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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-205
District Docket No. IV-05-016E

IN THE MATTER OF :
: PATRICK J. MOORE :
: AN ATTORNEY AT LAW :
:

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

Decided: October 31, 2007

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), following respondent's failure to file an answer to
the formal ethics complaint.

Although respondent filed a motion to vacate the default,
we determined to deny it. In order to succeed on a motion to
vacate a default, a respondent must satisfy a two-pronged test:
offer a reasonable explanation for the failure to file an answer

and assert meritorious defenses to the charges. Respondent did neither. Despite good service of the complaint (sent to an address that respondent himself gave the OAE), respondent's lengthy letter neither addressed the reason why he did not answer the complaint nor offered meritorious defenses to the allegations of unethical conduct. The contents of the letter were essentially limited to multiple "ad hominem" attacks on the OAE attorney who acted as the presenter in the matter that led to respondent's one-year suspension. We, therefore, determined to proceed with the review of this matter as a default.

The three-count complaint charged violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information)¹, RPC 8.1(b) (false statement of material fact in connection with a disciplinary matter), and RPC 8.4(d) (conduct prejudicial to the administration of justice). We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1989. His disciplinary record includes a one-year suspension in 2003, and a

¹ The complaint charged violations of subsections (a) and (b) of RPC 1.4. The complaint's description of the conduct charged as unethical establishes that (b) is the applicable subsection.

reprimand in 2004. He remains suspended to date. The suspension was predicated on respondent's premature release of escrow funds, albeit with the reasonable belief that the purposes of the escrow agreement had been satisfied; his misrepresentation of the status of the escrow in a pleading and in letters to two attorneys and to the Office of Attorney Ethics (OAE); his failure to cooperate with the OAE's investigation of the disciplinary matter; and his practicing law while ineligible for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. In re Moore, 175 N.J. 100 (2003).

The reprimand was based on respondent's violation of the Court's order requiring him to comply with R. 1:20-20, the rule governing the future activities of suspended attorneys. That matter proceeded on a default basis. In re Moore, 181 N.J. 335 (2004).

Service of process was proper in this matter. On October 23, 2006, the DEC sent a copy of the complaint, by regular and certified mail, to P.O. Box 5499, Deptford, New Jersey, 08096, and 200 South Black Horse Pike, Runnemede, New Jersey, 08078, respondent's two last known addresses, as communicated to the DEC by the OAE. Both mailings were returned with the notation "unable to forward."

On January 10, 2007, the OAE informed the DEC that respondent had been using 1344 Edwardsville-Galena Road,

Georgetown, Indiana, 47122, as his address. Accordingly, on January 15, 2007, the DEC sent a copy of the complaint to that address, by regular and certified mail. The certified letter was returned as "unclaimed;" the regular letter was returned as "refused."

By letter dated January 31, 2007, respondent notified the OAE of his new address, P.O. Box 81, Ridley Park, Pennsylvania, 19078. Respondent's letter strongly indicates that he was aware of the pendency of this matter.

Thereafter, the DEC sent a copy of the complaint to that address, by regular and certified mail. Although the certified mail was returned as "unclaimed," the regular mail was not returned.

Respondent has not filed an answer to the complaint.

The first count of the complaint alleges that Joyce Rose retained respondent to represent her in connection with serious injuries sustained as a result of a slip-and-fall accident that occurred in March 2000. Promptly thereafter, respondent made efforts to place the property owner and its carrier on notice of the accident.

Starting in early 2001, Rose made repeated attempts to reach respondent, with occasional success. On those occasions, respondent would inform her that the case proceeding was

smoothly. By January 2001, however, respondent ceased sending Rose any written correspondence.

In March 2002, respondent sent a letter to Rose, enclosing a copy of a complaint filed in the Superior Court of New Jersey, Camden County. The complaint did not contain a docket number or the court's stamp. It bore a typewritten date of March 19, 2002, one day short of the expiration of the statute of limitations.

In April 2003, a subrogation analyst at an entity associated with Rose's health insurance plan notified her that she had made a number of inquiries of respondent about Rose's injuries, to no avail; respondent had not replied to a single inquiry.

In July 2004, respondent advised Rose that he was moving and that he was transferring the case to the care of another lawyer, which he did. After July 2004, Rose heard nothing further from respondent or from the other lawyer. Rose discovered that respondent had closed his office and relocated to an unknown place.

In March 2005, the DEC secretary contacted the Civil Docket Clerk in Camden County, at which time he found out that no complaint had been filed on Rose's behalf. The statute of limitations had expired on March 20, 2002.

The first count of the complaint charges that respondent's failure to file a complaint within the statute of limitations constituted gross neglect, a violation of RPC 1.1(a), and that his failure to "file an appropriate complaint to protect the interests of his client demonstrates neglect under R.P.C. 1.1(b)."

The second count of the complaint alleges that respondent's "unexplained lack of communication [with Rose] constitutes . . . failure to act with reasonable diligence and promptness in representing [Rose], in violation of R.P.C. 1.3." The second count also charges that respondent's failure to keep Rose reasonably informed about the status of her matter violated RPC 1.4(a) and (b), and that his "assurances to [Rose] that he was fully protecting her interests as well as his statement that he had filed a lawsuit . . . evidence intentional misrepresentation under R.P.C. 1.3 and 1.4(a) and (b)."

Finally, the third count alleges that, in July 2004, when respondent informed Rose that he was transferring her case to another lawyer, he did not disclose to her that he had been suspended from the practice of law as of January 14, 2003. The complaint charges that such conduct violated "Rules 8.1(b) and 8.4(d) as provided in R. 1:20-20(c)."

Following a review of the record, we find that, with two exceptions, the facts alleged 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)(1).

The first exception concerns the charges of the third count of the complaint. There, respondent is charged with having violated RPC 8.1(b) and RPC 8.4(d) for his failure to abide by the Court's order of suspension, directing him to comply with R. 1:20-20. Although it is undeniable that respondent violated the Court's order, he was already been disciplined for that transgression -- his 2004 reprimand. One of the charges in that matter was that respondent failed to notify his clients of his suspension. To find again that Rose was not apprised of respondent's suspension would be to sanction him one more time for that same violation. We, therefore, dismiss the third count of the complaint.

The second exception has to do with the pattern of neglect charge. 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). Here, respondent's conduct was limited to one case. Furthermore, although a pattern of neglect emerges when a single instance of

neglect is combined with other instances found in prior disciplinary matters involving the same attorney, In the Matter of Jeffry Nielsen, DRB 04-023 (April 29, 2004) (slip op. at 15), In re Nielsen, 180 N.J. 302 (2004), respondent's two disciplinary matters did not involve neglect. We, thus, dismiss the charged violation of RPC 1.1(b) as well.

The remaining allegations, however, fully support the charges of unethical conduct, for which respondent should be disciplined. Respondent not only lacked diligence in handling Rose's case, but he grossly neglected it by not filing a complaint within the statute of limitations. To be sure, to miss the statute of limitations, without more, constitutes simple neglect, unless the attorney knows that the statute is about to expire and takes no action. In the Matter of Sandra Taylor, DRB 02-330 (February 20, 2003) (slip op. at 11). Simple neglect does not amount to unethical conduct. Ibid.

In Taylor, we dismissed the charge that the attorney's failure to file the suit within the statute of limitations was unethical. We found the attorney guilty of other unethical conduct and determined that a reprimand was the appropriate level of discipline. The Court agreed and imposed a reprimand. In re Taylor, 176 N.J. 123 (2003).

Here, respondent was aware that the statute of limitations was about to expire; he sent Rose a copy of a complaint dated March 19, 2002, the day before the running of the statute of limitations. We find, thus, that his failure to file the complaint constituted lack of diligence and gross neglect.

