

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-016
District Docket No. VI-2008-0026E

IN THE MATTER OF :
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PETER R. CELLINO :
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 :
AN ATTORNEY AT LAW :
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Corrected Decision

Argued: March 18, 2010

Decided: May 13, 2010

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

This matter was before us on a certification of default
filed by the District VI Ethics Committee ("DEC"), pursuant to
R. 1:20-4(f). Respondent grossly neglected a matter, failed to
communicate with and misrepresented the status of the case to
the client, and failed to cooperate with ethics authorities in
the investigation of the grievance. We determine to impose a
censure.

Respondent was admitted to the New Jersey bar in 2005. He has no prior discipline. On September 28, 2009, he was placed on the New Jersey Lawyers' Fund for Client Protection list of ineligible attorneys for failure to pay the annual attorney assessment for 2009. As of March 4, 2010, respondent was still ineligible to practice law.

Service of process was proper. On August 25, 2009, the DEC sent a copy of the complaint to respondent by both certified and regular mail, at his home address, 436 Bryant Park Drive, Springfield, NJ 07030.

According to the certification of service, the "certified green card indicating effectuation of service was not returned. The certified envelope with the green card indicating 'Unclaimed' was not returned."¹ The regular mail was not returned.

¹ Because the quoted language is confusing, Office of Board Counsel ("OBC") staff entered the tracking information contained on the certified mail receipt into the USPS tracking system. According to the USPS, the mail was processed through its Kearny, New Jersey Sort Facility on August 27, 2009. No further information is available.

On October 26, 2009, the DEC sent respondent a "five-day" letter notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the matter would be certified directly to us, pursuant to R. 1:20-4(f). The letter was sent to 436 Bryant Park Drive, Springfield, NJ 07030, by certified and regular mail. The certified mail was received, signed by a "C. Merrill" on October 30, 2009. The regular mail was not returned.²

Subsequently, the DEC obtained a forwarding address for respondent, P.O. Box 747, Farmington, CT 06034-0747. On November 16, 2009, the DEC sent the complaint to the new Connecticut address, by certified and regular mail. The certified mail was accepted by a "J. Cellino" on November 20, 2009. The regular mail was not returned.

On December 15, 2009, the DEC sent respondent a "five-day" letter notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the matter

² OBC entered tracking information for this parcel as well. It was delivered at 4:33 pm on October 30, 2009, in Farmington, CT 06032.

would be certified directly to us, pursuant to R. 1:20-4(f). The letter was sent to respondent's new address in Connecticut, by both certified and regular mail. The certified mail was accepted by a "C. Merrill" on December 17, 2009. The regular mail was not returned.

Respondent did not file an answer to the complaint.

The first count of the complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 3.2 (failure to expedite litigation), RPC 1.4 (a), more properly (b) (failure to promptly comply with the client's reasonable requests for information), and RPC 8.4(c) (misrepresentation).

According to the complaint, Michelle Bowman retained respondent pro bono, in August 2006, regarding a dispute over a security deposit. Bowman's landlord had taken a \$1,650 deposit from her, but had later returned to her only a portion of it (\$836). Respondent advised Bowman to hold the \$836 check, telling her that she was entitled to treble damages of \$3,000 for the landlord's actions. On respondent's advice, Bowman held the check, which became "stale."

Over the next two years, respondent misrepresented to Bowman the status of the case, claiming that he had filed a

complaint, had obtained a default judgment against the landlord, and would place a lien on the landlord's Sparta, New Jersey, property. In fact, respondent had never filed a complaint or obtained a judgment on Bowman's behalf.

When Bowman confronted respondent (at a time not specified in the complaint), he agreed to make her whole and provided her with his own personal check for \$2,800. That check was returned by the bank for insufficient funds. Thereafter, Bowman attempted to speak with respondent about the "bounced" check, to no avail.

The second count of the complaint charged respondent with failing to cooperate with ethics authorities in the investigation of the case, a violation of R. 1:20-3(g)(3) and RPC 8:1(b), mistakenly cited as RPC 1.6(d)(2), which addresses confidentiality of information.

On November 28, 2008, the DEC sent respondent a copy of the grievance with a letter requesting his reply. The letter was sent by certified and regular mail to 346 Bryant Park Drive, Springfield, NJ 07030, respondent's home address, after it was learned that he had closed his law office in Hoboken. The certified mail was accepted on December 30, 2008. By whom is not

disclosed in the complaint. Respondent did not reply to the grievance. The delivery status of the regular mail is unknown.

On January 24, 2009, the DEC sent a second notice to respondent at 436 Bryant Park Drive, Springfield, NJ 07030, by certified and regular mail. The DEC tracked the parcel through the USPS and learned that it had been forwarded to Farmington, Connecticut, where it was accepted by a "C. Merrill" on December 17, 2009. The delivery status of the regular mail is unknown. Respondent never replied to the grievance.

The facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer is deemed an admission that the allegations of the complaint are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

Respondent was retained, in August 2006, to file a landlord/tenant action for the recovery of a security deposit. Over the next two years, he took no action on behalf of his client and lied to her repeatedly that he had filed a complaint, that he had obtained a judgment, and that he would place a lien on the landlord's New Jersey property. Respondent's conduct in

this regard amounted to gross neglect (RPC 1.1(a)) and misrepresentation (RPC 8.4(c)).

Respondent also failed to keep Bowman reasonably informed about the status of the matter and, when he "bounced" his personal check, which was supposed to make Bowman whole, he ceased communicating with her altogether. For all of it, he is guilty of having violated RPC 1.4(b).

So, too, respondent failed to cooperate with the DEC investigation into Bowman's grievance, ignoring the DEC's written requests for information about the matter, a violation of RPC 8.1(b).

Finally, regarding the charge that respondent failed to expedite litigation, he never initiated litigation. Because RPC 3.2 charge is inapplicable, we dismissed it.

In summary, respondent is guilty of having violated RPC 1.1(a), RPC 1.4(b), RPC 8.4(c), and RPC 8.1(b).

Respondent's most serious misconduct consisted of his repeated misrepresentations to the client, for two years, that the matter was proceeding apace, when he had done nothing to forward her claim. Misrepresentation to clients requires the

imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989).

A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Singer, 200 N.J. 263 (2009) (attorney misrepresented to his client for a period of four years that he was working on the case; the attorney also exhibited gross neglect and lack of diligence and failed to communicate with the client; no ethics history); In re Wiewiorka, 179 N.J. 225 (2004) (attorney misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf and did not inform the client about the status of the matter and the expiration of the statute of limitations); In re Onorevole, 170 N.J. 64 (2001) (attorney made misrepresentations about the status of the case; he also grossly neglected the case, failed to act with diligence, and failed to reasonably communicate with the client; prior admonition and reprimand); In re Till, 167 N.J. 276 (2001) (over a nine-month period, attorney lied to the client about the status of the case; the attorney also exhibited gross neglect; no prior discipline); and In re Riva, 157 N.J. 34 (1999)

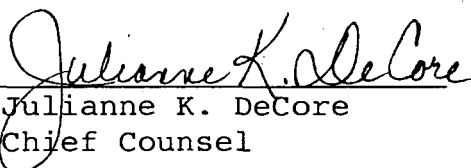
(attorney misrepresented the status of the case to his clients; he also grossly neglected the case, thereby causing a default judgment to be entered against the clients and failed to take steps to have the default vacated).

In aggravation, respondent allowed the matter to proceed as a default. In default matters, enhanced discipline is imposed to address a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Nemshick, 180 N.J. 304 (2004) (conduct meriting reprimand enhanced to three-month suspension due to default; no ethics history). Because of the default, we determine to impose a censure in this case.

Members Wissinger and Zmirich 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
Chief Counsel