

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-391
District Docket No. VIII-2011-
0021E

IN THE MATTER OF
RALPH V. FURINO, JR.
AN ATTORNEY AT LAW

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Decision

Decided: April 17, 2012

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

This matter came before us on a certification of default, filed by the District VIII Ethics Committee (DEC), pursuant to R. 1:20-4(f). 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)), failure to communicate to the client, in writing, the basis or rate of the fee (RPC 1.5(b)), and failure to cooperate with disciplinary

authorities (RPC 8.1(b)). For the reasons set forth below, we determine to impose a three-month suspension on respondent for his failure to cooperate with disciplinary authorities. The suspension is to run consecutively to any term of suspension that the Court may impose in the matters presently pending before it. We dismissed all other charges.

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, New Jersey.

On September 21, 2010, respondent received a reprimand for exhibiting gross neglect, lack of diligence, and failure to communicate with the client; providing financial assistance to the client in connection with contemplated litigation; and making an agreement with the client to limit 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 the client 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 \$3000 to the client 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.

On December 6, 2011, we determined to impose a three-month suspension on respondent for his misconduct in two disciplinary actions. In the Matters of Ralph V. Furino, DRB 11-176 and 11-205 (December 6, 2011) (slip op. at 37). In the first matter (Cevasco), which had previously come before us as a default and which we subsequently vacated, respondent exhibited gross neglect and lack of diligence in handling a personal injury action. The client's complaint was dismissed. Yet he took no action to have it reinstated. Id. at 18. He also failed to return the client's file, upon request. Id. at 19. Moreover, in both the personal injury matter and in a second matter involving the administration of an estate (in which we denied respondent's motion to vacate the default) (Donovan), respondent failed to communicate with the client and failed to cooperate with disciplinary authorities. Id. at 18-29, 31. The matters are pending with the Supreme Court.

Service of process was proper. On July 28, 2011, the DEC sent a copy of the formal ethics complaint to respondent at his

office address, 14 West Church Street, Jamesburg, New Jersey 08831, by regular and certified mail, return receipt requested. On August 15, 2011, the certified letter was returned, marked "UNCLAIMED." The letter sent by regular mail was not returned.

As of October 14, 2011, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

According to the complaint, on August 31, 2010, grievant Jason Matthew Burr retained respondent to "handle a pressing child support and parenting time matter." Shortly after the meeting, Burr paid respondent a \$1000 retainer.

The complaint alleged that, in addition to the single office meeting, respondent "purportedly prepared a letter to his adversary." Beyond that, however, respondent "performed little to no work to [Burr]'s knowledge, information or belief." Thus, Burr "began representing himself before retaining and paying for another attorney."

Some of the remaining allegations of the complaint appear to have been "copied and pasted" from an ethics complaint in another matter. For example, at times, the gender of the grievant is female, instead of male, and the type of matter

changes from a child support and visitation dispute to the administration of an estate.

According to paragraph six of the complaint, "Grievant" sent numerous letters and emails to respondent, but "she" received no response, "except for a few cursory email replies" and a telephone call in which respondent expressed his disbelief that "Grievant" had been upset with his "legal work and representation." The use of the pronoun "she" calls into question whether some, none, or all of the allegations in paragraph six apply to this matter.

Paragraph seven appears to be pertinent to this matter. There, it is alleged that respondent allegedly failed to comply with Burr's request for a copy of "his" file and the return of the \$1000 retainer.

Like paragraph six, paragraph eight is problematic in several respects. It states:

Grievant hired a new attorney to complete the Estate Administration and the new attorney had sent two letters to Respondent and left several messages on Respondent's office answering machine. Respondent never replied to the new attorney

forcing her to write her own letter to the Office of Attorney Ethics dated May 27, 2010 [emphasis added].

[C18.¹]

Clearly, Burr's matter did not involve the administration of an estate. Moreover, Burr did not retain respondent until August 31, 2010. Therefore, the May 27, 2010 letter could not have been written on Burr's behalf. Finally, it is not clear whether the pronoun "her" refers to the "new attorney" or to a female grievant. In any event, "her" clearly does not refer to Burr.

At some point, Burr did file a grievance against respondent. On June 16, 2011, the DEC investigator sent a letter to him, presumably enclosing the grievance and requesting a written reply. However, respondent ignored the letter and never filed a reply to the grievance. According to the complaint, he "has continuously failed to cooperate with the [DEC] with respect to this grievance."

