

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 11-324  
District Docket No. XB-2011-009E

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IN THE MATTER OF  
NEIL LAWRENCE GROSS  
AN ATTORNEY AT LAW

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Decision

Decided: March 13, 2012

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

This matter was before us on a certification of the record filed by the District XB Ethics Committee (DEC), pursuant to R. 1:20-4(f)(2). The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to inform a prospective client how to contact the lawyer), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter), RPC 1.4(c) (failure to explain a matter to the extent necessary for the client to make informed decisions about the representation), RPC 3.2 (failure to expedite litigation),

RPC 4.1(a)(1) (false statement of material fact or law to a third person), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(d) (conduct prejudicial to the administration of justice). For the reasons expressed below, we determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1994. He was temporarily suspended, on February 28, 2011, for failure to cooperate with a disciplinary investigation. In re Gross, 205 N.J. 82 (2011). He was reinstated to practice on March 30, 2011. In re Gross, 205 N.J. 233 (2011).

In 2011, respondent was censured for gross neglect, lack of diligence, failure to communicate with the client, failure to safeguard client property, and failure to cooperate with disciplinary authorities. In re Gross, \_\_\_\_ N.J. \_\_\_\_ (2011). That matter proceeded as a default.

Respondent has been ineligible to practice law since September 27, 2010 for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

In July 2011, the DEC secretary sent the complaint, by certified and regular mail, to respondent's office address: Ward & Gross, 227 U.S. Highway 206, Flanders, New Jersey 07836.

The certified mail was returned unclaimed. The regular mail was not returned.

In August 2011, the DEC secretary sent a second letter to the above address, by certified and regular mail, advising respondent that, if he did not file an answer to the complaint within five days, the allegations of the complaint would be deemed admitted and the record certified to us for the imposition of discipline. The letter also served to amend the complaint to charge respondent with violating RPC 8.1(b) for failing to file an answer. The certified mail was returned unclaimed. The regular mail was not returned. Respondent did not file an answer.

On the morning of our January 19, 2012 session, when this case was calendared for review, we received a motion to vacate the default from respondent. For a motion to vacate a default to be granted, it must meet a two-prong test. The attorney must explain why he or she failed to file an answer to the complaint and provide a meritorious defense to the underlying charges. Respondent failed to address one prong of the test, his failure to answer the complaint. Therefore, it is not necessary for us to reach a discussion of his defense to the allegations of the complaint. His motion is denied.

According to the complaint, in April 2010, respondent handled a real estate transaction in which the grievant, Mark S. Duke, was the seller. On April 23, 2010, Duke delivered the deed to respondent for recording. Respondent failed to properly record the deed for nearly ten months after the closing.

Duke made repeated calls to respondent for information about the deed. Respondent did not return his calls. Duke's attorney also attempted to contact respondent, to no avail.

In March 2011, the ethics investigator wrote to respondent, forwarding a copy of the grievance. The investigator made two additional attempts to communicate with respondent, in March 2011. The complaint alleged that respondent refused to cooperate with the ethics investigation.

Following a review of the record, we find that the facts recited in the complaint support some of the charges of unethical conduct. Although, in a default proceeding, the allegations of the complaint are deemed admitted, some of the charged violations are not supported by the facts set forth in the complaint.

Specifically, the complaint charged respondent with violating RPC 1.4(a), (b), and (c). RPC 1.4(a) addresses an attorney's failure to advise a prospective client of how to contact him or her. Duke, the seller, was not respondent's

client. Moreover, Duke clearly knew how to reach respondent. RPC 1.4(b) addresses an attorney's failure to communicate with a client. Again, Duke (or his attorney) was not respondent's client. Similarly, RPC 1.4(c) addresses a client's inability to make informed decisions about the representation, due to the attorney's failure to give detailed explanations to the client. Again, not only was Duke not respondent's client, but there is no indication that any decisions had to be made in connection with this real estate transaction and that they were affected by respondent's lack of communication. We, therefore, dismiss all three charges.

We also dismiss the charged violation of RPC 3.2. The record makes no mention of litigation in connection with this transaction. In addition, the charge that respondent violated RPC 4.1(a)(1), which addresses false statements of material fact or law to third persons, has no basis in the facts set forth in the complaint. Finally, the complaint charged respondent with violating RPC 8.4(d). Here, too, the complaint is silent with regard to facts that would support this allegation.

As to the remaining charges, for nearly ten months following the real estate closing respondent did not record the deed, a violation of RPC 1.1(a). Also, his failure to reply to

requests for information from the DEC and to file an answer to the complaint violated RPC 8.1(b).

An attorney's failure to complete post-closing steps generally results in discipline ranging from an admonition to a reprimand. See, e.g., In the Matter of Thomas S. Capron, DRB 04-294 (October 25, 2004) (admonition for failure to discharge a mortgage of record for eight years); In the Matter of Diane K. Murray, DRB 98-342 (September 26, 2000) (admonition for failure to record a deed and to obtain title insurance for fifteen months and two and a half years after the closing, respectively; the attorney also failed to reply to the client's numerous requests for information about the matter and to reconcile her trust account records in a timely fashion); In the Matter of Charles Deubel, III, DRB 95-051 (May 16, 1995) (admonition for failure to record a deed for fifteen months after the closing of title); In re Stoller, 183 N.J. 24 (2005) (reprimand for attorney who for a period of almost five years failed to record mortgages and deeds in two real estate matters and in addition failed to maintain records of the transactions for a period of seven years; the attorney's cavalier attitude toward circumstances that he created and failure to take remedial action were considered aggravating factors militating against lesser discipline; prior private

reprimand nine years before); In re Jodha, 174 N.J. 407 (2002) (reprimand for attorney who did not promptly complete post-closing procedures; the attorney did not record the deed, pay the title insurance premium, pay the real estate taxes or refund escrow funds to his client until nine to twenty months after the closing; the attorney also failed to correct accounting deficiencies noted during a 1998 random audit by the OAE); and In re Mandle, Jr., 167 N.J. 609 (2001) (reprimand for attorney who, while practicing law under the supervision of a proctor, failed to represent a client diligently by not recording a deed and a mortgage for five months after the closing and not properly disbursing the closing funds, instead allowing them to remain stagnant in his trust account; the attorney also failed to cooperate with the investigation of the ethics matter; the attorney had received two prior reprimands for conduct that included gross neglect, pattern of neglect, lack of diligence, failure to cooperate with disciplinary authorities, and failure to communicate with a client).

At first blush, it would appear that respondent's failure to record the deed for almost ten months fits squarely in the realm of the admonition cases. Only one client matter was

involved and there is no indication of harm to the client. There are, however, aggravating factors to consider.

First, respondent failed to reply to requests for information from Duke, as well as from his attorney. Although Duke was not his client, respondent had a fiduciary duty to Duke to the extent that, as the settlement agent, it was respondent's obligation to record the deed in a timely fashion. If problems developed and prevented him from doing so, then he had a duty to keep Duke informed, either through his attorney, if the attorney was still representing Duke, or directly. Second, respondent was recently censured for misconduct in three real estate transactions. The grievances in the three matters that led to his censure were filed between December 2009 and May 2010. The misconduct now under review began in April 2010. Although we cannot say that this is an attorney who failed to learn from his prior mistakes, respondent was already on notice that his conduct was under scrutiny by ethics authorities and, therefore, should have taken special care to comport himself in accordance with the RPCs. Third, respondent allowed this matter to proceed as a default. In a default proceeding, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as



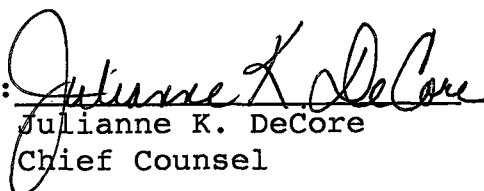
an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6).

Here, despite respondent's recent discipline on a certified record and awareness that the measure of discipline was increased because of the default nature of that proceeding, he again failed to cooperate with disciplinary authorities and failed to file an answer. Also, as noted previously, respondent was temporarily suspended for failure to cooperate with a disciplinary investigation.

In light of respondent's repeated disregard for the disciplinary system, an additional increase in the level of discipline is warranted. Combined, these factors serve to raise the appropriate measure of discipline to a censure.

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 Neil L. Gross  
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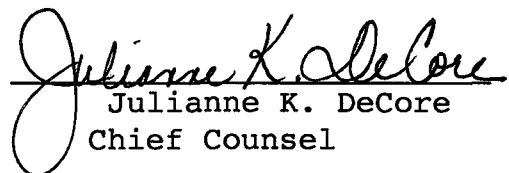
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Decided: March 13, 2012

Disposition: Censure

<b>Members</b>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			8			

  
Julianne K. DeCore  
Chief Counsel