alleged that, at the time of trial in the wrongful discharge matter, he did not hear from respondent and was forced to call witnesses on his own. He did, however, recall that subpoenas had been issued in that matter. Further, he consulted with a second attorney, who reviewed the file and determined that it had been properly handled as of that time.

On an undisclosed date, Mr. Cicchetti appeared in court himself and was apprised by the clerk that the case had been

dismissed. Thereafter, Mr. Cicchetti continued to attempt to contact respondent by telephone and in writing, without success. Mr. Cicchetti also left a note for respondent at his house, at which time he received a reply from respondent. (The record does not reveal what that reply was.)

With regard to the dismissal of the case, respondent explained that pre-trial briefs and certifications had been filed and witnesses had been subpoenaed, but that a motion for summary judgment had been granted dismissing the case. Respondent added that he had informed Mr. Cicchetti of his right to appeal.

On cross-examination, Mr. Cicchetti admitted that the worker's compensation matter had been filed by respondent and completed in 1990-1991. He further admitted that he and respondent had never entered into a retainer agreement on the remaining matter and that respondent had not represented that he would file a lawsuit on Mr. Cicchetti's behalf.

Respondent denied most of Mr. Cicchetti's allegations and testified that he had kept Mr. Cicchetti informed as to the status of his matters. Respondent admitted, however, that he did not always return Mr. Cicchetti's telephone calls because Mr. Cicchetti had become abusive and had threatened respondent and his secretary. Respondent contended that he had diligently handled all matters in Mr. Cicchetti's behalf.

* * *

The DEC found that there was conflicting testimony as to whether respondent had diligently pursued Mr. Cicchetti's cases and

kept him informed as to their status. Accordingly, the DEC did not find clear and convincing evidence of unethical conduct in this matter.

The Seip Matter

In or about May 1991, Kevin E. Seip retained respondent in an on again and off again matrimonial matter, based on the parties' attempts at reconciliation. At some point, however, Mr. Seip determined to proceed with the divorce. Mr. Seip testified that he had informed respondent that the visitation and joint custody agreements he had worked out with his estranged wife were satisfactory to both parties. Respondent advised Mr. Seip that they should wait and file the complaint under a no-fault basis because the court would be more inclined to continue the custody arrangement if it had been in place for a longer period of time.

* * *

The DEC found that there was conflicting testimony as to whether respondent had been instructed to file the complaint for divorce. It appeared that Mr. Seip had been informed that, for strategic purposes, the complaint would not be filed until an eighteen-month period of separation had passed. Mr. Seip admitted that he may have been so advised and that he had agreed. Accordingly, the DEC did not find unethical conduct in this matter.

Failure to Cooperate with the DEC

Respondent did not file an answer to the complaint in this matter. He further failed to provide his files or other evidentiary documents at the DEC hearing. Accordingly, the DEC found that respondent violated RPC 8.1(b) and recommended a private reprimand on that basis alone.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusion of the DEC that respondent was guilty of unethical conduct is fully supported by clear and convincing evidence. In the Callaghan and Gordon matters, respondent was guilty of gross neglect, failure to abide by a client's instructions, lack of diligence, failure to communicate, conduct prejudicial to the administration of justice and failure to cooperate with the DEC.

In addition, the DEC concluded that respondent had practiced law while ineligible and without a bona fide office. Although the record is sparse on these two issues, in light of the surrounding circumstances, the Board deemed the evidence sufficient to meet the clear and convincing standard required, and agreed with the DEC's conclusions. Respondent further failed to file an answer in Cicchetti and Seip, in violation of RPC 8.1(b).

There is one additional factor in this matter that is troublesome: respondent's disrespect for the disciplinary system. Although, in one of the above matters (DRB 94-134), respondent had

counsel and appeared at the DEC hearing, in the other (DRB 94-287) he not only failed to file an answer but also failed to appear at the hearing. As noted above, respondent also failed to appear at the Board hearing.

Given these factors, the Board is of the opinion that strong measures are needed to demonstrate for this respondent the seriousness of his misconduct and of his obligations as an attorney. The Board, therefore, unanimously recommends that respondent be suspended for a period of one year. See In re Jenkins, 117 N.J. 679 (1989) (one-year suspension for gross neglect in two matters and misrepresentation of the status of cases to clients. The attorney's disregard for the disciplinary process was considered as aggravation). Further, the Board recommends that, prior to reinstatement, respondent successfully complete the skills training courses offered by the Institute for Continuing Legal Education and that, upon reinstatement, he be required to practice under the supervision of a proctor for one year. Three members did not participate. One member recused himself.

The Board further recommends that respondent be required to reimburse the Disciplinary Oversight Committee for administrative costs.

Dated: 3/10/95

By: 

Raymond R. Trombadore
Chair
Disciplinary Review Board