Respondent also failed to communicate with Rose during the representation, a violation of RPC 1.4(b). Despite Rose's repeated efforts to reach respondent, only occasionally did he discuss the case with her. In January 2001, he stopped sending her correspondence about the case.

Furthermore, respondent misrepresented the status of the case to Rose. Not only did he tell her that the matter was proceeding apace, but he also represented that he had filed the complaint. Those false statements constituted violations of RPC 8.4(c) (conduct involving misrepresentation). Although the complaint charges that respondent's misrepresentations were violations of RPC 1.3 and 1.4(a) and (b), the applicable rule is RPC 8.4(c).

Finding that respondent violated this rule will not violate his due process rights. Although the complaint does not specifically mention RPC 8.4(c), the facts recited therein gave respondent sufficient notice of the charge of respondent's improper conduct and of a potential finding of a violation of that rule.

Altogether, then, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c).

Cases involving similar violations ordinarily result in a reprimand, depending on several factors, including the number of matters involved, the harm to the client(s), and the attorney's disciplinary record. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney took no action on the client's behalf, did not inform the client about the status of the matter and the expiration of the statute of limitations, and misled the client that a complaint had been filed; no prior discipline); In re Till, 167 N.J. 276 (2001) (attorney engaged in gross neglect and misrepresentation; for over a nine-month period, the attorney lied to the client about the status of the case; no prior discipline); and In re Riva, 157 N.J. 34 (1999) (attorney grossly neglected a matter, thereby causing a default judgment to be entered against the clients, failed to take steps to have the default vacated, and misrepresented the status of the case to the clients; no prior discipline).

Viewed in isolation, respondent's conduct would merit a reprimand. It was confined to one matter and there is no evidence that Rose suffered any economic harm. Moreover, at the time, respondent had a clean disciplinary record. His suspension and reprimand post-dated Rose's representation. It cannot be

said, thus, that he failed to learn from prior mistakes when he mishandled Rose's case.

On the other hand, the fact that respondent was disciplined twice -- in one instance, the discipline was serious (the one-year suspension) -- reflects on his fitness as a lawyer. Otherwise stated, that this is respondent's third brush with the disciplinary system shows his "propensity" for disregarding the ethics rules. Furthermore, this is his second default. The reprimand matter, too, proceeded on a default basis. Therefore, his indifference to the rules -- and to the maintenance of a good professional reputation -- becomes even more evident.


Because we must consider the foregoing aggravating factors in fashioning the appropriate measure of discipline for this respondent, a reprimand would be inadequate in this instance. Besides respondent's disciplinary record, his failure to file an answer in this matter must enhance the discipline that he should receive for his conduct vis-à-vis his client Rose. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6). The aggregate of the circumstances present in this case, that is, respondent's conduct in the Rose matter, his disciplinary record, and his penchant for ignoring the disciplinary system -- this is his second default; in addition, he failed to cooperate with the OAE in the suspension matter --

take the appropriate discipline here to the level of a suspension. Otherwise stated, the reprimand for respondent's violations in the Rose case should be increased to a censure because of his ethics history, and then elevated to a three-month suspension because he defaulted in this matter. We, therefore, determine that respondent should be prospectively suspended for three months.

Member Lolla 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
William J. O'Shaughnessy, Esq.

By: 
Julianne K. DeCore
Chief Counsel

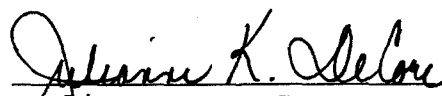
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Patrick J. Moore
Docket No. DRB 07-205

Decided: October 30, 2007

Disposition: Three-month suspension

Members	Three-month Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy	X				
Pashman	X				
Baugh	X				
Boylan	X				
Frost	X				
Lolla					X
Neuwirth	X				
Stanton	X				
Wissinger	X				
Total:	8				1


Julianne K. DeCore
Chief Counsel