SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-108
District Docket Nos. XII-2009-0009E; XII-2009-0012E; XII-2009-0027E; XII-2009-0040; and XII-2009-0041E

Docket No. DRB 11-193
District Docket Nos. XII-2009-0046E and XII-2010-0016E

IN THE MATTERS OF	:
NEIL GEORGE DUFFY, III	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 21, 2011

Decided: October 6, 2011

Louis H. Miron appeared on behalf of the District XII Ethics Committee in DRB 11-108.

Edward J. Kologi appeared on behalf of respondent.

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

These matters were before us on separate recommendations for a censure (DRB 11-108) and an admonition (DRB 11-193). We determine to impose a reprimand for the combined misconduct in both matters.

Respondent was admitted to the New Jersey bar in 1983. On March 10, 2010, he received an admonition for failure to communicate with a client in a criminal matter. In the Matter of Neil George Duffy, III, DRB 09-311 (March 10, 2010).

I. DRB 11-108

This matter came before us on a recommendation for discipline (censure) filed by the District XII Ethics Committee (DEC). A six-count complaint charged respondent with four instances of gross neglect (RPC 1.1(a)), pattern of neglect (RPC 1.1(b)), failure to communicate with the client (RPC 1.4(a), more appropriately (b)), and failure to return an unearned fee (RPC 1.16(d)).

A. The Rodriquez Matter — Docket No. XII-09-0009E

Count one of the complaint charged respondent with gross neglect, a pattern of neglect and failure to return an unearned fee.

Manuel Rodriguez retained respondent, on behalf of his painting company, to file a construction lien and/or lawsuit against A-1 Construction Company (A-1) to collect about $36,000 for painting services rendered. On December 27, 2007, Rodriguez paid respondent $2,500 to initiate the case.

Rodriguez told respondent that A-1 owned at least one of about twenty-six houses that had already been completed. He also provided a list of addresses for the houses that he had painted for A-1 and for which he had not been paid. Respondent failed to take any action to file a lien against that property or any other property owned by A-1 or its principal, a "Mr. Kalile."

Further, according to Rodriguez, he visited respondent's office three times, but respondent was unavailable to speak with him. No one at the office alerted him to any problems in the case. On Rodriguez' fourth visit to the office to check the status of his case, respondent advised him that he needed one more month to complete the collection matter.

On January 10, 2008, respondent sent a letter to A-1, demanding payment of $36,700. The letter stated that, if A-1 failed to remit that amount within ten days, respondent would file suit without further notice. Respondent never did so.

Respondent, too, testified about the representation. He admitted receiving Rodriguez' $2,500, after the parties had executed a written fee agreement. He also admitted having failed to file either a construction lien or a lawsuit on Rodriguez' behalf. Rodriguez had furnished respondent with Kalile's telephone number, and respondent knew the company's address.

When asked what steps he had taken to further his client's claim, respondent placed some blame on Rodriguez, stating that Rodriguez was to provide him with information about property owned by A-1 against which he could levy. He sought the addresses of houses, trucks, and equipment.

Respondent conceded that, between March and November 2008, Rodriguez left numerous notes at his house and telephone messages about the status of his case, which were left unanswered. Respondent further conceded that he never performed a corporate search on the company to see if A-1 was incorporated, even though he considered it a common practice for attorneys to make such an initial request of the Secretary of State. In fact, respondent ultimately conceded that, after the letter to A-1, he did no work in the case, other than meet with his client.

Finally, respondent conceded that he had not earned the fee and had intended to return it to Rodriguez, but a lack of personal funds had prevented him from doing so.

B. The Mavrakes Matter – Docket No. XII-09-0012E

Count two charged respondent with gross neglect, a pattern of neglect, failure to communicate with the client, and failure to return an unearned fee.

On October 13, 2008, Rae Mavrakes retained respondent to file a complaint for divorce and to follow it "if necessary through the trial of divorce proceedings, custody, child support, alimony and equitable distribution." Respondent charged Mavrakes a flat fee of $1,000 for the representation. In addition to that amount, Mavrakes gave respondent $200 for a filing fee.

Respondent was the sole witness at the ethics hearing in the matter, testifying that he had known Mavrakes' mother, a cook at a local restaurant, for many years, when she approached him about her daughter's marital situation. Respondent agreed to represent the daughter for less than he ordinarily charged and insisted, at the ethics hearing, that he had earned the entire fee.

