SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 11-176 and 11-205
District Docket Nos. VIII-2010-10E
and VIII-2010-54E

IN THE MATTERS OF	
RALPH V. FURINO	
AN ATTORNEY AT LAW	

Decision

Argued: September 15, 2011

Decided: December 6, 2011

Anish A. Joshi appeared on behalf of the District VIII Ethics Committee in DRB 11-176.

Respondent waived appearance for oral argument in DRB 11-176.

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

These matters came before us in the form of a recommendation for discipline and a default. They have been

consolidated for the purpose of imposing a single measure of discipline. We determine to impose a three-month suspension on respondent, with certain conditions.

In DRB 11-176, the District VIII Ethics Committee (DEC) recommended a censure, with conditions, for respondent's violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 1.16(d) (upon termination of representation, failure to surrender papers and property to which the client is entitled), and RPC 8.1(b) (failure to cooperate with disciplinary authorities).

The other matter, DRB 11-205, was before us on a certification of default, filed by the DEC, pursuant to R. 1:20-4(f). There, the complaint charged respondent with gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities (RPC 1.4(b) and (c)) and RPC 8.1(b)). Respondent filed a motion to vacate the default, which we denied for the reasons detailed below.

Respondent was admitted to the New Jersey bar in 1981. At the relevant times, he maintained an office for the practice of law in Jamesburg.

On September 21, 2010, respondent received a reprimand for gross neglect, lack of diligence, failure to communicate with the client, financial assistance to the client in connection with contemplated litigation, and an agreement with the client limiting respondent's liability for malpractice when the client was not independently represented by counsel. In re Furino, 203 N.J. 425 (2010). Specifically, respondent's inaction led to the dismissal of his client's personal injury complaint. He failed to keep her informed of the status of that matter, of which he himself was unaware, until she sought his representation in a second personal injury matter four years later. That event prompted respondent to examine the file and learn that the case had been dismissed. Respondent also advanced the client $3000 against the potential settlement of the second personal injury action and agreed to forego a fee as recompense for the dismissal of the first action.

I. DRB 11-176 (The Cevasco Matter)

This matter was first before us as a default, at our February 18, 2010 session. After we granted respondent's motion to vacate the default, the DEC held a hearing on August 4, 2010, where it received testimony from respondent's client and

grievant in this matter, Penny A. Cevasco, and respondent, who appeared pro se.

Cevasco testified that she and her daughter, Nicolette, were injured in an automobile accident on November 11, 2004. Cevasco suffered a torn meniscus, which was surgically repaired in February 2005. Her daughter's injuries required "multiple injections into her cervical spine area, including the trapezoid area." Cevasco retained respondent to represent her and her daughter in a personal injury action stemming from their injuries.

On October 3, 2006, respondent filed suit on behalf of Cevasco, her husband Louis, and Nicolette.[1] On February 23, 2007, defense counsel wrote to respondent and requested that he provide answers to the Form A interrogatories, as well as to supplemental questions, which were enclosed, along with a notice to produce. Respondent acknowledged that defense counsel mailed him the interrogatories on that date.

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[1] Cevasco's husband's lack-of-consortium claim was not at issue in this disciplinary matter. He and Cevasco are either separated or divorced.

Cevasco testified that, in that same month, she went to respondent's office, where she provided him with the information required to answer them. Respondent admitted that, after the interrogatory answers were completed, he did not follow up with his long-time secretary, Marie, to make sure that she had mailed the answers to defense counsel; he "just assumed they were gone and there wasn't an issue." He did not recall having received a telephone call from his adversary, requesting answers to the interrogatories. As it turned out, respondent did not serve defense counsel with answers to the interrogatories.

On July 25, 2007, defense counsel wrote to respondent, informed him that he had not received the answers, and advised him that, if he did not provide the interrogatory answers within ten days, he would file a motion to dismiss the complaint. When the answers were not served, counsel filed the motion.

Respondent did not oppose the motion, which was granted, and the complaint was dismissed, without prejudice, on October 19, 2007.

On February 20, 2008, defense counsel filed another motion to dismiss the complaint, this time with prejudice, for respondent's continued failure to provide the answers to the interrogatories. On March 17, 2008, the motion, which was again

unopposed, was granted, causing the complaint to be dismissed with prejudice.

