SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-112
District Docket No. VIII-2008-25E

IN THE MATTER OF

RALPH V. FURINO, JR.

AN ATTORNEY AT LAW

Decision

Argued: May 20, 2010

Decided: June 28, 2010

Maureen S. Binetti appeared on behalf of the District VIII Ethics Committee.

Respondent appeared pro se.

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

This matter was originally before us on a recommendation for an admonition, filed by the District VIII Ethics Committee ("DEC"), which we determined to treat as a recommendation for discipline greater than an admonition. R. 1:20-15(f)(4). The

DEC's recommended admonition was based on respondent's failure to prosecute a personal injury action — leading to the dismissal of his client's complaint — and his involvement in separate conflicts of interest. For the reasons stated below, we determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1981. At the relevant times, he maintained an office for the practice of law in Jamesburg. He has no disciplinary history.

The formal ethics complaint charged respondent with gross neglect (RPC 1.1(a)), based on the 2003 dismissal of the personal injury complaint of his client, Lizzie Morris; lack of diligence (RPC 1.3), based on his failure to monitor the Morris file, which prevented him from knowing that the case had been dismissed until four years later; and failure to communicate with Morris (RPC 1.4(b)), based on his failure to keep her reasonably informed of the status of the matter, to reply to her reasonable inquiries for information, and to turn over her file.

Moreover, the complaint charged respondent with three separate conflicts of interest, arising out of that representation: (1) respondent's advance of $3000 to Morris, through her son, "in connection with pending or contemplated litigation" (RPC 1.8(e)); (2) respondent's provision of

financial assistance to Morris, as a result of the dismissal of the 2003 action, as well as his offer to represent her without charging a fee in a cause of action that arose in 2007 (RPC 1.7(a)(2)); and (3) respondent's financial assistance to Morris and his offer to forego a fee in the 2007 action, in the face of a potential malpractice claim, as well as his failure to advise Morris that she had the right to seek the advice of other counsel regarding that potential claim (RPC 1.8(h)).

Finally, respondent was charged with a pattern of neglect (RPC 1.1(b)), based on "[a]ll of the foregoing" alleged acts of misconduct.

The DEC hearing took place on July 8, 2009. Respondent was the only witness who testified.

Respondent stated that, on April 3, 2003, he filed a personal injury action on behalf of Lizzie Morris, who had fallen in her apartment building, in June 2001. Unbeknownst to him, on October 10, 2003, the court dismissed the action for failure to prosecute. As will be seen later, respondent did not learn of the dismissal until June 2007.

According to respondent, his secretary, Marie, was in charge of effecting service of process on the defendants. He testified:

> . . . I just assumed [the complaint] was sent and was being processed and when it came back, Marie would put it in the file and when someone filed an answer to it, then we would deal with it. During the ensuing time, I think we were securing medical records and quite honestly the fact that it got dismissed got past me.
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> [T20-10 to 17.][1]

Respondent acknowledged that the file contained no evidence that any work had been done, between April 2003 and October 2007, or even that he had reviewed the file during that time. "This got away," he stated.

Moreover, during the same four-year period, respondent did not "think there was much communication with Lizzie at all." He stated that she "may have" called his office, but he "didn't pull the file to review it to talk to her about it."

Respondent testified that he learned of the October 2003 dismissal of Morris's complaint when she met with him, in June 2007, to discuss a new personal injury cause of action that had arisen that same month, as the result of another slip-and-fall in the same building. When Morris asked respondent about the

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[1] "T" refers to the transcript of the DEC hearing on July 8, 2009.

status of the 2003 action, he told her that he would look into it, which he did about a week or two later.

When respondent reviewed the file and saw that it contained no answers to the complaint, he contacted the court and learned that the case had been dismissed four years earlier. Respondent then called Morris, disclosed the problem to her, and said that he would file a motion and get the case reinstated.

Respondent denied that, between June and October 2007, Morris had repeatedly and unsuccessfully tried to reach him. Instead, he had had several discussions with Morris and three or four meetings with Morris and her son, Roy Hamilton, during that time. Respondent claimed that Hamilton was present at every conversation that he had with Morris. However, he did not have his diary to confirm any meetings with Morris during this time. According to respondent, he and Morris "were fine" until Hamilton "entered the picture."

