

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 14-033  
District Docket No. XIV-2012-0439E

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IN THE MATTER OF  
RALPH V. FURINO, JR.  
AN ATTORNEY AT LAW

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Decision

Decided: August 27, 2014

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 Office of Attorney Ethics (OAE) pursuant to R. 1:20-4(f). The formal ethics complaint charged respondent with multiple ethics infractions, arising out of a demand audit and other acts of misconduct committed by him during his representation of the purchaser in a real estate transaction. Respondent filed a motion to vacate the default, which we

denied. The OAE's request to withdraw the certification of the record also was denied, as explained below.

We find that respondent violated most of the infractions with which he was charged and determine to impose a six-month prospective suspension on this serial defaulter.

Respondent was admitted to the New Jersey bar in 1981. At the relevant times, he maintained an office for the practice of law in Jamesburg, Middlesex County.

On September 21, 2010, respondent received a reprimand for gross neglect, lack of diligence, failure to communicate with the client, providing financial assistance to the client in connection with contemplated litigation, and making an agreement with the client, when the client was not independently represented by counsel, to limit respondent's liability for malpractice. In re Furino, 203 N.J. 425 (2010) (Furino I). In that case, respondent's inaction led to the dismissal of his client's personal injury complaint. He failed to keep her informed of the status of that matter, of which he himself was unaware, until she sought his representation in a second personal injury matter, four years later, which prompted respondent to examine the file and learn that the first case had been dismissed. Respondent also advanced to the client \$3000

against the potential settlement of the second personal injury action and agreed to forego a fee as recompense for the dismissal of the first action.

On May 2, 2012, respondent received a three-month suspension, in a default matter, for his misconduct in two client matters. In re Furino, 210 N.J. 122 (2012) (Furino II). In the first matter (Cevasco), which had previously come before us as a default and was subsequently vacated, respondent exhibited gross neglect and lack of diligence in handling a personal injury action. After the client's complaint was dismissed, respondent took no action to have it reinstated. He also failed to return the client's file, upon request. Moreover, in both the Cevasco matter and a second matter (Donovan), involving the administration of an estate (in which we denied respondent's motion to vacate the default), respondent failed to communicate with the client and failed to cooperate with disciplinary authorities.

On August 3, 2012, in another default matter, the Court suspended respondent for an additional three months, to be served at the expiration of the prior suspension. There, too, respondent failed to cooperate with disciplinary authorities. In re Furino, 210 N.J. 124 (2012) (Furino III). Specifically,

he ignored a letter from the district ethics committee and failed to comply with its request for a written reply to the grievance.

To date, respondent has not sought reinstatement from his 2012 suspension.

Service of process was proper in this matter. On November 26, 2013, the OAE sent a copy of the formal ethics complaint to respondent's last known office address, 14 Church Street West, Jamesburg, New Jersey 08831, by regular and certified mail, return receipt requested. On December 30, 2013, the certified letter was returned, marked "UNCLAIMED." The letter sent by regular mail was not returned. The OAE explained that it had mailed the complaint to respondent's office address because he had "continued to occupy that office space," despite his suspension.

On January 9, 2014, the OAE sent another copy of the complaint to respondent's Jamesburg address, as well as the home address listed on the attorney registration records. The letter, sent by regular and certified mail, directed respondent to file an answer within five days and informed him that, if he failed to do so, the allegations of the complaint would be

deemed admitted and the record would be certified directly to us for the imposition of sanction.

As before, the certified letter sent to the Jamesburg address was returned as "UNCLAIMED." The certified letter sent to respondent's home address was delivered on January 14, 2014 and accepted by a Donna Furino. The letters sent to respondent's business and home addresses by regular mail were not returned.

As of February 12, 2014, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified the record to us as a default.

As mentioned above, respondent filed a motion to vacate the default, which we denied on the ground that he had failed to satisfy the two-prong test for vacating a default. Under that test, a respondent must (1) provide a reasonable explanation for the failure to file an answer to the complaint and (2) present meritorious defenses to the ethics charges. Here, respondent failed to satisfy both requirements.

