

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-080
District Docket No. VB-2009-0003E

IN THE MATTER OF
MARVIN S. DAVIDSON
AN ATTORNEY AT LAW

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Decision

Decided: August 2, 2010

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

This matter came before us on a certification of default filed by the District VB Ethics Committee ("DEC"), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), and RPC 3.2 (failure to expedite litigation).

We determine that a six-month suspension, with conditions, is appropriate in this case. The suspension is to be served consecutively to the six-month suspension recently ordered by the Court.

Respondent was admitted to the New Jersey bar in 1969. He maintains a law office in Orange, New Jersey.

In 1995, respondent was suspended for three months for improperly witnessing and acknowledging documents, preparing a power of attorney containing false representations, and advancing funds to a client in connection with litigation. In re Davidson, 139 N.J. 232 (1995). In 2005, he was reprimanded for recordkeeping violations and negligent misappropriation of more than \$28,000 in client funds. In re Davidson, 182 N.J. 587 (2005).

Respondent was temporarily suspended, on May 20, 2009, for failure to satisfy a fee arbitration determination and to pay a sanction to the Disciplinary Oversight Committee. In re Davidson, 199 N.J. 37 (2009). He was reinstated on July 7, 2009. In re Davidson, 199 N.J. 574 (2009).

On April 3, 2008, we considered a default matter (DRB 07-340) involving respondent's handling of two client matters and recordkeeping violations. Respondent filed a motion to vacate the default,¹ which we denied. We determined to impose a three-

¹ In his motion, respondent argued that he had filed an answer to the ethics complaint, but had not done so in a timely fashion because of problems with his divorce and because he was trying to manage his law practice. He did not, however, serve the Office of Attorney Ethics ("OAE") with the purported answer. His
(Footnote cont'd on next page)

month suspension, with various conditions. Respondent filed a petition for review with the Court, which the Court granted. The Court remanded the matter to the OAE for further proceedings.

Recently, respondent was suspended for six months for having violated RPC 1.1(a) (gross neglect), RPC 1.2(a) (failure abide by a client's decisions regarding the scope and objectives of the representation), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 1.5(c) (failure to provide a client with a writing setting forth the basis or rate of the fee), RPC 1.15(a) (failure to safeguard client funds), RPC 1.15(b) (failure to notify a client or third person of receipt of funds in which the client or third person has an interest or failure to promptly deliver funds that the client or third person is entitled to receive), RPC 1.15(c) (failure to keep separate property in which the lawyer and another person claim an interest until there is an accounting and severance of their interests), RPC 1.15(d) and R. 1:21-6 (recordkeeping violation), RPC 4.1(a) (false statement of material fact or law to a third person), and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

(Footnote cont'd)

motion did not set forth good cause for failing to file a timely answer and did not provide a meritorious defense to any of the charges in the ethics complaint.

The Court further ordered that, prior to reinstatement, respondent is to complete ten hours of professional responsibility courses approved by the OAE and to submit proof of the satisfactory completion of the courses to the OAE; that he is to practice under the supervision of an OAE-approved proctor until the OAE deems him capable of practicing unsupervised; that he is to submit monthly reconciliations of his attorney accounts to the OAE on a quarterly basis, which reconciliations are to be prepared by an OAE-approved accountant until further order of the Court; and that, within thirty days of the filing date of the Court's Order, he is to repay certain funds to his clients. In re Davidson _____ N.J. _____ (2010).

Service of process was proper in this matter. On July 29, 2009, the DEC sent a copy of the ethics complaint to respondent, by regular and certified mail, to 90 South Main Street, Orange, New Jersey 07050. The certified mail receipt was signed by a Shelita Tate. The regular mail was not returned.

On September 9, 2009, the DEC sent a second letter to the same address, by regular and certified mail. The letter informed respondent that, if he did not file an answer, the matter would be certified directly to us for the imposition of sanction and the complaint would be deemed amended to include a willful

violation of RPC 8.1(b). Once again the certified mail receipt was signed by a Shelita Tate. The regular mail was not returned.

