SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-208
District Docket No. IV-01-071E

IN THE MATTER OF	:
ROBERT E. BARTH, JR.	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 15, 2004

Decided: August 18, 2004

John P. Jehl appeared on behalf of the District IV Ethics Committee.

Mark J. Molz appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline filed by the District IV Ethics Committee ("DEC"). The two-count complaint charged respondent with violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with a client), RPC 1.5(a) (charging an unreasonable fee), RPC 8.1(b) (failure to reply to

a lawful demand for information from a disciplinary authority), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). This same matter was before us as a default in October 2002. On November 6, 2002, we vacated the default and remanded the matter for a hearing. It is now ripe for our de novo review.

Respondent was admitted to the New Jersey bar in Although he does not currently maintain a law office, at the relevant times he practiced in Cherry Hill and Marlton, New Jersey. He has no history of discipline. Respondent has been on the New Jersey Supreme Court's list of ineligible attorneys since September 2001, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

Respondent entered into a stipulation of facts with the DEC and, for the most part, admitted the allegations of the complaint.

On January 7, 2000, Danice Conaway retained respondent to represent her in a Chapter 7 bankruptcy matter. She gave him $795 for legal and filing fees for the bankruptcy petition. According to respondent, $595 was for his fee and $200 was for filing fees.

At respondent's request, Conaway completed "certain" documents and signed a voluntary bankruptcy petition. Respondent

informed Conaway that it would take several months for the court to schedule a hearing in the matter.

In June 2000, Conaway moved to South Dakota. Although the complaint alleged that she informed respondent of her new address, he had no recollection of when he learned of it.

Thereafter, respondent failed to communicate with Conaway about the status of her case. As a result, in late 2000 or early 2001, Conaway tried to contact respondent at his Cherry Hill office, but he was no longer employed there. She eventually located him at another law office in Woodbury, New Jersey. At that time, respondent informed Conaway that her bankruptcy hearing was scheduled for February 16, 2001, in Camden, New Jersey, which was untrue.

Based on respondent's representation, Conaway returned to New Jersey on February 15, 2001, the day before her alleged bankruptcy hearing. When she attempted to contact respondent at the Woodbury law office, she learned that the firm no longer employed respondent. Thereafter, Conaway obtained respondent's home telephone number and left numerous telephone messages on his answering machine asking him to return her calls. Respondent did not return her calls or otherwise attempt to communicate with her. Respondent recalled that he received only one threatening telephone call from Conaway, and that she did not request that he return the call.

Conaway telephoned the court to confirm the date of her bankruptcy hearing. At that time, court personnel informed her that her bankruptcy petition had never been filed and, therefore, there was no hearing scheduled. An investigation by the Office of Attorney Ethics ("OAE") confirmed that respondent had not filed a bankruptcy petition in Conaway's behalf.

Respondent eventually reimbursed Conaway for the entire amount she had paid him. Because of respondent's apparent inability to locate her, he submitted a $795 bank check to Disciplinary Review Board counsel's office, which was forwarded to Conaway in Beresford, South Dakota, on October 11, 2002.

The complaint also charged that respondent failed to reply to the DEC's and OAE's letters dated May 31, June 26, and September 10, 2001, requesting information about the grievance. The letters were mailed to respondent's last known office address. The OAE's September 10, 2001 letter was returned as "not deliverable." Thereafter, on September 20, and October 16, 2001, the OAE sent letters to respondent's home address requesting a reply to the grievance. Respondent did not submit a reply.

The OAE also attempted to telephone respondent at his home and at his office. Although the complaint alleged that both numbers had been disconnected, respondent claimed that his home telephone had not been disconnected and that he had spoken with

the OAE investigator, set up an appointment to meet with him, canceled the appointment, and never rescheduled it.

At the DEC hearing, respondent stated that he never intended to harm any client. He admitted that, at times, due to his struggle with alcohol, he was a "very bad attorney." He remarked that, although he helped a lot of people, he also hurt some, for that he apologized.

The presenter stated that respondent was most cooperative and honest during the course of the investigation. Furthermore, respondent did not try to justify his conduct, readily admitting his wrongdoing.

Respondent submitted an October 6, 2002 letter from Elizabeth Taransky, MALCSW, who began treating him, in August 2001, for chronic alcohol-dependency and associated depression. The letter stated, in relevant part:

> Mr. Barth began practicing in 1995, having obtained employment with Zabel and Petkevis in Cherry Hill, N.J. Mr. Barth remained with the firm until they moved in June 2000, at which time he was forced into self-employment. . . . It was during this period of self-employment that Mr. Barth's alcoholism worsened. Concurrent with the filing of the ethics complaints[,] Mr. Barth was fired from Puff and Associate[s] in Woodbury, NJ, in January 2001. On July 31, 2001, Mr. Barth's [fiancée] left him, approximately two (2) months before their wedding date . . . . It was this emotional crash that precipitated recovery.
>
> In August 2001, Mr. Barth started his treatment and counseling with me. This

> included his self-directed de-tox. He ha[d] his first drink at age 10. He has now obtained an Alcoholics Anonymous sponsor and has chaired a few meetings. . . .
>
> . . . .
>
> Through his therapy, Mr. Barth has expressed his deep regret and remorse for those people he and his alcoholism have adversely affected. . . . [Mr. Barth] has faced his faults. He has accepted responsibility for his mistakes and is working to develop a support structure to allow him to gain advice regarding his professional endeavors and his daily challenge to remain sober. It is the group therapy that has made him so very aware of his professional responsibilities and the profound trust that lawyers generate in clients at their most vulnerable times of stress and crisis.
>
> Mr. Barth's prognosis has improved throughout our continuing treatment. He has made good progress in the last year, and continues to do so on all levels.
>
> [Ex.R3.]

The DEC found that respondent violated RPC 1.5(b), RPC 1.1(a), and RPC 1.3 in that he charged Conaway a fee of $795, and then failed to perform any services on her behalf.

The DEC also found that respondent failed to inform Conaway about the status of her matter, a violation of RPC 1.4(a); that he misrepresented that the court had scheduled a bankruptcy hearing, a violation of RPC 8.4(c); and that he failed to reply to disciplinary authorities' lawful demands for information, a violation of RPC 8.1(b).

As mitigating factors, the DEC considered that respondent testified in a credible, honest, forthright manner, and that he was refreshingly candid in his admission of misconduct. The DEC also considered that respondent reimbursed Conaway the full amount of the fees, and that he sought counseling for chronic alcohol-dependency and associated depression.

Based on the above factors, the DEC recommended a three-month suspension.

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

The DEC properly found that respondent violated RPC 1.1(a) and RPC 1.3 by agreeing to represent Conaway, having her complete certain documents and sign a voluntary bankruptcy petition, and then not taking any further action in her behalf. Respondent also failed to keep his client apprised about the true status of her matter and failed to return her telephone calls, violating RPC 1.4(a).

Respondent did not inform Conaway that he had changed law firms. When she was finally able to locate him, respondent informed her that a hearing had been scheduled on her bankruptcy petition for February 16, 2001. This statement was patently false, since the bankruptcy petition had never been filed. Respondent's conduct in this regard violated RPC 8.4(c). As a

result of respondent's misrepresentation, Conaway returned to New Jersey for the fictitious hearing.

The complaint also charged respondent with violating RPC 1.5(a) (charging an unreasonable fee). However, respondent claimed that only $595 was to be his fee, that the rest was for filing fees, and that his fee was below the prevailing market price. Furthermore, respondent returned the entire amount to Conaway. We, therefore, dismiss this charge.

Finally, the complaint charged respondent with violating RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority). The complaint itself alleged that, on at least one occasion, mail to respondent was returned as undeliverable. However, respondent stated in his answer that he was no longer at the address listed in the first three letters. He also claimed that, in February 2002, he had spoken to an OAE investigator and scheduled an appointment to turn over his file. The appointment was canceled, but never rescheduled. Thus, there is no clear and convincing evidence that respondent intentionally failed to reply to the DEC's and OAE's requests for information. In addition, at the DEC hearing, the presenter acknowledged that respondent was very cooperative, and admitted his wrongdoing in the matter. From the time that respondent filed a motion to vacate the default until the time of the DEC hearing, he fully cooperated with disciplinary

authorities. We, therefore, dismiss the charge of a violation of RPC 8.1(b).

The discipline imposed in matters involving similar violations has been a reprimand. See In re Weiworka, 179 N.J. 225 (2004) (reprimand where the attorney entered into a retainer agreement with the client and then failed to take any action in his client's behalf, failed to keep the client informed about the status of the matter or to alert her that the statute of limitations had expired, failed to reply to her numerous requests about the status of the matter, and misled the client that he had filed a complaint); In re Till, 167 N.J. 276 (2001) (reprimand for gross neglect, lack of diligence, and misrepresentation where the attorney failed to take action in representing his client in a "minority shareholder oppression action" and made numerous misrepresentations to her about the status of the case for more than a nine-month period; the attorney lied to the client that the complaint had been filed, that service had been made, that the defendant had failed to answer the complaint, that he was seeking default judgments, and that he had filed motions to obtain the deposition of her ailing father); In re Riva, 157 N.J. 34 (1999) (reprimand where the attorney grossly neglected a litigated matter, allowing a default judgment to be entered, and then failed to act with diligence to have the default vacated; the attorney also

misrepresented the status of the matter to his clients); and In re Onorevole, 144 N.J. 477 (1996) (reprimand where the attorney grossly neglected a landlord-tenant matter for nearly one year, lied to his client, and failed to cooperate with disciplinary authorities).

Because respondent has no ethics history, ultimately cooperated with the DEC, has accepted full responsibility for his ethics troubles, and is attempting to deal with his alcohol problems, we find no reason to deviate from precedent. We, therefore, determine that a reprimand is appropriate discipline in this matter. Robert C. Holmes, Esq. did not participate.

We also require respondent to provide proof that he is enrolled in an alcohol treatment program.

We further require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
Mary J. Maudsley, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Robert E. Barth, Jr.
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Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Maudsley			X			
O'Shaughnessy			X			
Boylan			X			
Holmes						X
Lolla			X			
Pashman			X			
Schwartz			X			
Stanton			X			
Wissinger			X			
Total:			8			1

Julianne K. DeCore
Chief Counsel