

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 89-178

IN THE MATTER OF :
: :
JEROME J. COHEN, :
: :
AN ATTORNEY AT LAW :
:

Decision and Recommendation
of the
Disciplinary Review Board

Argued: November 29, 1989

Decided: February 28, 1990

Joseph H. Enos, Jr. appeared on behalf of the District IV 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 is before the Board based upon a presentment filed by the District IV Ethics Committee.

Respondent was admitted to the New Jersey bar in 1965. He maintained offices in Cherry Hill until February 15, 1989, when he was suspended from the practice of law for one year. Matter of Cohen, 114 N.J. 51 (1989).

In January 1984, Samuel Joftis (grievant) was involved in a three-car collision. The following month, he retained respondent to pursue a claim against two drivers and the owner of the driveway where the accident occurred. In December 1984, grievant reached

a settlement with one of the other drivers and signed a release prepared by respondent (C-8 in evidence). According to grievant's testimony, respondent told him that suit had been filed against the other parties at the same time that it was filed against the party with whom he had settled his claim (T18).¹ Grievant telephoned respondent every month to ask about the status of the other lawsuits. Respondent told grievant that he was waiting to get a docket number and a trial date (T18-T19). In August 1986, respondent gave grievant a docket number that turned out to be false (C-10 in evidence; T20-T24).

On January 29, 1986, twelve days after the running of the statute of limitations, respondent finally filed suit against the other parties. Thereafter, respondent served the complaint on counsel for the two remaining defendants. However, the filing date on the served copies of the complaint had been altered to read January 9, instead of January 29, 1986, to reflect a filing date within the statute of limitations period (C-3 in evidence; C-6 in evidence). Eventually, both defendants realized that the case had been filed out of time. Motions to dismiss were filed, to which respondent did not object. The first dismissal was granted by order dated August 29, 1986 (C-12 in evidence); the second motion was granted on April 9, 1987 (C-13 in evidence). Even though respondent knew that the complaint had been dismissed and that further legal action was barred by the statute of limitations, he

¹T refers to the transcript of the District IV Ethics Committee hearing on May 25, 1989.

continued to tell his client, for two more years, that the matter was proceeding apace.

Respondent has not cooperated fully in the investigation of this matter. The investigator was unable to meet with respondent to discuss this matter. Unable to have respondent schedule a mutually convenient time for the ethics hearing, the committee heard the case without his presence (T6-T7). Similarly, the Disciplinary Review Board, after multiple attempts to reach respondent at his office, made notice by publication of the Disciplinary Review Board hearing date for two consecutive weeks in both the Camden County Courier Post and the New Jersey Law Journal. Respondent finally contacted the Board stating his attorney would be present. Hours before the hearing, however, he waived appearance.

The committee found that respondent had failed to comply with his client's reasonable requests for information about the status of the matter, in violation of RPC 1.4(a); had misrepresented to his client that the case was proceeding smoothly, knowing that the complaint had been dismissed, in violation of RPC 8.4(c); had altered the filing date on the complaint, in violation of RPC 8.4(c); had exhibited a pattern of neglect by his conduct in this and in a preceding matter for which respondent was suspended, in violation of RPC 1.1(b); and had not cooperated with the committee, in violation with RPC 8.1(b). The committee recommended a public reprimand.

CONCLUSION AND RECOMMENDATION

Upon a de novo review of the full record, the Board is satisfied that the conclusions of the ethics committee in finding respondent guilty of unethical conduct are fully supported by clear and convincing evidence. However, the Board has concluded, after reviewing all the evidence, that discipline greater than a public reprimand is required.

Respondent failed to communicate with his client about the status of the matter, in violation of RPC 1.4(a). Moreover, although retained in January 1984, shortly after the grievant was injured, respondent did not file the complaint until after the statute of limitations had run. Once retained, respondent owed grievant a duty to pursue his interests diligently. See Matter of Smith, 101 N.J. 568, 571 (1986); Matter of Schwartz, 99 N.J. 510, 518 (1985); In re Goldstaub, 90 N.J. 1.5 (1982). Respondent's abrogation of this duty violates RPC 1.3. Additionally, this negligence, combined with respondent's earlier actions that resulted in a one-year suspension on February 1, 1989, demonstrates a pervasive pattern of negligence, in violation of RPC 1.1(b).

Compounding his negligence, respondent continued to assure his client that the case was progressing, even after the complaint had been dismissed. Public confidence in the bar is diminished when an attorney falsely represents to a client that a case is proceeding smoothly. A client should not continue to suffer the

consequences of being told that his or her case is under control, when it is not. In re Goldstein, 97 N.J. 545, 549 (1984). This misrepresentation was a violation of RPC 8.4(c).

Most egregiously, the Board finds, by clear and convincing evidence, that respondent altered the filing date of the complaint in an attempt to mislead his adversaries and the court into believing that it had been filed in a timely manner. This misconduct requires greater discipline than the public reprimand recommended by the ethics committee. Respondent intentionally committed a fraudulent act when he altered the filing date, contrary to RPC 8.4(c). In cases of this nature, where an attorney alters an official document to conceal his failure to act, a lengthy suspension is the minimum discipline required. See Matter of Reiss, 101 N.J. 475, 491 (1986); Matter of Yacavino, 100 N.J. 50 (1985); In re McNally, 81 N.J. 304 (1979).

The purpose of discipline is the "protection of the public against the attorney who cannot or will not measure up to the high standards of responsibility required of every member of the profession." In re Getchius, 88 N.J. 269, 276 (1982), citing In re Stout, 76 N.J. 321, 325 (1978).

Although mitigating factors are relevant and may be considered, In re Hughes, 90 N.J. 36 (1982), respondent has not presented any such mitigating factors to the Board. To the contrary, respondent's total lack of cooperation in the investigation of this matter, his lack of response to letters and telephone calls, and his non-attendance of the hearings before both

the local ethics committee and the Disciplinary Review Board give the appearance that respondent does not value his license to practice law. An attorney is obligated to cooperate fully with the ethics committee. Matter of Smith, 101 N.J. 568, 572 (1986); Matter of Winberry, 101 N.J. 557, 566 (1986). The Board views this failure to cooperate as an aggravating factor.

Furthermore, the Board finds as additional aggravating factors that respondent has previously received a private reprimand² and is presently serving a one-year suspension for similar conduct.

Accordingly, the Board unanimously recommends that respondent serve a two-year suspension to run consecutively to the present suspension. One member did not participate.

The Board further recommends that respondent be required to reimburse the Ethics Financial Committee for appropriate administrative costs.

Date: _____

2/28/1990



Raymond R. Trombadore
Chair
Disciplinary Review Board

²Respondent was privately reprimanded on February 6, 1979, under DR 1-102(4) for conduct involving misrepresentation to an expert.