First, he offered no explanation for his failure to file an answer to the complaint, which was delivered to his home, via certified mail, and received by his wife. Second, respondent's certification in support of his motion to vacate the default was

silent with respect to any meritorious defenses to the charges. Although his written reply to the grievance was attached to the certification, it does not constitute an answer to the very specific allegations in the 120-paragraph formal ethics complaint.

In addition to respondent's motion, on May 14, 2014, the day before we considered this default matter, the OAE sent a letter withdrawing the certification of the record on the ground that "[r]espondent has certified that he seeks to file his answer and proceed to a hearing." We rejected the OAE's attempted withdrawal of the certification of the record, as this matter came to us as a default precisely because respondent had ignored the opportunity to file an answer within the time prescribed.

We now turn to the allegations of the formal ethics complaint.

Count one of the complaint alleged that, on February 13, 2013, respondent appeared at the OAE for a demand audit and interview, prompted by a grievance filed by Stephanie Demeniuk. Respondent did not bring his financial records to the audit. He agreed to appear again, on February 21, 2013, and to bring his client ledger cards and additional itemized attorney financial

records for the period encompassing January 2011 through December 2012. Over the course of the following month, however, he requested four postponements and did not produce the financial records requested by the OAE.

In March 2013, respondent agreed to have his client ledger cards and additional itemized attorney financial records ready for pick-up by the OAE, on March 28, 2013, at 8:30 a.m., at his office address. When the OAE investigator appeared at respondent's office on that date, respondent did not turn over the ledger cards to the investigator.

In a letter dated April 24, 2013, the OAE set a May 3, 2013 deadline for respondent to produce his "original client ledger cards for any and all matters that [he had] handled from January 1, 2010 to the present." On May 2, 2013, respondent wrote to the OAE, stating, "I will get the documents together over the weekend and to you before close of business on Tuesday."

Respondent did not meet his own deadline. Consequently, the OAE sent him a "final request," on May 17, 2013, for "the full set of . . . client ledger cards." The letter warned respondent that the OAE "would take . . . further steps for the imposition of discipline," if he failed to cooperate in the disciplinary investigation.

As of November 22, 2013, respondent had not made his client ledger cards available to the OAE.

The OAE had also requested that respondent produce the records for his attorney trust and business accounts maintained at PNC Bank. Respondent did not comply with that request. Therefore, on April 3, 2013, the OAE subpoenaed copies of respondent's trust account bank records from PNC Bank, which were used to reconstruct his trust account receipts journals, disbursements journals, client ledger cards, and monthly reconciliations.

According to the complaint, respondent's records showed the following deficiencies:

- a. No trust receipts journal, contrary to R. 1:21-6(c)(1)(A);
- b. No trust disbursements journal, contrary to R. 1:21-6(c)(1)(A);
- c. No business receipts journal, contrary to R. 1:21-6(c)(1)(A);
- d. No business disbursements journal, contrary to R. 1:21-6(c)(1)(A);
- e. No monthly trust account reconciliations with client ledgers, journals and checkbook, contrary to R. 1:21-6(c)(1)(B);
- f. Client ledger cards, if they existed, appeared to have been kept in client



case files, contrary to R. 1:21-6(c)(1)(B); and

- g. Client ledger cards did not include running balances, contrary to R. 1:21-6(c)(1)(B).

[C¶27.]<sup>1</sup>

The complaint alleged that, as a result of a 1997 random audit, respondent "was on notice of the steps he was required to take to fall within the standards of compliance set by the Court Rules."

Based on the above, count one of the ethics complaint charged respondent with having violated RPC 1.15(d) (failure to comply with the recordkeeping provisions of R. 1:21-6) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Count two of the complaint alleged that, at the February 2013 demand interview, respondent acknowledged to the OAE that he was the closing attorney for Demeniuk's real estate purchase, which took place on April 1, 2011; that Demeniuk had provided funds to pay closing costs, which were deposited into his trust

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<sup>1</sup> "C" refers to the formal ethics complaint, dated November 25, 2013.

account;<sup>2</sup> and that he knew, at the time of the closing, that \$868.74 of the funds was intended for payment of the second quarter 2011 property taxes to East Windsor Township (property taxes). According to the complaint, respondent admitted, at the demand interview, that he did not pay the property taxes at the time of the closing. Indeed, as of the date of the ethics complaint, respondent had not provided any evidence to the OAE that he had ever paid Demeniuk's property taxes.

