

h.

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-218
District Docket No. VII-05-030E
Docket No. DRB 07-204
District Docket No. VII-06-001E

IN THE MATTER OF
NEAL SHARMA
AN ATTORNEY AT LAW

:
:
:
:
:
:
:
:
:

Decision

Argued: November 15, 2007

Decided: December 18, 2007

Karen Confoy appeared on behalf of the District VII Ethics Committee in 07-218.

Charles Casale appeared on behalf of the District VII Ethics Committee in 07-204.

Respondent waived appearance.

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

These matters came before us on recommendations by the District VII Ethics Committee (DEC) for a two-year suspension in

the first matter (VII-05-030E) and a reprimand in the second matter (VII-06-001E). In the first matter, respondent was charged with gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities. The charges were brought as a result of respondent's failure to follow through on his agreement to remove a lien placed against his client's property in a bankruptcy proceeding four years earlier.

In the second matter, respondent was charged with practicing law while ineligible (RPC 5.5(a)), as a result of his failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (the CPF). In addition, he was charged with failure to maintain a bona fide office, a violation of R. 1:21-1(a) and, therefore, a violation of RPC 5.5(a). The charges were based on respondent's representation of a client in a legal matter after respondent had been placed on the ineligible list and had discontinued the practice of law and closed his office.

Although these matters were not consolidated below, we consider them together for the purpose of discipline because the conduct in each matter took place within the same time frame. For the reasons expressed below, we determine to impose a

prospective three-month suspension on respondent for his conduct in both matters.

Respondent was admitted to the New Jersey bar in 1992. On April 26, 2006, he was disciplined in two separate default matters. In the first matter, he was censured for gross neglect, lack of diligence, failure to communicate with his client, misrepresentation of the status of the matter to her, and failure to cooperate with disciplinary authorities. In the second matter, respondent was reprimanded for failure to cooperate with disciplinary authorities.

During several time periods, respondent became ineligible to practice law for failure to pay the annual assessment to the CPF: September 24, 2001 to October 10, 2001; September 27, 2004 to December 14, 2005; and September 25, 2006 to February 1, 2007.

VII-05-030E (The Buttich Matter)

On September 1, 2005, the DEC issued a two-count complaint, charging respondent with gross neglect (RPC 1.1(a)), pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), failure to communicate with the client (RPC 1.4(a), (b), (c)), and failure to cooperate with disciplinary authorities (RPC 8.1(b)). The

charges stemmed from respondent's (1) deficient representation of Carol Buttich in the removal of a lien that had survived an earlier bankruptcy proceeding in which respondent had represented her, and (2) failure to reply to the grievance or provide any information to the DEC.

In his answer to the ethics complaint, respondent admitted that, in November 2004, he had agreed to represent Buttich in the removal of the lien and that she had paid him the requested \$785 fee. He further admitted that, during the month of December 2004, he had had no communication with Buttich. Moreover, on the two occasions in 2005 (January 1 and March 18) when Buttich succeeded in contacting respondent, he told her that he was busy and had not worked on the file, but that he would "get to it." In fact, respondent admitted that he did not perform any of the services for which he accepted payment and that he did not return Buttich's file to her.

In mitigation, respondent asserted that he had "greatly curtailed his law practice in the fall of 2004;" that, by January 2005, he "was actively involved in very few legal matters;" that, by August of that year, he had closed his office in Philadelphia, because he "did not intend to continue

practicing law; and that, as of November 27, 2006, he was not "actively involved in practicing law."

Respondent claimed that he had "always fully intended to file a motion to reopen the chapter 13 case and another motion to avoid the lien on Mrs. Buttich's home." He claimed that any "error or omission in this matter was unintentional and the result of an administrative oversight resulting from the closure of respondent's law practice."

Buttich and respondent testified at the March 26, 2007 hearing before the DEC. According to Buttich, respondent first represented her and her husband in a bankruptcy matter from September 2000 through the entry of the March 2001 order of confirmation. Their next contact was in November 2004. Buttich called respondent after she discovered, during the course of her and her husband's attempted refinance of their mortgage loan, that a lien, which should have been discharged in the bankruptcy proceeding, remained unsatisfied.

When Buttich called respondent about the problem, he told her that, for a \$785 fee, he could remove the lien. Buttich handed respondent all of the bankruptcy papers in her possession and a \$400 check, which respondent cashed on November 30, 2004.

