

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-237
District Docket No. IIB-2009-0020E

IN THE MATTER OF
DANIEL N. SHAPIRO
AN ATTORNEY AT LAW

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Decision

Decided: December 9, 2010

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

This matter was before us on a certification of default filed by the District IIB Ethics Committee (DEC), pursuant to R. 1:20-4(f). We determine to impose a censure.

The complaint charged respondent with having violated RPC 1.1(a) (gross neglect) and (b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (b) (failure to comply with the client's reasonable requests for information), and RPC 1.5(b) (failure to set forth in writing the rate or basis of the attorney's fee).

Respondent was admitted to the New Jersey bar in 1984. On October 15, 2002, he received a reprimand for misconduct in four matters, including gross neglect, lack of diligence, failure to communicate with the client and failure to cooperate with an ethics investigation. In re Shapiro, 174 N.J. 368 (2002).

On February 25, 2010, respondent received a reprimand for gross neglect and failure to communicate with the client in one matter and lack of diligence and failure to utilize a written fee agreement in a second matter. In re Shapiro, 201 N.J. 201 (2010).

Service of process was proper in this matter. On February 26, 2010, the DEC sent a copy of the complaint to respondent by both certified and regular mail, at his office address, 25 Main Street, Hackensack, New Jersey 07601. According to the certification of service, the certified mail and regular mail were both returned unclaimed.

On March 19, 2010, the DEC sent a copy of the complaint to a new office address for respondent, 125 State Street, Suite 101, Hackensack, New Jersey 07601. Both the certified and regular mail were returned unclaimed.

On March 30, 2010, the DEC sent a copy of the complaint to respondent's home address, 39-02 Vanore Drive, Fair Lawn, New

Jersey 07410. The certified mail was returned unclaimed. The regular mail was not returned.

Respondent did not file an answer to the complaint.

In September 2008, Joseph Mackey retained respondent to represent him in connection with an adverse court order for visitation with his son. Respondent met with Mackey several times and told him that he would review all of Mackey's "documents and render an opinion as to the viability of [a] Petition." On October 27, 2008, Mackey gave respondent \$1,000 toward the fee.

In December 2008, respondent advised Mackey that he could prepare the appropriate petition to re-apply for visitation. He represented to Mackey that the process would be "relatively quick and successful." He then requested, and Mackey paid, an additional \$3,000.

According to the complaint, respondent thereafter performed no legal services, failing to take any steps to pursue Mackey's claims.

Further, over the subsequent twelve months, Mackey made numerous and repeated attempts to obtain information about the status of the case. Initially, respondent represented to Mackey that the papers were complete, nearly complete, or already filed. Mackey, thus, believed that the matter was "progressing."

In September 2009, respondent contacted Mackey, agreed to refund \$3,500 of the \$4,000 "retainer," and promised to file the petition immediately. Instead, respondent took no action and ceased all communications with Mackey. It is not clear from the complaint if respondent actually refunded the \$3,500.

Finally, according to the complaint, "[r]espondent's failure to have [Mackey] sign a retainer letter, clearly identifying the terms of the engagement, constitutes a violation of RPC 1.5(b)."

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).

Respondent was retained to represent Mackey in a family law matter, more specifically, Mackey's visitation with his son. Although Mackey gave respondent \$4,000 for the representation, respondent took virtually no action to forward Mackey's claim. Respondent's inaction constituted gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3).

The complaint also charged respondent with a pattern of neglect (RPC 1.1(b)). That charge was appropriate. For a finding of a

pattern of neglect, at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). We find that, when respondent's gross neglect in this matter is combined with prior instances of gross neglect in each of his two earlier reprimand matters, a pattern of neglect emerges, a violation of RPC 1.1(b).

As to respondent's communication with his client, over the course of the representation, he ignored Mackey's numerous and repeated requests for information about the status of the petition, a violation of RPC 1.4(b). Parenthetically, the complaint hints that respondent may have misled Mackey to believe that his matter was proceeding apace. Respondent was not, however, charged with having violated RPC 8.4(c). Therefore, we make no such finding.

Respondent also failed to set forth in writing the rate or basis of his fee, for which he was charged with having violated RPC 1.5(b). Subsection (b) addresses situations where the attorney has not regularly represented the client. The complaint did not set forth facts sufficient for us to conclude that respondent had not regularly represented Mackey. Nevertheless, R. 5:3-5, dealing with family law matters, states that, "[e]xcept where no fee is to be charged, every agreement for legal services to be rendered in a civil family action shall be

in writing signed by the attorney and the client, and an executed copy of the agreement shall be delivered to the client." Therefore, respondent's failure to utilize a written fee agreement in this family law matter was improper.

Generally, in default matters, a reprimand is imposed for gross neglect, even if the conduct is accompanied by other ethics infractions, such as failure to communicate with the client and failure to cooperate with ethics authorities. See, e.g., In re Swidler, 192 N.J. 80 (2007) (attorney grossly neglected one matter and failed to cooperate with the investigation of an ethics grievance); In re Van de Castle, 180 N.J. 117 (2004) (attorney grossly neglected an estate matter, failed to cooperate with disciplinary authorities, and failed to communicate with the client); and In re Lampidis, 153 N.J. 367 (1998) (attorney failed to pursue discovery in a personal injury lawsuit or to otherwise protect his client's interests and failed to comply with the DEC's investigator's requests for information about the grievance; the attorney also failed to communicate with the client).

Here, in aggravation, respondent has two prior reprimands, both of which involved gross neglect, lack of diligence, and failure to communicate with the client. One of the matters included

failure to utilize a written fee agreement. Once again, respondent has failed to utilize a writing for his fee, this time in contravention of R. 5:3-5. In sum, for respondent's conduct in this matter, coupled with the default and prior discipline, we determine to impose a censure.

Members Clark, Stanton, Wissinger, and Yamner voted for a three-month suspension.

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

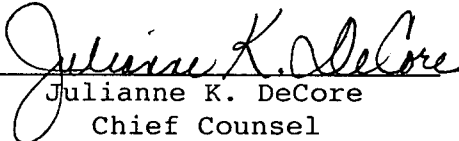
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Daniel N. Shapiro
Docket No. DRB 10-237

Decided: December 9, 2010

Disposition: Censure

Members	Disbar	Censure	Three-month suspension	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark			X			
Doremus		X				
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich		X				
Total:		5	4			


Julianne K. DeCore
Chief Counsel