

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-018
District Docket Nos. XA-09-052E,
XA-10-006E, and XA-10-017E

IN THE MATTER OF
NEIL LAWRENCE GROSS
AN ATTORNEY AT LAW

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Corrected
Decision

Decided: July 12, 2011

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

Three consolidated disciplinary matters were before us on a certification of default filed by the District IIB Ethics Committee (DEC), pursuant to R. 1:20-4(f). The charges against respondent are set out in the recitation of facts for each matter. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1994. However, he was temporarily suspended on February 28, 2011. He has no history of final discipline. In re Gross, 205 N.J. 82 (2011). He was reinstated on March 30, 2011. In re Gross, 205 N.J. 233 (2011).

Respondent has been ineligible to practice law since September 27, 2010 for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Service of process was proper. On September 16, 2010, the DEC secretary forwarded a copy of the complaints via certified and regular mail, to respondent's office address, Ward & Gross, 227 Route 206, Flanders, New Jersey 07836. The certified mail receipt was returned, indicating delivery on September 20, 2010. The signature is illegible. The regular mail was not returned.

On October 12, 2010, the DEC secretary sent a second letter to the above address, via certified and regular mail. The letter advised respondent that, if he did not file an answer within five days, the allegations of the complaints would be deemed admitted and the record would be 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) (failure to cooperate with disciplinary authorities). The certified mail was returned as unclaimed. The regular mail was not returned. Respondent did not file an answer to the complaints.

The Schwarzwaelder Matter (District Docket No. XA-09-052E)

In August 2009, Jeffrey S. Schwarzwaelder (Schwarzwaelder) and his wife retained respondent to represent them as the sellers in a real estate closing. Schwarzwaelder was relocating to Colorado and anticipated that he would be in transit on August 21, 2009, the scheduled closing date. Schwarzwaelder and his wife met with respondent before the closing and signed the documents that would be needed at closing, including a letter authorizing respondent to attend the closing on their behalf. They did not sign a power of attorney.

Following the closing, while en route to Colorado, Schwarzwaelder spoke with respondent and "verbally reviewed the financial aspects of the transaction."

In September 2009, Schwarzwaelder called respondent and requested copies of the closing documents and a full financial accounting of the transaction. Schwarzwaelder followed his request with an email to respondent, on September 15, 2009.

Respondent did not retain copies of the signed closing documents and did not provide a copy of the signed HUD-1 to Schwarzwaelder until replying to the grievance, in February

2010.¹ In his reply to the grievance, respondent admitted that he did not keep copies of "the client's" signed documents. The complaint charged respondent with violating RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence), and RPC 1.15(a) (failure to safeguard client property).²

The Markiewicz Matter (District Docket No. XA-10-006E)

On July 29, 2009, respondent represented Peter Markiewicz in a real estate purchase. Respondent signed the HUD-1 as the settlement agent. He did not record the deed until January 14, 2010.

In addition, respondent recorded the deed with incorrect information. In February 2010, Markiewicz advised respondent that the legal description in the deed was incorrect. Markiewicz had no further communication with respondent. As of the date of the complaint, September 7, 2010, respondent had not corrected the deed.

¹ Respondent obtained the signed HUD-1 from the buyer's attorney.

² The complaint does not specify the applicable sections of RPC 1.1 and RPC 1.15. The language used, however, is that of RPC 1.1(a) and (b) and RPC 1.15(a).

Although respondent replied to the grievance, he failed to reply to the DEC investigator's subsequent requests for information about the case.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, RPC 1.4(b) (failure to communicate with a client), and RPC 8.1(b).³

The Jeanette Matter (District Docket No. XA-10-017E)

In February 2010, Helene Jeanette retained respondent to represent her in the purchase of commercial property. Jeanette delivered a check to respondent, dated about February 20, 2010, to be held in his trust account "as a condition of the contract for the purchase of the property."

Respondent misplaced the check, requiring Jeanette to eventually obtain a stop-payment order. In the interim, however, he had not promptly advised Jeanette that he had misplaced the check, so as to enable her to issue a new check in compliance with the real estate contract. It was not until respondent's receipt of an email from Jeanette, in May 2010, accusing him of "violating ethical and fiduciary standards by

³ The complaint does not specify the applicable section of RPC 1.4. The language used, however, is that of RPC 1.4(b).

failing to return her money," that he told her about the loss of the check.

Despite Jeanette's numerous requests for assistance, respondent failed to diligently pursue the real estate transaction on her behalf. Specifically, he failed to review the contract, failed to contact the seller's attorney about a disputed radon test, failed to review the bank's commitment letter, and failed to reply to calls from Jeanette and from the seller's attorney.

