SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-173
District Docket No. VII-2007-0024E

IN THE MATTER OF	
GARY T. JODHA	
AN ATTORNEY AT LAW	

Decision

Argued: July 22, 2010

Decided: September 10, 2010

Azzmeiah R. Vazquez appeared on behalf of the District VII Ethics Committee.

David H. Dugan appeared on behalf of respondent.

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

This matter came before us on a recommendation for a censure filed by the District VII Ethics Committee ("DEC"). The complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 5.3

(failure to supervise nonlawyer employees). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1983. In 2002, he received a reprimand for failing to complete post-closing tasks promptly and to maintain required records, violations of RPC 1.1(a), RPC 1.3, RPC 1.4 (failure to communicate with a client), RPC 1.15(b) (failure to deliver funds promptly to clients), and RPC 1.15(d) (failure to comply with recordkeeping rules).

In 2004, Michael and Pamela Lesniewski retained respondent in an immigration matter to obtain permanent resident status for Pamela and her two children, Gina and Dylan Gladu. Pamela was from Canada. Although the Lesniewskis paid respondent a $4,000 retainer on July 24, 2004, they did not sign a fee agreement until October 25, 2004. Because the terms of the fee agreement are significant, we set out its relevant provisions:

> This will acknowledge that I have retained the Law Offices of Gary T. Jodha to represent and assist **Pamela Elizabeth Margaret Gladu-Lesniewski** and **two minor children Gina V.L. Gladu & Dylan J. Gladu** in applying for **Permanent Residency** through **I-130 USC husband, Michael J. Lesniewski**. Attorney's fees and Cost shall be as follows:
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> - Attorney's fees for **Pamela E.M. Lesniewski** is [sic] **$3,000.00**

- Attorney's fees for **each minor child** is [sic] **$2,000.00**

- Cost & Penalty to BCIS[1] are **$2,000.00** ($700 for Pamela, $600 for each minor child & $100 for Express Mail and Photocopies)

- Total is **$9,000.00**

- Payment made by ck #1086 for **$4,000.00** on 7/19/04

- Balance is **$5,000.00**

- **$1,000.00** due every three (3) months starting December 2004.

ATTONEY'S [sic] **FEES INCLUDE (1) INTERVIEW WITH IMMIGRATION. IF THERE ARE SUBSEQUENT INTERVIEWS, THERE SHALL BE AN ADDITIONAL FEE OF $500.00 PER VISIT TO IMMIGRATION.**

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS FEE AGREEMENT, IF THE CLIENT CALLS THE OFFICE NEEDLESSLY AND PRIOR TO THE DATE EXPECTED FOR ANY APROVALS, [sic] **THE CLIENT SHALL BE BILLED AT AN HOURLY RATE OF $250.00 PER HOUR OVER AND BEYOND THE STIPULATED FLAT FEE AGREEMENT. . . .**

INTERVIEW WITH IMMIGRATION WILL BE CANCELLED IF PAYMENT IN FULL IS NOT RECEIVED MINIMUM ONE (1) WEEK BEFORE DATE OF INTERVIEW. . . .

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[1] "BCIS" refers to the United States Bureau of Citizenship and Immigration Services.

> This fee does not include professional services rendered in connection with deportation proceedings; professional services rendered in connection with administrative or court review (including appeals to the Board of Immigration Appeals); professional services rendered after a denial of an application for adjustment of status; professional services rendered after a denial of an application for an immigrant visa at an American Consulate or Embassy; professional services rendered regarding contact with or visits to the INS Investigations Sections, deportation Section or Detention Facility. . . .
>
> All fees and costs must be paid to date before an application or appeal will be filed, hearing scheduled, or consultation will take place, except in those circumstances where required to prevent immediate prejudice and/or the canons of ethics require such action.
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> [Ex.C-3.]

Although the Lesniewskis lived at 1468 North Olden Avenue, Ewing, their address on the fee agreement appeared as 1486 North Olden Avenue. Because the last building on the street was numbered 1470, there was no building with the address of 1486 North Olden Avenue. The Lesniewskis' regular postal carrier delivered mail to them, even if the address was incorrect; however, there were times when they had not received improperly addressed mail.

According to Pamela, after the Lesniewskis received the fee agreement in the mail, they informed respondent's office that the address on the fee agreement was wrong. Pamela asserted that one of respondent's secretaries assured her that the address would be corrected.

