

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 88-284

IN THE MATTER OF :
 :
LUIS OSCAR BELTRE, :
 :
AN ATTORNEY AT LAW :

Decision and Recommendation
of the
Disciplinary Review Board

Argued: May 17, 1989

Decided: February 5, 1990

John O'Shaughnessy appeared on behalf of the District VI Ethics Committee.

Respondent did not appear¹.

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

This matter is before the Board based on a presentment filed by the District VI Ethics Committee.

Respondent was admitted to the practice of law in New Jersey in 1982 and maintained an office in Hudson County until he moved his practice to New York, approximately two years ago. Jose Torres, the grievant in this matter, was convicted of aggravated arson in Hudson County and received a seven-year sentence on August 15, 1986. Grievant was represented by another attorney through his

¹ Respondent was notified of the date and time of the Board hearing by regular and certified mail, sent to his New Jersey address. The green certified receipt card was returned signed by an individual whose last name is Beltre.

trial and sentencing. On July 10, 1986, grievant retained respondent to file an appeal. Grievant's brother paid respondent \$2,000 on that date.² On July 21, 1986, grievant's brother made a payment of \$4,600 to respondent. Respondent acknowledges having received those payments. Receipts given to grievant's brother were admitted into evidence at the ethics hearing.

Grievant's appeal had to be filed by October 1, 1986.³ From the time that respondent was retained until mid-February 1987, when he was contacted by grievant, respondent took no steps toward advancing the appeal, other than reviewing the file in the office of grievant's trial counsel. Respondent testified that he ordered the transcripts. Yet, he never obtained them or kept a record of the transcript order.

Throughout this period, with the exception of his sentencing date, grievant never saw respondent. Because he was incarcerated, grievant relied on his brother to contact respondent. Grievant's brother testified that he went to respondent's office in New York approximately ten times, and telephoned him five to seven times a day. He was never able to see or speak with respondent. None of

² Although the receipt for the \$2,000 payment is marked "Investigation Crime Matter in New Jersey", the committee determined that it constituted a down payment toward the total \$8,000 fee.

³ While in prison, grievant learned that his appeal had not been filed. After he attempted to file it pro se, he received an order allowing the appeal nunc pro tunc. As of the date of the committee hearing, the appeal was still pending.

his calls was returned.

The committee found that respondent was guilty of gross negligence, in violation of RPC 1.1, by failing to take the minimum steps necessary to perfect the appeal. In addition, the committee found that respondent failed to contact grievant and grievant's brother about the status of the appeal. The committee also found a lack of diligence, in violation of RPC 1.3, in that respondent was remiss in his duties toward his client. Lastly, the committee found a violation of RPC 1.4, in that respondent failed to communicate with his client, denying him his constitutional right to pursue a defense.

CONCLUSION AND RECOMMENDATION

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

When retained, respondent owed his client 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). The Board finds by clear and convincing evidence that respondent was guilty of gross neglect, in violation of RPC 1.1, and of lack of diligence, in violation of RPC 1.3, due to his failure to pursue the matter for which he had been retained. Except for visiting grievant's trial counsel, respondent did nothing to ensure that the appeal was advanced.

In his answer to the complaint, respondent argued that his other engagements caused him to miss the filing date. Given the ease with which the appeal could have been filed, the Board is unpersuaded by this argument. Respondent further explained that he did not attempt to file the appeal after October 1, 1986, because he felt that grievant would be in a better position to file late if grievant acted pro se. Respondent testified before the committee:

When I first realized that the time had expired, I was even advised, you know, to file a late Notice but I decided not to do so, based on the fact that I did not want to prejudice the application by the Complaining Witness herein of saying -- of being told, well, you had an attorney and the time expired, therefore, you would not get the appeal heard . . . I decided not to do anything so that the chances of Mr. Torrez [sic] getting a nunc pro tunc appeal granted would have a greater chance of succeeding.

[T3/23/88 49-16 to 50-7.]

The Board is unpersuaded by this argument. During cross-examination, the following exchange took place:

Q. From the date that the Notice of Appeal was due, from October 1, 1986, until the middle of February, 1987, you didn't really give any thought to that Notice of Appeal at all, did you?

A. To be real [sic] truthful, I don't believe I did.

[T3/23/88 68-25 to 69-4.]

The Board also finds that respondent failed to keep grievant reasonably informed about the status of his appeal, in violation of RPC 1.4. Grievant's brother went to great lengths to communicate with respondent, unsuccessfully. An attorney's failure to communicate with his clients diminishes the confidence the

public should have in members of the bar. Matter of Stein, 97 N.J. 550, 563 (1984).

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 respondent admitted his misconduct in his answer to the complaint, as well as before the committee. "Contrition and admission of wrongdoing are mitigating factors in respondent's favor." In re Rosenthal, 90 N.J. 12, 17 (1982); In re Horan, 78 N.J. 244, 247 (1978). The Board also notes that the \$6,600 sum that grievant's brother paid respondent has been returned.

Respondent's unethical behavior in this matter was aggravated by his lack of cooperation with the ethics committee. Not only did he ignore letters, telephone calls, and a subpoena issued by the committee's investigator, but he did not file an answer to the complaint until the day before the hearing, in violation of RPC 8.1(b). Respondent continued his disregard for the ethics process by failing to appear before this Board on May 17, 1989. An

attorney has an obligation to cooperate fully with ethics committees and proceedings. Matter of Smith, 101 N.J. 568, 572 (1986); Matter of Winberry, 101 N.J. 557, 566 (1986). An ethics complaint should be entitled to priority over any matter in which the lawyer is involved that can possibly be postponed. In re Kern, 68 N.J. 325, 326 (1975).

The Board is of the opinion that the within misconduct merits a public reprimand. The Board unanimously so recommends. One member did not participate.

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

Dated: 2/5/1990

By: 

Raymond R. Trombadore
Chair
Disciplinary Review Board