Respondent recalled that Mavrakes had met him at his office, on four occasions over the course of the representation, and that each meeting lasted over an hour. He had also prepared a two-page complaint, with certifications totaling an additional three pages, as well as a draft case information statement.

A young couple, the Mavrakes' had little in the way of assets. They rented their dwelling, owned no real estate or other investments, and had some debt. Mavrakes confided in respondent that she was distraught that her short marriage was not working out and would often call him to talk about her distress. She told him that her husband was "a degenerate gambler" who spent days on end in Atlantic City gambling whole paychecks away. Respondent recalled that he and Mavrakes "talked all the time."

Respondent also recalled advising Mavrakes that, ordinarily, he would have sent the husband written notice of the representation and recommend that the husband seek legal counsel. Mavrakes, however, did not want respondent to take that action right away, fearing her husband's reaction. She had told him that the husband was "bipolar" and otherwise "unstable."

With respect to filing a complaint on Mavrakes' behalf, respondent testified as follows:

> Well, originally, you know, she was not breathing down my back to file the Complaint. It wasn't one of these things where it's day one. It was, I gave her some material, she came back, we reviewed it, so it was a couple months. Then, when I went to file the Complaint she asked me not to file it until after she returned from cleaning the apartment — cleaning the house or whatever it was.
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> [2T115-20 to 2T116-3.][1]

Respondent further recalled that in November and December 2008, Mavrakes had called his office numerous times and that, for a period of two or three weeks, he "would not take her calls." By that time, she had advised him to file the complaint. Thereafter, respondent "didn't hear from her a month [sic] and next I got the letter from the attorney saying that I'm discharged."

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[1] "2T" refers to the transcript of the July 8, 2010 DEC hearing.

C. **The Conrad Matter – Docket No. XII-09-0027E**

This count charged respondent with gross neglect, failure to communicate with the client, and failure to return an unearned fee.

On October 22, 2008, Dennis Conrad retained respondent to file an answer to a complaint for divorce. According to respondent, who was the only witness to testify at the ethics hearing in this matter, Conrad gave him a $100 consultation fee and a $3,500 retainer against his fee for services. Under the agreement, respondent was to receive $300 per hour for his services.

When respondent did not timely file an answer to the complaint, a default was entered in favor of the wife. Respondent testified that he learned of the default from his client, who had received a call from his wife asking why he had not answered the complaint.[2]

Respondent recalled that, at some point thereafter, he met with his adversary, Lou DeLeo, at the courthouse. DeLeo agreed

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[2] In his answer, respondent stated that he learned about the default at the Union County Courthouse, where he encountered Conrad's wife's attorney, on an unspecified date.

to execute a stipulation vacating the default. Respondent recalled preparing the stipulation, but had no recollection of sending it to DeLeo.

When pressed, respondent also admitted that he had never properly entered his appearance in the case. A document contained in Exhibit R-4, Defendant's Entry of General Appearance, dated October 22, 2008, was never filed. Therefore, neither the court nor Conrad's wife was aware that Conrad had retained respondent to file an answer on his behalf.

Respondent also recalled explaining to Conrad (at an unspecified time) that the default could easily be vacated by way of a stipulation.

According to respondent, in about March 2009, Conrad determined to retain new counsel. Respondent had not yet taken action to vacate the default. By letter dated April 30, 2009, respondent turned over his file to Conrad's new attorney.

At the same time that he sent the file to the new attorney, respondent included a statement of services rendered, which indicated 3.9 hours for legal services at $300 per hour, or $1,170 of the $3,500 retainer. The document also indicated that, by May 10, 2009, respondent would refund the remaining unearned

portion of the fee ($2,330). He never did so, claiming, at the ethics hearing, that he could not afford to pay the money back.

With regard to communications with Conrad, respondent conceded that Conrad may have (as he claimed in the grievance) attempted to meet with respondent at his office, only to find that respondent was not there. Likewise, respondent conceded that he had received telephone calls from Conrad, but, "for whatever reason," he simply failed to return those calls.

D. The Gougoumis Matter – Docket No. XII-09-0040E

Count four charged respondent with gross neglect and failure to communicate with the client.