Respondent claimed that he did not receive defense counsel's letter requesting the answers to interrogatories; the letter informing him that the answers were overdue and threatening him with a motion to dismiss, if they were not served within ten days; the first motion to dismiss; the order dismissing the complaint without prejudice; the second motion to dismiss; and the order dismissing the complaint with prejudice. He offered a variety of explanations as to how this could have happened.

First, respondent suggested that, perhaps, Marie had failed to mail the interrogatory answers and had failed to bring the motions and orders to his attention. He claimed that Marie routinely reviewed the mail and directed his attention to "whatever she thought was important." With respect to motions, in general, respondent stated that he reviewed them with Marie and, together, they would decide what would be done with them. Ultimately, the documents would be put into the client file.

As to the motion to dismiss in the Cevasco case, respondent claimed to have no independent recollection of having received it when it came into the office. However, he stated that, if

the motion had come into the office, he and Marie would have followed the established office practice, that is, she would have brought it to his attention and they would have reviewed it and "dealt with it."

After March 2008, when the complaint was dismissed with prejudice, respondent did nothing to follow up on the file, including calling the courthouse for an update, because he "didn't know there was a problem;" he relied on Marie to let him know if something needed to be done with a case.

At some point, Marie developed Parkinson's Disease. Her decline was gradual, but the illness did not affect her cognitively. Marie went out on disability in the fall of 2007. By the time of respondent's testimony, she was "seriously disabled."

Sometime in 2008, respondent hired a new secretary, who left after about eight or nine months. Since then, his secretaries have been part-time, due to the economy.

Respondent also speculated that he did not receive the motions and orders due to delivery problems with his mail. He stated that, in addition to his 14 West Church Street address, there was a 14 East Church Street address, at which his mail would sometimes be delivered. He claimed that "[t]hose people

would just throw it in the garbage." He also testified that, sometimes, his mail was delivered to a Dorothy Furino, who lived "down the street." She, however, would bring his mail to him. Moreover, the letter carrier "could never get certified mail right." According to respondent, this problem had been ongoing for "several years." Yet, it never occurred to him to get a post office box, when he was having difficulty with mail delivery.

When asked if he had grossly neglected Cevasco's case, respondent stated: "I made a mistake. Yes. My office made a mistake. Yes." He believed that he had kept Cevasco informed about the case, "as [he] knew it."

Cevasco testified that respondent did not inform her either that the complaint had been filed or that it had been dismissed. Sometime in 2008, she called the court and was told that there was no record of any case having been filed. She testified that she never saw the complaint or the answer until the DEC investigator gave her a copy, after she filed the grievance against respondent, in July 2008.

Cevasco gave inconsistent testimony with respect to the communication between her and respondent, prior to late February 2007, when they met in his office to answer interrogatories. On

the one hand, Cevasco testified that she had difficulty communicating with respondent even before that time. Specifically, between 2004 and 2006, when she called the office, respondent sometimes answered the phone, his secretary sometimes answered, and, at other times, the answering machine picked up.

On the other hand, Cevasco testified, on cross-examination, that, prior to 2007, she and respondent talked on the phone every couple of weeks. She also met with him in his office two or three times prior to the late February 2007 meeting.

According to Cevasco, after she answered the interrogatories, in February 2007, the communication between her and respondent stopped, despite her attempts to reach him. About a month after she had completed the interrogatory answers, she called the office to request a copy. Thereafter, she called once a week or "sometimes everyday" or "every couple of weeks." She estimated that, by July 2008, she had called respondent fifteen-to-twenty times.

All told, Cevasco surmised that, between 2004 and 2008, she tried to reach respondent fifty times. With the exception of her visit to the office to provide answers to interrogatories, she never heard from him or anyone in his office during that time. Between the date Cevasco went to respondent's office to

complete the answers to interrogatories and the date of her testimony, Cevasco never spoke to respondent or anyone on his staff.

Cevasco expressly denied that respondent's secretary had returned any of her telephone calls to tell her that respondent would call her when he had a chance or to find out why she was calling. She last heard from respondent in 2009.

Cevasco wrote to respondent on August 7, 2008, asking him for an update on the status of the case. The letter stated:

> I am writing this letter to find out what is going on w/ the lawsuit for Nicolette + I? You don't return my phone calls. Why? Neither Monmouth or Middlesex Courts have anything on file. Did you not follow up? Did you settle out of court? What's going on?
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> [Ex.C10.]

