

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 12-029  
District Docket Nos. XIV-11-0008E,  
XIV-11-0009E, XIV-11-0012E, XIV-  
11-0027E, and XIV-11-0028E

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IN THE MATTER OF  
TERENCE SEAN BRADY  
AN ATTORNEY AT LAW

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Decision

Decided: July 20, 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 Office of Attorney Ethics (OAE), pursuant to R.  
1:20-4(f)(2). The complaint charged respondent with violating a  
combination of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern  
of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to  
communicate with the client) RPC 1.16(d) (failure to protect a  
client's interests on termination of the representation), RPC  
8.1(b) (failure to cooperate with disciplinary authorities), RPC

8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) in five client matters. We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1988. He has no history of discipline. However, he has been temporarily suspended since June 2011. In the Matter of Terence Sean Brady, 206 N.J. 136 (2011). The OAE sought respondent's suspension based on his

multiple instances of neglecting client matters, failure to respond to his clients' efforts to communicate with him, his continued representation of clients despite consenting to a Superior Court Order prohibiting him from doing so as well as the appointment of an attorney-trustee, and for his failure to cooperate with the Office of Attorney Ethics' investigation.<sup>1</sup>

A supporting affidavit from Janice Richter, OAE Deputy Ethics Counsel, in support of the motion for respondent's temporary suspension, states that the OAE had received several grievances against respondent, each essentially alleging that he had accepted money from clients and had failed to perform the tasks

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<sup>1</sup> Respondent also did not maintain an attorney trust account.

for which he had been retained. Richter's affidavit went on to state that, "[o]n information and belief, respondent is suffering from a serious illness, which may be impacting his ability and/or capacity to practice law." The OAE's letters and calls to respondent's home went unanswered.

At some point in 2010, the Burlington County Superior Court entertained an application for a temporary attorney-trustee to be appointed to oversee respondent's practice. The Honorable Ronald E. Bookbinder, A.J.S.C., appointed an attorney as trustee in December 2010. Respondent was not cooperative with the trustee. Apparently, respondent was not opening his mail, matters were not being addressed, and he was not maintaining his law practice. Moreover, the OAE received information suggesting that respondent had been representing clients, despite consenting to a February 2011 order by Judge Bookbinder that he cease practicing law.

In addition, respondent was ineligible to practice law, from September 27, 2010 to January 13, 2011, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection. There is a very brief overlap between that period of ineligibility and the relevant time in one of the matters

involved in this complaint. Ineligibility to practice is not mentioned in this record.

Service of process was proper in this matter. On November 7, 2011, Richter mailed the complaint, by certified and regular mail, to respondent's last known office address and last known home address, Law Offices of Gary L. Daniels, LLC, 88 High Street, Mt. Holly, New Jersey 08060, and 451 High Street, Mt. Holly, New Jersey 08060, respectively. The certified mail receipt to respondent's home address was returned indicating delivery on November 17, 2001. The regular mail to that address was not returned. Both the certified and regular mail to respondent's office address were returned marked "Not Deliverable As Addressed - Unable to Forward."

On December 8, 2011, respondent telephoned the OAE and requested an extension of time in which to answer the complaint. He also faxed an undated letter to the OAE, requesting an extension to January 6, 2012 to file his answer. His request for an extension of time was apparently denied, because, on December 23, 2011, the OAE sent a second letter to the above addresses, by certified and regular mail, advising respondent that, if he did not file an answer within five days, the allegations of the complaint would be deemed admitted and the

record would be certified to us for the imposition of sanction. 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 receipts were returned indicating delivery to both respondent's home and office addresses. The regular mail envelopes were not returned.

After respondent's receipt of the December 23, 2011 five-day letter, he faxed a second undated letter to the OAE, in which he referred to his previous letter asking for an extension of time to January 6, 2012 to file his answer. As of the date of the OAE's certification of the record, January 17, 2012, respondent had not filed an answer.

**Count One (The Edwards Matter XIV-2011-0012E)**

In February 2010, Gregory Edwards retained respondent in connection with a matrimonial matter. Edwards agreed to pay respondent \$1,500 and gave him an initial payment of \$775. Thereafter, Edwards made numerous calls to respondent, but was unable to reach him or to leave messages because respondent's answering machine was always full. On March 6, 2010, Edwards contacted respondent, "but no discussions occurred." Respondent stated that he would call Edwards back, on March 8, 2010, to

schedule an appointment. Respondent did not call Edwards on March 8, 2010 and did not meet with him. Respondent mailed a divorce petition on April 9, 2010 to the Essex County Superior Court, but it was returned to him, on April 12, 2010, as incomplete.

In early May 2010, respondent called Edwards and told him "that everything was in progress" and that he would call him in a few days. Edwards did not receive a subsequent call. On June 7, 2010, Edwards wrote to respondent demanding the docket number of his case and a date on which they would meet to review the case. Edwards told respondent that, if he did not receive the requested information by June 14, 2010, he wanted his retainer and his file returned.

At some point, Edwards learned that the complaint had been returned to respondent unfiled. He so advised respondent.<sup>2</sup> Respondent assured Edwards that he would make the necessary corrections and mail the complaint back to the Court. The complaint was filed sometime after July 4, 2010. Respondent also assured Edwards that his divorce would be completed by the

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<sup>2</sup> The complaint does not reveal how Edwards obtained that information.

end of July 2010 and that he would check his schedule and call Edwards to schedule a meeting with him. Respondent did not call Edwards, however.

Subsequently, Edwards received notice from the court about a date for a child support hearing. He tried to contact respondent to discuss it. Respondent failed to call Edwards and failed to appear in court on his behalf, causing Edwards' complaint to be dismissed.

Edwards' further attempts to communicate with respondent were unsuccessful. By letter dated August 20, 2010, he terminated respondent's representation and asked for the return of his retainer and his file. Respondent did not contact Edwards or return his file.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(d).

**Count Two (The Dupont Matter XIV-2011-0009E)**

In November 2009, Darryl Dupont retained respondent to represent him in a matrimonial matter. Dupont paid respondent \$500. Respondent advised him that he would have a restraining order against Dupont lifted so that he could see his children by Christmas.

At some point, respondent told Dupont that his filing of documents had been postponed "due to a court backlog." He falsely told Dupont that he had filed papers with the court, in February 2010 and April 2010, and had filed an emergent order, in June 2010. However, the only document that respondent had filed was a letter of representation, dated June 17, 2010.

During the course of the representation, Dupont left repeated messages for respondent, but respondent failed to return his calls. At some point, Dupont could no longer leave messages because respondent's answering machine was full. He eventually met with respondent at a coffee shop and in respondent's car, but respondent gave him no information on the status of his matter.

In August 2010, Dupont terminated respondent's services and, on several occasions, asked for his file and \$500 to be returned. Respondent did not return the retainer or the file. In addition, he "threatened" Dupont, when Dupont indicated that he was going to file an ethics grievance against him.



The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, RPC 1.4, presumably (b), RPC 1.16(d), RPC 8.4(b), and RPC 8.4(c).<sup>3</sup>

**Count Three (The Dillon Matter XIV-2011-0027E)**

In October 2009, Thomas Dillon retained respondent to resolve credit card and credit reporting issues and to handle a pension claim against a former employer. Exhibit 4 is a series of letters from respondent to various parties pursuing Dillon's claim.

At some point, respondent represented to Dillon that a complaint had been filed on his behalf. Dillon was, however, advised by the court that nothing had been filed on his behalf.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, and RPC 8.4(c).

**Count Four (The Szalai Matter XIV-2011-0028E)**

In May 2010, Erika Szalai retained respondent to represent her son in an unemployment compensation appeal and to file

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<sup>3</sup> The RPC 8.4(b) charge relates to respondent's "threat" to Dupont.

emancipation documentation to remove her grandson from her son's child support obligations. Szalai paid respondent \$300 towards a \$500 legal fee, as well as \$30 for the emancipation filing fee.

Szalai spoke with respondent twice, between May and August 2010, trying to determine the status of her son's matter. Respondent advised her that the appeal had been faxed to "Trenton." When respondent and Szalai's son went to the Trenton unemployment office, they were told that there was nothing on file in the matter.

On September 30, 2010, Szalai met with respondent and paid him another \$200. Thereafter, Szalai received a letter from the Appeal Tribunal, dated September 29, 2010, indicating that it had denied her son's appeal as out of time.<sup>4</sup> Also, respondent failed to file the emancipation documentation.

The complaint charged respondent with violating RPC 1.1(a), RPC 1.3, and RPC 8.4(c).

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<sup>4</sup> The ethics complaint, however, alleges that respondent failed to file the appropriate appeal request.

**Count Five (The Brewer Matter XIV-2011-0008E)**

In September 2009, Jeremy Brewer retained the Gary L. Daniels, LLC law firm to represent him in a divorce proceeding initiated by his wife. Brewer agreed to pay a flat fee of \$1,750 for the services of Gary Daniels and respondent.<sup>5</sup> Respondent was responsible for the Brewer matter.

Respondent failed to file "paperwork" in Brewer's divorce action and charged him \$400 to return to court, where Brewer was ordered to pay his ex-wife's attorney fees.

The complaint charged respondent with violating RPC 1.1(a). This count of the complaint also charged respondent with engaging in a pattern of neglect, a violation of RPC 1.1(b), when the Brewer, Edwards, Dillon, Dupont, and Szalai matters are considered in concert.

**Count Six (Failure to Cooperate with the OAE)**

On March 25, 2011, the OAE sent to respondent the grievances filed by Dupont, Szalai, Brewer, and Dillon and asked him to reply to each. Respondent did not reply to any of the grievances.

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<sup>5</sup> Daniels was then respondent's employer.

The OAE called respondent's residence and cell phone on three occasions, in March and April 2011, and left messages for him to contact the OAE about the grievances.<sup>6</sup> Respondent did not reply to the messages.

The complaint charged respondent with violating RPC 8.1(b).

Pursuant to R. 1:20-4(f)(1), an attorney'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. However, this complaint charged respondent with a serious rule violation that is not supported by the allegations of the complaint. Specifically, the complaint charged respondent with violating RPC 8.4(b), by "threatening" Dupont, when he indicated that he was going to file an ethics grievance against respondent. The record provides no more information on this issue. The complaint fails to describe the conduct that supports the allegation that respondent threatened Dupont. The mere mention of the word "threat" in the complaint does not constitute clear and

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<sup>6</sup> The complaint states: "Messages for Respondent from the Office of Attorney Ethics were left with Respondent's estranged wife, with whom Respondent was residing." It is unclear if these were the same messages that were left for respondent in March and April 2011, mentioned in ¶50 of the complaint.

convincing evidence on which we can make such a grave finding. The allegation that respondent violated RPC 8.4(b) is, therefore, dismissed.

In addition, the complaint charged respondent with violating RPC 8.4(c), in the Szalai matter, in connection with his misrepresentation to her "regarding the status of the filing." A review of Exhibit 7 indicates that, in August 2010, an appeal was filed, albeit out of time. The complaint states that respondent did not file an appeal. Given the lack of clarity in the record regarding this allegation, we also dismiss the charged violation of RPC 8.4(c) in the Szalai matter.

As to the other violations, respondent's correspondence to the OAE seems to indicate that he may have unspecified defenses to some or all of the allegations against him. Of note is Exhibit D, respondent's previously mentioned, undated letter to the OAE, in which he requested additional time to file an answer to the complaint. In that letter, respondent denied the allegations of the complaint, saying that some were "blatantly false" and some were "distortions of the truth." Moreover, respondent stated that there were "medical facts that need to be presented." However, respondent supplied no specific information in support of his claimed defenses and mitigating

factors. He went on to state that he was seeking appointed counsel from the assignment judge in Burlington County. Again, the record contains no information on this issue. We are, thus, bound by the substantiated allegations in the complaint.

As to the remaining allegations, respondent is guilty of gross neglect in five matters, lack of diligence in four of those matters, failure to communicate with the client, failure to protect a client's interests on termination of the representation, and misrepresentation in two of the matters, and also a pattern of neglect, when these matters are considered together. Three instances of neglect are required to form a pattern for purposes of RPC 1.1(b). In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16).

Specifically, in Edwards, respondent allowed his client's case to be dismissed after he failed to appear in court in his behalf. Moreover, he failed to return Edwards' calls, did not supply him with requested information, and did not return his retainer or file, when the representation was terminated. In Dupont, respondent failed to file documents with the court, failed to return his client's calls, and made misrepresentations about the steps he had taken on his behalf. Moreover, he did not turn over the file or return the retainer when the

representation was terminated. In Dillon, although respondent took some steps on his client's behalf, he failed to file a complaint in the matter and misrepresented to the client that he had done so. In the Szalai matter, respondent failed to file the emancipation documentation and did not diligently pursue the unemployment appeal. In Brewer, respondent failed to file anything in his client's divorce proceeding. In addition, he is guilty of a pattern of neglect. Finally, he failed to cooperate with disciplinary authorities.

If an attorney displays a pattern of neglect, a reprimand ordinarily ensues, at times even if this infraction is accompanied by additional rule violations. See, e.g., In re Tyler, 204 N.J. 629 (2011) (consent to reprimand; in six bankruptcy matters the attorney was guilty of gross neglect, pattern of neglect, lack of diligence, and failure to communicate with clients; in one matter the attorney communicated with a client represented by counsel; mitigating factors included the attorney's lack of disciplinary history and her health and mental problems at the time of her misconduct); In re Gellene, 203 N.J. 443 (2010) (attorney guilty of gross neglect, pattern of neglect, and lack of diligence; the attorney failed to timely file three appellate briefs, failed to

communicate with his client in two of the matters, and failed to appear on the return date of an order to show cause without notifying the court that he would not appear, which was considered conduct prejudicial to the administration of justice; aggravating factors included his ethics history: two private reprimands and an admonition; mitigating factors considered were his financial problems, depression, and serious personal problems); In re Weiss, 173 N.J. 323 (2002) (reprimand for lack of diligence, gross neglect, and pattern of neglect); In re Balint, 170 N.J. 198 (2001) (reprimand for attorney who, in three matters, engaged in lack of diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (reprimand for lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect).

In determining the appropriate discipline for this respondent, In re Tyler, supra, 204 N.J. (2011), is a good starting point. The cases are comparable, in that Tyler was guilty of misconduct in six matters; respondent was guilty of misconduct in five. In both cases, the attorneys had a previously unblemished disciplinary history. Tyler had



additional mitigating factors of health issues. As discussed previously, although we have nothing definitive before us on the issue of respondent's health, the OAE's motion papers in connection with respondent's temporary suspension make clear that something is amiss with him, be it physical or mental. Moreover, the fact that respondent has had an unblemished career for over two decades and suddenly has a "bubble" of mishandled cases and unethical conduct indicates that something is seriously wrong. Indeed, as further indication that respondent is suffering under a disability, we recall that he did not ignore the OAE. Rather, he sent two detailed letters seeking additional time to file his answer and then failed to do so, allowed this matter to proceed as a default, and has not communicated with the Office of Board Counsel. In Exhibit 9, the OAE's letter forwarding the grievances to respondent, Richter stated:

We are also aware that on February 4, 2011, Judge Bookbinder appointed [an attorney] to act as a Trustee over your law practice for what was characterized as your temporary "inability" to carry on your law practice. .

. . . We would like to sit down with you to discuss your current status, and to determine whether or not you are able to respond to the grievances, whether or not

you are currently practicing law, or are currently able to practice law.

[Ex.9.]

It seems, thus, that something is "up" with respondent, a factor that we have considered, in mitigation. Were we at the final stage of our analysis, we would find that a reprimand is the suitable sanction for this respondent.

There is, however, the aggravating factor that the case proceeded 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).

There is, also, one more aggravating factor to consider. The OAE's motion papers reveal that, although Judge Bookbinder entered an order (to which respondent consented) that respondent stop practicing law, he continued to represent clients. Respondent's defiance of a court order constitutes conduct prejudicial to the administration of justice, an additional factor weighing against him. We, therefore, determine that the otherwise appropriate form of discipline for respondent's

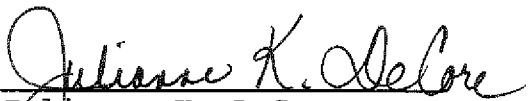
transgressions (a reprimand) must be increased two levels to reflect the above aggravating factors.

In addition, within ninety days from the date of the Court order, respondent is to submit to the OAE proof of his fitness to practice law, as attested by a health professional approved by the OAE.

Member Baugh 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 Terence Sean Brady  
Docket No. DRB 12-029

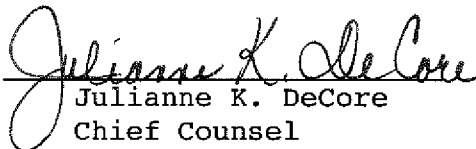
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Decided: July 20, 2012

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				
Gallipoli		X				
Wissinger		X				
Yamner		X				
Zmirich		X				
Total:		8				1

  
Julianne K. DeCore  
Chief Counsel