

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 88-278

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IN THE MATTER OF :  
WILBERT MARTIN, :  
AN ATTORNEY AT LAW :

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Decision and Recommendation  
of the  
Disciplinary Review Board

Argued: July 19, 1989

Decided: June 15, 1990

William Wood appeared on behalf of the Office of Attorney Ethics.

Frank A. Louis appeared on behalf of respondent, who was also present.

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 IIIA Ethics Committee.

By way of procedural background, between 1967 and 1982, the Ocean County District Ethics Committee had before it three prior matters against respondent. In 1967, the committee ("the 1967 committee") received a complaint in a case designated infra as the DeLorenzo Matter. That case was ultimately dismissed on grievant's representation that it had been satisfactorily resolved. At that time, the 1967 committee found no unethical conduct on the part of respondent, only simple neglect.

In addition, in 1975, Norman Pharo (the Pharo Matter below), filed a complaint with the committee ("the 1975 committee"), which Mr. Pharo subsequently withdrew.

Further, in 1982, the committee ("the 1982 committee"), dismissed the so-called Stackhouse and Malloy Matter on the basis that respondent's conduct did not rise to the level of gross negligence, but only simple neglect.

On July 14, 1987, the Office of Attorney Ethics (OAE) filed a seven-count amended complaint charging respondent with misconduct in three new matters (the Farlie Matter, the Hawley Matter, and the Hill Matter), and with gross neglect in the three matters supra that were dismissed by the committee. The OAE further charged respondent with exhibiting a pattern of neglect in all six matters.

The facts are as follows:

#### COUNT I: THE FARLIE MATTER

In August 1980, Mary Farlie retained respondent to represent her in a claim arising from an automobile accident. Ms. Farlie was employed at an Exxon service station, when a car pulling in for service struck her, injuring her leg. Respondent represented Ms. Farlie in a workers' compensation claim, for which she received a lump sum settlement in March 1982.

In January 1982, respondent filed a complaint against the operator of the automobile. On April 19, 1982, respondent received interrogatories from the defendant in the negligence matter. Although respondent apparently prepared answers to the interrogatories, he failed to file the answers. In December 1982, an order was issued, requiring respondent to answer the interrogatories within thirty days. Respondent failed to comply with the order. In January 1983, Ms. Farlie's complaint was dismissed for failure to answer interrogatories. Throughout most of 1983, Ms. Farlie contacted respondent regarding the case, and was informed that it was proceeding smoothly. Respondent knew, at the time of the statements, that the case had been dismissed. In February 1984, Ms. Farlie contacted the Ocean County Clerk's Office and was advised that the case had been dismissed.<sup>1</sup>

**COUNT II: THE HAWLEY MATTER**

In January 1981, Anna Hawley retained respondent to handle the estate of her husband, who had died a few days before. The estate consisted of one piece of real property held as a tenancy by the entirety, one checking account, savings accounts, and a Christmas Club account. Respondent contacted Mrs. Hawley and requested a check for \$435.00 to pay the estate taxes. Mrs. Hawley sent

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<sup>1</sup>Ms. Farlie retained another attorney. The case was reinstated and she has been compensated for her injury.

respondent the check, which was never cashed. Over a twenty-month period, until Mrs. Hawley filed the ethics grievance, respondent did not file the New Jersey inheritance tax return.<sup>2</sup>

**COUNT III: THE DeLORENZO MATTER**

In June 1963, Mr. and Mrs. Harry DeLorenzo retained respondent to represent Mrs. DeLorenzo in a personal injury action arising from an automobile accident. Respondent failed to file a complaint in the matter before the statute of limitations ran. Respondent agreed to compensate Mrs. DeLorenzo for her loss. After advising the DeLorenzos to seek outside counsel, which they declined to do, respondent arrived at a figure acceptable to them, \$2,000. On November 13, 1965, the DeLorenzos and respondent established a payment schedule, which was partially followed by respondent. After respondent fell behind in his payments to her, Mrs. DeLorenzo filed her grievance with the ethics committee on November 25, 1966. Subsequent to the filing of the complaint, Mrs. DeLorenzo informed the committee that the total sum owed to her by respondent had been paid. The 1967 committee found that, although respondent had been negligent in allowing the statute of limitations to run, he had not acted unethically in his dealings with Mrs. DeLorenzo, and dismissed the complaint.