In October 2008, Peter and Deborah Gougoumis retained respondent to represent them as third-party defendants in their son's matrimonial matter. Respondent produced a large number of documents comprising Exhibit R-6, evidencing a significant amount of work performed on behalf of the Gougoumises. When respondent was asked if he could produce copies of monthly billing statements to the Gougoumises, he stated, "I, I prepared a statement to Miss Gougoumis. I know I did. I cannot seem to locate it in there. I'm not certain – it was not monthly, but it was periodic. We didn't do monthly statements."

Respondent maintained that he had kept the Gougoumises informed about the status of their matter. He specifically recalled having spoken to Mrs. Gougoumis by telephone, after the $4,000 retainer had been depleted. She told respondent that her business had been slow and that she would remit payment in the future. Indeed, respondent recalled having had several such conversations with her about his bill.

In a November 11, 2009 submission to the presenter, which was made a part of Exhibit R-7, respondent recounted, in great detail, the services performed for the Gougoumises. That document chronicles communications that respondent had with the Gougoumises from September 22, 2008, when he was retained, to December 2008, when his services were terminated.

No evidence was presented to support the gross neglect charge.

E. <u>The Espiritu Matter – Docket No.XII-09-0041E</u>

Count five of the complaint charged respondent with gross neglect, a pattern of neglect, failure to communicate with the client, failure to return an unearned fee and failure to cooperate with the ethics investigation. At the ethics hearing, the presenter withdrew the latter charge.

Melinda Lucas Espiritu, the grievant, did not appear at the DEC hearing. Respondent, however, testified that Espiritu retained him, in August 2008, to obtain an annulment or divorce. To that end, she gave respondent $2,000. An undated fee agreement called for respondent to be paid at a rate of $350 per hour.

Espiritu's husband, a member of the armed forces, was stationed in Germany, when respondent first met with Espiritu, in August 2008. Espiritu reasoned that she might have been entitled to an annulment because her husband had promised her, prior to their marriage, that he would never be deployed overseas. Yet, over a year had passed, during which her husband had been deployed to Germany and Iraq. Respondent researched annulments, with which he was unfamiliar, and then prepared a complaint for an annulment or divorce. At an unspecified time, respondent and Espiritu discussed the logistics of serving the husband overseas. When Espiritu told respondent that her husband would be returning to an Army base in Texas, in January 2009, the two decided to file and serve the complaint upon his return. Respondent stated, unequivocally, that it was a strategic decision made with his client, not his own undue delay that caused the complaint to remain unfiled.

Respondent recalled three meetings with Espiritu about her matter, including the initial meeting, each of which lasted over an hour. He testified that he spent time researching annulments and preparing the complaint and associated documents. He also recalled talking to Espiritu five or six times on the telephone, when the duration of the calls ranges from a few minutes to thirty minutes. He estimated that, in total, he spent a little less than one hour on the telephone with his client.

Respondent conceded that, in November and December 2008, Espiritu made several calls to his office that he simply ignored. He explained that he spent much of that time "drunk" and that, as detailed below, Espiritu "joined a cacophony of messages of people complaining that I had not returned their telephone calls."

In December 2008, before her husband's return, Espiritu terminated respondent's representation.

Thereafter, Espiritu filed for fee arbitration. In July 2009, she received an award of $2,000, the full amount that she had paid respondent. Although respondent was aware of that proceeding, he did not participate in it. He speculated that, if he had participated, he could have shown over six hours of legal services devoted to Espiritu's case, which, at the fee-agreement

rate of $350 per hour, amounted to $2,100, or slightly more than the fee Espiritu had paid him.

According to respondent, due to his own personal financial difficulties, the fee arbitration award remained unpaid until October 2009.

Respondent offered mitigation for his actions. In 2003, when his weight reached five-hundred seventy pounds, he underwent bariatric bypass surgery. Over the next eighteen months, he lost three hundred pounds. He found his new situation very stressful, but could not, as he had in the past, seek solace in food, because his stomach was so much smaller. So, instead of abusing food, he began to abuse alcohol. By 2004, he was drinking "virtually every night." By 2007, his practice of consuming between two and three two-liter bottles of wine per night began to affect him. He grew isolated, canceled appointments with clients, and failed to return telephone calls:

> At any rate on August 26th of '09 I went into Bowling Green Rehabilitation in Pennsylvania. I had been trying to get into a rehab for a couple of months but much like everything else I had let my health insurance lapse, I had no health insurance. I was on the waiting list for Bergen Pines, it's a county hospital and the State Bar Association got me into rehab. It saved my life is what it really did. I was in there for 30 days, after that I started AA, I remain in AA today.

