SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 11-384
District Docket No. IIA-2009-0025E

IN THE MATTER OF	
LAWRENCE M. TINGHINO	
AN ATTORNEY AT LAW	

Decision

Argued: February 16, 2012

Decided: April 24, 2012

David M. Repetto appeared on behalf of the District IIA Ethics Committee.

Edward W. Cillick appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District IIA Ethics Committee (DEC). Respondent was charged with having violated RPC 1.1 (a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to adequately communicate with the client), and RPC 3.2

(failure to expedite litigation). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1994. He has no prior discipline.

Respondent reported his conduct in this matter in an August 5, 2009 letter to the DEC secretary. The letter stated, in relevant part:

> The potential violation occurred during the firm's representation of Jean Washington, the Administratrix of the Estate of Percy Washington. As part of our firm's representation of Ms. Washington, I was assigned to the task of initiating a constructive trust action seeking to enjoin payment of life insurance proceeds [in the amount of $100,000], and have the policy reformed to designate Ms. Washington's children as the beneficiaries. These claims were based on Mr. Washington's failure to provide life insurance for the benefit of the children as required by their Property Settlement Agreement. The work performed in connection with the constructive trust action was being done as a courtesy to the client, and was without charge.
>
> On September 25, 2006, I filed the Complaint on behalf of Ms. Washington. On May 28, 2008, the matter was dismissed without prejudice on the grounds of forum non-conveniens. At that time, I failed to notify the client of the status of the case and advise[d] the client that the case was still active. I discussed this matter with the client on numerous occasions for a period of

> approximately eleven (11) months and informed the client that a trial date was imminent. Thereafter, I informed the client that the matter had settled in the amount of $80,000 and that she could expect a settlement check. In furtherance of this misrepresentation, I forwarded to the client a Release for her execution. After several weeks, in June 2009, I confessed my misrepresentations to the client and to firm management, and advised them that the matter had been dismissed.
>
> I immediately began assisting the client and firm management in their effort to locate an attorney in the appropriate jurisdiction who could handle the constructive trust matter. The client has terminated the services of Andora & Romano, LLC, and I have reimbursed the client for any out-of-pocket costs incurred as a result of my misrepresentations. I also am providing a copy of this correspondence to firm management, so that they can be sure that this matter has been reported to the appropriate authorities.
>
> [Ex.A.]

In addition, in a memorandum filed with the DEC by his attorney, respondent admitted that he had written two letters on behalf of Washington's children, one to a prospective landlord and another to a school, which misrepresented that those parties would be receiving funds shortly.

The complaint alleged that, once respondent admitted his wrongdoing to Washington, he "suggested" he and Washington

refrain from advising his law partners about it. Respondent denied that charge and clarified at the DEC hearing that, when he told Washington of his wrongdoing, he cautioned her that he, not she, should tell the head of the law firm, Robert J. Romano, Jr., Esq., about his misdeeds.

Washington testified at the DEC hearing that, when she contacted the court directly about the case, she learned, for the first time, that it had been dismissed. She immediately confronted respondent. It was then that he "came clean" about his lies.

When Romano learned of respondent's misconduct, he advised respondent to seek medical help for what turned out to be attention deficit disorder (ADD). Although respondent did not seek to blame his actions on ADD, he thought that it played a role in his handling of the case. Respondent explained that he was an associate at the firm and that Romano had assigned the case to him, even though it was outside of his area of expertise. Rather than seek help once he was "in over his head," respondent ignored the case and began to lie to the client about his inaction.

Respondent also entered into a voluntary, oral arrangement with Washington, whereby he pays her monthly installments of about $1,500 toward self-imposed restitution, totaling $80,000. At the time of the DEC hearing, respondent had paid about $65,000. As of the date of oral argument before us, he had paid a total of $75,000.

Although respondent has no written agreement limiting his liability for malpractice, he expressed his hope that Washington and the children would sign releases, once he pays the total $80,000. Washington was asked about the possibility that she and the children would sign releases for $80,000. She replied that she and the children had discussed the matter, but had not yet decided if they would sign releases, upon her receipt of that amount.

In a memorandum prepared by his counsel, respondent presented mitigation for his actions. Specifically, a) he sought to make his client whole, having already paid (at the time of the hearing below) $65,000 of a total $80,000; b) he obtained Pennsylvania counsel to handle the underlying constructive trust and substantive issues; c) he has no prior discipline; d) a mental disability was present (ADD), which has been diagnosed

and treated; e) he confessed to the client and reported himself to the ethics authorities; f) he now takes prescription medication, which helps him focus on his work; g) he has exhibited exemplary conduct since the transgression; h) he is of good character and reputation;[1] and i) he has expressed genuine contrition and remorse for his wrongdoing.

The DEC found respondent guilty of having violated RPC 1.1 (a), RPC 1.3, and RPC 1.4(b). The DEC dismissed the charge that respondent violated RPC 3.2, without further explanation.