¹ "C" refers to the formal ethics complaint, dated July 19, 2011.

The complaint charged respondent with having violated RPC 1.1(a), based on his "failure to properly conduct the Action for Grievant, including the proper and diligent handling [sic] a domestic relations matter;" RPC 1.3, based on his "failure to monitor the action or to take measures to contact his adversary in an attempt to settle the potential case pre-suit or at any time as he was paid \$1,000 to do;" RPC 1.4(b), based on his failure to "(A) provide Grievant with written notice of the status of the case, (B) provide bills and the case file upon receiving reasonable requests, (C) keep his client reasonably informed of the matter or to respond to her reasonable inquiries for information, at most times during his representation of Grievant;" RPC 1.4(c), based on his "failure to communicate with and explain matters to the Grievant about the material aspects or about any aspect of Grievant's situation;" RPC 1.5(b), based on his "failure to deliver to the Grievant any proposed form of a retainer agreement, any executed retainer agreement or any other form of written communication (e.g., letter, email) specifying the legal fee arrangement;" and RPC 8.1(b), based on his failure "to respond to lawful demands for information from the Ethics Committee in this matter" (emphasis added).

Respondent was not charged with having violated RPC 1.16(d), even though the following sentence appeared in the count relating to the RPC 1.5(b) charge: "Respondent had never returned any of the \$1,000 received from Grievant despite Grievant's multiple requests." Moreover, again, although respondent was not charged with having violated RPC 8.4(a), the "WHEREFORE" clause requests that he "be disciplined pursuant to Rule 8.4(a)," a form of relief that does not exist under that rule.

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). However, the facts recited in the complaint support only one charge of unethical conduct, that is RPC 8.1(b).

First, we dismiss the gross neglect and lack-of-diligence charges. The complaint does not allege what precisely respondent did not do that constituted gross neglect or lack of diligence. It alleges only that respondent was retained "to handle a pressing child support and parenting time matter."

We also dismiss the failure-to-communicate charges. The allegations of the complaint regarding RPC 1.4(b) clearly do not

pertain to Burr's matter, because the allegations refer to the grievant in the feminine.

Similarly, there are no allegations in the body of the complaint that support a finding that respondent violated RPC 1.4(c), which requires an attorney to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Nothing in the complaint identifies what matters needed to be discussed with Burr so that he could make an informed decision about the next course of action.

We further determine to dismiss the RPC 1.5(b) charge, which applies to fee arrangements when the lawyer "has not regularly represented the client." In those situations, "the basis or rate of the fee shall be communicated in writing to the client before or within a reasonable time after commencing the representation." Although the complaint states that respondent did not provide Burr with "any proposed form of a retainer, any executed retainer agreement of any other form of written communication . . . specifying the legal fee arrangement," this statement is insufficient, standing alone. There also must be evidence that respondent had not regularly represented Burr.

Although this is likely the case, the complaint contains no allegation that would support that finding.

The one charge that the allegations of the complaint do support is RPC 8.1(b). The pleading alleges that respondent ignored a letter from the DEC and that he also failed to comply with its request that he submit a written reply to the grievance. These allegations support the finding that respondent failed to cooperate with the DEC in its investigation of the grievance.

There remains for determination the quantum of discipline to be imposed on respondent for his violation of RPC 8.1(b).

In the absence of a disciplinary record, an attorney who fails to cooperate with disciplinary authorities will typically receive an admonition, even if he or she has committed other less serious ethics infractions. See, e.g., In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011) (attorney did not reply to the committee's investigation of the grievance and did not communicate with the client); In the Matter of James M. Docherty, DRB 11-029 (April 29, 2011) (attorney failed to comply with the committee's investigator's requests for information about the grievance; attorney also violated RPC 1.1(a) and RPC 1.4(b)); In the Matter of Kevin H. Main, DRB 10-

046 (April 30, 2010) (attorney failed to reply to two letters from the ethics investigator seeking his version of the events); In the Matter of Robert W. Laveson, DRB 08-436 (March 27, 2009) (attorney failed to reply to all of the committee's investigator's questions during the investigation into whether the attorney had practiced law while ineligible; although the committee concluded that the attorney had not committed that infraction, he nevertheless failed to cooperate with the committee; mitigating factors included personal and professional problems faced by the attorney at the time of the investigation and his claim that he had not received all of the investigator's letters and therefore did not know that additional information was required of him); In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004) (attorney did not promptly reply to the committee's investigator's requests for information about the grievance); and In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to the committee's requests for information about two grievances).