Respondent never filed the motion to reinstate the complaint for the 2003 action. He explained:

> Because the son ultimately came in and at first he came in, he was cordial, we talked, I told him that there was a problem, he ultimately left and then apparently he went and spoke with somebody from Stark and Stark and he asked to come back in and I sat down with him and he said that he went to

> Stark and Stark. I said I told you there was a problem, I need to file a motion and if I can't file a motion, then I have a problem.
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> [T36-11 to 20.]

Respondent's testimony was contradictory, in terms of when Hamilton consulted with Stark and Stark. At one point, respondent testified that Hamilton went to Stark and Stark after Hamilton had asked him if he thought that Morris had a cause of action against him, to which respondent answered "I think you do." At another point, respondent stated that, after Hamilton had consulted with Stark and Stark, respondent told Morris, in Hamilton's presence, that there was a problem with the 2003 action and that she may have a cause of action against him. Respondent estimated that the discussion took place in the fall of 2007. Nothing was put into writing about the 2003 action's dismissal, including the suggestion that Morris seek the advice of other counsel in connection with the dismissal.

Hamilton came up with the idea that respondent should forego a fee on the second case, as a result of the dismissal of the 2003 action. Hamilton told respondent that he did not want to pay the $5000 retainer demanded by Stark and Stark to pursue a malpractice claim against respondent, did not want to put his

mother "through this," and asked "can we do something[?]" So, a "dialogue started about getting the second case done as quickly as possible." Respondent did not put any of this "dialogue" in writing.

When Hamilton proposed that respondent forego a fee in the 2007 action, respondent stated that he would first like to try to reinstate the complaint. Hamilton rejected this idea and proposed that respondent "just get the second one done," settling it as quickly as possible, at which point, respondent could give Hamilton and his mother "all the money," while taking no fee. This, according to respondent, is what "really went down." He admitted that he agreed to the proposal, which was not in writing, "because it was Lizzie." Respondent did not document any of this because "it was Lizzie and I didn't think that it would get to this."

At some point, Hamilton told respondent that his mother needed money. Respondent wrote three attorney business account checks to Hamilton: $2000 on October 1, 2007; $500 on March 11, 2008; and $500 on March 20, 2008. He explained:

> I think what you need to understand is that I knew Lizzie really well and when she started complaining that she had trouble paying bills and what not that [sic] could I give her some money. I told her that I

> would advance some money to her because . . . I had known her for a long time and I realize now I shouldn't have done it but I was trying to help her out.
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> [T40-18 to T41-1.]

Respondent never moved to reinstate the 2003 action. Therefore, no money was ever recovered for Morris, on that suit.

On October 1, 2007, respondent advanced $2000 to Morris in the form of a check to Hamilton. Respondent gave it to her at a meeting with her and Hamilton. It was not respondent's practice to lend money to clients, but, "because it was Lizzie," he did it.

Morris had injured her nose in the 2007 fall. Although she wanted to settle the case quickly, respondent cautioned that they should wait until the true extent of her injuries was determined and evaluated. Respondent suggested that she see another doctor to determine whether her scar should be "repaired."

Between October 1, 2007 and the date of the next check, in March 2008, respondent was "sure" that he had conversations with Morris and Hamilton, in which respondent continued to impress on them the need for Morris to be finished with treatment, before the case settled. However, on December 18, 2007, at Hamilton's

request, respondent wrote to Morris and told her that he would do everything in his power to try to settle the case in early January.

At some point, Hamilton became hostile toward respondent. Although respondent told Hamilton that he could not "keep advancing money," he nevertheless wrote the two $500 checks to Hamilton, in March 2008, requesting that Hamilton not cash the second one until after respondent had returned from vacation. Hamilton cashed that check anyway.

Respondent explained that he wrote the checks to Hamilton because that is what Morris told him to do. He had the impression from Morris that Hamilton was using the money to pay her bills.

When respondent returned from vacation, he called Hamilton to confront him about cashing the check. Hamilton said: "[T]hat's just the way it is."[2]

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[2] According to the presenter, there was no evidence that the money given to Hamilton was not used for the benefit of Morris.

Respondent never filed suit in the 2007 matter. He understood, however, that another lawyer was handling the matter on her behalf.

