

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-025
District Docket No. IV-2006-0009E

IN THE MATTER OF
JOHN M. DE LAURENTIS
AN ATTORNEY AT LAW

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Decision

Decided: June 25, 2008

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 IV Ethics Committee (DEC), pursuant to R. 1:20-4(f).

The complaint charged respondent with violating RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for

information) and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Respondent filed a motion to vacate the default, which we will address below. We determine to deny the motion and to impose a censure.

Respondent was admitted to the New Jersey bar in 1980. He has an extensive disciplinary history. On April 25, 2002, he received a reprimand for gross neglect, lack of diligence, and failure to communicate in three matters, failure to expedite litigation in two of those matters, pattern of neglect, practicing law while ineligible, and failure to cooperate with disciplinary authorities. In re De Laurentis, 172 N.J. 35 (2002).

On October 7, 2002, respondent was suspended for one year. In re De Laurentis, 174 N.J. 299 (2002). In that case, he concealed from welfare agencies that his clients, who were recipients of welfare assistance, had obtained personal injury settlements, thereby precluding the welfare agencies from enforcing liens; settled a personal injury claim without disclosing his client's death to the insurance company; engaged in several conflicts of interest; provided financial assistance to clients; failed to disburse funds to a welfare agency; failed

to notify a welfare agency of the receipt of funds to which the welfare agency was entitled; failed to prepare written fee agreements; displayed a lack of diligence; and failed to comply with the recordkeeping rules. Respondent was required to submit proof of fitness to practice law before his reinstatement and to complete six hours of professional responsibility courses upon his reinstatement.

Respondent was suspended again for one year on November 29, 2004, for misconduct in two separate matters. In one case, he was convicted of thirty-five counts of animal neglect, a violation of RPC 8.4(c). In the second case, he drafted wills for a former husband and wife, notwithstanding his prior representation of the husband in a divorce proceeding; he then represented the former wife in a personal injury matter in which he failed to advance her claim with reasonable diligence, failed to communicate with her, failed to promptly deliver funds to her medical providers, and failed to supervise a secretary, who improperly notarized the client's signature. In that matter, he was found guilty of a lack of diligence, failure to communicate with a client, failure to notify a third person of the receipt of funds, failure to promptly deliver funds to a third person, failure to supervise an employee, and conflict of interest.

Service of process was proper in this matter. On June 12, 2007, the DEC sent a copy of the complaint by certified and regular mail to respondent's home address in Cherry Hill, New Jersey. Respondent signed the certified mail receipt on June 13, 2007. The complaint sent by regular mail was not returned.

Respondent did not file an answer to the complaint. The DEC then certified the record directly to us for the imposition of discipline, pursuant to R. 1:20-4(f).

Respondent was retained by Balbina C. Cruz, the grievant, to represent her in connection with a December 1994 automobile accident in which she sustained personal injuries and incurred medical bills. At some point, respondent stopped replying to Cruz's inquiries about the status of her claim. Cruz never received information from respondent about the outcome of her claim, despite her requests.

By letters dated September 9, 2004, October 28, 2005, and February 12, 2007, the DEC requested a reply to the grievance. Respondent failed to reply.

On May 5, 2008, respondent filed a motion to vacate the default in this proceeding, claiming that he did not answer the complaint because he "assumed it was still under investigation by the District Committee" and assumed that the DEC would first

ascertain that, in the underlying action, the client had a bona fide claim, before the DEC would enter default. He alleged that Cruz was subject to the verbal threshold, that she had not sought medical treatment as a result of the automobile accident, and that she did not pursue the personal injury claim.

In addition, respondent recited "recent factors not having a bearing" on his conduct: on November 6, 2007, he was evicted in a tax lien foreclosure; the foreclosing entity destroyed all of his client files and records; and in December 2007 and February 2008, he was hospitalized with cardiac problems.

To vacate a default, we must be persuaded that a respondent has overcome a two-pronged test. First, a respondent must offer a reasonable explanation for his or her failure to answer the ethics complaint. Second, a respondent must assert a meritorious defense to the underlying charges.

In opposing respondent's motion to vacate the default, the Office of Attorney Ethics (OAE) argued that respondent failed to meet either hurdle. The OAE remarked that respondent did not deny his failure to cooperate with the DEC investigator; that respondent candidly admitted that the recent factors that he listed had no bearing on his failure to file an answer to the complaint; and that respondent's undocumented and vague

recollection that his client did not pursue the personal injury claim was neither adequate nor meritorious.

Respondent claimed that he did not file an answer to the complaint because he believed that the grievance was still under investigation. According to the certification of the record, respondent failed to reply to three letters, dated September 9, 2004, October 28, 2005, and February 12, 2007, from the DEC investigator, requesting a reply to the grievance. The DEC then served respondent with the formal ethics complaint on June 12, 2007, well before his November 2007 eviction. Respondent did not deny receiving the complaint, for which he signed a receipt. His claim that he believed that the matter was still being investigated is, thus, unreasonable. He had three opportunities to reply to the grievance. If he believed that Cruz's claim had no merit, he had several chances to so inform the investigator. Instead, he ignored the DEC's requests for information and then disregarded the complaint as well.

Moreover, respondent is no stranger to the disciplinary system. This is his fifth disciplinary proceeding. Consequently, he had to be aware that, once a formal ethics complaint is filed, the matter is no longer under investigation.

Respondent's eviction and illness, as well as the destruction of his client files, cannot excuse his failure to answer the complaint, as these events post-dated his default. Respondent seems to agree, referring to these events as recent factors not bearing on his failure to file an answer.

Moreover, respondent's purported defense, that his client chose not to pursue a personal injury claim, is insufficient. He produced no documentation by which he advised his client that she was subject to the verbal threshold and confirmed her intention to abandon her claim. Furthermore, had Cruz chosen not to pursue her claim, she would not have filed a grievance complaining that respondent had failed to keep her informed about the status of her matter.

Because respondent presented neither a reasonable explanation for his failure to file an answer to the complaint nor a meritorious defense to the charges, we determined to deny his motion and to proceed with our review of this matter as a default.

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

By failing to keep Cruz informed about the status of her case, respondent violated RPC 1.4(b). He also violated RPC 8.1(b) by failing to reply to the grievance.

In assessing the quantum of discipline, we considered the chronology of these events in relation to respondent's disciplinary history. A review of our decisions in respondent's prior disciplinary matters reveals that the misconduct in those cases took place on various dates between 1990 and 2001, with the majority of the infractions occurring between 1991 and 1996. The first Court order imposing discipline (a reprimand) on respondent is dated April 25, 2002.

In this matter, the record reveals only that Cruz retained respondent in 1994 and that, at some point thereafter, he stopped communicating with her. The OAE database indicates that Cruz filed the grievance on November 1, 2004, the DEC docketed the grievance on February 13, 2006, and the DEC filed the formal ethics complaint on April 25, 2007.

From this record, it appears that the present misconduct occurred at about the same time as respondent's prior infractions. Thus, this is not a case of an attorney's failure to learn from prior mistakes. Had this matter been heard at the same time as respondent's prior disciplinary matters, we

probably would not have imposed greater discipline for his failure to communicate with one client. For that reason, we determine to impose no further discipline for the RPC 1.4(b) violation.

We conclude, however, that respondent's failure to reply to the grievance warrants discipline. Ordinarily, admonitions are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In the Matter of Kevin R. Shannon, DRB 04-512 (June 22, 2004) (attorney did not promptly reply to the DEC investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to DEC's requests for information about two grievances).

A reprimand generally issues if the attorney has an ethics history or has defaulted. In re Pierce, 181 N.J. 294 (2004) (ethics history included one reprimand for misconduct in three cases); In re Wood, 175 N.J. 586 (2005) (ethics history included an admonition for failure to cooperate with disciplinary authorities); and In re Medinets, 154 N.J. 255 (1998) (despite lack of ethics history, reprimand ordered where the attorney had defaulted).

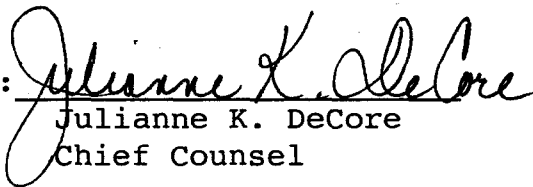
In this case, given respondent's disciplinary history, a reprimand would be the minimum measure of discipline for his failure to cooperate with the DEC. However, respondent also has defaulted in this matter. In a default matter, the discipline is enhanced to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Nemshick, 180 N.J. 304 (2004) (conduct meriting reprimand enhanced to three-month suspension due to default; no ethics history).

Because of respondent's disciplinary history and the default nature of this matter, a censure is warranted. See, e.g., In re Williams, 193 N.J. 590 (2008) (censure in a default matter for attorney who failed to cooperate with disciplinary authority; the attorney had received a prior reprimand) and In re Walsh, 192 N.J. 445 (2008) (censure in a default matter for attorney who failed to cooperate with disciplinary authority; the attorney had received a reprimand in an earlier default matter).

We, thus, determine that a censure is the appropriate level of discipline in this case. Members Baugh and Clark 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

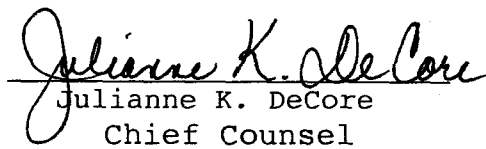
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

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Disposition: Censure

<i>Members</i>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh						X
Boylan			X			
Clark						X
Doremus			X			
Lolla			X			
Stanton			X			
Wissinger			X			
Total:			7			2


Julianne K. DeCore
Chief Counsel