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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-164
District Docket No. IIIA-04-032E

IN THE MATTER OF :
 :
JEFFREY W. LUTZ :
 :
AN ATTORNEY AT LAW :
 :
_____ :

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

Decided: August 31, 2006

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

Pursuant to R. 1:20-4(f), the District IIIA Ethics
Committee ("DEC") certified the record in this matter directly
to us for the imposition of discipline, following respondent's
failure to file an answer to the ethics complaint.

This case arose from respondent's failure to properly
pursue a workers' compensation matter, and failure to inform his
client that his claim had been dismissed. We have determined to
impose a reprimand.

Service of process was proper. In August 2005, the DEC secretary mailed a copy of the complaint, via certified and regular mail, to 88 Sandy Point Drive, Brick, New Jersey, 08723, respondent's office address listed on the attorney registration records. That address is also listed as respondent's home address. The certified mail receipt was returned with an illegible signature. The regular mail was not returned to the sender.

Respondent submitted an answer captioned "Response to Complaint." In October 2005, the DEC secretary sent a letter to the above address, via regular mail, advising respondent of several deficiencies in his answer and instructing him to file an amended answer within two weeks. The letter was not returned to the sender. Respondent did not file an amended answer.

In November 2005, the secretary sent a third letter to the above address, via certified and regular mail, advising respondent that, if he did not file an answer within five days, the allegations of the complaint would be deemed admitted, and the matter would be certified to us for the imposition of discipline. The letter also served as an amendment to the complaint to charge respondent with violating RPC 8.1(b), based on his failure to file an answer. The certified mail receipt was returned with an illegible signature. The regular mail was

not returned to the sender. Respondent did not file an amended answer.

Respondent was admitted to the New Jersey bar in 1975. He has no history of discipline.¹

In August 1999, Louis Pollara, Jr. retained respondent in connection with a personal injury and workers' compensation claim. Respondent filed a claim petition in the New Jersey Department of Labor, Division of Workers' Compensation.

In September 2002, the claim petition was dismissed for lack of prosecution, after respondent failed to appear in court and/or to oppose the dismissal. Respondent did not disclose to Pollara that the matter had been dismissed, and failed to advise him of his rights in connection with reinstating the claim. Instead, respondent misled Pollara by advising him that the case was still proceeding, and that he was attempting to join the Second Injury Fund to obtain total disability benefits for him.

Pollara learned of the dismissal approximately two years later, when he contacted the workers' compensation carrier. By

¹ The record contains a letter from respondent to Stephen W. Townsend, Clerk of the New Jersey Supreme Court, purporting to tender his resignation as a member of the bar. The letter is dated September 26, 2005. Respondent was apparently unaware that an attorney cannot withdraw from the bar while there is a disciplinary proceeding pending against him. R. 1:20-22(a).

the time Pollara learned of the dismissal, he was time-barred from seeking reinstatement of the claim.

The complaint does not provide details of the DEC investigator's attempts to obtain information from respondent, stating only that "[t]hroughout the investigation of this grievance, the respondent failed to respond and/or cooperate with the ethics committee investigator."

The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate [in 2005 when the complaint was drafted, subsection (b) was in effect]), RPC 8.4(c)(conduct involving dishonesty, fraud, deceit or misrepresentation), and R. 1:20-3(g)(3)(failure to cooperate with the DEC, more properly a violation of RPC 8.1(b).

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 that complied with the rules, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

This matter was before us in an unusual posture. Although the matter proceeded as a default, respondent did file a document called "Response to Complaint." For unknown reasons, when the DEC secretary advised respondent that he had to amend

his answer to conform to the Court Rules, respondent failed to do so. As a result, the DEC secretary certified the record to us as a default. Although we have determined to process this matter as a default, we considered respondent's effort to file a response/answer (albeit deficient) in fashioning the appropriate discipline for his ethics infractions.

Specifically, discipline in a default matter is enhanced to reflect respondent's total lack of cooperation with the disciplinary system. In re Nemshick, 180 N.J. 304 (2004) (in matter that proceeded as a default, three-month suspension imposed for infractions that usually result in a reprimand; no ethics history). Here, respondent, at least in the beginning, made an effort to participate in his disciplinary matter. Under these circumstances, we see no need to elevate the appropriate degree of discipline, although we do consider the allegations of the complaint admitted, pursuant to R. 1:20-4(f).

We now turn to the appropriate measure of discipline for respondent's misconduct. Respondent allowed Pollara's matter to be dismissed, apparently took no action to have it reinstated, and failed to advise him of the dismissal. Respondent then aggravated his misconduct by misrepresenting to Pollara that the case was proceeding apace. Respondent, thus, violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c).

Although respondent has an unblemished record of thirty-one years, that circumstance cannot undo the fact that he acted unethically in the Pollara case, and was less than cooperative with the DEC investigator and the DEC secretary, in violation of RPC 8.1(b). We see no reason to vary from the reprimand generally imposed in similar situations.

The Court has held that "intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472, 488 (1989). This is typically the discipline imposed even where, in addition to the misrepresentation, the attorney has engaged in gross neglect, lack of diligence, and failure to communicate with the client. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney reprimanded for gross neglect, lack of diligence, failure to communicate with the client, and conduct involving dishonesty, fraud, deceit or misrepresentation in one client matter, where he was hired to investigate a personal injury claim for the purpose of a possible lawsuit, but failed to return phone calls and told the client that he had filed suit when he had not); and In re Porwich, 159 N.J. 511 (1999) (reprimand imposed upon attorney who admitted to gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with ethics authorities in two client matters; the

Court also found that the attorney engaged in conduct involving misrepresentation, based on the attorney's representation to the client that he had filed suit, when he had not). We, therefore, determine that a reprimand is the appropriate penalty for respondent's conduct in the Pollara matter.

One more point warrants mention. The investigative report indicates that respondent settled the third-party claim against the tortfeasor in Pollara's case, in or about October 2002, for \$75,000. Attached to the investigative report is a letter from respondent to Pollara, dated June 10, 2003, stating "Enclosed is check [sic] representing the proceeds of the settlement." The check, for \$25,000, is dated November 22 2002. The investigative report did not address this delay (November 2002 to June 2003) in turning over the funds. We, therefore, direct the Office of Attorney Ethics to perform an audit of respondent's trust account to determine the legitimacy of that delay in turning over the funds to Pollara.

Vice-Chair Pashman 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 O'Shaughnessy, Chair

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

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

In the Matter of Jeffrey W. Lutz
Docket No. DRB 06-164

Decided: August 31, 2006

Disposition: Reprimand

Members	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