> I got to bring something up because I got out of rehab in October and I paid Espiritu back two weeks later, it wasn't to buy off an ethics complaint, I knew that. When I say I knew that, I knew you can't do that. I have had to speak about my alcoholism probably a hundred times since I've got out of rehab and I'm saying this as an apology for reasons I cannot account for in this setting, I mean, as you are aware, I had a prior hearing. I have a very difficult time talking about it but when I say a difficult time talking about it, a difficult time keeping my emotions together but in this particular setting and I don't know why but I think it's probably because I know I let down the standards of my profession by my alcoholism. I don't drink anymore.
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> Q. Do you need a little break?
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> A. No. I don't drink anymore, I answer all my calls, I haven't had any complaints from clients, that's it, that's all I can tell you.
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> [3T64-14 to 3T65-21.][3]

In the Rodriguez matter, the DEC found respondent guilty of gross neglect and failure to return an unearned fee. In the Mavrakes matter, the DEC found that respondent failed to return the $200 filing fee and to promptly turn over the file to new

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[3] "3T refers to the transcript of the August 2, 2010 DEC hearing.

counsel upon termination of the representation. The DEC also found that respondent failed to take Mavrakes' telephone calls for the three weeks preceding her termination of the representation. The DEC made no finding on the charge of gross neglect.

In the Conrad matter, the DEC found respondent guilty of gross neglect, in that he failed to file an answer and caused the entry of default against his client. So, too, the DEC concluded that, although respondent had established that he worked on Conrad's matter, none of it inured to the client's benefit, as respondent never filed an answer for five months. The DEC found that the entire fee was unearned and that respondent had a duty to return it. The DEC dismissed the charge that respondent had failed to communicate with the client.

In the Gougoumis matter, the DEC dismissed the charge that respondent had failed to keep his clients informed about the status of their matter. The DEC did not address the gross neglect charge.

In the Espiritu matter, the DEC found respondent guilty of failure to communicate with his client, citing respondent's refusal to take her telephone calls because he was inebriated. The panel dismissed the remaining charges (RPC 1.1(a) and RPC

1.16(d)) for lack of clear and convincing evidence. With regard to the latter charge, the DEC noted that respondent performed the work charged to Espiritu and ultimately returned the funds after a fee arbitration award in her favor.

The hearing panel report is silent about the charge in the final count of the complaint, a pattern of neglect. The panel report does mention a "pattern of conduct that has affected several clients," but the reference is unrelated to any ethics rule.

In aggravation, the DEC considered respondent's failure to take steps to "reimburse even token sums to his clients, or to pay them back their money in installments" and respondent's prior admonition.

In mitigation, the DEC considered that respondent cooperated with ethics authorities and that the misconduct for which he received an admonition in 2010 arose out of the same long episode of alcoholism. The DEC recommended a censure.

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.

In the Rodriguez matter, respondent was retained, in December 2007, to pursue either a construction lien or lawsuit

against a builder for the collection of $36,000 in unpaid painting services provided by his client. In January 2008, respondent sent a demand letter to the builder for payment and threatened legal action. That appears to be the only action respondent took in the case. He faulted Rodriguez for failing to provide him with documentation about assets owned by the builder. Yet, respondent admitted that he had not even performed a corporate "look up" through the Secretary of State, an initial inquiry into an entity's status. Indeed, respondent conceded that, beyond sending one letter to the builder, he did nothing of substance to forward his client's claim. We find him, thus, guilty of gross neglect, a violation of RPC 1.1(a).

In addition, respondent was charged with violating RPC 1.16(d) by failing to return to Rodriguez the $2,500 fee. Respondent conceded, at the DEC hearing, that he had not earned the fee. Although he expressed an intention to return those funds to Rodriguez, he apparently never did so, citing financial reasons.

In the Mavrakes matter, respondent was retained, in October 2008, to file a divorce complaint. He agreed to a $1,000 flat fee because he knew his young client's mother. He prepared a draft complaint, but Mavrakes asked him not to file it until she

"cleaned" out their residence, fearing her husband, who was described as a compulsive gambler in an unstable mental state.