On December 2, 2004, Buttich wrote a check to respondent for \$385, which he also cashed. Thereafter, respondent had no communication with her, despite her many calls and messages. She finally reached him sometime in early January 2005. At that time, respondent told Buttich that he had been busy and assured her that he would take care of the problem. When Buttich did not hear from respondent, she called him several times. Her husband, too, called respondent. Their efforts to reach him were unsuccessful.

When Buttich was able to contact respondent in March 2005, he continued to claim that he was busy, but promised her that that he would file a motion to remove the lien.

When Buttich sought another attorney's counsel, he told her that nothing could be done to remove the lien. Consequently, Buttich and her husband were required to pay off the \$27,000 lien (which was about to be the subject of a foreclosed) in order to refinance their mortgage loan.

At the DEC hearing, respondent agreed with "the majority of what Miss Buttich ha[d] testified to here today." With respect to the lien, respondent explained that there "should have been a lien avoidance motion" and that he had "made the mistake" of not filing the motion at that time. He claimed that the debt had

been discharged, although "a lien continued to exist."
Respondent testified that, by the end of 2004, he was "beginning
to wind up [his] law practice:"

I was still practicing but I wasn't particularly interested in continuing my practice.

And by January of 2005 I had started to spend a great deal of time in a different business venture and it was taking me out of my office for at least three to four days a week, sometimes maybe more.

And it was during that time when I was making the transition from practicing law and doing something else for a living that I kind of lost track of this particular matter.

And I am very apologetic to Miss Buttich and her husband for that. I certainly should have seen this through. And it was my fault and I do apologize to Miss Buttich for that, but it was not an intentional effort on my part to skirt my responsibility to Miss Buttich, it's just as I was transitioning from practicing law to doing something else, this happened to be something that just slipped through the cracks and should not have; it was my responsibility to make sure it was done.

[1T49-18 to 1T50-10.¹]

¹ "1T" refers to the transcript of the DEC hearing on March 26, 2007.

As of the date of the hearing, respondent had not returned the \$785 to Buttich.

With respect to the failure-to-cooperate charge, respondent stated that, once the DEC secretary sent him a copy of the complaint, he cooperated and filed an answer immediately. Respondent stated that he had not received all of the DEC's prior letters, which he attributed to the fact that his Philadelphia office address was no longer valid. He learned of the complaint in this matter during a telephone conversation with the DEC secretary about the second matter.

The DEC found that respondent, by his own admission, had violated the following RPCs: 1.1(a), 1.1(b), 1.3, 1.4(b), and 1.4(c). The panel ruled that RPC 1.4(a) was inapplicable to the case because this subsection of the rule applies only to "a prospective client," whereas respondent "admitted being retained by the grievant."

In addition, the DEC concluded that respondent did not fail to cooperate with disciplinary authorities:

With regard to the duty to cooperate with disciplinary authorities, the respondent maintained that he did not receive any information about this grievance, until he was directly contacted by Alan Frank of the District VII Ethics

Committee. The respondent's lack of a law office in New Jersey, and his apparently somewhat ill defined situation in Philadelphia, may explain why he did not receive material related to this grievance. It should be noted that he did receive material related to another grievance resulting from practicing law in New Jersey during the period of his ineligibility.²

[1HPR\$III¶11.]³

The DEC recommended that respondent be suspended for two years. The DEC justified this recommendation by pointing to respondent's undertaking the representation at a time when he was not interested in practicing law, continuing with the representation when he was declared ineligible to practice a few days later, taking no steps to advise Buttich "of this situation" or returning her money, and, ultimately, doing nothing on her behalf. The DEC did not cite any legal precedent to support the recommendation for a lengthy suspension.

² The complaint in this matter was issued in September 2005. The complaint in the ineligibility matter was issued in August 2006.

³ "1HPR" refers to the DEC's hearing panel report.

VII-006-001E (The Ineligibility Matter)

On August 14, 2006, the DEC issued a two-count complaint, charging respondent with practicing while ineligible (RPC 5.5(a)(1)) and failure to maintain a bona fide office for the practice of law in this state or any other state or territory of the United States (RPC 5.5(a); R. 1:21-1(a)). Respondent answered the complaint and, on December 18, 2006, entered into a stipulation of facts with the DEC. Also, on December 18, 2006, a brief hearing took place so that respondent could testify in mitigation.

The parties stipulated that, from September 27, 2004 to December 14, 2005, respondent was on the ineligible list for failure to pay the annual assessment to the CPF. During this time, respondent made a court appearance in the Superior Court of New Jersey, Burlington County, Special Civil Part, in a landlord-tenant matter captioned High Street Center v. Island Treat Restaurant. Respondent stipulated having he violated R. 1:20-1 and R. 1:28-2.⁴

⁴ R. 1:28-2(a) requires every attorney who holds a plenary license to make an annual payment to the CPF. R. 1:20-1(d)
(footnote cont'd on next page)

In August 2005, respondent closed the office where he practiced law. He did not maintain a bona fide office in another location, as required by R. 1:21-1(a). Respondent stipulated having violated RPC 5.5(a) when he appeared in the High Street Center case as counsel, despite not having a bona fide office anywhere.

In mitigation, the stipulation provided – and respondent testified – that, when he closed his office, "he did not intend to continue in the active practice of law, but acceded to the request to represent a friend in the High Street Center case." Respondent explained:

And I just you know, the only reason I asked for a hearing was not because I wanted to take everyone's time, but I just wanted to make it clear that I had no intention of practicing law, and that is why I didn't have the office.

(footnote cont'd)

provides that, after thirty days of nonpayment, the attorney "shall be declared ineligible to practice law and shall be included on the Ineligible to Practice Law List of the Supreme Court."

It was a failure on my part to pay the annual fee, and resulted in me [sic] being on the ineligible list.

I really should have sent in the form which indicated I was no longer practicing and I would have been in a different type of status, wouldn't have been on the ineligible list.

And that was clearly [sic] failure on my part.

When I did close my office, which was last in Philadelphia, I wasn't handling any legal matters, and I wasn't taking any new legal matters on.

This matter that I appeared in court on, I got a phone call from a friend. And it quite honestly it never even crossed my mind that you know, I hadn't paid the fee and I could be on the ineligible list.

The issue about the office, I was aware that I didn't have an office.

I had a place where sometimes you know, if someone wanted to call me like a former client wanted to call me, if they had my phone number they could call me at that particular office.

But it was not a place where I practiced law. It wasn't a place where I maintained files. Wasn't a place where you know, I advertised it as my office address or office phone number or anything along those lines.

Really, the only reason I took on the matter that I was in court on, was to help a friend.

I wasn't holding myself out to the public as a practicing attorney. Wasn't charging people money to do legal work for them. Really just helping someone who had over the many many years I've known him, always helped me.

And, had I even thought about the fact I was on the ineligible list, I am sure I could have told him, he being an attorney, would have understood it, and there would have been no problem, I wouldn't have been in court. But it completely slipped my mind.

And, you know, it was my fault for allowing that to happen.

[2T5-8 to 2T7-9.]⁵

As of the DEC hearing, respondent was working with a legal recruiting firm and continued to have no intention of practicing law. The DEC found that respondent had violated R. 1:20-1, R. 1:28-2 and, therefore, RPC 5.5(a)(1), by practicing while ineligible, as well as R. 1:21-1(a) and RPC 5.5, by practicing without a bona fide office. Based on respondent's violations in this matter and his disciplinary history, the DEC recommended that respondent receive a reprimand.

⁵ "2T" refers to the transcript of the December 18, 2006 hearing.

Following a de novo review of the record, we are satisfied that the DEC's findings that respondent's conduct was unethical is fully supported by clear and convincing evidence.

DRB 07-218 (The Buttich Matter)

In the Buttich matter, although the complaint contains a passing reference to the 2001 bankruptcy case, it makes no claim that respondent neglected the matter. Rather, the basis for the RPC 1.1(a) and RPC 1.3 charges is his failure to take any action to remove the lien after Buttich retained him in 2004. We cannot find, however, that respondent grossly neglected the lien-removal matter when he failed to file a motion to reopen the bankruptcy proceeding and a motion to avoid the lien. There is no evidence that the motions would have been procedurally proper or substantively meritorious. In fact, Buttich testified that another lawyer told her that nothing could be done to remove the lien, which suggests that either there was a procedural bar or there was no meritorious basis upon which to seek such relief.

Thus, in the absence of clear and convincing evidence that these motions would have succeeded, respondent cannot be found to have grossly neglected the post-bankruptcy relief matter. It

follows, therefore, that respondent did not engage in a pattern of neglect, in violation of RPC 1.1(b). Nevertheless, he did act unethically in other respects.

When Buttich contacted respondent about the lien, he told her that he could have it removed. He did nothing. If respondent had been diligent in following through with his legal representation of Buttich, he would have learned of either the procedural bar to or the lack of merit in seeking such relief. In this regard, respondent violated RPC 1.3.

Of the three failure-to-communicate charges, we find that respondent violated RPC 1.4(b) and RPC 1.4(c). RPC 1.4(b) requires a lawyer to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information. After Buttich retained respondent, he failed to initiate any contact with her; he ignored many of her telephone calls; and when she did manage to reach him, he told her that he would file the motion, did nothing, and then failed to inform her that he had done nothing. Finally, when Buttich last tried to contact respondent, she learned that his phone had been disconnected.

RPC 1.4(c) requires a lawyer "to explain a matter to the extent reasonably necessary to permit the client to make

informed decisions regarding the representation." Respondent failed to inform Buttich of any problems with filing the motion, which, in turn, precluded her from promptly seeking other counsel to either confirm that there was no likelihood of removing the lien or to explore other options.

Respondent did not violate RPC 1.4(a), however, which requires a lawyer to "fully inform a prospective client of how, when, and where the client may communicate with the lawyer." As the DEC panel pointed out, Buttich knew where to communicate with respondent when she sought his representation, as she had called him at his Philadelphia office. It was only after she retained respondent that she had difficulty tracking him down. This, however, was not due to her ignorance of where to find respondent. Rather, it was the result of his unavailability and failure to return her telephone calls.

Finally, with respect to the failure-to-cooperate charge, the complaint alleged merely that respondent had "failed and refused to provide any information or response" to the DEC secretary or the DEC investigator. At the hearing, the proofs were virtually non-existent with respect to this claim.

As stated previously, respondent maintained that he knew nothing of this matter until the DEC secretary and he had a

conversation about the ineligibility matter, which was filed after the Buttich complaint. Respondent testified that he had never seen the grievance in this proceeding until it was shown to him at the hearing. He denied ever having received a telephone call from an investigator assigned to this matter.

Although the complaint was mailed to the Philadelphia office, respondent was rarely there and had stopped paying rent as of August 2005. (The complaint was dated September 2005.) In addition, respondent's post office box was shut down because he failed to pay the annual fee.

Based on these facts, the record does not clearly and convincingly establish that respondent failed to cooperate with disciplinary authorities. On the one hand, an attorney is required to notify the Office of Attorney Ethics "of any change in the home and primary bona fide law office addresses . . . either prior to such change or within thirty days thereafter." R. 1:20-1(c). On the other hand, RPC 8.1(b) is violated only when an attorney "knowingly" fails to respond to a lawful demand for information from a disciplinary authority. While there is no evidence that respondent knowingly failed to respond to the DEC, his unintentional failure to do so was the result of his non-compliance with R. 1:20-1(c). Thus, while we find that

respondent did not violate RPC 8.1(b), we consider as an aggravating factor his failure to keep the OAE informed about his whereabouts.

In sum, respondent violated RPC 1.3, RPC 1.4(b), and RPC 1.4(c) in the Buttich matter. He did not violate RPC 1.1(a), RPC 1.1(b), RPC 1.4(a), and RPC 8.1(b).

VII-06-001E (The Ineligibility Matter)

In the second matter, respondent committed separate violations of RPC 5.5(a). First, he practiced law while ineligible, a violation of RPC 5.5(a)(1), which prohibits a lawyer from practicing law in a jurisdiction where doing so violates the regulation of the legal profession in that jurisdiction.

Second, respondent practiced law without maintaining a bona fide office, a violation of R. 1:21-1(a). That rule requires an attorney to maintain a bona fide office for the practice of law "in this or any other state, territory of the United States, Puerto Rico, or the District of Columbia." R. 1:21-1(a) also states that "[a]n attorney who practices law in this state and fails to maintain a bona fide office shall be deemed in violation of RPC 5.5(a)."

There remains the quantum of discipline to be imposed on respondent for his lack of diligence and failure to communicate with the client in the first matter, and his separate violations of RPC 5.5(a) in the second matter.

Generally, reprimands are imposed for lack of diligence and failure to communicate with the client in matters where the attorney has an ethics history. See, e.g., 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); and In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure 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). Given respondent's extensive ethics history, our determination of the appropriate measure of discipline begins with a reprimand. However, there are extensive aggravating factors that we must consider.

Respondent admitted that he had "made the mistake" of failing to file a lien avoidance motion upon the conclusion of the 2001 bankruptcy proceeding. As a result, a lien continued to exist on the Buttich property. Because a motion to reopen the proceeding and a motion to avoid the lien could not be filed in 2005, either because they lacked merit or because they were barred for whatever reason, Buttich was required to satisfy a \$27,000 lien that should have been discharged and avoided by the 2001 bankruptcy.

Moreover, respondent took a \$785 fee from Buttich in 2004, at a time when he "wasn't particularly interested" in practicing law and, in fact, was "making the transition" from practicing law to engaging in "a different business venture." Respondent communicated none of this (or anything else) to Buttich, did no work, and kept the fee. He has not made restitution to the client and has not ever returned the fee.

In our view, these aggravating factors are so serious that nothing less than a censure would be required for respondent's misconduct in the Buttich matter. Nevertheless, we still must consider the other matter before us.

Practicing law while ineligible is generally met with an admonition if it is the attorney's sole violation and the

attorney is unaware of his or her ineligible status, or if the attorney also commits other, non-serious ethics infractions, but advances compelling mitigating factors. See, e.g., In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligibility; prior private reprimand in 1999 and reprimand in 2002); In the Matter of Frank D. DeVito, DRB 06-116 (July 21, 2006) (attorney practiced law while ineligible, failed to cooperate with the OAE, and committed recordkeeping violations; compelling mitigating factors, including the attorney's lack of knowledge of his ineligibility, justified only an admonition); In the Matter of Queen Esther Payton, DRB 05-250 (November 3, 2005) (during an eleven-month period of ineligibility, the attorney practiced law with her husband on a limited, part-time basis, conducting legal research, calling clients and doing "paperwork" in the office; the attorney initially failed to cooperate with the OAE's investigation of the matter; mitigating factors taken into account); In the Matter of Steven V. Podolsky, DRB 05-187 (September 19, 2005) (attorney practiced law while ineligible; the attorney's conduct was confined to one instance; the attorney did not know of his ineligibility); In the Matter of

Samuel Fishman, DRB 04-142 (June 22, 2004) (attorney, while ineligible to practice law, represented one client in a lawsuit and signed a retainer agreement in connection with another client matter; the attorney also failed to maintain a trust and a business account; mitigating factors were the attorney's lack of knowledge of his ineligibility, his contrition at the hearing, his quick actions to remedy the recordkeeping deficiency, and the lack of disciplinary history); In the Matter of Juan A. Lopez, Jr., DRB 03-353 (December 1, 2003) (attorney practiced law while ineligible for nine months; the attorney was not aware that he was ineligible; prior admonition); and In the Matter of Kevin B. Thomas, DRB 00-161 (July 26, 2000) (attorney appeared in court twice while ineligible to practice law; in mitigation, the attorney was closing down his practice and no longer had any staff who was responsible for paying the annual assessment).

Here, as in Thomas, respondent was in the process of closing down his practice and appeared to have been unaware that he was ineligible to practice law during the time that he made the court appearance in the High Street Center case. However, at the same time that respondent was ineligible to practice law, he also failed to maintain a bona fide office and practiced

while on the ineligible list. Under these circumstances, a reprimand is the general measure of discipline. See, e.g., In re Fulmer, 152 N.J. 430 (1998) (attorney reprimanded for failure to maintain a bona fide office and for practicing while on the ineligible list); and In re Gaskins, 151 N.J. 3 (1997) (on discipline by consent, attorney reprimanded for failing to maintain required attorney accounts, practicing law while ineligible, and practicing law in New Jersey while failing to maintain a bona fide New Jersey law office).

When considered together, the censure in the Buttich matter and the reprimand in the ineligibility matter should result in a three-month suspension. We, therefore, determine that respondent should be suspended for three months. In addition, he must return the \$785 fee to Carol Buttich forthwith, which shall, in any event, be a condition of reinstatement if respondent ever seeks it.

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
Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

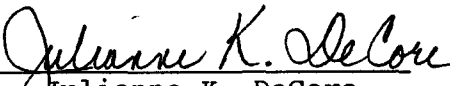
In the Matters of Neal Sharma
Docket Nos. DRB 07-204 and DRB 07-218

Argued: November 15, 2007

Decided: December 18, 2007

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	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