If the attorney has been disciplined before, but the attorney's ethics record is not serious, then a reprimand will be imposed. See, e.g., In re Wood, 175 N.J. 586 (2003) (attorney failed to cooperate with disciplinary authorities;

prior admonition for similar conduct); In re DeBosh, 174 N.J. 336 (2002) (failure to cooperate with disciplinary authorities; prior three-month suspension); and In re Williamson, 152 N.J. 489 (1998) (attorney failed to cooperate with disciplinary authorities; prior private reprimand for failure to carry out a contract of employment with a client in a matrimonial matter and failure to surrender the client's file to a new attorney).

In this case, respondent has received a reprimand. A three-month suspension case is pending with the Court. His disciplinary history, standing alone, would warrant increasing the usual admonition for failure to cooperate to a reprimand. However, this matter is a default, which requires further enhancement to a censure. In re Kivler, 193 N.J. 332, 342 (2008) ("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").

We also take into consideration two other aggravating factors. First, the complaint is very clear in its assertion that Burr requested a copy of his file, which respondent ignored. Although respondent was not charged with having

violated RPC 1.16(d), we consider his behavior an aggravating factor.

The second is respondent's demonstrated pattern of not cooperating with disciplinary authorities. Consider the disciplinary action that resulted in our 2011 determination to impose a three-month suspension. There, respondent ignored the DEC in connection with two grievances, each of which resulted in a default.

In Cevasco, the first matter, the DEC sent the grievance to respondent in the fall of 2008 and continued to seek his cooperation through the year 2010. That case then came before us as a default in February 2010, which we vacated, upon respondent's motion. In seeking to have the default vacated, respondent explained that his extremely competent secretary of twenty years, who had just retired, had never brought the court's notice of dismissal to his attention and that he also had been having difficulty with the delivery of mail to his office address. He further explained that he avoided the ethics grievance and the ethics complaint because it was easier to do that than to deal with the stress of a disciplinary action.

In Donovan, the grievance was filed in July 2010. Respondent ignored the DEC's attempts to communicate with him

throughout the remainder of the year. When that case came before us as a default, in September 2011, we denied respondent's motion to vacate because this second grievance was filed against him months after the default in the Cevasco had been vacated. Consequently, respondent was disciplined for his lack of cooperation in both matters.

In the matter now before us, Burr's grievance was filed in February 2011. As respondent continued to avoid the DEC up through the filing of the ethics complaint, in July 2011, he was well aware that his inaction vis-à-vis the DEC in the two prior disciplinary matters was under scrutiny. Yet, he continued to evade and avoid the system.

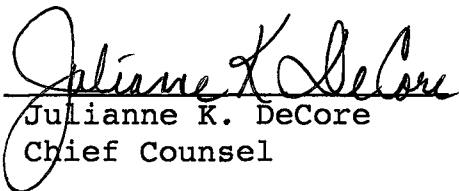
These aggravating factors, especially the one pertaining to respondent's pattern of non-cooperation, justify enhancement of what would be a censure to a three-month suspension. We so choose. In addition, the suspension should start of the expiration of any suspension that the Court may decide to impose in DRB 11-176 and 11-205.

Chair Pashman 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
Bonnie C. Frost, Vice-Chair

By: 
Julianne K. DeCore
Chief Counsel

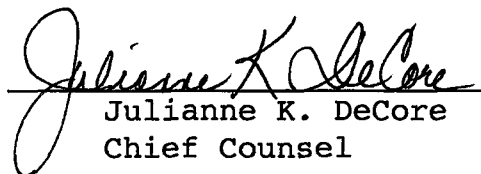
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Ralph V. Furino, Jr.
Docket No. DRB 11-391

Decided: April 17, 2012

Disposition: Three-month consecutive suspension

Members	Disbar	Three-month Suspension	Reprimand	Disqualified	Did not participate
Pashman					X
Frost		X			
Baugh		X			
Clark		X			
Doremus		X			
Gallipoli		X			
Wissinger		X			
Yamner		X			
Zmirich		X			
Total:		8			1


Julianne K. DeCore
Chief Counsel