

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 03-046

IN THE MATTER OF :
: :
CHARLES ANTHONY DiFAZIO :
: :
AN ATTORNEY AT LAW :
: :

Decision

Argued: April 17, 2003

Decided: June 24, 2003

Richard J. Engelhardt appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear, despite proper notice.

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

This matter was before us on a motion for reciprocal discipline filed by the Office of Attorney Ethics (AOAE@), based on respondent=s disbarment by consent in Pennsylvania.

R.1:20-14.

Respondent was admitted to the New Jersey bar in 1987 and has no prior discipline. He was admitted to Pennsylvania bar in 1988.

Respondent's disbarment was based on his Statement of Resignation Under *Pa. R.D.E.* 215, dated July 18, 2002. In a sworn resignation statement, respondent acknowledged as follows:

He is aware that there are presently pending investigations into allegations that he has been guilty of misconduct, the nature of which allegations have been made known to him by service of two Petitions for Discipline, as follows:

- a) No. 18 DB 2002, Petition for Discipline filed on February 19, 2002, a true and correct copy of which is attached hereto, made a part hereof and marked as 'Exhibit A';
- b) No. 64 DB 2002, Petition for Discipline filed on May 15, 2002, a true and correct copy of which is attached hereto, made a part hereof and marked as 'Exhibit B';
- c) File No. C1-02-744 to which [respondent] waived a DB-7 Request Letter and Petition for Discipline.

He acknowledges that the material facts upon which the allegations of the complaint contained in Exhibits 'A' and 'B' and File No. C1-02-744 are based are true.

He submits the within resignation because he knows that he could not successfully defend himself against the charges of professional misconduct set forth in the attached exhibits.

The facts that form the basis for respondent's disbarment are contained in two petitions for discipline (formal complaints). According to the petitions, respondent essentially abandoned his clients in a series of ten matters.¹

¹ An eleventh matter had not reached the complaint stage when these matters were considered.

The Battiste Matter

On or about October 9, 1998, Joseph Battiste retained respondent to represent him in connection with injuries sustained in a slip-and-fall accident.

Respondent filed a complaint on or about March 17, 2000. Thereafter, in September and October 2000, Battiste wrote respondent several letters requesting information about the case, to which respondent did not reply.

On October 10, 2000, the court entered a judgment of non pros for respondent's failure to appear at trial.

On October 23, 2000, respondent wrote to Battiste and misrepresented that, because the defendants failed to attend the settlement conference or answer the complaint, he was filing a default judgment against them.

In or about November 2000, respondent telephoned Battiste, misrepresenting to him that the judge had ruled in his favor. After a failed attempt to revive the case in February 2001, respondent again misrepresented the status of the case in an April 2001 meeting with Battiste.

The Perez Matter

On or about July 7, 1997, Carmen E. Perez retained respondent to represent her in a personal injury case.

On or about May 14, 1998, respondent started a civil action in the Philadelphia Court of Common Pleas. Although he made some attempts to serve the defendants, he was

unsuccessful.

Thereafter, in a July 28, 1998 letter, respondent advised Perez that, as soon as the postal service confirmed the defendants' address, he would file a motion to obtain substitute service and then proceed with litigation. Respondent never did so. Therefore, almost a year later, on April 19, 1999, the court dismissed the case.

Four months later, on August 25, 1999, respondent wrote to attorneys for Rawlings Associates, an out-of-state party, misrepresenting that Perez' case was active and that he was awaiting a new trial date in order to proceed.

Respondent failed to communicate with Perez after October 1998 and never advised her that her case had been dismissed.

The Oxford Matter

On or about June 17, 1997, Donna Oxford retained respondent to represent her in an employment claim against "Centocor" and an employee named James Douglas.

On or about March 8, 1999, respondent started a civil action in the Philadelphia Court of Common Pleas. Thereafter, Centocor's attorney advised respondent that Douglas was no longer a Centocor employee. Therefore, the attorney refused to accept service for Douglas. Respondent never succeeded in serving Douglas.