Cevasco sent the letter to respondent at his Jamesburg address, by certified and regular mail. The certified letter was returned, but the letter sent by regular mail was not. Cevasco testified that she did not receive a reply to the letter.

She also emailed respondent, on August 13, 2008, at an address that respondent denied was his. He did not reply to her letter or email.

Eventually, Cevasco hired another attorney, who was able to have the action reinstated and to obtain a "partial settlement" for her.

It appears that the parties' inability to communicate regularly was due, in part, to Cevasco's restrictions and work schedule. She conceded that she told respondent not to call her at home because no one answered the phone. That was so because of the high number of calls Cevasco was receiving from debt collectors. Respondent claimed that he and Cevasco could have communicated, if she had called him on his cell phone or home phone.

Respondent stated that, whenever Cevasco called him, it was difficult to return her calls because she drove a school bus and, therefore, he had to call her at very specific times. Often, he would be unsuccessful in reaching her. Then, when she returned his call, he would be unavailable.

Cevasco remembered that respondent had reviewed the file with her, when she had gone to his office to prepare the interrogatory answers. She denied having received a letter, prior to that time, informing her of the need to go to his office and review the interrogatories and answer them. She also denied that respondent had sent any correspondence to her. She

testified: "There's not one piece of paper with any information from you. I have no file from you."

Respondent, in turn, testified that the client receives a copy of every document that is sent out from his office, including the complaint. In this instance, he could not state whether the complaint was or was not mailed to Cevasco, because Marie took care of that. Although he tried to talk to Marie, who no longer worked for him due to Parkinson's Disease, she was "for lack of a better word . . . gone." Nevertheless, he reiterated, this was the practice in the office.

With respect to interrogatories, the office practice was to send them to the client with a cover letter, requesting the client to answer them to the best of the client's ability. The letter further directed the client to come into the office, when the answers were completed, so that he and the client could go over them. Respondent acknowledged Cevasco's claim that she did not get such a letter and that the file did not contain a copy of it. However, he maintained, this was the office routine.

Respondent explained that, consistent with his office practice, Cevasco would have signed the certification for the answers at their meeting, in February 2007, and that Marie would have sent Cevasco a copy of the answers for her review, before

they were served on counsel. After Cevasco's final approval, Marie would have mailed the interrogatory answers to counsel, with a copy to Cevasco. This was his standard practice and what he believed had been done in Cevasco's case. Nevertheless, he conceded that the file did not contain a copy of the final, typed version of Cevasco's interrogatory answers. In addition, he could not find the tape onto which he had dictated the final answers.

Respondent testified that, after the complaint was filed, he met with Cevasco "several times." He denied that they never talked, after the meeting where they reviewed the interrogatory answers. Specifically, he recalled conversations with Cevasco about her surgery and whether she would require physical therapy or additional surgery. They talked about the importance of her sending him medical bills. He acknowledged that, when he requested something from Cevasco, she would get it to him.

Respondent produced a letter, dated March 8, 2007, requesting Cevasco to sign medical authorizations and to review a list of medical providers that she and her daughter had seen, since the accident, so that respondent's records would be up-to-date. Cevasco signed the authorizations, dated them March 14, 2007, and returned them to respondent. He did not know why the

medical authorizations signed by Cevasco had never been forwarded to defense counsel.

Respondent denied Cevasco's claim that she and her new attorney requested her case file several times, but received nothing. He stated that, if Cevasco wanted a copy of something, she could have asked him and he would have taken care of it immediately.

With respect to the failure-to-cooperate charge, respondent asserted that the post office's notice of the DEC's May 28, 2010 certified letter, which demanded copies of the Cevasco file, did not identify the letter as having come from the DEC. Therefore, he said, he put the notice aside and never got around to picking up the letter. He maintained that, if the letter had been identified as coming from the DEC, he would have picked it up immediately.

Respondent contended that he also had never received the DEC's May 29, 2010 letter, even though it had been sent to the correct address. He claimed that the delivery of letters sent to him by certified mail often did not succeed, presumably due to what he perceived to be the incompetence of the letter carrier.

Respondent testified that he first received notice that Cevasco's case had been dismissed, when he received the DEC's September 4, 2008 letter enclosing the Cevasco grievance and requesting a written reply. He acknowledged having received the DEC's September 26, 2008 follow-up letter. When he had examined the file, there was nothing in it. Ultimately, he confirmed what had happened with the case by calling the courthouse.

When asked why he had not replied to the DEC letters, respondent stated:

> It's a horribly uncomfortable thing to deal with. I should have and I didn't. I mean I have high blood pressure. I couldn't tell you what my blood pressure is right now. This is really an uncomfortable thing to deal with.
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> [T111-22 to T112-1.][2]

Respondent admitted that he received, but did not reply to, the DEC investigator's December 23, 2008 and January 14, 2009 letters, requesting a reply to the grievance. He did not recall having received the DEC's July 31, 2009 letter, serving him with the amended ethics complaint. He suggested that the letter had

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[2] "T" refers to the transcript of the August 4, 2010 hearing before the DEC.

been delivered because Jamesburg, where his office is located, and Monroe Township share a zip code. Nevertheless, he conceded that someone had signed for the letter.

Respondent acknowledged receipt of the DEC's August 26, 2009 letter, directing him to file an answer within five days and informing him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. Respondent sent an answer to the DEC on March 8, 2010. When asked what had prompted him to finally file an answer, he explained:

> The fact that the thing is hanging over your head makes you nuts. I mean this is not a pleasant experience by any means. I don't think I've dealt with anything more disturbing than this. I had to deal with it. I tried not to. It's just wrong. I should have just did [sic] it. Ultimately I did and filed what I had to file and did what I had to do.
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> [T118-2 to 9.]

Finally, respondent denied that he had received the DEC's May 28, 2010 letter, demanding that he produce the entire file in the Cevasco matter.

The DEC concluded that respondent violated RPC 1.1(a), RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b). Although the DEC made no mention of RPC 1.3 in its determination, the panel report stated

that "the passage of over a year on a file in suit with absolutely no activity acknowledged or engaged in by the plaintiff's attorney is a lack of diligence in and of itself." The DEC also referred to respondent's lack of diligence as having led to the dismissal of Cevasco's complaint.

In essence, the DEC concluded that respondent failed to monitor the case and to manage the discovery aspect of the litigation. Moreover, the DEC noted that, even if respondent's claimed difficulties with the delivery of mail were true, "the simple fact that time passed on this case well beyond any discovery period and nothing was done by [respondent] to check on its status is cause enough to find that he failed to exercise reasonable diligence in handling the grievant's case."

Given respondent's prior reprimand for gross neglect, the DEC recommended a censure, plus two conditions: (1) that he obtain a post office box for his law firm and (2) that he be monitored by a proctor "until his office is properly organized such that internal notices alert him to the needs of his case management rather than what happened in this case."

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.

First, he grossly neglected and lacked diligence in his handling of the case. He took no responsibility for the management of his case load, claiming instead that his long-time secretary was charged with determining what was "important" and then consulting with him as to what to do. He never followed up with her to ensure that she completed the tasks assigned to her.

Interrogatory answers were never served. The complaint was dismissed twice, upon motions that were unopposed. The second dismissal was with prejudice. Respondent made no effort to seek reinstatement of the complaint. We find, thus, that he violated. RPC 1.1(a) and RPC 1.3.

Second, respondent failed to communicate with Cevasco, either on his own or in reply to her efforts to contact him. Cevasco testified that he did not send her a single piece of paper relating to the file. He was unable to counter her testimony, but produced a copy of a letter requesting that she sign medical authorizations. He did not notify her that motions to dismiss had been filed; he did not notify her that the complaint had been dismissed; he did not discuss with her the actions that could be taken to have the complaint reinstated; he did not answer most of Cevasco's telephone calls; and he ignored her letters. He, thus, violated RPC 1.4(b).

Third, respondent violated RPC 1.16(d), when he failed to return the file to Cevasco. Under that rule, a lawyer has a duty to surrender papers and property to which the client is entitled. Here, respondent failed to do so, on multiple occasions. Although the parties' testimony conflicted on whether the file ever was requested, the DEC obviously found Cevasco more credible. We, therefore, do not disturb that determination. Dolson v. Anastasia, 55 N.J. 2, 7 (1969) (requiring an appellate court to defer to the trial court's findings with respect to intangible aspects of a case, such as witness credibility).

Finally, respondent failed to cooperate with disciplinary authorities. He ignored every letter he received from the DEC, to the point of defaulting in the matter. Although he claimed that he often did not receive his mail due to the incompetence of the letter carrier, that problem had been going on for quite some time. Yet, he did nothing to rectify it. Moreover, he admitted to having received all but two of the seven letters sent to him by the DEC. We find, thus, that he violated RPC 8.1(b).

To conclude, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b) in the Cevasco matter.

II. DRB 11-205 (The Donovan Matter)

As indicated previously, this matter was before us on a certification of default filed by the DEC, following respondent's failure to answer the complaint. R. 1:20-4(f)(2).

Service of process was proper in this matter. On February 2, 2011, the DEC sent a copy of the formal ethics complaint to respondent, at his law office address, 14 West Church Street, Jamesburg, New Jersey 08831, by regular and certified mail, return receipt requested. On February 8, 2011, an unidentified person signed for the certified letter. Although the signature is illegible, as is most of the printed name written below, the "R" and "F" of the first and last names are discernible.

On March 7, 2011, the DEC sent a letter to respondent at the same address, by regular and certified mail, return receipt requested. The letter directed him to file an answer within five days and informed him that, if he failed to do so, the DEC could seek his temporary suspension or certify the record directly to us for the imposition of sanction. The letter sent by certified mail was returned and marked "unclaimed." The letter sent by regular mail was not returned.

As of June 10, 2011, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The complaint charged respondent with gross neglect (RPC 1.1(a)), lack of diligence (RPC 1.3)), failure to communicate with the client (RPC 1.4(b) and (c)), and failure to cooperate with disciplinary authorities (RPC 8.1(b)).

According to the complaint, on March 28, 2009, grievant Laura Ann Donovan retained respondent to administer the estate of her deceased husband, Timothy. Donovan paid respondent a $3500 retainer.

Donovan and respondent met approximately four times in his office. Respondent purportedly prepared a will for Donovan, wrote one or two letters on behalf of the estate to Timothy's life insurance company, wrote another letter to a company of which Timothy was a part owner, and made "one or more" telephone calls to "either entity." Yet in response to Donovan's new estate attorney's inquiry, in early August 2010, the life insurance company stated that it had never received one of respondent's letters regarding Donovan's claim under Timothy's policy.

To Donovan's "knowledge, information or belief," after January 2010, respondent performed no work for her husband's estate. On March 29, 2010, she wrote to respondent and also left a voice mail message for him. She received no reply to either communication.

Donovan hired a new attorney to complete the administration of the estate. He sent two letters to respondent and left several voice mail messages for him. Respondent ignored all of them.

In addition, Donovan requested, individually and through her new attorney, the return of her file. Respondent did not reply to or comply with these requests.

On May 7, 2010, Donovan filed a grievance against respondent.[3] Respondent did not reply to "most" of the DEC's letters to him, which presumably sought his reply to the grievance. However, on November 23, 2010, respondent wrote to the DEC investigator, stating that he would comply with the request for the file and that he would send him a written reply

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[3] According to the OAE's records, the grievance was filed on July 1, 2010.

to the grievance. Respondent did not follow through on his promise.

At some point, the investigator talked to respondent on the telephone. Respondent assured him that he would personally deliver the case file and his reply to the grievance on Monday, December 13th, 2010. Again, respondent did not keep his promise.

Additional facts were set forth in some of the individual counts of the complaint. In the second count, the complaint alleged that respondent failed to "monitor the action or to take measures to ensure [the] Estate's administration, particularly given the notice of potential estate litigation provided by the new attorney." In the third count, the complaint alleged that respondent had failed to provide Donovan with "written notice of the status of the administration of [the] Estate or of the need to re-bond the Estate," had failed to "provide bills and the case file upon receiving reasonable requests," and had failed to "keep his client reasonably informed of the matter or to respond to her reasonable inquiries for information, at most times during his representation of [Donovan]."

On July 28, 2011, Office of Board Counsel received from respondent a motion to vacate the default and for leave to file an answer. In the supporting certification, respondent stated that the Donovan matter was "frustrating" because, as soon as he was retained to represent the estate, Timothy's former wife filed an order to show cause regarding the life insurance policy. Thus, he had to "get that issue dealt with almost immediately after [he was] retained." Also, according to respondent, it was difficult to resolve the insurance issue because the insurance company did not reply to his letters or return his telephone calls.

In addition, there was the possibility of litigation against Timothy's business partner, which was going to be difficult because Timothy was deceased, and Donovan knew very little about the business. According to respondent, these issues arising out of Timothy's death were compounded by the fact that he had committed suicide, which had devastated Donovan.

In terms of other work, respondent attached a copy of a billing statement, which reflected the work that he did on the matter between March 25, 2009 and September 3, 2009.

Respondent also stated that, even though he is "a sole practitioner with a heavy court calendar" and is "often times out of the office for the entire day," when he is out of the office, his answering machine notifies the caller that he will not be available to return telephone calls or emails at those times. Further, he now has a Blackberry® and is able to email clients, when he is in court "or on the run."

With respect to his communication with Donovan, respondent denied that she could not get in touch with him. He claimed that he "often returned her phone calls at her work as she told [him] that was OK because she could receive calls at work." Moreover, he added, because Donovan is his cousin's friend, he gave her his cell phone number and told her that, if she could not reach him in the office, she should call him on the cell phone, "especially if she was upset by anything going on in the estate." Respondent did not recall her ever calling him on the cell phone.

In addition, respondent told Donovan that she could see him in the office "whenever she wanted" for updates. Allegedly, she was reluctant to do that, given the distance between her home and his office.

According to respondent, he copied Donovan, by email, on every letter he wrote on behalf of the estate. He claimed that she often responded to these emails. He also gave her copies "of whatever she needed," during their office meetings.

Respondent's certification also detailed the difficulties he was having with the management of his office, which he attributed to the economy. He stated:

> I am still practicing alone with a part time secretary. As the economy gets worse I have been doing more and more of the processing of the paperwork to keep costs down. That takes a lot of my time to keep up with the work as well as be in court on a regular basis. As you know the economy is horrible right now and has been that way for the last two and one half years. We are busy now with mostly family law clients with a heavy motion practice as well as Municipal Court work and general practice issues.
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> [Certification,¶7.][4]

As to his failure to reply to the grievance, respondent explained:

> I cannot adequately answer why I have not answered this grievance until now other than it is horribly uncomfortable to deal with

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[4] "Certification" refers to the certification in support of respondent's motion to vacate the default, dated July 25, 2011.

> and I guess when confronted with this very personal and embarrassing situation it's too easy to ignore rather than deal with the horrible stress involved in one of these cases. I am sure you know that any grievance is horribly uncomfortable, especially one from the friend of a relative.
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> [Certification,¶8.]

To prevail on a motion to vacate a default, an attorney must satisfy a two-prong test: (1) provide a reasonable explanation for the failure to file an answer to the complaint and (2) present meritorious defenses to the ethics charges.

Respondent has not offered a reasonable explanation for his failure to answer the ethics complaint, other than to say that he was embarrassed and that "it's too easy to ignore rather than deal with the horrible stress involved in one of these cases." He made the same claim in the successful motion to vacate that he filed in the Cevasco matter, which was before us as a default in February 2010. There, respondent asserted that he did not cooperate with the DEC in its investigation of the grievance and that he did not file an answer to the complaints, because the situation was just too embarrassing and, therefore, he ignored it.

We indulged respondent's "head-in-the-sand" argument, based on In the Matter of Steven J. Plofsky, DRB 08-286 and 08-365 (February 20, 2009), where we had previously vacated a default when the attorney alleged the "ostrich defense." In our view, when an attorney asserts that the failure to file an answer was the product of embarrassment or fear, assures us that such failure was not a conscious, willful decision to refuse to cooperate with disciplinary authorities, and apologizes for not having answered the complaint, there is a tendency to view the motion to vacate the default with favor.

However, we are unwilling to give respondent another bite of the apple. The Cevasco default was vacated in February 2010. Donovan filed her grievance against respondent in July of that year. Therefore, there is no reasonable explanation for his having ignored another grievance and complaint a second time around. Respondent should not be permitted to continue to avoid his obligations to his clients and to the disciplinary system.

In addition, respondent has failed to present meritorious defenses to the ethics charges. First, there is not a single entry demonstrating any work done on the actual administration of the estate itself. Second, respondent's claim that the matter was "frustrating" due to an order to show cause has no

bearing on whether he neglected the matter or lacked diligence in handling it. His own billing statement shows that he learned of the order to show cause on April 1, 2009 and that it was dismissed the next day.

Third, respondent claimed that Donovan had to litigate with her deceased husband's partner and that he advised her that it would be difficult and expensive. Yet, neither his certification nor his billing statement shows that anything was done with respect to this potential litigation or that his client declined to pursue the matter.

Fourth, the most telling entry on the billing statement is the September 3, 2009 entry, six months into the representation, which states, "[g]ave client my cell number as she said she could not always get me in the office." This belies the claim in respondent's certification that he gave Donovan his cell phone number "early on."

The only thing that the billing statement seems to support is respondent's unsuccessful efforts to have the life insurance company pay a claim. The billing statement shows that he sent the claim forms to the insurance company on April 10, 2009. He followed up with a letter on May 28, 2009. On July 15, 2009, he

called the insurance company and wrote a follow-up letter. This was minimal effort, but effort nonetheless.

For respondent's failure to satisfy either prong of the required test, we determined to deny his motion and to proceed with our review of this matter as a default, pursuant to R. 1:20-4(f).

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

In this case, we determine to dismiss the gross neglect and lack-of-diligence charges. Although it is possible that respondent engaged in this sort of misconduct, the allegations of the complaint are insufficient to establish the violations by clear and convincing evidence. The complaint identifies only what respondent did after he was retained to represent the estate. It states nothing of what he should have done, but failed to do. According to the complaint, he was retained in March 2009. It identifies a few things that he did between that date and May 28, 2009. Although the complaint mentions "the notice of potential estate litigation" and the "need to re-bond

the estate," there is no detail provided that would enable us to determine whether respondent's alleged failure to attend to these matters was neglectful.

On the other hand, the allegations of the complaint support a finding that respondent violated RPC 1.4(b). Donovan and her new attorney made several attempts to communicate with him, both by letter and by telephone. They requested the return of the estate file. He ignored both of them.

Respondent also violated RPC 8.1(b). To be sure, the complaint also suffers from a lack of specificity in this regard, asserting, for example, that respondent did not reply to "most letters" sent to him by the DEC. However, the complaint does allege that the DEC requested the estate file, which respondent did not provide. Moreover, the complaint alleges that respondent never submitted a reply to the grievance. These allegations do serve to support, by clear and convincing evidence, that respondent failed to cooperate with the DEC in its investigation of the grievance.

Respondent did not violate RPC 1.4(c). That rule requires an attorney to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Although respondent was not in

communication with Donovan during the brief period that he represented her, there are no allegations in the complaint as to what matters needed to be discussed with Donovan so she could make informed decisions.

In summary, respondent violated RPC 1.4(b) and RPC 8.1(b) in the Donovan matter.

There remains for determination the quantum of discipline to be imposed on respondent for his unethical conduct in the Cevasco and Donovan matters.

Ordinarily, an admonition is imposed for gross neglect, lack of diligence, failure to communicate with the client, failure to comply with the client's request to return the file, and failure to cooperate with disciplinary authorities. See, e.g., In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney guilty of gross neglect, failure to communicate with the client, and failure to cooperate with disciplinary authorities); In the Matter of Steven J. Plofsky, DRB 10-384 (March 7, 2011) (attorney failed to communicate with his clients in two different matters and failed to cooperate with the investigation of grievances filed by the two clients plus four other clients; the attorney's lack of disciplinary history since his 1989 admission to the bar was considered in mitigation); and

In the Matter of Daniel G. Larkins, DRB 09-155 (October 8, 2009) (attorney's gross neglect and lack of diligence resulted in the dismissal of his client's personal injury complaint and his failure to seek its reinstatement; the attorney also lost touch with his client and failed to turn over the file to his client because it was "lost for a time;" mitigating factors included personal problems at the time of the representation and the attorney's lack of disciplinary history since his 1983 admission to the bar). Therefore, an admonition would be the minimum measure of discipline to be imposed for respondent's violations of RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16(d), and RPC 8.1(b) in the Cevasco matter. However, we must also take into consideration the context of the violations.

Respondent abdicated a considerable measure of responsibility for his practice in favor of his secretary, leaving it to her to determine what was important and, therefore, what would be brought to his attention. He also failed to follow up with her to make sure that pleadings and responses to discovery requests were served. In addition, although he knew that there was a problem with the delivery of his mail, he did nothing to resolve it.

Because respondent's actions went beyond gross neglect and lack of diligence and were, instead, a way of doing business, we believe that a reprimand is the appropriate measure of discipline for the violations he committed in the Cevasco matter.

With respect to the Donovan matter, generally, in a default matter, a reprimand is imposed for gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other, non-serious ethics infractions. See, e.g., In re Rak, 203 N.J. 381 (2010) (attorney guilty of gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with the investigation of a grievance); In re Swidler, 192 N.J. 80 (2007) (attorney grossly neglected one matter and failed to cooperate with the investigation of an ethics grievance); In re Van de Castle, 180 N.J. 117 (2004) (attorney grossly neglected an estate matter, failed to cooperate with disciplinary authorities, and failed to communicate with the client); In re Goodman, 165 N.J. 567 (2000) (attorney failed to cooperate with disciplinary authorities and grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the

client's claim; the attorney also failed to keep the client apprised of the status of the matter; prior private reprimand (now an admonition)); and In re Lampidis, 153 N.J. 367 (attorney failed to pursue discovery in a personal injury lawsuit or to otherwise protect his client's interests and failed to comply with the ethics investigator's requests for information about the grievance; the attorney also failed to communicate with the client). Thus, a reprimand would be in order for respondent's violations of RPC 1.4(b) and RPC 8.1(b) in the Donovan default.

In addition to the conduct justifying the imposition of a reprimand for each matter, respondent's ethics history also must be taken into consideration. Respondent's 2010 reprimand (Furino I) does not serve to justify enhancement of the discipline in the Cevasco matter because his misconduct in Cevasco (committed between the years 2004 and 2008) was taking place at about the same time as his misconduct in Furino I (2003 to 2007). Therefore, respondent had not been disciplined at the time of his derelictions in Cevasco. Moreover, it cannot be said that he was on notice that his behavior was under scrutiny

at the time, because Cevasco's grievance was filed only a month after the grievance in Furino I.[5] Thus, the appropriate measure of discipline in the Cevasco matter would remain a reprimand, notwithstanding the ethics history.

The same cannot be said for the Donovan matter, however. Donovan retained respondent in 2009. By then, he was well aware of the grievances that had been filed in Furino I and in the Cevasco matter. This serves to justify enhancement of what would be a reprimand to a censure.

Moreover, respondent has an established history of not learning from similar mistakes. The grievance in Furino I, filed in June 2008, contained the same allegations that were made by Cevasco, who filed a grievance in July 2008. Yet, by March 2009, when Donovan retained respondent, he continued to neglect his files and his clients. Thus, the censure for the Donovan default should be enhanced to a three-month suspension, based on respondent's refusal or inability to learn from prior, similar mistakes.

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[5] The grievance in Furino I was filed in June 2008. Cevasco filed a grievance in July 2008.

In our view, together, respondent's gross neglect and lack of diligence in the Cevasco matter, combined with his failure to communicate with the client, failure to return the file, failure to cooperate with disciplinary authorities in both the Cevasco and Donovan matters, and his disciplinary history justify the imposition of a single three-month suspension for both matters.

Finally, we find it necessary to impose some conditions on respondent, which he must meet prior to reinstatement. First, given his repeated claims that he does not receive all of his mail, he must be required to obtain a post office box. Second, he must be monitored by a proctor, until further order of the Court, because he clearly does not understand how to run a law office or his duties as a lawyer, especially his duty to remain on top of his cases, rather than relying on his secretary. Third, prior to reinstatement, respondent must provide proof of fitness to practice law, as attested to by a mental health professional approved by the OAE.

Members Clark and Stanton did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ralph V. Furino, Jr.
Docket Nos. DRB 11-176 and DRB 11-205

Argued: September 15, 2011

Decided: December 6, 2011

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark						X
Doremus		X				
Stanton						X
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		7				2

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel