

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 10-393  
District Docket Nos. IIIB-2009-0015E  
and IIIB-2009-0016E

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IN THE MATTER OF  
JOHN E. KURTS  
AN ATTORNEY AT LAW

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Decision

Argued: February 17, 2011

Decided: May 5, 2011

Roger Lai appeared on behalf of the District IIIB Ethics Committee.

George R. Saponaro appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline (six-month suspension) filed by the District IIIB Ethics Committee (DEC). A three-count complaint charged respondent with misconduct in two client matters, including gross neglect (RPC 1.1(a)), lack of diligence (RPC 1.3), failure

to communicate with clients (RPC 1.4, presumably (b)), failure to provide a written fee agreement (RPC 1.5, presumably (b)), and failure to cooperate with the ethics investigation (RPC 8.1(b)). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1979. He has no prior discipline.

**I. THE STANLEY MATTER (District Docket No. IIIB-2008-0015E)**

On March 10, 2006, Mildred Stanley retained respondent to represent the estate of her brother, Raymond Nixon. According to Stanley, respondent never provided her with a writing setting forth the rate or basis of his fee. She gave respondent \$350 upon his retention and then \$750, in early April 2006, for a total of \$1,100.

Stanley testified that, initially, respondent took some action on behalf of the estate by writing letters to various entities, such as Nixon's insurance carriers, advising them that he had passed away and that she was his sole beneficiary. Within a few months, however, respondent had ceased communicating with Stanley. She claimed that she went to his office thirty to forty times to drop off documents about the estate and to discuss the matter with him, but he was not available to speak with her.

Stanley recalled that she last spoke with respondent about the case in June 2006. Thereafter, she tried several times to reach respondent, but he was never available. She also recalled that, almost a year later, on April 24, 2007, she had to travel to the county clerk's office to re-file some documents in the case. She had received a letter stating that the estate was being penalized for failure to complete its administration.

Frustrated with respondent's failure to act, Stanley called several attorneys, ultimately retaining Neil Manuel to "complete the estate." Respondent then met with Manuel and turned over the estate file to him. According to the complaint, the file contained little more than "a few letters and a preliminary draft tax return."

Respondent did not testify at the DEC hearing. In his answer, however, he admitted that he "did not file an inheritance tax return, which caused penalties to be assessed against the estate." His answer neither admitted nor denied that his actions constituted ethics infractions.

## **II. THE THOMPSON MATTER (District Docket No. IIIB-2008-0016E)**

In August 2006, Brett Thompson retained respondent to file an application to reduce a child-support obligation. According

to Thompson, he was unable to keep up with a \$1,200 per month support obligation, after suffering several work setbacks that included a lost bonus and lost overtime.

At the inception of the representation, Thompson paid respondent \$500 toward his fee. Although respondent did not testify at the DEC hearing, he conceded, in his closing argument, that he had failed to set forth, in writing, the basis or rate of his fee.

About eight months into the representation, Thompson and respondent attended a court hearing. According to Thompson, two women with whom he had children were supposed to appear, but one of them failed to do so, prompting the judge to carry the matter to a later date. Respondent then required Thompson to pay him an additional \$100 to file "another piece of paper" on his behalf.

At some point thereafter, Thompson was laid off from his job and began to collect unemployment compensation. He desperately tried to reach respondent about the child-support matter, as a reduction in support was now even more pressing. Hearing nothing, he stopped by respondent's office, met with respondent's secretary, and asked for his file. The secretary looked for the file, but could not find it. Although Thompson

left word with the secretary for respondent to contact him, respondent failed to do so.

In his answer, respondent conceded that he ultimately ceased returning Thompson's telephone calls and performing work on Thompson's case. Respondent offered in evidence a September 10, 2007 letter to another client, which, he said, was identical to the letter that he had sent to all of his clients, when he closed his office, on September 10, 2007. Thompson denied having ever received such a letter from respondent. In fact, Thompson recalled that the last time that respondent had contacted him was when he had asked for the additional \$100, earlier in the case.

Thompson testified that he called respondent ten times thereafter, but never received a call back. By then unemployed, he attended the postponed child-support hearing without an attorney and was granted a reduction in his child support obligations.

Thompson was questioned about respondent's assertion, in his opening remarks, that the court had denied Thompson's

application and that Thompson had failed to appear at a hearing. Thompson denied both of these contentions.

One of the charges in the complaint was that respondent failed to cooperate with the DEC investigation of the grievances.<sup>1</sup> The record contains the original investigator's April 30, 2008 letter to respondent early in the investigation, expressing frustration with his lack of cooperation to that point. The complaint charged respondent with having violated RPC 8.1(b).

In his closing remarks, respondent expressed remorse for the way he had handled the Stanley and Thompson matters:

But I am going on too long and I apologize. I certainly – there was never any intention here to ignore, there was never intention here to not complete the work. There was never any intention here to avoid my responsibilities. If it happened, it shouldn't have happened. The consequences of that are what they are.

And Mr. Thompson, certainly I owe an apology to, and certainly Ms. Stanley I owe an apology to. Hopefully, from what I've been doing in terms of the medications, and hope that I got from my doctors, I'm in a

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<sup>1</sup> The current presenter, Roger Lai, took over this disciplinary matter from the original investigator in September 2009, after it was certified to us a default.

better position today than I was three years ago. I don't know what else to say.

[T24-6 to 18.]<sup>2</sup>

According to respondent, in the spring of 2007, he began to have memory problems, which were later diagnosed as symptoms of depression, for which he was prescribed medication. He also experienced severe financial hardships in 2007, which forced him to close his office.

Although respondent repeatedly assured the DEC, in a series of letters, that he would provide proof of his medical problems, he failed to do so. Even an April 27, 2010 post-hearing letter from the presenter did not spur him into action.

The day after oral argument before us, respondent's counsel forwarded to Office of Board Counsel a report from respondent's psychologist, Wm. Dennis Coffey, dated December 15, 2010. The report had been updated on February 16, 2011.<sup>3</sup>

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<sup>2</sup> "T" refers to the transcript of the February 25, 2010 hearing.

<sup>3</sup> Counsel explained that, prior to February 18, 2011, he had only a draft, unsigned report from Dr. Coffey.

Dr. Coffey diagnosed respondent as suffering from major depressive disorder, which had affected his organizational skills, memory, and law practice. Prior to consulting with Dr. Coffey, respondent had been treated by his physician, who had prescribed the anti-depressant, Effexor.

In his February 16, 2011 Clinical Update, Dr. Coffey reported that, after his initial evaluation, respondent had appeared for two therapy sessions and that he is "open to the treatment process and has fully engaged [in it]." Dr. Coffey stated that respondent "will continue in individual therapy for an undetermined time period" and that, "[g]iven his level of motivation, prognosis is good."

In each of the two matters, the DEC found respondent guilty of having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to comply with the client's reasonable requests for information about the case), RPC 1.5, presumably (b) (failure to set forth in writing the rate or basis of the fee), and RPC 8.1(b) (failure to cooperate with ethics authorities).

The DEC recommended a six-month suspension, citing, without further elaboration, In re Cullen, 112 N.J. 13 (1988).



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

Stanley testified that she retained respondent to complete the administration of her brother's estate, which respondent failed to do, resulting in the imposition of penalties against the estate. Respondent conceded that his inaction caused penalties to be assessed against the estate. When, after an unspecified date, Stanley could no longer reach respondent about the matter (he closed his office in September 2007), she retained a new attorney, who completed the estate work. Respondent provided no evidence to refute Stanley's testimony, which was found to be credible below.

We, too, find that respondent's failure to take action to complete the estate and allowing penalties to be assessed against it violated RPC 1.1(a) and RPC 1.3. Admittedly, respondent also failed to communicate with Stanley after about June 2007, a violation of RPC 1.4(b), despite Stanley's thirty to forty attempts to obtain information from him. Finally, respondent provided no evidence to refute Stanley's testimony that he had failed to reduce to writing the rate or basis of his fee, for which we find a violation of RPC 1.5(b).

In the Thompson matter, respondent was retained to obtain a reduction of a \$1,200 per month child-support obligation. At some point, respondent ceased working on Thompson's case. Thompson, who had lost his job, could not afford the child support payments. After having tried to reach respondent, without success, Thompson attended his support hearing alone and was able to have his payments reduced.

In September 2007, respondent closed his office. Although he allegedly notified Thompson of this event, Thompson denied having been so informed. As with Stanley, respondent did not provide Thompson with a writing setting forth the rate or base of his fee.

Altogether, thus, respondent's conduct in the Thompson matter violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.5(b).

Finally, respondent failed to comply with the DEC investigator's requests for information about the Stanley and the Thompson grievances, a violation of RPC 8.1(b).

As indicated previously, in recommending a six-month suspension, the DEC cited a single case, In re Cullen, 112 N.J. 13, (1988). There, the attorney neglected the cases of two clients, the plaintiffs in lawsuits. The first matter involved a medical malpractice suit brought by a husband whose wife had

died in a hospital, after the respirator supplied by the hospital had failed.

Cullen filed a complaint against the hospital, the device manufacturer, and various doctors. Over the course of about a year, the complaint was dismissed as to each of the defendants, after Cullen failed to comply with discovery rules. He did manage to file a motion to restore the complaint as to the defendant hospital.