At the time that the Lesniewskis retained respondent, Pamela and Gina were in the United States. Dylan was scheduled to arrive later because he was spending time with his father, in Canada.

In September 2004, respondent prepared and submitted two packages of documents to the BCIS on behalf of Gina and Pamela. Those documents, all dated either September 16 or September 20, 2004, included a Petition for Alien Relative, an Application to Adjust Status, an Application for Work Authorization, and an Application for Travel Document. The Lesniewskis' correct address appeared on those documents.

At some point, the Lesniewskis received a document from the BCIS indicating that, on September 22, 2004, it had received applications for travel on behalf of both Pamela and Gina. Pamela understood that respondent's fees quoted in the retainer agreement included obtaining travel authorizations for herself and her two children.

In September 2005, about one year after the immigration documents were submitted, the Lesniewskis and respondent attended an adjustment of status interview at the BCIS office for Pamela and Gina to obtain permanent resident status. Although Gina received approval at the interview, Pamela's approval was delayed. After Pamela contacted respondent's office for information about the status of Gina's green card and her own application, she was told to be patient. She then contacted the BCIS directly to obtain this information.

Respondent also prepared, on behalf of Dylan, the same documents as he had for Pamela and Gina. The Lesniewskis' correct and incorrect addresses appeared in various places on those documents. Dylan's documents were not submitted at the same time as the others because he had remained in Canada.

Because Dylan's father objected to his travelling to the United States, Pamela obtained a court order in Canada, authorizing her to bring Dylan to this country. That order, dated December 21, 2004, provided that Dylan was to return to Canada annually on July 1, beginning in 2005, for summer visitation with his father. Pamela informed respondent of the court order's provisions, particularly the requirement that Dylan return to Canada to see his father.

Upon Dylan's arrival in the United States, which occurred on December 24, 2004, Pamela asked respondent's office to initiate the application process for Dylan. She understood that the process would take place immediately. Dylan's applications, however, were dated March 14, 2005 and were submitted to the BCIS on March 22, 2005. The Lesniewskis never received a copy of the cover letter enclosing Dylan's applications to the BCIS. The BCIS issued a receipt to respondent, indicating that it had received Dylan's documents on March 23, 2005.

Also in March 2005, Pamela became concerned about the absence of progress in Dylan's matter. Upon calling respondent's office, she was told to be patient. At one point, according to Pamela, respondent told her that he had 2,000 clients and that, because he could not oversee everyone's paperwork, she would have to monitor her own documents. Michael, too, claimed that he had contacted respondent, at some point, to obtain information about the status of the immigration applications and had also been told by respondent that respondent had 2,000 clients and that Michael would have to monitor his own case.

By June 2005, Pamela was frantic about the fact that Dylan's travel authorization had not been issued. On July 1, 2005, Dylan was required to return to Canada for summer

visitation with his father, pursuant to the December 21, 2004 court order. When Pamela contacted respondent's office, she was told that she was required to pay additional attorneys' fees to obtain the travel authorization. Although she believed that, pursuant to the retainer agreement, respondent was obligated to provide this service, Pamela agreed to pay extra fees to obtain Dylan's travel authorization. Respondent charged the Lesniewskis additional fees and costs of $2,390 to obtain travel authorizations for Pamela, Gina, and Dylan. Previously, on January 13, 2005, respondent had issued a $9,000 invoice to the Lesniewskis (the same amount listed in the fee agreement). At that point, he had submitted travel applications for Pamela and Gina. Presumably, thus, the $9,000 included charges for those services as well.

Dylan's travel authorization application, dated June 30, 2005, contained both correct and incorrect addresses for the Lesniewskis. The BCIS received the application on July 17, 2005, more than two weeks after the July 1 court-ordered date for Dylan to visit his father in Canada. After Dylan's father threatened to file an action against Pamela for failure to comply with the court order, she transported Dylan to Canada without the travel authorization.

On February 14, 2006, the BCIS notified respondent's office that Dylan's adjustment of status interview would take place on April 5, 2006. Pamela denied receiving the notice, stating that, if she had received it, she would have been "ecstatic." Pamela did not appear at the BCIS office on April 5, 2006, allegedly unaware of its scheduling.

In 2006, Pamela continued to contact both respondent's office and the BCIS to ascertain the status of her matter. In September and November 2006, the Lesniewskis received letters from the BCIS confirming that they had contacted that office in connection with their immigration applications. The November 2006 letter also confirmed the Lesniewskis' change of address (they had moved to Pennington by that time).

In March 2007, respondent's office made an appointment with the BCIS for the Lesniewskis to obtain a status update about Dylan's application. Pamela and Dylan met with a BCIS officer on March 19, 2007. At this meeting, the BCIS officer informed Pamela that someone had postponed Dylan's April 5, 2006 interview and had failed to appear at the rescheduled interview. The officer further told Pamela that all documents had to be filed within one year of the date of the application, that the one-year period would expire in May 2007 (two months later), and

that, if all documents were not filed timely, the BCIS could seek legal action, including Dylan's deportation. When Pamela contacted respondent's office, she was told that she was no longer permitted to talk to him and that his wife, who was the office manager, was in charge of the case. Thereafter, Pamela had no further contact with respondent's office.

Dylan was required, by court order, to return to Canada for visitation with his father on July 1, 2007. Dylan's father threatened to seek full custody of Dylan. Moreover, Dylan's father was married in July 2007. Dylan's inability to attend the wedding caused a strain on the relationship between Pamela and Dylan's father.

Pamela took various steps to obtain assistance for Dylan, contacting the Canadian Consulate in New York, the Canadian Embassy in Washington, and her congressman. After these efforts failed, the Lesniewskis obtained a new attorney, incurring additional costs and fees to complete Dylan's application. At the time of the ethics hearing, October 27, 2008, Dylan had received his permanent resident status and his authorization to travel.

During the period of representation, respondent sent various letters to the Lesniewskis about their outstanding fees.

In a December 19, 2005 letter, he threatened the Lesniewskis with legal action if they did not pay an outstanding balance of $3,890 by December 23, 2005. Enclosed with the letter was a December 19, 2005 invoice indicating that, of the total $11,390 fee, $7,000 had been paid, the balance owed was $4,390, and the sum of $3,890 was due at that time. The letter, sent by certified mail to an incorrect address – 1486 North Olden Avenue – was returned to respondent's office, stamped "unclaimed," with the correct house number (1468) written on the envelope.

On April 7, 2006, respondent sent to the Lesniewskis, at the wrong address, notice of their right to request fee arbitration. On October 31, 2006, respondent sent another invoice to the wrong address.

On November 14, 2006, respondent filed suit against the Lesniewskis in the Superior Court of New Jersey, Mercer County, Special Civil Part, to collect legal fees of $4,090. Respondent and the Lesniewskis settled the lawsuit on March 5, 2006, at the courthouse. After the Lesniewskis told respondent that Dylan had not received permanent resident status, respondent agreed to file another application and to make an appointment for an adjustment of status interview with the BCIS. The Lesniewskis

agreed to pay respondent's legal fees in full in $200 monthly installments.

The Lesniewskis paid respondent $200 on March 7, 2007. As previously stated, respondent's office then made the appointment with the BCIS for an update about the status of Dylan's application. Although the Lesniewskis had settled the lawsuit by agreeing to pay respondent's fees, they did not submit any payments, after the March 2007 payment, because respondent had taken no action on Dylan's behalf.

For his part, respondent offered the testimony of his secretary, Sundia Enriquez. Enriquez speculated that the Lesniewskis may have been confused about their own address. According to Enriquez, the Lesniewskis had confirmed that their correct address was 1486 North Olden Avenue. Upon cross-examination, Enriquez persisted that the clients had told her to send all mail to 1486 North Olden Avenue.

Enriquez claimed that, upon receipt of the February 14, 2006 notice of the adjustment of status interview for Dylan, she sent a copy of it to the Lesniewskis, along with a "Post-It" note asking them to call respondent's office. Although Enriquez admitted that the notice of interview was one of the most important documents in the immigration application process, she

mailed the notice without a cover letter by regular, not certified, mail. She sent the notice to 1486 North Olden Avenue, the incorrect address. Acknowledging that she handled more than one thousand immigration files, Enriquez nevertheless claimed to have a very specific recollection that the notice sent to the Lesniewskis by regular mail had not been returned.

Enriquez also alleged that she kept a log of her attempts to contact the Lesniewskis. The log indicated that, on nine occasions, from October 14 through December 14, 2005, Enriquez had called the Lesniewskis and left a message, but never received a return telephone call from the Lesniewskis. The log contained no notation about the purpose of those telephone calls.

A log entry for February 17, 2006 indicated that Enriquez had contacted the Lesniewskis specifically about Dylan's interview notice. According to a February 20, 2006 notation, Enriquez sent "via reg. mail, copy of Dylan's Notice to clients with post it note indicating to call office to schedule appt. to prepare for Dylan's interview (Did not receive any calls back)." Enriquez claimed that, on March 3, March 13, March 24, March 31, and April 4, 2006, she had attempted to contact the Lesniewskis by telephone about Dylan's April 5, 2006 interview, but that she was unsuccessful.

As to the travel application, respondent asserted that it was an optional item, not part of the standard immigration package. He stated that the fee agreement did not include services for obtaining the travel authorization. He claimed that the Lesniewskis later agreed to pay the additional legal fees and costs for the preparation of the travel applications. He admitted, however, that he had not prepared a supplemental fee agreement and had not sent a letter confirming the change in the scope of representation. He explained that, when Pamela met with him, in July 2004, she was not certain of her travel plans and that it was not until his office was close to submitting the documents that she requested that he include the travel application.

With respect to the travel authorization, respondent asserted that the Lesniewskis could have obtained passports at any time and that attorneys are not involved in that process. He admitted, however, that, in 2005, children did not need passports for travel between the United States and Canada.

According to respondent, although the receipt for the travel application indicated that it was sent to "Dylan J. Gladu c/o Gary T. Jodha," at respondent's law office, the BCIS

typically sends a copy of the adjustment of status interview notice directly to the applicant, as well as to the attorney.

Respondent testified that, when he received the notice of Dylan's interview date, he instructed Enriquez to telephone the Lesniewskis. When she reported her inability to reach them, he told her to mail the notice to the clients. Respondent surmised that the Lesniewskis were not returning Enriquez's telephone calls because (1) they owed him fees and (2) they had received the interview notice and had determined to appear at the BCIS office without his assistance. He did not contact the BCIS to ascertain whether it had sent the notice of Dylan's adjustment of status interview to the Lesniewskis, did not instruct his staff to contact the post office to determine whether he had the clients' correct address, and did not use an Internet service to locate the Lesniewskis' address or telephone number.

Although the fee agreement required the Lesniewskis to pay $1,000 every three months, they did not make any of the $1,000 payments. Respondent claimed that, on September 14, 2005, the day before the adjustment of status interview for Pamela and Gina, he met with the Lesniewskis and entered into a new fee arrangement, whereby they would pay $500 per month, beginning in October 2005, instead of $1,000 every three months. The

Lesniewskis made a $500 payment on September 14, 2005. Thereafter, they made no additional $500 payments.

At the ethics hearing, respondent was asked about the meaning of the following provision in the retainer agreement: "All fees and costs must be paid to date before an application or appeal will be filed, hearing scheduled, or consultation will take place, except in those circumstances where required to prevent immediate prejudice and/or the canons of ethics require such action." Respondent replied that he "will never preclude a client from knowing that he has an interview pending. . . . we fulfilled our ethical obligation by sending [the notice of interview] to the client, and by calling the client, incessantly, and did not obtain return phone calls."

Although respondent acknowledged sending to the Lesniewskis a notice of their right to request fee arbitration and filing a lawsuit against them for payment of his fee, he never notified them that he was withdrawing from their case.

In mitigation, respondent submitted "character letters" from Alberto Riefkohl, an immigration judge; the pastor of his church; and three clients (two from the same family), attesting to his skills as an immigration attorney.

The hearing panel report indicated that, before reaching its decision, the hearing panel had contacted Marta Cruz-Gold, a DEC member who had an immigration practice. The hearing panel asked Cruz-Gold whether attorneys routinely appear with clients at adjustment of status interviews or whether clients attend those meetings without counsel. Cruz-Gold replied that the fee agreement should specify whether the immigration interview is included in the services to be rendered by the attorney.

Upon receipt of the hearing panel report, respondent's counsel objected to the procedure whereby the hearing panel consulted Cruz-Gold, requested and received an affidavit from Cruz-Gold about her conversation with the hearing panel chair, and submitted an expert report, authored by Robert Frank. By agreement of the hearing panel and counsel, the DEC considered the following documents: Cruz-Gold's affidavit, Frank's expert report, and counsel's summations.

In her affidavit, Cruz-Gold stated that, although, "in many instances, an immigration attorney will attend an adjustment interview with the applicant, there are instances where the attorney or client choose to exclude this appearance as part of the fee agreement process."

Frank opined that, although many immigration attorneys attend adjustment of status interviews with their clients, whether such attendance is mandated depends on the terms of the retainer agreement and the parties' understanding. He asserted that "[f]rom the information provided I am not sure as to what was there [sic] agreement." He concluded that, because Pamela's interview was critical, while Dylan's was "routine," respondent's attendance at Dylan's appointment was not required, in the absence of a separate fee agreement including such an appearance.

The presenter did not recommend a level of discipline in her summation before the DEC. She maintained, however, that, because respondent's file contained the Lesniewskis' accurate address, respondent could have corrected his records, with minimal effort. She also observed that, although he had "spared no effort or expense" to collect his fees, he failed to exert such effort in the discharge of his duties to his clients.

In a brief filed with us, respondent's counsel argued that respondent had not violated any ethics rules and, therefore, no discipline should be imposed. He suggested, however, that, if any sanction were to be imposed, it should not exceed a reprimand.

The DEC found that respondent's retainer agreement was not clear on whether respondent was obligated to attend a BCIS interview for each client (Pamela, Gina, and Dylan) or one interview in total. The DEC determined that the retainer agreement required respondent to appear at one interview for each client.

In addition, the DEC concluded that respondent had not confirmed with the Lesniewskis that they were aware of Dylan's April 5, 2006 immigration interview; that Dylan's failure to appear at the immigration office necessitated the filing of a new application; that respondent and the Lesniewskis had little contact with each other, during most of 2006 and early 2007; that, although respondent had no records documenting communication with the Lesniewskis about the status of their cases, he regularly sent letters requesting payment of his fee; that respondent did not thoroughly review documents sent by his office; that respondent did not ensure that his staff used the Lesniewskis' correct address; that respondent's staff routinely sent copies of important documents to clients without cover letters; and that respondent failed to take reasonable steps to either withdraw from the representation or to act promptly, while representing his clients.

Based on these findings, the DEC determined that respondent was guilty of a lack of diligence. The DEC found that respondent's conduct did not rise to the level of gross neglect or failure to supervise staff. Noting that respondent previously had received a reprimand, the DEC recommended a censure.

After considering Cruz-Gold's affidavit, Frank's expert report, and counsel's summations, the DEC found no reason to disturb its previous determination and again recommended a censure.

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.

Respondent unquestionably displayed a lack of diligence in his representation of the Lesniewskis. From the onset of the case, respondent's office repeatedly sent documents to an incorrect address. Many documents that respondent's office drafted contained either the wrong address or a combination of correct and incorrect addresses. We found not credible the testimony of respondent's secretary, Sundia Enriquez, that the Lesniewskis had given her the wrong address and that they had been confused about their own house number.

In December 2005, the post office returned to respondent's office an invoice sent to the Lesniewskis by certified mail. The Lesniewskis' correct address had been written on the envelope returned to respondent. Yet, respondent's office failed to correct its records to reflect the right address. Even after respondent's secretary informed him that she was unable to reach the Lesniewskis, respondent made no effort to ascertain their correct address or telephone number. This inadequacy is particularly egregious, as seen below, in the light of respondent's failure to notify the Lesniewskis of a scheduled BCIS interview for Dylan's adjustment of status.

In addition, respondent and his clients did not agree on two issues concerning the scope of the representation: whether respondent was required to prepare and submit travel authorization documents to the BCIS and whether he had agreed to attend one immigration hearing for each of his three clients, or one hearing in total.

Our assessment of respondent's obligations to the Lesniewskis must begin with a review of the retainer agreement. This document governs both the scope of respondent's services and payment of the legal fees. The purpose of the requirement that fee agreements be in writing is to avoid misunderstandings

and fraud. Starkey v. Estate of Nicolaysen, 172 N.J. 60, 69 (2002). Moreover, the general rule of construction is that fee agreements between lawyers and clients will be construed against the lawyers. Cohen v. Radio-Electronics Officers Union, 146 N.J. 140, 156 (1996); Vaccaro v. Estate of Gorovoy, 303 N.J.Super. 201, 207 (App.Div.1997). In addition, a court should construe an agreement between an attorney and a client "as a reasonable person in the circumstances of the client would have construed it." Restatement (Third) of the Law Governing Lawyers §18 (2000). Alpert, Goldberg v. Quinn, 410 N.J.Super. 510, 530 (App.Div.2009).

Here, the Lesniewskis understood that respondent would submit travel applications as part of the services included in the original fee agreement. That agreement provided that respondent would represent Pamela, Gina, and Dylan in applying for permanent residency. The agreement did not specifically address services involving applications for travel authorization. Although it excluded various legal services (those in connection with deportation proceedings, administrative or court review, and so on), the agreement did not exclude services related to obtaining travel authorization.

The Lesniewskis' position is supported by the fact that the travel applications were drafted at the same time as the other immigration documents. Respondent prepared these documents in September 2004, before the October 25, 2004 fee agreement was signed. Furthermore, in January 13, 2005, respondent sent to the Lesniewskis a $9,000 invoice, which was consistent with the amount of the fee contained in the retainer agreement. At that point, he had already submitted travel applications for Pamela and Gina. The Lesniewskis, thus, reasonably believed that respondent's $9,000 fee included travel applications.

According to respondent, the travel applications were not contemplated in the retainer agreement and, thus, he was entitled to charge the Lesniewskis an additional fee for those services. Respondent asserted that, when Pamela first contacted him, in July 2004, she was uncertain of her travel plans and did not finalize them until September 2004. We note, however, that the retainer agreement was drafted in October 2004, after Pamela's travel plans were confirmed. Respondent admitted that he neither prepared a supplemental fee agreement addressing the travel documents nor sent a letter confirming the change in the scope of representation and the additional fees for those services.

Notwithstanding whether respondent was entitled to additional fees for obtaining travel authorizations, he had agreed to provide that service. His failure to do so caused harm to his clients, including Dylan's inability to travel to Canada, as required by a court order; Dylan's father's threat to file a motion for full custody; Dylan's non-attendance at his father's wedding; and damage to the relationship between Pamela and Dylan's father.

As to the requirement that respondent attend Dylan's interview, the Lesniewskis believed that he was so obligated, while respondent asserted that, pursuant to the retainer agreement, his duty did not extend beyond appearing at one adjustment of status interview. According to respondent, he discharged that duty by attending the interview with Pamela and Gina.

On this point, the retainer agreement was not clear. Both Cruz-Gold and Frank asserted that whether an attorney's attendance at an immigration interview is mandated depends on the terms of the retainer agreement and the parties' understanding. Frank further opined that he could not determine the terms of the parties' agreement. Pursuant to the cases discussed above, we resolve the ambiguity in respondent's

retainer agreement in the clients' favor and find that respondent was duty-bound to attend Dylan's BCIS interview.

One of the key documents in this case is the February 14, 2006 notice of Dylan's April 5, 2006 adjustment of status interview. The Lesniewskis denied receiving this document. The notice contained only respondent's, not the Lesniewskis', address. Respondent insisted, however, that it was the practice of the BCIS to send a copy of the interview notice directly to the client, as well as to the attorney. He did not contact the BCIS to confirm that it had sent a copy of the notice to the Lesniewskis. Because respondent's office continually sent documents to the Lesniewskis' wrong address, it is possible that, had the BCIS sent a copy of the notice to the Lesniewskis, it was directed to an incorrect address.

As to respondent's actions to ensure that the Lesniewskis were informed of Dylan's adjustment of status hearing, we find they were inadequate. Although respondent claimed that he had discharged his duty by sending the clients a copy of the notice of the hearing and by calling them "incessantly," he did not mail any subsequent documents, by certified mail or otherwise, to notify them of the hearing. Regardless of respondent's

obligation to attend that hearing, he was required to notify the Lesniewskis of the hearing date and location.

We, thus, find that respondent displayed a lack of diligence by failing to (1) ensure that his records of his clients' address were correct, (2) obtain Dylan's travel authorization or permanent resident status, (3) take appropriate steps to notify the Lesniewskis about Dylan's adjustment of status interview, and (4) attend Dylan's adjustment of status interview.

The DEC properly dismissed the charges that respondent was guilty of gross neglect and failure to supervise staff. Because the record does not contain clear and convincing evidence of these infractions, we, too, dismissed them.

Respondent, thus, exhibited a lack of diligence in one matter. Generally, an admonition results for a lawyer's lack of diligence in the handling of a client's matter, even if other conduct of a non-serious nature is present. See, e.g., In the Matter of Joseph C. Lane, DRB 09-196 (October 21, 2009) (attorney failed to promptly record deeds following two real estate transactions for the same client; conduct deemed to constitute gross neglect and lack of diligence); In the Matter of Michelle Joy Munsat, DRB 09-207 (July 29, 2009) (because

attorney failed to file an appellate brief, the client's appeal of a felony conviction was dismissed; subsequent counsel succeeded in reinstating the appeal; violation of RPC 1.3 found, along with substantial mitigation); In the Matter of Rosalyn C. Charles, DRB 08-290 (February 11, 2009) (attorney permitted a client's divorce complaint to be dismissed for lack of prosecution and failed to reply to the client's requests for information about the status of the matter; the attorney was guilty of lack of diligence and failure to communicate with a client); In the Matter of Fayth A. Ruffin, DRB 04-422 (February 22, 2005) (attorney did not file an answer to a counterclaim, thereby causing a default judgment to be entered against the client; violation of RPC 1.3 found); and In the Matter of Ronald W. Spevack, DRB 04-405 (February 22, 2005) (attorney exhibited a lack of diligence in a Social Security matter by failing to ensure that the Social Security Administration ("SSA") had received his request for appeal forms and was processing it in its regular course of business; because the attorney's letter to the SSA did not request appeal forms, the appeal was never processed).

In other immigration cases, attorneys have received admonitions or reprimands for conduct similar to, or more

egregious than, respondent's infractions here. See, e.g., In the Matter of Jonathan Saint-Preux, DRB 04-174 (July 19, 2004) (admonition for attorney who displayed a lack of diligence by failing to appear at immigration interviews in two unrelated client matters, resulting in the entry of deportation orders for those clients; he also failed to communicate with both clients; attorney had no disciplinary history); In re Nichols, 182 N.J. 433 (2005) (reprimand for attorney who performed some services in immigration matters for two clients, but never finalized the cases, conduct constituting gross neglect and lack of diligence; in both matters, the attorney failed to communicate with the clients and failed to prepare a writing setting forth the basis for his fee; in one of the matters, he also failed to return an unearned retainer; the attorney had received a prior reprimand for engaging in a conflict of interest and in conduct involving deceit and misrepresentation); and In re Block, 181 N.J. 297 (2004) (in a default case, attorney was reprimanded for gross neglect, lack of diligence, and failure to communicate with a client; the attorney filed an immigration petition that was returned because the filing fee was incorrect; the attorney did not review the returned petition, which was then misfiled; over the next eighteen months, when the client asked about the status

of the matter, the attorney, without reviewing the file, gave a series of excuses for the delay, including a claim that the immigration bureau had lost the petition; the attorney had no disciplinary history).

Here, we considered, in mitigation, the letters that respondent submitted, attesting to his professional abilities, particularly in immigration cases. We also took into account aggravating factors. Respondent received a reprimand, in 2002, for failing to timely complete post-closing tasks. In addition to recordkeeping violations, the infractions found included lack of diligence, gross neglect, failure to communicate with a client, and failure to promptly deliver funds to a client. Respondent, thus, has already been disciplined for similar misconduct.

Of additional concern to us is respondent's obvious failure to appreciate the fiduciary nature of the attorney-client relationship. His retainer agreement contains provisions that are at odds with his duty to his clients. For example, the agreement permitted respondent to charge hourly fees, in addition to the flat fee, for "needless" calls from the client; permitted respondent to cancel an immigration interview, if full payment was not made at least one week before the date of the interview; and required all fees and costs to be paid before certain events

could take place, except when necessary to prevent immediate prejudice or when the "canons of ethics" mandated that services be provided.

Although respondent is entitled to be paid for his services, he is not permitted to threaten to withhold those services and, in effect, abandon the client, if he does not receive his fee. Despite the letters that respondent sent to the Lesniewskis, seeking payment of his fee, he never informed them that he would withdraw from the representation. Furthermore, as noted by the DEC, although respondent had no records documenting communication with the Lesniewskis about the status of their cases, he regularly sent letters requesting payment of his fee. If he had concentrated as much effort on ensuring that his clients were informed about the status of their matter as he did on obtaining payment of his fee, he might not be facing ethics charges in this case.

Based on the aggravating factors discussed above, we find that an admonition is insufficient discipline in this case. The DEC's recommendation of a censure, however, is not in line with precedent. We, thus, determine that a reprimand is the appropriate level of discipline in this matter.

Member Clark 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 Gary T. Jodha
Docket No. DRB 10-173

Argued: July 22, 2010

Decided: September 10, 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

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