

In Re Tos,
Del. Supr., 576 A.2d 607 (1990)

Disciplinary Rules: DLRPC 1.1, 1.3, 1.4(a), 1.16(a)(3), 1.16(d), 3.4(c),
5.3(b), 8.1(a), 8.4(c), 8.4(d)

Nature of Case:

The Board on Professional Responsibility held a hearing on charges of misconduct against the Respondent related to his representation of five separate clients. 576 A.2d 609. The Board's findings of fact and conclusions of law are summarized as follows:

- (1) In representing client Nickson in an appeal from a Family Court custody decision, Respondent failed to file a certificate stating that the notice of appeal had been served on the appropriate court reporter as required by Supreme Court Rule 9, in violation of DLRPC 1.1. Id. at 609-10. He further failed to promptly comply with the Family Court's request to prepay transcript costs or with the Supreme Court's notice to show cause for his failure to prepay the costs, in violation of DLRPC 1.3. Id. In addition, by his failure to timely comply with the Supreme Court's directions to furnish the certificate or its notice to show cause, Respondent also violated DLRPC 3.4(c) and 8.4(d). Id.
- (2) In representing client Hathaway in an appeal from a Family Court decision denying a motion to stop a wage attachment for child support, Respondent also violated DLRPC 1.1, 1.3, 3.4(c), and 8.4(d) (as in the Nickson appeal), when he failed to timely file a certificate of service or to prepay the transcript costs. Id. at 610-11.
- (3) In representing client Brazas in an appeal from a Family Court decision regarding property division and alimony, Respondent violated DLRPC 1.1, 1.3, and 8.4(d) when he failed to comply with the Supreme Court's denial of an extension and order to file an opening brief by a certain date. Id. at 612. While the Board was disturbed by his conduct, it did not find there was clear and convincing evidence of a violation of DLRPC 3.2, noting that the comment to the Rule suggests that it was intended to apply to "dilatatory conduct with some ulterior motive or purpose". Id. In addition, the Board did not find that Respondent violated DLRPC 3.4(c) because Respondent's filing of a second motion for an extension did not constitute "knowing disobedience of his obligations under the rules...." Id.

- (4) In representing client Mathews in a divorce action, Respondent violated DLRPC 1.3, 1.4(a), 1.16(a)(3), 1.16(d), 8.4(c) and 8.4(d) when, inter alia, he failed to discuss the case with Mrs. Mathews, failed to respond to her new attorney's requests for her files, failed to move to withdraw as her counsel, failed to provide an accounting of her funds or to refund the unearned portion of the advance fee paid, and falsely notarized her signature on an affidavit. The Board did not find that there was clear and convincing evidence that Respondent had violated DLRPC 5.3(b). Id. at 614.
- (5) In his representation of client Bowers in a name change petition, the Board did not find clear and convincing evidence that Respondent had violated DLRPC 1.1, 1.3, 1.4(a), or 8.1(a). Id. at 614-16.
- (6) The Board found that Respondent's violation of a Disciplinary Order to pay the costs of a proceeding in which a public reprimand was imposed provided grounds for discipline. Id. at 616.

As an aggravating factor, the Board found that this was the fourth disciplinary matter involving Respondent. Id. As mitigating circumstances, the Board considered Respondent's illness at the time of the incidents in the Nickson and Hathaway cases, Respondent's acknowledgment of his problems and his efforts to seek professional help. Id. at 616-17.

Action Taken by the Court:

The Court found that the record before it clearly supported the findings of fact and conclusions of law made by the Board. Id. at 617. The Court considered the recommendations of the Assistant Disciplinary Counsel and Respondent, the Board's Report, the fact that Respondent voluntarily rearranged his practice of law, his remorse for the damage he had done, his efforts to rehabilitate himself, and the number and nature of his violations. Id.

A one-year suspension was imposed.