In addition to failing to produce his trust account bank records at the demand interview, respondent failed to produce the Demeniuk file. Nevertheless, he claimed that the \$868.74 had remained intact in his trust account at all times. The complaint charged that this representation was false because his trust account held only \$597.90 for Demeniuk "from May 21, 2012 forward."

The OAE's reconstruction of respondent's financial records included a detailed accounting of Demeniuk's funds. Based on the reconstruction, the OAE determined that respondent had

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<sup>2</sup> The total amount provided to respondent for the closing was \$94,934.90.

overdisbursed Demeniuk's funds and failed to preserve them intact.

Specifically, on April 1, 2011, respondent issued to himself a \$500 trust account check from the Demeniuk closing funds for "Demeniuk Purchase costs." He deposited that check into his business account, on that same date, to pay the recording fees for the transaction. Thereafter, he disbursed \$92,260 from the Demeniuk funds, leaving a trust account balance of \$2,179.90 for the Demeniuk transaction. He then paid the title agency and realty transfer fees from the \$2,179.90 in the trust account, leaving a balance of \$597.90, instead of the \$893.90 that should have remained in the trust account for Demeniuk.

Respondent admitted to the OAE that he did not record the Demeniuk deed until May 17, 2012, more than thirteen months after the closing. He stated that the title company had brought this failure to his attention.

According to the complaint, the \$296 "shortage" in the trust account (\$893.90-\$597.90) was caused by respondent's failure to pay the recording fees from his business account, into which he had deposited \$500 to cover those fees, rather than from his trust account. The complaint alleged that, by

issuing a trust account check instead, respondent created the \$296 "shortage" in Demeniuk's funds.

The complaint also alleged that respondent failed to return to his trust account the \$296 that was in his business account, as well as to return to Demeniuk the difference between \$500 and \$296, or \$204.

During an OAE interview, Demeniuk stated that, sometime after the April 1, 2011 closing, she received a notice that the property taxes had not been paid. She contacted respondent by telephone and email and requested that he call her about the unpaid tax bill. Respondent ignored Demeniuk's communications. Demeniuk then paid the taxes from her personal funds, including penalties and interest.

Thereafter, Demeniuk retained attorney Evan Pickus to represent her in connection with the property tax issue. In June 2011, respondent assured Pickus that he would look into the issue and resolve any outstanding items. As early as June 2011, thus, respondent was on notice that the property taxes might not have been paid.

Both Demeniuk and Pickus contacted respondent by telephone to request that he either resolve the unpaid property taxes or

issue a refund to Demeniuk for the full amount of the taxes owed.

On March 21, 2012, the Township wrote to Demeniuk, informing her that it did not have a recorded deed of sale for the property. As before, Demeniuk attempted to contact respondent several times by telephone and email regarding the deed and the tax issues, but respondent ignored her.

On June 20, 2012, the DEC provided respondent with a copy of Demeniuk's ethics grievance. In his written reply, respondent stated the following:

I have reviewed my trust records to see what became of the tax monies. It appears to me that the tax monies were not sent out as [t]he file was put on the side when the files were transferred to Mr. Pickus. . . . The tax check was never written and is still in the trust account. . . . Simply put when the file was transferred, the file was put on the side and I did not follow up on the real estate tax payment. . . .

Had Ms. Demeniuk contacted me I would have pulled the file and resolved it right then and there. . . .

[C115.]

According to the complaint, during the period that respondent was preparing the written reply to Demeniuk's grievance, he had the opportunity to review his file and to

refund the tax monies to her. Indeed, in his reply to the grievance, respondent stated that he had reviewed his records and had determined that the property taxes had not been paid. Nonetheless, he took no further action to refund the tax monies to Demeniuk.