In about November or December 2008, Mavrakes told respondent to go ahead and file the complaint. During this same two-month period, respondent ignored two or three weeks of telephone calls from his client, who sought information about the status of her case. On February 9, 2009, with the complaint as yet unfiled, respondent received a facsimile from attorney Anthony Sytko, notifying him that Mavrakes had retained him to represent her.

Although respondent's representation was short-lived, he is still guilty of gross neglect, a violation of RPC 1.1(a). Once he was told to file the complaint, Mavrakes was understandably apprehensive, fearing her mentally unstable husband's reaction to a surprise divorce. Under these circumstances, the three months (November 2008 to February 2009) that respondent ignored his client's pleas to take action constitute an unreasonably long period of time to leave her "hanging," without a filed complaint.

Respondent also failed to keep Mavrakes reasonably informed about events in the case. Although the time period during which he ignored his client's calls for information seems brief, two

to three weeks according to respondent, it was at a critical juncture, right after Mavrakes told respondent to file the complaint. Anxious about her husband's reaction, Mavrakes awaited a "heads up" from respondent that the complaint had been filed and served on her husband. We find, thus, respondent guilty of violating RPC 1.4(b).

Additionally, although respondent established that he performed about six hours of work for Mavrakes, she did not benefit from it, for he never filed her complaint. He also failed to return the $200 that Mavrakes had advanced specifically for filing fees in the case. To that extent, respondent is guilty of having failed to return funds to the client upon termination of the representation, a violation of RPC 1.16(d).

In the Conrad matter, respondent was retained, in October 2008, to answer a divorce complaint. He and Conrad executed a fee agreement. Respondent received $3,600 to apply against future fees. He then failed to answer the complaint, resulting in the entry of a default against Conrad. Because respondent failed to file his appearance with the court, he did not receive the notice of default entered against his client. Instead, he learned about the default directly from the client.

Then, after promising Conrad that he would vacate the default with the cooperation of his adversary, respondent apparently again failed to take action. Eventually, in March 2009, Conrad grew tired of respondent's inaction and retained new counsel. For respondent's failure to properly advance his client's claim, once he became aware of the default, we find him guilty of gross neglect (RPC 1.1(a)).

Respondent also failed to keep his client informed about events in the case, a violation of RPC 1.4(b). In fact, it was Conrad who informed respondent about the default. Respondent conceded that there may have been times when Conrad found him unavailable at his office and that he failed to return calls from his client seeking information about the case.

Finally, respondent acknowledged that he did not earn the entire fee that Conrad paid and that he failed to promptly turn over the client file to subsequent counsel. As indicated previously, respondent agreed to return $2,330 to Conrad, but never did so. His failure to return the unearned portion of the fee and to turn over the file to subsequent counsel violated RPC 1.16(d).

In the Gougoumis matter, we agree with the DEC and determine to dismiss the charge that respondent failed to keep

his clients informed about the status of their matter (RPC 1.4(b)). Respondent testified, and the record supported his assertion, that he spoke with them frequently about the case during the pendency of the matter. Similarly, the record is devoid of evidence that respondent acted negligently with respect to the Gougoumises' matter. We, therefore, dismiss the RPC 1.1(a) charge as well.

In the Espiritu matter, respondent was retained, in August 2008, to obtain an annulment or divorce after his client's husband was called to active duty overseas. Respondent prepared a complaint and related documents and discussed service of process with Espiritu, who decided that they should wait to file and serve the complaint in January 2009, when the husband was due to return to the United States.

In December 2008, Espiritu terminated the representation, before the agreed-upon time to file the complaint had expired. Under those circumstances, it cannot be said that respondent neglected the case. Therefore, we determine to dismiss the RPC 1.1(a) charge.

Respondent did, however, fail to communicate with Espiritu in the weeks before he was discharged from the representation. In fact, he believed that his failure to return her telephone

calls was at the heart of Espiritu's decision to terminate the representation. Respondent, thus, violated RPC 1.4(b).

The DEC dismissed the charge that respondent failed to return an unearned fee. Respondent testified about a significant amount of work performed for the client. In addition, he refunded the entire fee, after defaulting in a fee arbitration proceeding. We, therefore, concur with the DEC's dismissal of RPC 1.16(d) for lack of clear and convincing evidence.