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<sup>2</sup>In October 1982, Mrs. Hawley retained another attorney to handle the estate on her behalf. The return was filed, and the taxes were paid in November 1982.

**COUNT IV: THE PHARO MATTER**

In the summer of 1972, Mr. Norman Pharo retained respondent to file a motion for the emancipation of Mr. Pharo's son. The motion was filed on August 25, 1972, and was granted. Respondent was required to file an order for the judge's signature within ten days of the granting of the motion. This notwithstanding, respondent failed to file an order on Mr. Pharo's behalf for a period of approximately three years. In April 1975, Mr. Pharo filed a complaint with the ethics committee. In May 1975, respondent prepared and submitted to the court an order nunc pro tunc, recognizing the son's emancipation and cancelling any support arrears that had resulted from the delay. Because Mr. Pharo withdrew his complaint, the 1975 committee did not hold a hearing on this matter.

**COUNT V: THE STACKHOUSE AND MALLOY MATTER**

In 1970, Mr. John Stackhouse retained respondent to attempt to release monies held by the State of New Jersey as the result of a condemnation proceeding involving Mr. Stackhouse's father.<sup>3</sup>

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<sup>3</sup>Ms. Diane Malloy is Mr. Stackhouse's sister and became involved in the matter later in the proceedings. The extent of her involvement is unclear. It appears that Ms. Malloy attempted to determine the status of the matter from respondent. Ms. Malloy was the individual who filed the grievance against respondent.

Respondent did, in fact, begin to pursue this matter on Mr. Stackhouse's behalf. However, prior to respondent's being able to proceed with the representation, other heirs involved in the matter needed to consent, or release their interest in the funds. The 1982 committee determined that Mr. Stackhouse knew of the requirement, although it was never explained to him in writing. Until the heirs consented to release their interest, respondent could not proceed, however. Respondent never informed Mr. Stackhouse, or anyone else, that he considered his employment in the matter ended. There was no action in this matter for a period of approximately ten years. The 1982 committee found that respondent's omission to advise Mr. Stackhouse, in writing, of the requirement of having a release signed by the other heirs, as well as respondent's failure to inform his client of his withdrawal had been negligent, but not grossly negligent.

COUNT VI: THE HILL MATTER

In the summer of 1986, Ms. Margaret Hill retained respondent to represent her in connection with the sale of real property. In late September 1986, respondent received a copy of the title binder, at which time he learned that a relative of Ms. Hill might have a possible interest in the property. Ms. Hill was informed of this fact. Respondent attempted to find out the status of the title to the property to allow the conveyance. By late October or

early November, respondent concluded that Ms. Hill's nephew had to execute a deed, which respondent prepared for the nephew's signature. Ms. Hill terminated respondent's representation in early December 1986, until which time he was attempting to resolve the title problem.

#### THE 1988 COMMITTEE FINDINGS

In the Farlie matter, the committee found that respondent was grossly negligent in his handling of Ms. Farlies' case, and that his conduct evidenced a pattern of neglect, charged in the complaint as Count VII, when taken in concert with the matters discussed in Counts II through V. The committee also found that respondent misrepresented the status of the case to Ms. Farlie. The committee concluded that respondent had violated DR 6-101(A)(1) and (2), and DR 7-101(A)(3).<sup>4</sup>

In the Hawley matter, the committee found that respondent's failure to file the inheritance tax return had been negligent, but not grossly negligent, and thus not unethical. The committee concluded, however, that respondent's acts were part of a pattern of neglect.

With regard to the DeLorenzo matter, the committee determined that the count was barred by the lapse of twenty-four years. Although the committee did not find respondent's conduct in

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<sup>4</sup>Although the committee found respondent guilty of misrepresentation in the Farlie matter, they did not make a specific finding of a violation of DR 1-102(A)(4).