On August 4, 1999, respondent wrote to Douglas at Centocor's address, enclosing plaintiff's request for admissions, despite knowing that Douglas could not be served there.

Thereafter, respondent misrepresented (1) to Centocor's attorney, that respondent had

served Douglas with the complaint and had taken steps to perfect a default judgment against him; (2) to the court, in an affidavit of non-military service, that Douglas was a business, not an individual; (3) to the court, that Douglas' proper address for service was the Centocor address and that he had served Douglas with the default papers at that address; (4) to his client, that he had served Douglas and had taken steps to obtain a default judgment; and (5) to his client, that he had obtained a judgment in her favor and was executing against Douglas' assets at Centocor.

The Kimball Matter

On or about March 17, 1998, Bernadette Kimball retained respondent to file an appeal from a municipal court determination, which he filed on July 2, 1998.

One year later, on or about June 8, 1999, the appeal was dismissed for respondent's failure to appear at trial.

Thereafter, on July 29, 1999, respondent filed a new action in the Philadelphia Court of Common Pleas, which resulted in a judgment of non pros against Kimball for respondent's failure to file a complaint. On February 2, 2000, respondent again attempted to file the complaint, which was ultimately rejected by the court.

Respondent failed to advise Kimball that a judgment had been entered against her because of his neglect.

On June 23, 2000, respondent filed a second civil action on Kimball's behalf.²

² It is not clear if this matter was related to the prior matter.

However, he failed to serve the defendant or appear at a December 8, 2000 case management conference in that matter. It is not known if that case, too, was dismissed. Throughout the representation, respondent failed to adequately inform Kimball of the status of either of her matters, thereby preventing her from making informed decisions about the representation.

The Ohio Casualty Insurance Company Matter

On or about April 1998, respondent represented Ohio Casualty Insurance Company (“OCIC”), as defendant in a construction contract dispute. Respondent filed an answer for OCIC on or about April 22, 2003.

Thereafter, because respondent repeatedly failed to comply with plaintiff’s discovery requests, an order was entered requiring OCIC to reimburse plaintiff \$600 for respondent’s failure to attend a scheduled deposition.

On or about November 20, 2000, the case settled in plaintiff’s favor for \$95,000. In January 2001, the court granted plaintiff’s motion to enforce the settlement agreement and ordered defendant to tender payment of \$95,000 plus a \$2,000 sanction against the defendant for failure to complete settlement. Respondent failed to comply with that order until March 2001, when he tendered a check to the plaintiff without the \$2,000 sanction.

After those events, respondent attempted to recover the settlement amount from another insurance company, CNA Insurance Company (“CNA”), although CNA had never settled with OCIC. Thereafter, CNA attempted to resolve the matter with respondent, but he never returned CNA’s telephone calls.

By order dated April 2, 2001, OCIC was held in civil contempt of the court's January 29, 2001 order. It is not known if respondent was also held in contempt.

The Meredith Matter

On or about June 20, 1997, Margaret Meredith retained respondent to represent her in a slip-and-fall case. On September 3, 1997, respondent initiated an action in the Philadelphia Court of Common Pleas.

In April 1998, respondent settled the matter for \$2,500. On or about May 5, 1998, the court was advised (presumably by respondent) that the case had been settled. Therefore, the court dismissed the case.

Respondent failed to inform Meredith of the settlement of her case and its dismissal.

In a September 27, 1999 letter to Meredith, respondent misrepresented that he was awaiting a scheduling order from the court. Respondent again misrepresented the status of the case to Meredith in February 8 and May 8, 2000 letters to her.

Respondent never informed Meredith that he had settled her case for \$2,500. The record is silent about the disposition of the settlement funds.

The Beck Matter

On or about March 11, 1998, Dwayne Beck and his wife, Terry Sutton, retained respondent to represent them in an automobile accident.

Respondent initiated an action, on or about April 20, 1999, in the Philadelphia Court

of Common Pleas. However, as of October 1999, he had not filed a complaint. Therefore, on or about December 3, 1999, the court entered a judgment of non pros against Beck and Sutton.

Respondent never advised his clients that he had not filed a complaint and that the case had been dismissed for his failure to file the complaint.

After the dismissal, respondent misrepresented to Beck, in letters dated February 8 and May 8, 2000, that the matter was proceeding apace.

In late November 2000, respondent mounted an unsuccessful attempt to reinstate the complaint. He never advised his clients that the case had been dismissed for his failure to file the complaint.

The Goldberg Matter

On or about August 20, 1997, Randolph H. Goldberg, an attorney, retained respondent to represent him in a dental malpractice action.

On April 9, 1998, respondent filed a complaint in the Philadelphia Court of Common Pleas. Between April and December 1998, respondent ignored the case. Therefore, on December 10, 1998, the court entered an order to compel discovery and tentatively imposed sanctions against Goldberg if the terms of the order were not satisfied within fifteen days. On May 10, 1999, the court issued its order imposing sanctions and dismissing Goldberg's complaint.

In November 1999 and February 2000, respondent wrote letters to Goldberg

misrepresenting that the case was still pending. In November 2000, respondent filed a “discovery hearing request form” with the court, requesting a hearing on plaintiff’s motion to vacate the dismissal. Respondent had not yet filed that motion and did not subsequently do so.

In January 2001, respondent drafted a proposed order in which he misrepresented that his adversary had replied to his motion to vacate the dismissal. In fact, he had not served the motion on his adversary or filed it with the court.

The Watson Matter

In or about January 1998, Eric Watson retained respondent to represent him in a personal injury action.

On or about August 9, 1999, respondent began a civil action in the Berks County Court of Common Pleas, an improper venue.

Between March 2000 and June 12, 2001, respondent filed two amended complaints. Despite those revisions, the court dismissed the complaint because respondent failed to base his action on the legal requirements contained in 42 *Pa. C.S.A.* § 8522.

Respondent did not take steps to reinstate the complaint and never advised Watson of its dismissal.

The Freas Matter

In or about August 1999, Richard Freas retained respondent to represent him as defendant in a suit arising out of an altercation.

Respondent agreed to file an answer and counterclaim, but never did so. Thereafter, he took no steps to remedy his inaction and never advised Freas of his failure to answer the complaint or file a counterclaim.

* * *

The Pennsylvania disciplinary authorities did not specifically tie their findings to the above individual matters, generally finding violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with client), RPC 1.4(b) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation), RPC 3.1 (filing a frivolous law suit), RPC 3.3 (a) (1) (knowingly making a false statement to a tribunal), RPC 4.1 (a) (knowingly making a false statement of material fact to a third person), RPC 8.4 (c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and RPC 8.4 (d) (conduct prejudicial to the administration of justice).

The OAE urged us to impose a five-year suspension, since in Pennsylvania a disbarred attorney may seek reinstatement five years after the effective date of disbarment.

* * *

Upon review of the full record, we determined to grant the OAE's motion. We adopted the findings of the Supreme Court of Pennsylvania.

Reciprocal disciplinary proceedings in New Jersey are governed by R.1:20-14(a)(4),

which states as follows:

. . . The Board shall recommend imposition of the identical action or discipline unless the Respondent demonstrates, or the Board finds on the face of the record upon which the discipline in another jurisdiction was predicated that it clearly appears that:

(A) the disciplinary or disability order of the foreign jurisdiction was not entered;

(B) the disciplinary or disability order of the foreign jurisdiction does not apply to the Respondent;

(C) the disciplinary or disability order of the foreign jurisdiction does not remain in full force and effect as the result of appellate proceedings;

(D) the procedure followed in the foreign matter was so lacking in notice or opportunity to be heard as to constitute a deprivation of due process; or

(E) the misconduct established warrants substantially different discipline.