Respondent was also charged with engaging in a pattern of neglect in the Rodriguez, Mavrakes, Conrad, and Espiritu matters. For a finding of a pattern of neglect at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). When the gross neglect in Rodriquez is combined with the gross neglect in the Mavrakes and Conrad matters, a pattern emerges. Therefore, we find that respondent violated RPC 1.1(b).

In summary, respondent grossly neglected the Rodriquez, Mavrakes and Conrad matters; failed to communicate with his clients in Mavrakes, Conrad, and Espiritu; and failed to return unearned fees in Rodriquez, Mavrakes, and Conrad, violations of RPC 1.1(a), 1.4(b), and 1.16(d). He also displayed a pattern of neglect, a violation of RPC 1.1(b).

II. DRB 11-193

This additional matter was before us on a recommendation for an admonition filed by the DEC. A two-count complaint charged respondent with two instances of gross neglect (RPC 1.1(a)), pattern of neglect (RPC 1.1(b)), one instance of lack of diligence (RPC 1.3), two instances of failure to communicate with the client (RPC 1.4(a), more appropriately (b)), and failure to return an unearned fee (RPC 1.16(d)).

A. The Peterson Matter – Docket No. XII-09-046E

Count one of the complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a), more properly (b) (failure to keep client adequately informed about the case), and RPC 1.16(d) (failure to return unearned fee).

At the inception of the DEC hearing, the presenter withdrew paragraphs three and eight of the complaint, as well as the charged violation of RPC 1.16(d), acknowledging that it could not be proven, by clear and convincing evidence, that respondent had violated that rule.

In September 2007, Darlene Peterson retained respondent to represent her in a divorce action, for which she paid him $2,500 as a retainer and $250 for a filing fee. Respondent held three meetings with Peterson: one in October and two in November 2007. Respondent then prepared a complaint, which was sent to the court for filing.

The court, however, returned the complaint "unfiled" for failure to append a required confidential litigant information statement.

Peterson did not testify at the DEC hearing. Respondent testified that he was unaware that the complaint had been returned unfiled until sixteen months later, when, in January 2009, he received a telephone call from Peterson. Respondent did not dispute that the pleadings were returned to him by the court, but was unable to explain how he had overlooked them for over a year thereafter.

Respondent returned both the $2,500 fee and the $250 filing fee to Peterson.

B. The Biesecker Matter – Docket No. XII-10-016E

Count two of the complaint charged respondent with violating RPC 1.1(a) and (b) (gross neglect and pattern of

neglect), RPC 1.4(a), more properly (b) (failure to keep client adequately informed about the case), and RPC 1.16(d) (failure to return an unearned fee).

In May 2009, David Biesecker (Biesecker) retained respondent to represent his daughter, Melanie Biesecker, in a New Jersey criminal matter. Biesecker gave respondent a $2,500 retainer. Both Bieseckers testified at the DEC hearing.

In June 2009, respondent met with Melanie at the Susquehanna, Pennsylvania, correctional facility where she was incarcerated at the time. Prior to that incarceration, she had been arrested in Bergen County, New Jersey, had been released on her own recognizance, and had then failed to appear at a New Jersey pre-trial conference. Apparently, Melanie's boyfriend, with whom she was arrested in the New Jersey incident, misinformed her that she did not need to appear at the New Jersey court hearing. As a result, a bench warrant was issued against Melanie. Respondent was retained to vacate the bench warrant and to return her to "ROR" status in New Jersey.

Biesecker testified that he could not reach respondent after their initial meeting and thought that his daughter was incarcerated in Pennsylvania for an excessive period of time due to respondent's mishandling of the case. Ultimately, in

September 2009, after learning that respondent had been hospitalized for inpatient rehabilitation, Biesecker retained another attorney, who was successful in having the warrant vacated shortly thereafter.

Melanie testified that she was released from confinement in Pennsylvania, on November 4, 2009, and taken by correction officers to Bergen County. She was released later that same day.

According to Melanie, she also had difficulty reaching respondent after their initial meeting, as his voicemail box was full. She was only able to speak with him once. In September 2009, she learned from Pennsylvania counsel that respondent had been hospitalized.

Respondent testified that Melanie had been arrested and charged in New Jersey with the third degree crimes of manufacturing, distributing and dispensing a controlled dangerous substance. Her bail had been revoked, when she had failed to appear at a court conference. He also recalled speaking to her two or three times, while she was incarcerated, noting that he was limited in what he could tell her because he had been retained by her father.

