

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 05-104  
District Docket No. XIV-04-061E

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IN THE MATTER OF  
ROBERT H. LEINER  
AN ATTORNEY AT LAW

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Decision

Argued: May 19, 2005

Decided: July 28, 2005

Michael J. Sweeney appeared on behalf of the Office of Attorney Ethics.

Respondent waived appearance for oral argument.

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

On January 29, 2004, this matter had been presented to us on a motion for discipline by consent. At that time, we denied the motion and remanded the matter to the Office of Attorney Ethics ("OAE"). The matter is now before us pursuant to R. 1:20-

6(c)(1)<sup>1</sup>, based on respondent's admissions to the allegations of the complaint charging him with violations of RPC 1.1, presumably (a), (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4, presumably (a), (failure to keep client informed about the status of the matter and to comply with reasonable requests for information), RPC 1.16(d) (failure to protect a client's interests upon termination of representation), RPC 3.2 (failure to expedite litigation), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

Respondent was admitted to the New Jersey bar in 1994. At the relevant time, he maintained a law office in Hainesport, New Jersey. On May 26, 2005, however, the Supreme Court entered an order for his temporary suspension, to be effective June 24, 2005, for his failure to comply with a fee arbitration determination, requiring him to refund a fee to a client. In re Leiner, N.J. (2005).

Respondent has no history of discipline. According to the New Jersey Lawyers' Fund for Client Protection, he has been ineligible to practice law since September 2004.

Respondent represented the grievant, Wade Reeder, in his divorce proceedings. The June 10, 1998 final judgment of divorce

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<sup>1</sup> This section states that a hearing shall only be held if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter asks to be heard in aggravation.

required Reeder's former wife, Diane Reeder, to "buy out" Reeder's interest in the marital residence.

Contrary to the terms of the final judgment of divorce, in February 1999, Diane listed the marital residence for sale. Although respondent told Reeder that he would call Diane's attorney and "take care of it," Diane sold the marital residence in July 1999. Over the course of the next three years, respondent made numerous misrepresentations to his client and failed to obtain any relief for Reeder.

After the sale of the property, respondent twice represented to Reeder that he would file an action in Superior Court to compel Diane to turn over Reeder's share of the sale proceeds, but failed to do so.

On a number of occasions between October 1999 and January 2000, respondent informed Reeder that the matter had been "scheduled for Court," and made arrangements with Reeder to meet him at the office to drive to the courthouse. When Reeder arrived at his office, respondent informed him that the scheduled court dates had been canceled.

In January 2000, respondent told Reeder that an order had been entered against Diane, compelling her to reimburse Reeder for counsel fees and to pay Reeder interest on the amount she

owed him. That was untrue. Respondent had never filed such an application with the court.

In 2001, respondent informed Reeder that Diane would use her retirement account to pay him his share of the sale proceeds. On several occasions, respondent instructed Reeder to meet him at his office to pick up the check. On each occasion that Reeder went to pick up the check, respondent had an excuse as to why it was not available. For example, respondent told Reeder that Federal Express had the check, but had been unable to deliver it because no one had been present at respondent's office. When Reeder offered to pick up the check, respondent told him that Federal express had lost it. On another occasion, respondent told Reeder that Diane's lawyer had the check, and that he was going to pick it up. When Reeder offered to pick it up himself, respondent told him that he could not because respondent first had to withdraw his fee from the funds. The check did not exist.

In December 2001, respondent gave Reeder a \$68,316 trust account check dated December 24, 2001, but requested that Reeder not cash it until the following week. Thereafter, in January 2002, respondent telephoned Reeder and requested that Reeder meet him at the bank. When Reeder arrived at the bank, respondent explained to him that he did not have the money, but

asked Reeder to meet him later at his office. Later, respondent admitted to Reeder that he had never filed any applications with the court and, therefore, did not have the money in his trust account. The OAE confirmed that respondent had not deposited funds relating to the sale of the property into his trust account.

As a result of their conversation, Reeder retained Michael Stein to represent him in his post-divorce proceedings. Respondent did not provide Reeder's file to Stein. Therefore, on June 26, 2002, Stein filed an order to show cause to compel respondent to turn over Reeder's file. Following the entry of the court's order, respondent gave Reeder's file to Stein. Ultimately, Stein was able to obtain Reeder's share of the sale proceeds.

In mitigation, respondent stated that, from November 2001 to July 2002, he was ill and suffering from high fevers on a daily basis. He, nevertheless, continued working during that time. Eventually, in early 2002, he was diagnosed with a liver abscess, for which he was hospitalized and treated. According to respondent, the source of the abscess was not discovered until he was admitted to the emergency room in July 2002. At that time, respondent learned that he had developed a fistula between

his colon and bladder. Thereafter, he was admitted to Jefferson Hospital and had a portion of his colon removed.

Respondent conceded that his medical problems did not constitute an excuse for his wrongdoing, but he alleged that it contributed to his lack of judgment in issuing the check. He stated that he never intended to withhold Reeder's file, and that he was unable to release it to new counsel because he was in the hospital at the time of the order to show cause.

Respondent admitted that, prior to Reeder's retaining Stein, he had confessed to Reeder that he had misrepresented his actions in the matter. Although respondent refunded Reeder's fees, he recognized that it was "a small gesture compared to the grief and aggravation [he] caused [his] client."

The OAE recommended the imposition of a reprimand, relying on In re Onorevole, 144 N.J. 477 (1996) (reprimand for gross neglect, lack of diligence, failure to communicate with client, failure to cooperate with disciplinary authorities, and misrepresentations to a client that a complaint had been filed; attorney had a prior admonition); and In re Riva, 157 N.J. 34 (1999) (reprimand for neglect, lack of diligence, and misrepresentation of the status of the matter).

Following a review of the full record, we find that respondent's admissions to the allegations of the complaint support a finding that he was guilty of unethical conduct.

Respondent's failure to take any action on Reeder's behalf after entry of the final judgment of divorce amounted to gross neglect and lack of diligence. In fact, in his answer to the complaint, respondent specifically admitted that his conduct was "negligent and unacceptable and there [was] no reasonable mitigation for [his] actions." Respondent also failed to communicate with his client about the matter and misled him about its status from 1999 to 2002. His misrepresentations (RPC 8.4(c)) included telling Reeder that he would contact Diane's attorney to obtain Reeder's proceeds from the sale, that he would file an application with the court to have Diane turn over the proceeds from the sale, that the matter was "scheduled for court," that the court dates had been canceled, that an order had been entered against Diane, that Diane would pay Reeder out of her retirement account, that respondent would pick up the check, that the check was at the Federal Express office, that Federal Express lost the check, and that Diane's lawyer had the check.

Respondent also failed to turn over Reeder's file to his new attorney until that attorney obtained an order to compel its release. In this regard, respondent violated RPC 1.16(d).

Although respondent was also charged with a violation of RPC 3.2 (failure to expedite litigation), it does not appear that there was any litigation pending at the time of respondent's misconduct. The final judgment of divorce had already been entered. Respondent's failure to pursue Diane for Reeder's interest in the marital residence is, therefore, subsumed in the finding of gross neglect. We, therefore, dismiss the charged violation of RPC 3.2.

Generally, in cases involving similar violations, discipline ranges from an admonition to a short suspension. See In re Carroll, DRB 95-017 (June 29, 1995) (admonition for the attorney's inaction in a personal injury matter, failure to turn over his client's file to a new attorney despite numerous telephone calls and several letters, failure to communicate, and failure to cooperate with disciplinary authorities); In re Barth, 181 N.J. 536 (2004) (reprimand where the attorney agreed to represent a client in a bankruptcy matter, did some work in the matter, but never filed the bankruptcy petition, failed to keep her informed about the true status of the matter or to return her telephone calls, changed law firms without notifying



her, and misrepresented that a hearing had been scheduled on the bankruptcy petition, causing her to return to New Jersey from out of state); 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); 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); and In re Berstein, 144 N.J. 369 (1996) (three-month suspension where attorney engaged in gross neglect, lack of diligence, failure to communicate with client, misrepresentation to client, and failure to cooperate with disciplinary authorities).

We find that the mitigating circumstances advanced by respondent are not very compelling. In fact, respondent recognized that his illness did not excuse his wrongdoing. Moreover, his misconduct began prior to the onset of his illness in November 2001. Respondent also noted that he was hospitalized when the order to show cause for the return of the file was filed and, therefore, could not reply to it. Respondent conceded that refunding Reeder's retainer was only a small gesture compared to the grief and aggravation that he caused his client.

Respondent's inaction was exacerbated by his numerous misrepresentations to Reeder. In that regard, respondent's behavior was comparable to the misconduct in Barth, where the attorney's misrepresentations to his client caused her to return to New Jersey to attend a nonexistent bankruptcy hearing, and to that in Till, where for nine months the attorney made

misrepresentations to his client about the status of her case. Those attorneys received only reprimands. Furthermore, respondent has no disciplinary history, and for the second time has fully cooperated with the OAE.

We, therefore, determine that a reprimand is appropriate discipline for respondent's violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to keep client informed about the status of a matter and to comply with reasonable requests for information), RPC 1.16(d) (failure to surrender file on termination of representation), and RPC 8.4(c) (misrepresentations). Member Matthew Boylan, Esq. did not participate.

We further determine to 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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Robert H. Leiner  
Docket No. DRB 05-104

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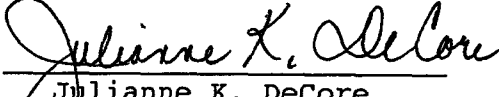
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Argued: May 19, 2005

Decided: July 28, 2005

Disposition: Reprimand

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

  
Julianne K. DeCore  
Chief Counsel