SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-117
District Docket No. IIB-09-0002E

IN THE MATTER OF	
CHRISTOPHER P. HUMMEL	
AN ATTORNEY AT LAW	

Decision

Decided: August 20, 2010

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

This matter came before us on a certification of default filed by the District IIB Ethics Committee ("DEC"), pursuant to R. 1:20-4(f). The four-count complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably

informed), and RPC 3.3(a) (lack of candor to a tribunal).[1] The complaint was amended to charge respondent with violating RPC 8.1(b) (failure to cooperate with disciplinary authorities). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1982. He has no history of discipline.

Service of process was proper. On January 15, 2010, the DEC secretary sent a copy of the complaint, via certified and regular mail, to respondent's office address at 2185 Lemoine Avenue, Fort Lee, New Jersey 07024. The receipt for the certified mail was returned to the DEC indicating delivery. The signature on the receipt is not legible. The regular mail was not returned.

On February 9, 2010, the secretary sent a second letter to respondent, advising him that, if he did not file an answer within five days of the date of the letter, the charges would be deemed admitted and the record certified to us for the imposition of discipline. The letter also served to amend the complaint to charge respondent with violating RPC 8.1(b), based on his failure to file an answer. The letter was sent to the

[1] No subsections were specified in the complaint. The applicable subsections have been provided where appropriate.

above address, by regular mail only. The secretary's certification does not state whether that letter was returned to the DEC.

Respondent did not file an answer to the complaint.

Respondent is a contract attorney for Local 371 in New York. Latoya Reina-Simeone is a member of the union and, as such, is entitled to legal services, pursuant to her pre-paid legal services plan. On August 10, 2006, Reina-Simeone was served with a complaint alleging breach of a real estate contract. Respondent met with her, on August 28, 2006. He agreed to represent her and to file an answer on her behalf.[2] He failed to file an answer to the complaint filed against Reina-Simeone and ignored the file for over nine months.

In November 2006, a default was entered against Reina-Simeone. In March 2007, a judgment was entered against her for $37,703.36. Even after learning that the judgment had been entered, respondent took no action on Reina-Simone's behalf for another eight months.

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[2] Twice during the time that respondent represented Reina-Simeone, he became ineligible to practice law for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. Because, on both occasions, the time period was quite brief, in our view such minor violation does not require any disciplinary action.

Moreover, respondent failed to promptly reply to Reina-Simeone's requests for information about her matter. In addition, when he spoke with Reina-Simeone, he either failed to adequately explain events that had occurred in her case, or, according to the complaint, "misrepresented that an action had been taken when it had not been."[3]

The order for judgment was forwarded to a New York attorney for collection against Reina-Simeone, who is a New York resident. At some point in 2007, Reina-Simeone's wages were garnished and a levy was placed against her bank accounts.

In January 2008, respondent filed a motion to vacate the default judgment. In his motion, he certified that Reina-Simeone had a meritorious defense for setting aside the judgment and that she had "applied for a mortgage . . . but was unable to obtain financing. . . ." Respondent knew, when he made that statement, that it was either not truthful or that it omitted material facts. The motion was denied in February 2008. Reina-Simeone paid $9,000 toward the judgment.

In early 2009, after Reina-Simeone "filed her Grievance" (presumably against respondent), he engaged in settlement discussions with New York counsel (presumably, counsel for the

[3] Respondent was not charged with misrepresentation.

other party in the real estate transaction), who agreed to accept less than the full amount owed, if payments were made within a specific time frame.

In early June 2009, respondent and Reina-Simeone entered into an agreement, wherein respondent acknowledged that she had paid "her share" of the judgment and he accepted responsibility for the rest, which was due by June 30, 2009, lest a penalty be incurred. Respondent agreed to make his best efforts to comply with that deadline and, if not, to be responsible for the balance due, including any penalties. He also agreed to indemnify Reina-Simeone for all funds that had been the subject of her wage execution.

Respondent did not make the June 2009 deadline, but ultimately provided $16,000 toward the judgment.[4]

In July 2009, New York counsel executed a satisfaction of judgment and forwarded a warrant of satisfaction to be filed. Despite the full satisfaction of the judgment, Reina-Simeone's wages were again garnished in July 2009. New York counsel stated that the money would not be returned.

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[4] The negotiated amount owed is not revealed in the record. Presumably, it was $25,000 ($9,000 from Reina-Simeone and $16,000 from respondent).

As indicated previously, the complaint charged respondent with violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 3.3(a).[5]

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In re Russell, 201 N.J. 409 (2009) (admonition for attorney whose failure to file answers to divorce complaints against her client caused a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf; In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (admonition imposed when attorney's

[5] The complaint states "[t]he conduct described above constitutes a failure to act with candor toward the court and counsel, in violation of RPC 3.3." Failure to act with candor toward counsel would fall under RPC 4.1(a)(1), with which respondent was not charged. Thus, only respondent's lack of candor to the court is discussed herein.