Respondent recalled speaking to an assistant prosecutor assigned to the case about vacating the bench warrant, but was

referred to a new assistant prosecutor, who refused to cooperate with him in that request. Respondent also testified that the Pennsylvania authorities would not release Melanie until she completed serving her sentence there. In respondent's experience, without the New Jersey assistant prosecutor's cooperation, Melanie would be required to appear in person in New Jersey, before the ROR would be reinstated. Therefore, there was little that he could do for her, until she was released from confinement in Pennsylvania.

In the Peterson matter, the DEC found that respondent's failure to prosecute his client's claims for over a year constituted gross neglect and lack of diligence, in violation of RPC 1.1(a) and RPC 1.3, respectively. As previously noted, the RPC 1.16(d) charge was withdrawn. The DEC made no finding regarding RPC 1.4(b).

In the Biesecker matter, the DEC found respondent's testimony credible and concluded that "Ms. Biesecker did not remain confined in Pennsylvania due to any neglect on respondent's part. Rather, she remained confined until she served the sentence imposed by the Pennsylvania court."

The DEC also accepted respondent's explanation that Melanie could not have had the bench warrant vacated without her

appearance in court here in New Jersey. Finding that respondent had not violated any of the charged rules, the DEC dismissed the Biesecker count for lack of clear and convincing evidence.[4]

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.

It was clear to the DEC from the evidence adduced at the hearing, including respondent's own testimony, that he grossly neglected and lacked diligence in the Peterson matter, violation of RPC 1.1(a) and RPC 1.3. In fact, for a period of over a year, he had no idea that the complaint had been returned to his office unfiled, due to a deficiency in the pleadings. The DEC made no finding regarding RPC 1.4(b). We dismiss that charge for lack of clear and convincing evidence.

As previously noted, for lack of clear and convincing evidence the DEC dismissed the Biesecker complaint in its entirety, a determination with which we concur.

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[4] The hearing panel report did not discuss the pattern of neglect charge.

Given the similar nature of the ethics infractions and the timeframe during which they occurred in all of these matters, we find it appropriate to consider respondent's misconduct in DRB 11-108 and DRB 11-193 together, in assessing the appropriate degree of discipline. Despite two separate recommendations for discipline, all of the misconduct occurred during the same period, roughly from 2007 to 2009. We note also that the grievances in DRB 11-108 and DRB 11-193 were all filed within months of each other and, ideally, should have been considered together.

In a similar, but more serious case, In re McBride, 188 N.J. 389 (2006) an attorney received a reprimand for misconduct in five separate client matters, including gross neglect, pattern of neglect, failure to keep clients reasonably informed about their cases, failure to safeguard clients' and third parties' funds, and failure to cooperate with disciplinary authorities. There was significant mitigation presented regarding the attorney's dependency on powerful prescription pain medication, after a motorcycle accident injured his back, requiring substantial spinal surgery. His practice slowly deteriorated, as a result of his condition and addiction to

medication. The attorney had a prior reprimand, in 2004, and was transferred to disability-inactive status, in 2005.

Similarly, this respondent lost control of his practice as the result of alcoholism following bariatric bypass surgery. He finally sought treatment for his addiction in 2009. From approximately 2004 until then, he was functioning on the margins as an attorney, drinking vast quantities of wine on a nightly basis. All of respondent's misconduct, whether in these or in the March 10, 2010 admonition matter, can be traced back to the same long episode of post-bariatric surgery alcohol abuse.

It appears now that respondent has straightened himself out, having sought in-patient treatment in 2009. He continues to attend regular AA meetings.

We find that respondent's misconduct is certainly no more serious than McBride for additional reasons. Respondent has a prior admonition, while McBride had a prior reprimand. So, too, McBride failed to safeguard client funds and failed to cooperate with disciplinary authorities, elements that are not present here. Therefore, we determine that a reprimand sufficiently addresses the totality of respondent's transgressions.

We also require respondent to continue his participation in AA for a sustained period of time, with proof of attendance sent

periodically to the OAE. Lastly, we require him to refund the unearned fees to the clients in Rodriguez, Mavrakes, and Conrad, as he indicated he intended to do.

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 Matters of Neil G. Duffy, III
Docket Nos. DRB 11-108 and DRB 11-193

Argued: July 21, 2011

Decided: October 6, 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
Julianne K. DeCore
Chief Counsel