By letter dated August 4, 2010, the DEC advised respondent that his failure to cooperate with the disciplinary investigation could result a RPC 8.1(b) charge. Respondent received the letter, as evidenced by a certified mail receipt signed by him, but failed to contact the investigator.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.15(a), RPC 1.16(d) (failure to protect a client's interests on termination of the representation), and RPC 8.1(b).⁴

The failure of a respondent to file an answer shall be deemed an admission that the allegations of the complaint are

⁴ The complaint does not specify the applicable sections of RPC 1.1, RPC 1.4, RPC 1.15, and RPC 8.1. The language used, however, is that of RPC 1.1(a), RPC 1.4(b), RPC 1.15(a), and RPC 8.1(b).

true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1). Nevertheless, the complaint must contain sufficient factual basis for the charged violations to be sustained. In two of the matters, Schwarzwaelder and Jeanette, that was not the case.

In the first matter, Schwarzwaelder, the complaint charged respondent with "a pattern or practice of negligent behavior in violation of RPC 1.1, [(a) and (b)] and 1.3," based on his "admission that he does not keep copies of this client's signed documents." As to the charged violation of RPC 1.1(b), however, three instances of neglect are required for a finding of a pattern of neglect. As will be seen below, we do not find respondent guilty of neglect in all three of these matters. Therefore, we do not find a violation of RPC 1.1(b).

Also in the Schwarzwaelder matter, we do not find violation of RPC 1.3 and RPC 1.15(a). First, there is no indication that respondent was not diligent in his handling of the Schwarzwaelders' closing. Second, the closing documents were not, strictly speaking, property entrusted to respondent for safekeeping. Instead, his failure to keep copies of the closing documents was a reflection of his sloppy practices and a violation of RPC 1.1(a).

In the Jeanette matter, too, we dismiss one charged violation, RPC 1.16(d). The complaint alleged, in the relevant paragraph, that respondent failed to promptly turn over Jeanette's file to new counsel. The complaint does not, however, recite specific facts to support that charge. There are no allegations, for instance, that either Jeanette or the new attorney asked for the return of the file.

The remaining violations, RPC 1.1(a) in Schwarzwaelder; RPC 1.1(a), RPC 1.3, and RPC 1.4(b) in Markiewicz; and RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.15(a) in Jeanette are all supported by the record. There is no question that respondent's failure to maintain copies of closing documents, failure to timely and correctly record a deed, failure to pursue a real estate transaction, failure to safeguard a check, and failure to communicate with his clients violated the cited Rules of Professional Conduct. In addition, respondent's failure to cooperate with the DEC investigator in Markiewicz and Jeanette and failure to file an answer to the three complaints violated RPC 8.1(b).

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 who failed to file answers to divorce complaints against her client causing 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 for attorney whose 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 did not 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); and In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose failure to act 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 re Uffelman, 200 N.J. 260 (2009) (reprimand for attorney 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 Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); In re Zeitler, 165 N.J. 503 (2000) (reprimand for attorney who lacked diligence and failed to communicate with clients; extensive ethics history); In re Gordon, 139 N.J. 606 (1995) (reprimand for attorney who lacked diligence and failed 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).

Respondent's misconduct is most akin to that of attorney Wildstein who, as here, acted improperly in three client matters. Therefore, respondent is deserving of at least a reprimand.

What elevates the otherwise appropriate discipline here to a censure, however, is respondent's allowing these three matters to proceed as defaults. In a default matter, the appropriate

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). We, therefore, unanimously determine to impose a censure on respondent.

Member Baugh did not participate.

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
Chief Counsel

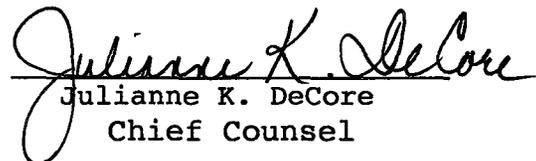
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Neil L. Gross
Docket No. DRB 11-018

Decided: July 12, 2011

Disposition: Censure

| Members | Disbar | Suspension | Censure | Dismiss | Disqualified | Did not participate |
|----------------|---------------|-------------------|----------------|----------------|---------------------|----------------------------|
| Pashman | | | X | | | |
| Frost | | | X | | | |
| Baugh | | | | | | X |
| Clark | | | X | | | |
| Doremus | | | X | | | |
| Stanton | | | X | | | |
| Wissinger | | | X | | | |
| Yamner | | | X | | | |
| Zmirich | | | X | | | |
| Total: | | | 8 | | | 1 |


Julianne K. DeCore
Chief Counsel