On September 22, 2009, the DEC sent a third letter to to the same address, by regular and certified mail. The certified mail receipt was returned indicating delivery, also signed by the same individual. The regular mail was not returned. This letter informed respondent that his September 10, 2009 purported answer to the complaint was insufficient to satisfy the requirements of R. 1:20-4(e)² and that an amended answer had to be filed no later than ten days from the date of the letter. The letter also listed the following requirements:

1. A full, candid and complete disclosure of all facts reasonable [sic] within the scope of the complaint;
2. all affirmative defenses, including any claims of mental or physical disability, if any, and whether it is alleged to be causally related to the offense charged;
3. any mitigating circumstances;

² R. 1:20-4(e) requires an attorney, within twenty-one days after service of the complaint, to "file with and serve on the secretary the original and one copy of a written, verified answer designated as such in the caption." The rule also outlines the requirements for the verification.

4. a request for a hearing either on the charges or in mitigation, and any constitutional challenges to the proceedings.

[Ex.E.]

In addition, the letter cautioned respondent that, if he did not file a verified answer within ten days of the letter, the allegations of the complaint might be deemed admitted. Respondent did not file an amended, verified answer within the allotted time.

As of the date of the certification of the record, February 4, 2010, respondent had not filed an amended, verified answer to the complaint. By letter to the DEC, dated February 1, 2010, respondent stated that his prior "answer," which he again enclosed, was "more than sufficient to deal with this type of Complaint," but he would try to supplement a former letter, dated September 29, 2009, to more fully answer the ethics complaint.

On April 6, 2010, respondent sent a letter to Office of Board Counsel ("OBC"), stating that he was in receipt of OBC's letter notifying him that he was in default. He claimed that he had answered the complaint, "in letter form," and added, "It may not have been as acceptable as you would have liked." He requested another copy of the complaint to enable him to file a

proper motion to vacate the default. By letter dated April 13, 2010, OBC forwarded another copy of the ethics complaint to respondent and enclosed another copy of its March 26, 2010 scheduling letter.

Respondent did not file a motion to vacate the default.

According to the complaint, respondent represented grievant Lynn Berkley-Baskin in a personal injury action stemming from a December 2001 automobile accident. On an unspecified date, respondent filed a civil suit against USAA Insurance Company, Hertz Car Rental Company, Ford Motor Company, Elser Vasquez, and "various fictitious names," in Essex County Superior Court.

Based on one of the defendants' motions, Berkley-Baskin's complaint was dismissed for failure to provide answers to interrogatories. Afterwards, the same defendant filed a second motion to dismiss the complaint with prejudice for failure to provide discovery, pursuant to R. 4:23-5. Respondent did not oppose the motion. On January 6, 2006, the court dismissed Berkley-Baskin's complaint with prejudice.

Respondent did not seek to have the case reinstated in a timely manner. Almost two years after the case was dismissed with prejudice, he filed a motion to restore the complaint, returnable in November 2007.

In his March 3, 2009 reply to the grievance, respondent claimed that he did not know "the disposition of the Motion to restore the Complaint." However, a November 2, 2007 order had denied respondent's motion to restore the complaint because, for "no good cause shown, Plaintiff never responded to Motion to Dismiss with Prejudice and waited two years to file this Motion."

The formal ethics complaint charged that respondent's failure to provide answers to interrogatories and to reply to a motion to dismiss Berkley-Baskin's complaint with prejudice violated RPC 1.3, RPC 1.1(a), and RPC 3.2. The complaint further charged that respondent failed to keep Berkley-Baskin informed about the status of her case, thereby prejudicing her ability to obtain another attorney to protect her rights in the pending litigation. RPC 1.4(b).