A review of the record does not reveal any conditions that would fall within the ambit of subparagraphs (A) through (E). Respondent's pattern of misconduct warrants substantial discipline. See In re Foushee, 149 N.J. 399 (1997) (three-year suspension for engaging in gross neglect of four client matters, failure to communicate with clients, failure to prepare written fee agreements, misrepresentation and failure to cooperate with disciplinary authorities); In re Gaffney, 146 N.J. 422 (1996) (three-year suspension for misconduct in eleven matters, including gross neglect, pattern of neglect, failure to communicate with

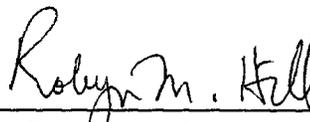
clients, lack of diligence, failure to cooperate with disciplinary authorities, failure to return client files or other property, misrepresentations, conduct prejudicial to the administration of justice, conduct intended to disrupt a tribunal, knowingly disobeying an obligation under the rules of a tribunal and failure to reduce a fee agreement to writing; attorney had a prior reprimand and a two and one-half year suspension); In re Beck, 143 N.J. 135 (1996) (three-year suspension for attorney who engaged in multiple violations of various ethics rules, including pattern of neglect, lack of diligence, failure to communicate with clients, improper termination of representation, lack of truthfulness, lack of candor toward a tribunal, unauthorized practice of law and conduct prejudicial to the administration of justice; the attorney had an extensive disciplinary history); In re Turner, 120 N.J. 706 (1990) (three-year suspension for pattern of neglect, failure to communicate and lack of diligence in the representation of sixteen clients; the attorney also failed to maintain trust and business account records).

Abandonment of clients, accompanied by other violations, may at times result in disbarment. See In re Golden 156 N.J. 365 (1998) (disbarment for abandonment of clients, multiple instances of gross neglect, lack of diligence, failure to communicate and failure to protect the clients' interests on termination of representation; the attorney had been temporarily suspended for abandonment of his law practice and failure to cooperate with the disciplinary investigation in two default matters involving gross neglect, lack of diligence and failure to refund an unearned fee, the attorney had been indefinitely suspended until the resolution of all ethics proceedings pending against him); In re Harris, 131 N.J. 117 (1993)

(disbarment where the attorney, in ten matters, engaged in conduct that included gross neglect, failure to communicate with clients, lack of diligence, dishonesty, deceit and misrepresentation, failure to safeguard client' property, failure to cooperate with ethics authorities and abandonment of clients). As in Beck and Harris, the component of deceit and misrepresentation looms large in this case. Based on the foregoing, we determined to impose the same discipline meted out by the Pennsylvania disciplinary authorities, a five-year suspension. We also determined not to reinstate respondent in New Jersey until he has been reinstated in Pennsylvania. Two members did not participate.

We also required respondent to reimburse the Disciplinary Oversight Committee for administrative expenses.

Disciplinary Review Board
Mary J. Maudsley, Chair

By: 
Robyn M. Hill
Chief Counsel

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

In the Matter of Charles A. DiFazio

Docket No. DRB 03-046

Argued: April 17, 2003

Decided: June 24, 2003

Disposition: Five-year suspension

<i>Members</i>	<i>Disbar</i>	<i>Five-year Suspension</i>	<i>Reprimand</i>	<i>Admonition</i>	<i>Dismiss</i>	<i>Disqualified</i>	<i>Did not participate</i>
<i>Maudsley</i>		X					
<i>O'Shaughnessy</i>		X					
<i>Boylan</i>							X
<i>Holmes</i>		X					
<i>Lolla</i>		X					
<i>Pashman</i>		X					
<i>Schwartz</i>							X
<i>Stanton</i>		X					
<i>Wissinger</i>		X					
<i>Total:</i>		7					2

Robyn M. Hill

Robyn M. Hill
Chief Counsel