The DEC found that respondent violated RPC 1.1(a) and RPC 1.1(b) "for grossly neglecting and demonstrating a pattern of negligence in handling grievant's 2003 action for 4 1/2 years resulting in lack of knowledge that the matter was dismissed." The DEC also found that respondent violated RPC 1.3 "for failure to demonstrate diligence and promptness in representing grievant in the 2003 action." Further, according to the DEC, respondent violated RPC 1.4(a) "for failing to keep grievant reasonably informed about the status of her 2003 action."

Finally, the DEC concluded that respondent engaged in two conflicts of interest: (1) RPC 1.7(b) (failure to observe the safeguards of that rule when a concurrent conflict of interest exists between the attorney and the client) "for representing grievant while respondent concurrently possessed an interest in a potential or pending malpractice claim against him by grievant" and (2) RPC 1.8(e) "for providing financial assistance

of $3,000 to grievant." The hearing panel report was silent as to the RPC 1.7(a)(2) and RPC 1.8(h) charges.[3]

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

The DEC correctly determined that respondent engaged in unethical conduct. Specifically, respondent violated RPC 1.1(a) and RPC 1.3, when his inaction led to the dismissal of Morris's complaint. He also violated RPC 1.4(b), mistakenly charged as RPC 1.4(a), when he failed to keep Morris informed of the status of the 2003 action for four years.

As to the alleged conflicts of interest, the DEC correctly found that respondent violated RPC 1.8(e), which expressly prohibits an attorney from providing financial assistance to a client in connection with pending or contemplated litigation. Indeed, respondent admitted that he had advanced $3000 to Morris, against the potential settlement of the 2007 action.

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[3] With respect to the RPC 1.7(a)(2) charge, the DEC may have been silent because a finding that an attorney has violated RPC 1.7(b) presupposes that the attorney has violated RPC 1.7(a)(2).

On the other hand, the DEC incorrectly determined that respondent violated RPC 1.7(b), inasmuch as he was not charged with this rule. We, thus, dismiss that finding.

Rather, respondent was charged with RPC 1.7(a)(2), which prohibits a lawyer from representing a client if "there is a significant risk that the representation . . . will be materially limited by . . . a personal interest of the lawyer." We find no violation of this rule. Although respondent's personal interest in not being sued for his misconduct in the first action might have created a conflict between his idea and Morris's idea of what constituted "the best representation" in the second action, Morris was very clear in what she wanted him to do, that is, to settle her case as soon as possible. Respondent agreed to pursue that strategy. In short, there was no conflict.

The panel report was silent with respect to the RPC 1.8(h) charge. That rule provides as follows:

> (h) A lawyer shall not:
> (1) make an agreement prospectively limiting the lawyer's liability to a client for malpractice unless the client fails to act in accordance with the lawyer's advice and the lawyer nevertheless continues to represent the client at the client's request. Notwithstanding the existence of those two conditions, the lawyer shall not

> make such an agreement unless permitted by law and the client is independently represented in making the agreement; or
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> (2) settle a claim or potential claim for such liability with an unrepresented client or former client unless that person is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advise [sic] of independent legal counsel in connection therewith.

Here, as a result of respondent's gross neglect, Morris's 2003 action was dismissed. Respondent did not even realize that until four years later, when she sought his representation for injuries sustained in 2007. Respondent was clearly exposed to liability for professional negligence, as a result of these lapses. He made an agreement with Morris to forego a fee in the 2007 action, as recompense for his failures in the 2003 action. Morris was not independently represented by counsel, when this agreement was forged. Therefore, respondent violated RPC 1.8(h)(1).

To conclude, respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b) with respect to his representation of Morris in the 2003 action. He violated RPC 1.8(e) and RPC 1.8(h)(1), when he undertook her representation in the 2007 action.

We found no violation of the RPC 1.1(b) charge. A pattern of neglect requires at least three instances of neglect. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Here, respondent committed only one act of neglect that continued over a four-year period. Therefore, the charged violation of RPC 1.1(b) was not sustained.

There remains the determination of the quantum of discipline to be imposed for respondent's ethics violations.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history.