As indicated previously, the DEC's letters to respondent informed him that the complaint would be deemed amended to include a willful violation of RPC 8.1(b), if he failed to file a verified answer to the ethics complaint.

We find that the facts recited in the complaint support the charges of unethical conduct. Respondent's failure to file an answer conforming to the requirements of R. 1:20-4(e) 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's failure to answer interrogatories, to provide discovery or to move to have the complaint restored before its dismissal with prejudice violated RPC 1.1(a), RPC 1.3, and RPC 3.2. His failure to keep his client informed about the status of her case violated RPC 1.4(b) and his failure to cooperate with ethics authorities violated RPC 8.1(b). The only issue left for determination is the proper quantum of discipline for respondent's conduct.

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. Here, respondent's ethics history alone makes an admonition inadequate. Indeed, stronger discipline has been imposed in default matters where attorneys had significant ethics histories. See, e.g., In re Banas, 194 N.J. 504 (2008) (censure for attorney guilty of lack of diligence and failure to communicate with a client for whom he was handling two separate matters; the censure was premised on the attorney's conduct, the default nature of the proceedings, and the attorney's

disciplinary record - a reprimand and a three-month suspension, the latter also a default); In re Clemmons, 169 N.J. 477 (2001) (three-month suspension for attorney who grossly neglected a matter, failed to act with diligence, failed to communicate with the client and failed to cooperate with disciplinary authorities; the attorney had a prior six-month suspension); In re Daly, 166 N.J. 24 (2001) (three-month suspension for attorney guilty of lack of diligence and failure to communicate with client; prior three-month suspension); and In re Walsh 196 N.J. 161 (2008) (six-month suspension for attorney guilty of failure to communicate with the client and failure to cooperate with disciplinary authorities; the attorney failed to inform his client of two court orders in a child custody case and failed to reply to the client's numerous telephone calls; the attorney had a prior reprimand for similar misconduct and a censure for failure to cooperate with disciplinary authorities; the six-month suspension was based on the attorney's ethics infractions, ethics history, and continuing disregard for the ethics system).

Respondent's ethics history is more serious than in any of the default cases cited above. It includes a three-month suspension, a reprimand, a temporary suspension, and a six-month suspension. In addition, not only is this matter before us as a default, but it is respondent's second default. Although he was

given ample opportunity to cure the deficiencies in his "answer" to the complaint, he failed to take the steps required to do so.

Respondent's record is significantly worse than Banas's, who received a censure, in a default matter, for lack of diligence and failure to communicate with a client for whom he was handling two separate matters. Banas had a prior reprimand and a three-month suspension, also in a default. Clemmons received a three-month suspension, also in a default, for similar violations. But Clemmons was disciplined only once before, a six-month suspension. Daly's similar violations, also in a default, and prior three-month suspension netted him an additional three-month suspension. Walsh received a six-month suspension in his default for lack of diligence and failure to cooperate with disciplinary authorities. While Walsh's ethics history included only a reprimand and a censure, we were particularly disturbed by his continuing disregard for the ethics system.

The above precedent compels us to conclude that respondent's misconduct, coupled with his significant ethics history and unwillingness to cooperate with the DEC, warrants an additional six-month suspension, with the same conditions previously imposed in DRB 09-280: proof of completion of ten hours of professional responsibility courses, prior to

reinstatement; an OAE-approved proctor, until the OAE discharges him of this obligation; and monthly reconciliations of his attorney records, submitted to the OAE on a quarterly basis for a two-year period. The term of the suspension is to start at the expiration of the six-month suspension recently imposed by the Court.

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

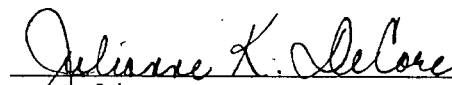
By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Marvin S. Davidson
Docket No. DRB 10-080

Argued: May 20, 2010
Decided: August 2, 2010
Disposition: Six-month Suspension

Members	Disbar	Six-month 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
Chief Counsel