inaction in a personal injury action caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; also, the attorney failed to communicate with the client about the status of the case); In re Dargay, 188 N.J. 273 (2006) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar conduct); In the Matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005) (admonition for attorney who did not disclose to the client that the file had been lost and canceled several appointments with the client for allegedly being unavailable or in court when, in fact, the reason for the cancellations was his inability to find the file; the attorney then took more than two years to attempt to reconstruct the lost file); In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also failed to comply with the client's requests for information about the case); In the Matter of Jeri L. Sayer, DRB 99-238 (January 11, 2001) (admonition for attorney who displayed gross neglect, lack of diligence, and failure to communicate with the client; a workers' compensation claim was dismissed twice because of the attorney's failure to appear in court; thereafter, the attorney filed an appeal, which was dismissed

for her failure to timely file a brief); In re Uffelman, 200 N.J. 260 (2009) (reprimand imposed; the attorney was found guilty of gross neglect, lack of diligence, and failure to communicate with a client; although the attorney had no disciplinary record, the reprimand was premised on the extensive harm caused to the client, who was forced to shut down his business for three months because of the attorney's failure to represent the client's interests diligently and responsibly); In re Zeitler, 165 N.J. 503 (2000) (reprimand for attorney guilty of lack of diligence and failure to communicate with clients; extensive ethics history); In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

If not for respondent's misrepresentation in his motion, the fact that only one matter was involved and that respondent has no previous disciplinary history would keep this matter in the admonition range, rather than a reprimand, for his violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b). Because of

the misrepresentation to the court, however, stronger discipline is required.

Lack of candor to a tribunal has resulted in discipline ranging from an admonition to a term of suspension. See, e.g., In the Matter of Lawrence J. McGivney, DRB 01-060 (March 18, 2002) (admonition for attorney who improperly signed the name of his superior, an Assistant Prosecutor, to an affidavit in support of an emergent wiretap application moments before its review by the court, knowing that the court might be misled by his action; in mitigation, it was considered that the superior had authorized the application, that the attorney was motivated by the pressure of the moment, and that he brought his impropriety to the court's attention one day after it occurred); In the Matter of Robin K. Lord, DRB 01-250 (September 24, 2001) (admonition for attorney who failed to reveal her client's real name to a municipal court judge when her client appeared in court using an alias; unaware of the client's significant history of motor vehicle infractions, the court imposed a lesser sentence; in mitigation, the attorney disclosed her client's real name to the municipal court the day after the court appearance, whereupon the sentence was vacated); In re Lewis, 138 N.J. 33 (1994) (admonition for attorney who attempted to deceive a court by introducing into evidence a document falsely showing that a heating problem in an

apartment of which the attorney was the owner/landlord had been corrected prior to the issuance of a summons; in mitigation, it was considered that the court was not actually deceived because it discovered the impropriety before rendering a decision and that no one was harmed by the attorney's actions); In re Mazeau, 122 N.J. 244 (1991) (attorney reprimanded for failure to disclose to a court his representation of a client in a prior lawsuit, when that representation would have been a factor in the court's ruling on the attorney's motion to file a late notice of tort claim); In re Whitmore, 117 N.J. 472 (1990) (reprimand imposed on a municipal prosecutor who failed to disclose to the court that a police officer whose testimony was critical to the prosecution of a DWI charge had intentionally left the courtroom before the case was called, resulting in the dismissal of the charge); In re Stuart, 192 N.J. 441 (2007) (three-month suspension for assistant district attorney in New York who, during the prosecution of a homicide case, misrepresented to the court that he did not know the whereabouts of a witness; in fact, the attorney had made contact with the witness four days earlier; compelling mitigation justified only a three-month suspension); In re Hasbrouck, 186 N.J. 72 (2006) (attorney suspended for three months for, among other serious improprieties, failing to disclose to a judge his difficulties in following the judge's exact instructions about

the deposit of a $600,000 check in an escrow account for the benefit of the parties to a matrimonial action; instead of opening an escrow account, the attorney placed the check under his desk blotter, where it remained for eight months); and In re Paul, 167 N.J. 6 (2001) (three-month suspension for attorney who made misrepresentations to his adversary in a deposition and in several certifications to a court); In re Forrest, 158 N.J. 428 (1999) (attorney who failed to disclose the death of his client to the court, to his adversary, and to an arbitrator was suspended for six months; the attorney's motive was to obtain a personal injury settlement); In re Telson, 138 N.J. 47 (1994) (after an attorney concealed a judge's docket entry dismissing his client's divorce complaint, he obtained a divorce judgment from another judge without disclosing that the first judge had denied the request; the attorney then denied his conduct to a third judge, only to admit to this judge one week later that he had lied because he was scared; the attorney was suspended for six months); and In re Cillo, 155 N.J. 599 (1998) (one-year suspension for attorney who, after misrepresenting to a judge that a case had been settled and that no other attorney would be appearing for a conference, obtained a judge's signature on an order dismissing the action and disbursing all escrow funds to his client; the attorney knew that at least one other lawyer would be appearing at the conference and that a trust

agreement required that at least $500,000 of the escrow funds remain in reserve).

Here, respondent's misrepresentation was akin to those made by the attorney in Paul, although not as serious. Attorney Paul lied to his adversary in a deposition and in several certifications to the court. Here, respondent's misrepresentation was confined to a single incident. For that infraction alone, a reprimand would be sufficient discipline in this instance. In fact, but for respondent's failure to file an answer to the complaint, a reprimand might have been adequate for the aggregate of respondent's conduct — misrepresentation, gross neglect, lack of diligence, and failure to communicate with the client. See, e.g., In re Onorevole, 170 N.J. 64 (2001) (reprimand for attorney who grossly neglected a matter, failed to act with diligence, failed to reasonably communicate with the client, and made misrepresentations about the status of the case). In a default matter, however, the discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004 (slip op. at 6).

In light of the foregoing and, in particular, respondent's unblemished record of twenty-eight years, we determine that a censure is the suitable form of sanction for his overall conduct.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Christopher P. Hummel
Docket No. DRB 10-117

Decided: August 20, 2010

Disposition: Censure

Members	Disbar	Censure	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		9				

Julianne K. DeCore
Chief Counsel