DeLorenzo unethical, it concluded that it was also part of a pattern of neglect.

In the Pharo matter, the committee found that respondent was not grossly negligent, in that the failure to file the order did not harm Mr. Pharo. However, here again, the negligence was part of respondent's pattern of neglect.

With regard to the Stackhouse and Malloy matter, on motion of respondent at the conclusion of the committee's case, the allegations were dismissed on the basis of res judicata, because the 1982 committee found that there was only simple neglect on respondent's part, not gross negligence. However, the 1988 committee did consider the 1982 committee's findings in determining that this matter also fell into respondent's pattern of neglecting his cases.

In the Hill matter, the committee found that respondent acted diligently in his representation of Ms. Hill. There was no finding of neglect or of a pattern of neglect.

#### CONCLUSION AND RECOMMENDATION

Upon a de novo review of the record, the Board is satisfied that the conclusions of the committee in finding respondent guilty of unethical conduct are supported by clear and convincing evidence.



The Board finds that, in the Farlie matter, respondent violated DR 1-102(A)(4) by misrepresenting to Ms. Farlie that her case was still proceeding, and that it would be coming up soon, when he knew that the personal injury action had been dismissed. In addition, respondent was grossly negligent in allowing Ms. Farlies' case to be dismissed by his unexplained failure to answer the interrogatories, in violation of DR 6-102(A)(1).

In the Hawley, DeLorenzo, Pharo, and Stackhouse and Malloy matters, respondent displayed conduct which, taken individually, constituted simple neglect, but not unethical conduct. However, these cases, taken together, and coupled with the gross neglect found in the Farlie matter, constitute a pattern of neglect of his responsibilities to his clients, in violation of DR 6-101(A)(2).

The purpose of discipline, however, is not the punishment of the offender, but "protection of the public against an 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). The severity of the discipline to be imposed must comport with the seriousness of the ethical infraction in light of all the relevant circumstances. In re Nigohosian, 86 N.J. 308, 315 (1982). Mitigating factors are, therefore, relevant and may be considered. In re Hughes, 90 N.J. 32, 36 (1982).

In mitigation, the Board considered that during the time in question, respondent's partnership was dissolved, as a result of which respondent was attempting to handle his own cases, as well

as those of his former partner. In addition, during the same period, respondent was assisting in the defense of several members of his family, who had been arrested. The Board also considered the testimony of three character witnesses. Each attested to respondent's good character and reputation in the community as an honest and zealous advocate for his clients. Furthermore, respondent recognized that his office procedures were inadequate and contacted an office management expert. Respondent acquired additional equipment, implemented some of the suggested changes, and agreed to ongoing contact with the management expert to improve his office procedures.

The Board was particularly impressed by respondent's candor before the committee. Respondent admitted his misconduct in all but the Hill matter, where no misconduct was found. In addition, respondent appeared to have cooperated with his former clients' new attorneys to remedy the results of his neglect. Finally, the Board noted that no client suffered any financial harm from respondent's actions.

Respondent's disregard of his ethical responsibilities to his clients, however, cannot be countenanced.<sup>5</sup> In its report, the committee strongly urged the Board to recommend discipline no stronger than a public reprimand. The Board agrees with the committee that a period of suspension is unwarranted.

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<sup>5</sup>The Board is aware that respondent was temporarily suspended on September 8, 1969. There is no opinion accompanying the Court's order. It is unclear what respondent's specific misconduct was. Respondent was restored to practice on November 28, 1969.

During the hearing before the committee, and also before the Board, respondent explained that he has placed self-imposed limitations on his practice by no longer accepting negligence matters. Based upon the totality of the circumstances, which include the Board's reliance on respondent's assurance that he will not undertake the representation of negligence matters, the requisite majority of the Board recommends that he receive a public reprimand. The Board hopes that respondent's restraint will also extend to complex estate matters. One member dissented, believing respondent should receive a six-month suspension based upon his prior two-month suspension. One member disqualified himself.

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

Dated: \_\_\_\_\_

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Raymond R. Trombadore  
Chair  
Disciplinary Review Board