The DEC accepted the following mitigation: respondent's attempt to make his client whole by paying $65,000 out of his own pocket, his lack of prior discipline, his self-report to the DEC, and his contrition and remorse.

Because the complaint did not charge respondent with violating RPC 8.4(c) (misrepresentation), the DEC found that respondent's numerous misrepresentations to the client constituted aggravating factors.

---

[1] Respondent also presented a character witness, Frank Tiedemann, Esq., who testified that he worked with respondent for three years and found him to be a good and honest attorney.

So, too, the complaint did not charge respondent with having violated RPC 1.8(a) (conflict of interest – business transaction with the client). Nevertheless, the DEC found, as an aggravating factor, that respondent's oral agreement to pay Washington $80,000 constituted a pecuniary interest adverse to the client that required him to obtain informed consent from the client.

The DEC recommended a reprimand, without citing any case law.

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.

Respondent, an associate attorney in a law office owned by Romano, was assigned a case that involved legal issues with which he was unfamiliar. Instead of seeking Romano's advice or advising his supervising attorney that he could not handle the case, in September 2006, respondent filed a complaint in the wrong court. When the complaint was dismissed for lack of jurisdiction in May 2008, respondent "buried his head in the sand," taking no further action over the next eleven months to re-file the complaint in the proper forum. We find, thus, that

respondent lacked diligence and grossly neglected the case, violations of RPC 1.3 and RPC 1.1(a), respectively.[2]

The DEC correctly dismissed the RPC 3.2 charge, given that there was no litigation to expedite.

Cases involving gross neglect and lack of diligence, without more, have yielded admonitions. See, e.g., In re Russell, 201 N.J. 409 (2009) (attorney failed to file answers to divorce complaints against her client, causing a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (attorney's inaction in a personal injury action caused the dismissal of the client's complaint, after which the attorney took no steps to have it reinstated; the attorney also failed to communicate to the client the status of the case); and In re Dargay, 188 N.J. 273 (2006) (attorney

---

[2] Respondent's failure to apprise the client of the dismissal of the complaint is, more appropriately, addressed in our finding of misrepresentations as an aggravating factor. We, therefore, do not find a violation of RPC 1.4(b), as found by the DEC.

guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition).

For his most serious misconduct, the complaint should have charged respondent with a violation of RPC 8.4(c) (misrepresentation). In fact, when respondent reported his numerous misrepresentations to the client and third parties, even he characterized his statements as misrepresentations, in his August 5, 2009 mea culpa letter to ethics authorities. Despite the omission in the complaint, the DEC found that respondent's statements to the client constituted misrepresentations, which the DEC considered as an aggravating factor.

Indeed, on numerous occasions over the eleven months following the dismissal of the complaint, respondent told his client a series of lies in order to obscure the actual status of the case. He even sent her a fabricated release for a supposed settlement, rather than tell her that the complaint had been dismissed. He also wrote two letters to third parties on behalf of Washington's children, one to a school and the other to a landlord, falsely advising them that they could expect funds shortly out of a settlement that did not exist.

The sanction imposed on attorneys who have lied to clients or supervisors and fabricated (and/or forged) documents to conceal their mishandling of legal matters has varied, depending on the specific facts of each case. The Court has considered the extent of the wrongdoing, the harm to the clients or others, and also mitigating circumstances. See, e.g., In re Sunberg, 156 N.J. 396 (1998) (reprimand for attorney who created a phony arbitration award to mislead his partner and then lied to the Office of Attorney Ethics about the arbitration award; mitigating factors included the passage of ten years since the occurrence, the attorney's unblemished disciplinary record, his numerous professional achievements, and his pro bono contributions); In re Kasdan, 115 N.J. 473 (1989) (three-month suspension for misconduct in six matters, including numerous misrepresentations to a client that a complaint had been filed and preparation and delivery of a false pleading to the client; in another case, the attorney hid from the client that the case was dismissed due to her failure to answer interrogatories; she then repeatedly misrepresented the status of the case and fabricated trial dates to mislead the client; in two other cases, a real estate closing and a custody matter, the attorney

ignored the clients' numerous requests for information; in two other real estate matters, she engaged in gross neglect when closing title without securing payment of the purchase price from her clients; she also knowingly delivered to the seller's attorney a trust account check that turned out to be drawn against insufficient funds); In re Bosies, 138 N.J. 169 (1994) (six-month suspension for misconduct in four matters; in one matter, for a period of five months, the attorney engaged in an elaborate scheme to mislead his clients that, although he had subpoenaed a witness, the witness was not cooperating; to "stall" the client the attorney prepared a motion for sanctions against the witness, which he showed the client but never filed with the court; he then informed the client that the judge had declined to impose sanctions; thereafter, the attorney traveled three hours with his client to a non-existent deposition, feigned surprise when the witness did not appear, and then traveled to the courthouse purportedly to advise the judge of the witness' failure to appear at the deposition; the attorney was also found guilty of a pattern of neglect, lack of diligence, failure to communicate with clients, failure to abide by discovery deadlines contained in a court order, failure to

abide by the clients' decisions concerning the representation, and a pattern of misrepresentations; although the attorney's conduct involved only four matters, the six-month suspension was predicated on his pattern of deceit); In re Morell, 180 N.J. 153 (2004) (reciprocal discipline matter; one-year suspension for attorney who told elaborate lies to the client about the status of the case and fabricated documents, including a court notice and a settlement statement for his clients' signature); In re Weingart, 127 N.J. 1 (1992) (two-year suspension, all but six months suspended; the attorney lied to his client about the status of the case and prepared and submitted to his client, to the Office of the Attorney General, and to the Administrative Office of the Courts a fictitious complaint to mislead the client that a lawsuit had been filed; the attorney was also found guilty of lack of diligence, failure to communicate, dishonesty and misrepresentation, and conduct prejudicial to the administration of justice); In re Alterman, 126 N.J. 410 (1991) (two-year suspension for attorney who got in over his head during his successive employment with two multi-member law firms and neglected several matters; to cover up his inaction, the attorney lied to his clients that the cases were proceeding

apace, fabricated documents to mislead his supervisors and the clients that the matters were progressing normally, and misrepresented to a judge that he had authority to settle a suit on behalf of a client; in the last instance, when confronted by his superiors, the attorney denied rumors that the matter had been settled and also denied knowledge of the draft settlement agreement; he finally admitted his misconduct when his superiors were about to telephone his adversary; he was also found guilty of failure to withdraw from or to decline representation, practicing law while ineligible, and failure to cooperate with disciplinary authorities by not filing an answer to an ethics complaint; in mitigation, the attorney testified that his work was unsupervised and that he suffered from psychological illness; although we found a causal link between the attorney's acts of misconduct and his psychological problems, we determined that the abominable nature of his behavior merited a two-year suspension); In re Penn, 172 N.J. 38 (2002) (three-year suspension in a default matter for attorney who failed to file an answer in a foreclosure action, thereby causing the entry of default against the client; thereafter, in order to placate the client, the attorney lied that the case had been successfully

concluded, fabricated a court order, and signed the name of a judge; the attorney then lied to his adversary and to ethics officials; the attorney also practiced law while ineligible); In re Meyers, 126 N.J. 409 (1991) (three-year suspension for attorney who prepared and presented to his client a fictitious divorce judgment in order to conceal his failure to file a complaint for divorce for about two years; he then failed to file a motion to vacate default after the husband filed a complaint for divorce; failed to inform his client that the husband had filed a complaint for divorce; lied to the client that the husband's action was just a re-examination of equitable distribution and that he had missed the trial date due to a calendar error; left the client to believe that she had been divorced for those two years and that all issues attendant to the divorce had been resolved; the attorney then asked his client to misrepresent to the court that the phony divorce judgment had been merely a draft and misrepresented to a court intake officer that the fabricated divorce judgment had been a mere draft and that his client had misunderstood its significance; the attorney also made other misrepresentations to his client and covered up the divorce action filed by the

husband; as a result of the attorney's gross neglect, the client lost her interest in the husband's pension and the ability to claim the couple's son for tax purposes); and In re Yacavino, 100 N.J. 50 (1985) (three-year suspension for attorney who prepared and presented to his clients two fictitious orders of adoption to conceal his neglect in failing to advance an uncomplicated adoption matter for nineteen months; the attorney misrepresented the status of the matter to his clients on several occasions; in mitigation, the Court considered the absence of any purpose of self-enrichment, the aberrational character of the attorney's behavior, and his prompt and full cooperation with law enforcement and disciplinary matters).

This conduct is akin to Sunberg, where the attorney fabricated an arbitration award to mislead his partner about his handling of an arbitration matter. Like respondent, Sunberg had no prior discipline. The suspension cases are much more serious, for they involve fabrications and lies in multiple matters, as well as other misconduct not present here.

In mitigation, respondent has no prior discipline since his admission to the bar in 1994, he self-reported his misconduct,

set about making the client whole, and is remorseful for his actions.

Like the DEC, we find that respondent's settlement of the claim with Washington, without advising her to obtain independent counsel, is a second aggravating factor.[3]

Had respondent's wrongdoing been limited to gross neglect and lack of diligence, an admonition might have been sufficient. There are, however, two aggravating factors: respondent's fabrications and misrepresentations to Washington and the agreement to settle the claim with her. We, therefore, determine that the otherwise appropriate admonition should be increased to a reprimand. In light of the mitigating factors present in this case, we do not believe that discipline more severe than a reprimand is required.

---

[3] The more appropriate rule, however, would be RPC 1.8(h)(2), instead of RPC 1.8(a), as found by the DEC.

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 Lawrence M. Tinghino
Docket No. DRB 11-384

Argued: February 16, 2012

Decided: April 24, 2012

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did no participp
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel