

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 07-343  
District Docket No. X-05-047E

---

IN THE MATTER OF  
RICHARD BANAS  
AN ATTORNEY AT LAW

---

:  
:  
:  
:  
:  
:  
:

**CORRECTED**  
Decision  
Default [R. 1:20-4(f)]

Argued: January 17, 2008

Decided: March 13, 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 Office of Attorney Ethics (OAE), pursuant to R.  
1:20-4(f). The complaint alleged that respondent lacked  
diligence and failed to communicate with his clients, violations  
of RPC 1.3 and RPC 1.4, presumably (b). We determine to impose a  
censure.

Respondent was admitted to the New Jersey bar in 1978. On  
May 10, 1996, he was reprimanded for improperly retaining as  
legal fees a \$5,000 payment intended to obtain bail for his  
client. In re Banas, 144 N.J. 75 (1996). On February 26, 1999,

he was suspended for three months, in a default case, for misconduct that included gross neglect, lack of diligence, failure to communicate with the client, failure to utilize a written fee agreement, and failure to cooperate with ethics authorities. In re Banas, 157 N.J. 18 (1999). He was reinstated on February 8, 2000. In re Banas, 162 N.J. 361 (2000).

Although respondent is current with the New Jersey Lawyers' Fund for Client Protection annual attorney assessments, he has been placed on the list of ineligible attorneys six times since 1998, most recently from September 24 to October 1, 2007.

Service of process was proper. On June 18, 2007, the District Ethics Committee (DEC) sent a copy of the complaint, by both certified and regular mail, to respondent's last known home address, as listed in the attorney registration system.

The certified mail receipt was returned indicating delivery, having been signed on June 19, 2007 (signature illegible). The regular mail was not returned.

On July 13, 2007, the DEC sent respondent a "five-day" letter notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the matter would be certified directly to us, pursuant to R. 1:20-4(f). The letter was sent to respondent's home address by certified and regular mail. The certified mail receipt was signed by a Paula Banas. The regular mail was not returned.

Respondent did not file an answer to the complaint.

The facts are as follows. Respondent represented John Paul Forti, a psychologist, in connection with two related actions: Schultze v. Forti and Princeton Insurance Co. v. John Paul Forti.

The Schultze action involved a malpractice claim filed against Forti by a former patient. The Princeton Insurance Co. (PIC) case was initiated by Forti's professional insurance carrier. It sought a declaratory judgment that Forti was not entitled to defense or indemnity under the terms of his PIC policy.

#### I. The Schultze Case

PIC assigned Maura Waters Brady to defend Forti in the Schultze litigation. Respondent, too, was involved in Forti's representation and he so advised the court. In fact, Forti considered respondent his principal attorney in the case.

According to the complaint, respondent failed to prepare a written fee agreement for the Schultze representation. Based on an oral agreement alone, Forti paid respondent \$2,500.

On March 5, 2003, Brady wrote to respondent to set up a meeting to discuss discovery issues. Respondent did not reply to Brady's request for a meeting.

At an unspecified time, presumably contemporaneously with the above events, PIC filed a summary judgment motion, which was granted, followed by an April 7, 2004 motion by Brady to be relieved as Forti's attorney.

On May 13, 2004, the court sent the parties a notice, scheduling the trial for July 12, 2004. On May 14, 2004, the court granted Brady's motion to be relieved as Forti's attorney. Respondent did not file any papers in connection with Brady's motion.

Just prior to the trial date, on July 8, 2004, respondent wrote to the court, requesting an adjournment of the trial. Although his request was denied, the trial was adjourned to September 8, 2004, on other grounds.

On August 31, 2004, respondent requested a further adjournment. The trial was rescheduled for September 27, 2004. On September 21, 2004, plaintiff's counsel served respondent with a copy of plaintiff's required "pretrial information exchange." Respondent did not serve a "pretrial information exchange" on the plaintiff's attorney.

In early November 2004, a proof hearing was held in Schultze. Respondent appeared without Forti, having failed to notify him of the hearing. Respondent told the court that Forti

was out of town and unable to attend.<sup>1</sup> Respondent cross-examined the plaintiff's witnesses. He had failed to obtain an expert witness on behalf of Forti, and presented no other witnesses at the hearing.

On November 16, 2004, the judge awarded the plaintiff \$35,000 in compensatory damages and \$50,000 in punitive damages. A judgment in those amounts was entered against Forti.

In December 2004, plaintiff's counsel sought to collect on the judgment. He also filed a motion to set aside, as a fraudulent conveyance, a 2002 deed transferring Forti's interest in the marital home to his wife. Respondent prepared and filed that deed in 2002.<sup>2</sup> Although respondent was notified of the hearing, he failed to notify Forti of the motion or to take any action on Forti's behalf.

On January 10, 2005, the court granted the unopposed motion, set aside the deed, and awarded the plaintiff \$1,517 in counsel fees. The fee award stemmed solely from the lack of opposition to the plaintiff's application for fees.

In May 2005, the plaintiff scheduled Forti's deposition for the disclosure of his assets. Forti appeared with another

---

<sup>1</sup> The complaint does not allege that respondent made a misrepresentation to the court.

<sup>2</sup> The complaint does not charge respondent with any improprieties in this context.

attorney and complained, in his deposition testimony, that respondent had repeatedly failed to reply to his pleas for help with the deposition. The attorney's representation was strictly a "favor" to Forti and limited to his presence at the deposition.

## II. The PIC Case

For reasons that are not relevant to this matter, in May 2003, PIC's attorney filed an action seeking a declaratory judgment that PIC was not liable to defend or indemnify Forti for his actions.

PIC served Forti with the complaint on June 6, 2003. On February 19, 2004, PIC sent respondent a courtesy letter, advising him of its intention to move for the entry of default, if no answer to the complaint was forthcoming. After respondent failed to file an answer to the complaint, PIC filed motions for summary judgment and for the entry of default. Those motions were granted on April 7, 2004.

Over the course of the representation, respondent failed to inform Forti about important events in the case.

Finally, the complaint alleged that respondent failed to memorialize the rate or basis of the fee for the PIC representation.

The complaint contains sufficient facts to support a finding 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).

In two related actions against his client, respondent lacked diligence and failed to communicate with the client, violations of RPC 1.3 and RPC 1.4(b).

Specifically, in the Schultze matter, respondent failed to reply to PIC's motion for summary judgment, to reply to Brady's motion to be relieved as counsel, to serve plaintiff's counsel with pretrial information exchange, to obtain an expert witness for the trial, to oppose the plaintiff's motion to set aside the conveyance of Forti's interest in the marital home to his wife, and to oppose the plaintiff's application for counsel fees.

Respondent also failed to keep Forti apprised of important developments in the case. He failed to notify Forti of the proof hearing date and of the plaintiff's motion to set aside the transfer of Forti's interest in the marital home.

In the PIC matter, respondent lacked diligence by not filing an answer to the complaint, allowing the entry of default, and not replying to PIC's motion for summary judgment. He also failed to keep Forti informed of the status of the case.

On the other hand, although the complaint alleged that respondent failed to memorialize the rate or basis of the fee in

both matters, it did not cite the corresponding RPC, as required by R. 1:20-4(b). We, therefore, make no finding in this regard.

Lack of diligence and failure to communicate with the client generally result in an admonition. See, e.g., In the Matter of Jonathan Saint-Preux, DRB 04-174 (July 19, 2004) (in two immigration matters, attorney failed to appear at the hearings, thereby causing orders of deportation to be entered against the clients, and failed to apprise the clients of these developments); In the Matter of Susan R. Dargay, DRB 02-276 (October 25, 2002) (failure to promptly submit to the court a final judgment of divorce in one matter and failure to reply to the client's letters and phone calls in another matter); In the Matter of Mark W. Ford, DRB 02-280 (October 22, 2002) (the attorney failed to file a workers' compensation claim and to reasonably communicate with the client about the status of the case); and In the Matter of W. Randolph Kraft, DRB 01-051 (May 22, 2001) (attorney failed to prosecute a case diligently and failed to communicate with the client; the lack of communication included the attorney's failure to notify the client that the complaint had been dismissed for lack of prosecution).

Here, respondent allowed the matter to proceed to us as a default. In default matters, enhanced discipline is imposed to address a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Nemshick, 180 N.J.

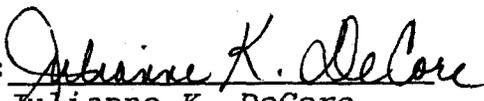
304 (2004) (conduct meriting reprimand enhanced to three-month suspension due to default; no ethics history). On that basis alone, a reprimand is warranted.

In further aggravation, however, respondent has prior discipline, including a 1996 reprimand and a 1999 three-month suspension, also a default. For the combination of respondent's prior discipline and his willingness to allow a second matter to proceed to us as a default, we vote to impose a censure.

Chair O'Shaughnessy, and Members Lolla and Neuwirth did not participate. Member Frost recused herself.

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, Vice-Chair

By:   
Julianne K. DeCore  
Chief Counsel

---

---

**SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD**

In the Matter of Richard W. Banas  
Docket No. DRB 07-343

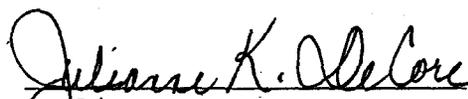
---

---

Decided: March 13, 2008

Disposition: Censure

Members	Suspension	Censure	Admonition	Disqualified	Did not participate
O'Shaughnessy					X
Pashman		X			
Baugh		X			
Boylan		X			
Frost				X	
Lolla					X
Neuwirth					X
Stanton		X			
Wissinger		X			
<b>Total:</b>		5		1	3

  
Julianne K. DeCore  
Chief Counsel