The second count of the complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 1.15(a) (failure to safeguard funds -- presumably, negligent misappropriation of client funds), RPC 1.15(b) (failure to promptly deliver to the client or third person any funds or other property that the client or third person is entitled to receive), RPC 1.15(d), and RPC 1.16(d), by failing to "surrender[] . . . property to which the client is entitled and refund[] any advance payment of fee that has not been earned or incurred."

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

The allegations of count one detail each recordkeeping violation, with reference to the specific provision of R. 1:21-6 that was violated. By violating the various provisions of R. 1:21-6 cited in the complaint, respondent, in turn, violated RPC 1.15(d).

The facts set forth in count one of the complaint also establish that respondent failed to cooperate with the OAE in its investigation of Demeniuk's grievance, in violation of RPC 8.1(b). Respondent was required to appear at the February 2013 demand audit with his financial records. He failed to do so. Despite multiple opportunities to produce the documents throughout the remainder of the year 2013, he never produced them, even though, on one occasion, he had promised to "get the documents together over the weekend."

Count two of the complaint, however, fails to identify which of the many facts support the many violations charged. Instead, we are left to decipher the complaint's intent. We begin with the charges that are not substantiated by the mere allegations of the complaint, that is, RPC 1.15(a), RPC 1.15(d), and RPC 1.16(d).

First, we dismiss the RPC 1.15(d) charge for its failure to identify any violations of R. 1:21-6.

Second, although the complaint does not clearly describe how respondent violated RPC 1.15(a), the allegations suggest that he negligently misappropriated client or escrow funds, in handling the Demeniuk transaction. Specifically, after the closing, respondent's trust account should have held intact the \$893.90 balance, which included the \$868.74 in property taxes that were not paid. When respondent paid \$296 for recording fees from his trust account, instead of the business account, where the \$500 intended to cover those fees had been deposited, he reduced the balance for Demeniuk to \$597.90. For the following reasons, we find that there was no shortage (negligent misappropriation) in the Demeniuk transaction.

As indicated previously, respondent had set aside \$500 from the closing funds to pay the recording fees. He deposited the \$500 in his business account.<sup>3</sup> The complaint does not allege that respondent spent the monies in the business account. Therefore, they remained intact in that account. It is possible that respondent paid the \$296 out of the trust account because

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<sup>3</sup> It is perfectly proper to pay recording fees from funds deposited for that purpose in the business account. They do not have to be paid out of the trust account.



he had forgotten about the \$500 that was in his business account. At the end of the day, however, between the \$597.90 in the trust account and the \$500 in the business account, respondent still had in his possession enough funds to cover the \$868.74 in property taxes. There was no shortage. Between the two accounts, the funds set aside for both the recording of the fees and the property taxes were kept untouched. Accordingly, we dismiss the RPC 1.15(a) charge.

Finally, we dismiss the RPC 1.16(d) charge. That rule requires a lawyer, upon termination of his or her representation of a client, to "surrender[] papers and property to which the client is entitled and refund[] any advance payment of fee that has not been earned or incurred." Even assuming that Demeniuk terminated the attorney-client relationship between her and respondent, none of the funds that he retained in his attorney accounts represented the advance payment of a fee. Thus, there is no basis, within the four corners of the complaint, to conclude that respondent violated RPC 1.16(d).

The other RPC violations are supported by the allegations of the complaint. Respondent's failure to pay the property taxes and his more-than-one-year delay in recording the deed and mortgage and paying the various fees that were still due were

violations of RPC 1.1(a) (gross neglect) and RPC 1.3 (lack of diligence. He also violated RPC 1.4(b) (failure to promptly comply with reasonable requests for information), when he ignored Demeniuk's attempts to communicate with him about the outstanding issues surrounding her purchase of the property. Finally, he violated RPC 1.15(b) (failure to promptly deliver to the client any funds that the client is entitled to receive) when he failed to return to Demeniuk the funds remaining in his attorney trust and business accounts.