Admonitions were imposed in In re Russell, 201 N.J. 409 (2009) (attorney failed to file answers to divorce complaints against her client causing a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (attorney's inaction in a personal injury action caused the dismissal of the client's complaint; the attorney took no

steps to have it reinstated; also, the attorney failed to communicate with the client about the status of the case); In re Dargay, 188 N.J. 273 (2006) (attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar conduct); and In the Matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005) (attorney did not disclose to the client that the file had been lost, canceled several appointments with the client for allegedly being unavailable or in court when, in fact, the reason for the cancellations was his inability to find the file, and then took more than two years to attempt to reconstruct the lost file; violations of RPC 1.4(a) and RPC 1.3 found); and In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (attorney's inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also failed to comply with the client's requests for information about the case; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(a)).

Reprimands were imposed in In re Uffelman, 200 N.J. 260 (2009) (attorney guilty of gross neglect, lack of diligence, and failure to communicate with a client; although the attorney had no disciplinary record, the reprimand was premised on the extensive harm caused to the client, who was forced to shut down

his business for three months because of the attorney's failure to represent the client's interests diligently and responsibly); In re Aranguren, 172 N.J. 236 (2002) (attorney 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) (attorney guilty of lack of diligence and failure to communicate with clients; extensive ethics history); In re Gordon, 139 N.J. 606 (1995) (attorney lacked diligence and failed 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); and In re Wildstein, 138 N.J. 48 (1994) (misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

In our view, an admonition would be the appropriate sanction for respondent's violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(b). He has no disciplinary history. His misconduct was limited to one client matter, the 2003 action. However, there remains for consideration the multiple conflicts of interest involved in the 2007 action.

Absent egregious circumstances or economic injury to clients, a reprimand is the typical measure of discipline imposed for a

conflict of interest. In re Berkowitz, 136 N.J. 134, 148 (1994). In particular, a violation of RPC 1.8(h), even when combined with other violations, has resulted in a reprimand, in the absence of aggravating factors. See, e.g., In re Regojo, 180 N.J. 523 (2004) (reprimand for attorney who did not advise his client to seek independent counsel before negotiating a potential malpractice claim, as required under RPC 1.8(h)(2); the attorney was also guilty of gross neglect, lack of diligence, and failure to communicate with the client; the attorney had a prior reprimand); and In re Ruddy, 142 N.J. 428 (1995) (reprimand for attorney who entered into an improper agreement to compensate his client for his gross neglect, without advising the client to obtain independent counsel; the attorney was also guilty of gross neglect, lack of diligence and failure to communicate with the client; he had a prior two-year suspension for criminal conduct). But see In the Matter of Michael A. Zindler, DRB 04-423 (February 24 2005) (admonition for attorney who improperly obtained releases from his clients for malpractice claims that they may have had against him, without complying with the provisions of RPC 1.8(h)(2)).

A reprimand also is the unusual measure of discipline imposed on an attorney who represents a client when there is "a significant

risk" that the representation will be "materially limited" by the attorney's "personal interest." See, e.g., In re Ford, 200 N.J. 262 (2009) (attorney who represented a plaintiff in a personal injury action violated RPC 1.7(a)(2) when he continued to represent his client in that action and then represented himself and the client in a subsequent action filed against them by a company that had advanced funds to the client in the first action; respondent had a prior admonition and a reprimand) and In re Baldinger, 195 N.J. 179 (2008) (attorney violated RPC 1.7(a)(2) when he continued to represent at closing the purchasers of a house who were to renovate the structure and then sell it to him, after a dispute arose over whether the purchasers or respondent were responsible for the closing costs). But see In re Morris, 196 N.J. 534 (2008) (attorney admonished by Supreme Court for continuing to represent his client after he learned that the client and his wife were engaged in an extra-marital affair; the attorney had a prior admonition and reprimand).

In this case, respondent engaged in two conflicts of interest. Each conflict, however, arose out of the same set of facts, namely, respondent's desire to atone for the dismissal of Morris's 2003 complaint by representing her free of charge in the second personal injury action and by advancing her funds against

the settlement in that matter. Therefore, we determine that we the combination of respondent's ethics transgressions does not warrant discipline higher than a reprimand.

Member Stanton 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
Louis Pashman, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ralph V. Furino, Jr.
Docket No. DRB 10-112

Argued: May 20, 2010

Decided: June 28, 2010

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton						X
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			1

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel