

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 11-289  
District Docket No. IIIA-2010-0018E

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IN THE MATTER OF  
PATRICK N. PERONE  
AN ATTORNEY AT LAW

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Decision

Decided: December 21, 2011

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

This matter was before us on a certification of default filed by the District III Ethics Committee (DEC), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 1.3 (lack of diligence) and RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter).

For the reasons expressed below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1992. At the relevant time, he maintained a law office in Manahawkin, New Jersey.

In 2006, respondent was admonished for lack of diligence for failing to diligently pursue his client's consumer fraud and

post-conviction relief cases. In the consumer fraud case, he also misled his client to believe that he would find an expert witness in the case, a pre-requisite for filing a complaint. He never retained the witness and did not file a complaint in the matter. He also failed to adequately communicate with the client and to explain the matters to the extent necessary to permit the client to make informed decisions about the representation. In re Perone, 188 N.J. 252 (2006).

On February 8, 2007, respondent was temporarily suspended for failure to pay a sanction to the Disciplinary Oversight Committee. In re Perone, 189 N.J. 300 (2007). He was reinstated on February 15, 2007, upon making the payment. In re Perone, \_\_\_ N.J. \_\_\_ (2007).

The New Jersey Lawyers' Fund for Client Protection report shows that respondent has been ineligible to practice for failure to pay his annual assessment since September 29, 2009.<sup>1</sup> Prior thereto, from September 1996 to October 2006, he had been ineligible ten times, for periods ranging from one day to six weeks.

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<sup>1</sup> In a July 12, 2010 email to the DEC investigator, respondent stated that he has not been an active member of the New Jersey bar or an active attorney "for some time."

Service of process was proper in this matter. On December 8, 2010, the DEC sent a copy of the complaint, by regular and certified mail, to 25 E. Bay Avenue, Manahawkin, New Jersey 08050, respondent's office address listed in the attorney registration records. The certified mail receipt was returned with the notation "Refused, 12/23/10." The regular mail was returned with the notations "Return to Sender" and "Wrong Address, Lives in Brazil."

On June 8, 2011, the DEC published a notice in The Asbury Park Press, notifying respondent about the complaint and giving him twenty-one days to file a verified answer. On July 13, 2011, the DEC published a second notice of the complaint in The Asbury Park Press, giving him an additional twenty-one days to file an answer. The notice also informed respondent that, if he did not file an answer, the matter would be certified to us for the imposition of discipline and the notice would serve to amend the complaint to charge him with a willful violation of RPC 8.1(b).

As of the date of the certification of the record, August 5, 2011, respondent had not filed an answer to the ethics complaint.

We now turn to the allegations of the complaint.

In August 2006, Donna Cocuzza retained respondent to obtain the expungement of her arrest in Stafford Township. The retainer

agreement stated, "[C]lient has other charge in Egg Harbor resulting in an ordinance violation this [sic] not part of the filing." On October 16, 2007, respondent filed a petition for expungement that did not mention the Little Egg Harbor Township criminal charges.

On November 22, 2007, respondent informed Cocuzza that her matter would be heard by the court in early 2008 and that her appearance was not necessary. Respondent did not communicate further with Cocuzza.

On March 14, 2008, the Ocean County Prosecutor's Office wrote to the court, objecting to the petition for expungement for its failure to disclose a February 16, 2006 Little Egg Harbor incident/conviction. That conviction would not be eligible for expungent until May 17, 2008. The Prosecutor's Office requested that respondent be required to file an amended petition disclosing the incident, the same incident referenced in the retainer agreement.

On a date not mentioned in the complaint or listed on the court's letter, the court informed respondent that, if he did not file an amended petition that included Cocuzza's entire criminal history by July 11, 2008, the court had the discretion to dismiss the expungement petition, without prejudice.

According to the complaint, "[t]here is no evidence" that respondent informed Cocuzza of the Prosecutor's Office's initial objection to the petition or that the petition was "carried." The complaint also asserted that there was no evidence that respondent filed an amended petition with the court and that, "[u]pon information and belief, the matter was dismissed by the Court."

Cocuzza learned that the Stafford Township matter had not been expunged, when the New Jersey Board of Nursing notified her that she was subject to a fine for failing to disclose the matter on her license renewal.

The complaint charged respondent with violating RPC 1.3 for not diligently pursuing Cocuzza's matter to completion and by allowing its dismissal and RPC 1.4(b) for failing to inform Cocuzza about the status of her matter.

The facts recited in the complaint support 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).

The allegations establish that respondent lacked diligence in the matter by failing to file an amended petition, thereby permitting the matter to be dismissed without prejudice. He also

failed to properly communicate with Cocuzza by failing to keep her apprised about the developments in her case.

Lack of diligence and failure to communicate with the client generally result in an admonition. See, e.g., In the Matter of Jonathan Saint-Preux, DRB 04-174 (July 19, 2004) (in two immigration matters, attorney failed to appear at the hearings, thereby causing orders of deportation to be entered against the clients, and failed to apprise the clients of these developments); In the Matter of Susan R. Dargay, DRB 02-276 (October 25, 2002) (attorney failed to promptly submit to the court a final judgment of divorce in one matter and failed to reply to the client's letters and phone calls in another matter); In the Matter of Mark W. Ford, DRB 02-280 (October 22, 2002) (attorney failed to file a workers' compensation claim and to reasonably communicate with the client about the status of the case); and In the Matter of W. Randolph Kraft, DRB 01-051 (May 22, 2001) (attorney failed to prosecute a case diligently and failed to communicate with the client; the lack of communication included the attorney's failure to notify the client that the complaint had been dismissed for lack of prosecution).

Because this matter proceeded as a default, discipline greater than an admonition is warranted. "[A] respondent's

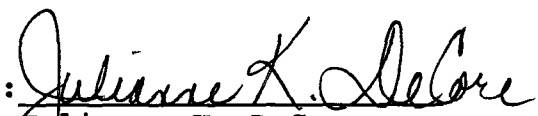
default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced." In re Kivler, 193 N.J. 332 342 (2008). In assessing discipline we also considered, as an aggravating factor, respondent's ethics history, a 2006 admonition for similar violations.

Based on respondent's failure to learn from prior, similar mistakes, and the default nature of these proceedings, we determine that a censure is the appropriate discipline here.

Chair Pashman and Member Clark voted to impose a reprimand. Member Wissinger 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  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Patrick N. Perone  
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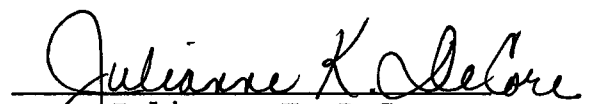
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Decided: December 21, 2011

Disposition: Censure

<b>Members</b>	Disbar	Suspension	Reprimand	Censure	Disqualified	Did not participate
Pashman			X			
Frost				X		
Baugh				X		
Clark			X			
Doremus				X		
Wissinger						X
Yamner				X		
Zmirich				X		
<b>Total:</b>			2	5		1

  
Julianne K. DeCore  
Chief Counsel