For three years thereafter, the husband sought information from Cullen about the matter, but Cullen lied to the client, stating that the matter was proceeding apace. Finally, days before the trial against the remaining defendant hospital, Cullen told his client the truth - that his neglect had allowed claims against the main defendants to slip away. Cullen then failed to appear for the trial date.

In a second matter, Cullen neglected personal injury causes of action against a driver and the owner-passenger of an automobile involved in an accident. The complaint was dismissed against both defendants, due to Cullen's neglect. Over a five-year period, the plaintiff-clients tried to obtain information from Cullen about the case. For at least the last two years of that time period, Cullen lied to them that the matter was

progressing. In addition, when preparing the ethics matter for an appearance before us, Cullen discovered five additional cases in his care that had suffered similar neglect.

Finally, Cullen failed to continue with psychotherapy and to work under the supervision of a proctor, as was required by an agreement with ethics authorities.

We find Cullen considerably more serious than the present matter. Cullen neglected numerous clients, as opposed to two, as here. Also, unlike respondent, Cullen lied to his clients for years and failed to comply with an agreement with disciplinary authorities.

Attorneys found guilty of misconduct similar to that of respondent, including gross neglect, lack of diligence, and failure to communicate with clients, ordinarily receive 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. See, e.g., In re Russell, 201 N.J. 409 (2009) (admonition for attorney who failed to file answers to divorce complaints against her client and caused 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) (admonition imposed; 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 did not communicate with the client about the status of the case); In re Dargay, 188 N.J. 273 (2006) (attorney found guilty of gross neglect, lack of diligence, and failure to communicate with the client received an admonition; prior admonition for similar conduct); In the Matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005) (admonition for attorney who 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); In re Uffelman, 200 N.J. 260 (2009) (reprimand for attorney found 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 reprimanded for lack of diligence in a bankruptcy matter, failure to communicate with the client, and failure to memorialize the basis of the fee; prior admonition and six-month suspension); In re Zeitler, 165 N.J. 503 (2000) (attorney reprimanded for lack of diligence and failure to communicate with clients; extensive ethics history); and In re Gordon, 139 N.J. 606 (1995) (attorney reprimanded for lack of diligence and failure to communicate with clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand).

Here, respondent's misconduct in two matters was relatively non-serious and he has no prior record. In addition, he has finally provided evidence of his medical condition, which we considered in mitigation. On the other hand, respondent ignored these two cases for extended periods of time and failed to reply to scores of requests for information from the clients about their matters. We determine, thus, that he should receive a reprimand for his overall conduct.

We do not believe that the addition of the RPC 1.5(b) charge should serve to elevate the reprimand to a higher degree. Usually, a violation of RPC 1.5(b) will result in no more than

an admonition, even if accompanied by other non-serious improprieties. See, e.g., In the Matter of Steven M. Olitsky, DRB 95-358 (November 27, 1996) (attorney failed to communicate, in writing, the basis or rate of his fee and failed to inform the client that work would not be initiated in the matter until the fee was fully paid) and In the Matter of Steven M. Olitsky, DRB 93-391 (November 22, 1993) (attorney failed to reduce fee agreement to writing and failed to reply to the client's requests for information about the matter).

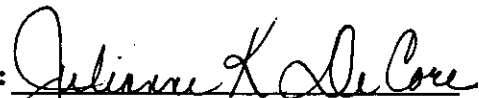
We are aware that, in one of the present matters (Thompson), respondent closed down his office in the midst of the representation. There is no evidence, however, that respondent's failure to protect his client's interests at the time was the product of lack of concern for the client's well-being or other inexcusable reason. He was beset by mental illness at the time. Although this circumstance does not excuse his conduct, it serves to explain it. We, therefore, determine that a reprimand is sufficient discipline in this case.

We further determine that respondent should complete a CLE course in law office management, that he continue with psychological therapy until discharged, that he periodically show proof to the Office of Attorney Ethics that he is

undergoing therapy, and that he practice under the supervision of a proctor for a period of two years. We are aware that respondent's counsel has offered to serve as his proctor.

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



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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of John E. Kurts  
Docket No. DRB 10-393

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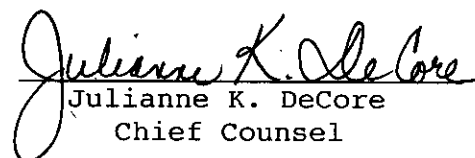
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Argued: February 17, 2011

Decided: May 5, 2011

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:			9			

  
Julianne K. DeCore  
Chief Counsel