In summary, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.15(b), RPC 1.15(d), and RPC 8.1(b).

There remains for determination the appropriate quantum of discipline to be imposed for respondent's unethical conduct.

Generally, in default matters, a reprimand is imposed for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other, non-serious ethics infractions. See, e.g., In re Rak, 203 N.J. 381 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance); 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); In re Goodman, 165 N.J. 567 (2000) (attorney failed to cooperate with disciplinary authorities and grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the client's claim; the attorney also failed to keep the client apprised of the status of the matter; prior private reprimand (now an admonition)); and In re Lampidis, 153 N.J. 367 (attorney failed to pursue discovery in a personal injury lawsuit or to otherwise protect his client's interests and failed to comply with the ethics investigator's requests for information about the grievance; the attorney also failed to communicate with the client).

In cases involving attorneys who fail to properly deliver funds to clients or third persons (RPC 1.15(b)), admonitions or reprimands are usually imposed. In the Matter of Raymond Armour, DRB 11-451, DRB 11-452, and DRB 11-453 (March 19, 2012) (in three personal injury matters, attorney did not promptly notify his clients of his receipt of settlement funds and did not promptly disburse their share of the funds; the attorney

also failed to properly communicate with the clients; mitigation considered); In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney admonished for failure to promptly deliver balance of settlement proceeds to client after her medical bills were paid); In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (admonition imposed upon attorney who, for three-and-a-half years, held in his trust account \$4800 earmarked for the payment of a client's outstanding hospital bill); and In re Dorian, 176 N.J. 124 (2003) (reprimand imposed upon attorney who failed to use escrowed funds to satisfy medical liens and failed to cooperate with disciplinary authorities).

For the totality of respondent's conduct, and taking into account his disciplinary record (a reprimand and two three-month suspensions) and the fact that this is his third default, we determine that a six-month suspension is warranted. This measure of discipline is further viewed as appropriate when it is considered that he has not learned from his past mistakes. Indeed, respondent's written reply to Demeniuk's grievance is dated July 29, 2012. At that time, he had already received a three-month suspension in Furino II, a default involving two client matters, in each of which he had failed to cooperate with

disciplinary authorities.<sup>4</sup> In imposing a three-month suspension in Furino II, we took into consideration that respondent had established a history of not learning from similar prior mistakes.

Furino III was decided by the Supreme Court on August 3, 2012. It, too, was a default. It also involved a failure-to-cooperate charge, based on respondent's failure to reply to communications from the DEC. As with Furino II, the discipline was enhanced to a suspension based, in part, on respondent's "pattern of non-cooperation" with disciplinary authorities.

When the OAE's demand audit in this matter took place, on February 13, 2013, respondent was well aware of the additional suspension in Furino III and, thus, of our notice of his "pattern of non-cooperation." Yet, for almost a year, he refused to produce the information requested by the OAE - information that he was required to maintain by R. 1:21-6. He demonstrated the same behavior as he had in the past by

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<sup>4</sup> One of those matters had come before us earlier and we granted respondent's motion to vacate. However, after that default was vacated, respondent defaulted again.


promising to produce the documents on a certain date and then failing to follow through with the promise.

Two three-month suspensions have not convinced respondent to modify his behavior. Therefore, progressive discipline is in order in this case. We determine that a six-month prospective suspension is required in this case.

Chair Frost voted for a one-year prospective suspension. Member Gallipoli 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  
Bonnie C. Frost, Chair

By:   
Ellen A. Brodsky  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Ralph V. Furino, Jr.  
Docket No. DRB 14-033


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Decided: August 27, 2014

Disposition: Six-month suspension

<i>Members</i>	Disbar	One-year Suspension	Six-month Suspension	Dismiss	Disqualified	Did not participate
Frost		X				
Baugh			X			
Clark			X			
Gallipoli						X
Hoberman			X			
Singer			X			
Yamner			X			
Zmirich			X			
Total:		1	6			1

  
Ellen A. Brodsky  
Chief Counsel