

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-119
District Docket No. XA-2011-0017E

IN THE MATTER OF :
: STUART D. FELSEN :
: AN ATTORNEY AT LAW :
:

Decision

Decided: October 1, 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 default filed by the District XA Ethics Committee (DEC), pursuant to R. 1:20-4(f). A one-count complaint charged respondent with gross neglect (RPC 1.1(a)), lack of diligence (RPC 1.3), failure to communicate with his client (RPC 1.4, presumably (c)), and making a false statement of material fact or law to a third person (RPC 4.1(a)). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1993. On April 25, 2002, he received a reprimand for improperly practicing law under the trade name of "Law Advisory Group" and

for making false or misleading statements in advertisements about his qualifications and the make-up of that entity. In re Felsen, 172 N.J. 33 (2002).

Respondent was suspended for three months, effective February 24, 2007, for third-degree criminal attempt to possess CDS (Percocet) by fraud, in violation of N.J.S.A. 2C:5-1 and N.J.S.A. 2C:35-13, and third-degree forgery, in violation of N.J.S.A. 2C:21-1a(2). In re Felsen, 189 N.J. 199 (2007).

On November 27, 2007, respondent was reinstated to the practice of law. In re Felsen, 193 N.J. 329 (2007).

Service of process was proper in this matter. According to the certification of service, on December 8, 2011, the DEC sent a copy of the complaint to respondent, in accordance with R. 1:20-7(h), at his law office address, 119 Vista Place, Cedar Knolls, N.J. 07927. The certified mail was accepted on December 10, 2011, but the signature on the green certified mail return card is illegible. The regular mail was not returned.

On January 12, 2012, the DEC sent a "five-day" letter to respondent at his law office address, by regular and certified mail, advising him that, if he failed to file a verified answer within five days of the date of the letter, no further hearing would be held and the entire record would be certified directly

to us. The certified mail was accepted on January 14, 2012. Again, the signature on the green certified mail return card is illegible. The regular mail was not returned.

The time within which to answer the complaint has expired and respondent has not filed an answer.

According to the complaint, in February 2010, Cinderella Eboh, the grievant, retained respondent to defend a DWI charge then pending in Parsippany Township. Respondent entered his appearance on February 16, 2010.

Respondent served a discovery demand on the State for any videotape or like evidence of the vehicle stop. He did not receive the video evidence with the State's initial reply materials. Respondent claimed that he asked the municipal prosecutor about the video evidence and was advised that none existed.

The municipal prosecutor told the DEC that, on October 28, 2010, he informed respondent that such a video did exist. According to the prosecutor, on that day respondent was also directed by the court to obtain a copy of the video. Respondent, however, never obtained the video, which contained exculpatory evidence.

Having told respondent that she was innocent of DWI, Eboh complained that respondent had then failed to meet with her to review discovery, that he did not explain the case to her, and that he prepared no defense to the charge.

Despite Eboh's claim of innocence, respondent advised her to plead guilty to the DWI charge because there was no defense to the charges against her. On his advice, on January 27, 2011, Eboh pleaded guilty to DWI.

Dissatisfied with respondent's representation, Eboh retained new counsel, who, on February 23, 2011, was able to vacate her guilty plea and obtain a copy of the exculpatory videotape.

Eboh's subsequent post-conviction relief petition was filed and granted, based on ineffective assistance of counsel, for respondent's failure to obtain the video.

The complaint charged that respondent's inaction, especially to obtain the exculpatory video evidence, constituted gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively. His failure to discuss the important issues with Eboh constituted a violation of RPC 1.4, presumably (c) (failure to explain a matter to the extent reasonably necessary for the client to make informed decisions about the

representation). In addition, respondent's statement to Eboh that there was no video evidence of her stop was false. The prosecutor informed respondent of its existence and the court directed him to obtain it. According to the complaint, respondent's statement constituted a violation of RPC 4.1 (making false statement of material fact or law to a third person).

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)(1).

Respondent was retained to defend Eboh against a DWI charge. Importantly, Eboh believed that she was innocent. According to the complaint, the video evidence of her motor vehicle stop contained exculpatory evidence.

Although respondent claimed that the prosecutor told him that no video existed, the prosecutor claimed otherwise. Moreover, respondent had been directed by the court to order a copy of the video. Respondent made no effort to order the video. Instead, he advised his client that, in the absence of a video, she should plead guilty. She did so to her own detriment.

Respondent's failure to ascertain the existence of the video and to defend his client against the DWI charge amounted to gross neglect and a lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

The complaint also charged respondent with a violation of (RPC 4.1) for his alleged misrepresentation to Eboh, more properly, a violation of RPC 8.4(c). Irrespective of the rule cited, the complaint contains contradictory factual allegations about respondent's knowledge of the video, prior to advising Eboh. On the one hand, respondent said that he was told by the prosecutor that there was no video of Eboh's vehicle stop, information upon which he relied, when advising Eboh how to proceed. On the other hand, the prosecutor said that he told respondent that a video existed.

Respondent's statement to Eboh that no video existed would make sense under his version of events, where he had been told that none existed. There was no reason to lie to the client about it. It is impossible to know who in this regard - respondent or the prosecutor - is more credible on the issue of respondent's knowledge. Because of the conflicting information in the complaint, it cannot be said that respondent lied to Eboh about the video. Therefore, the complaint lacks sufficient facts

to support, by clear and convincing evidence, a finding of a false statement. We, thus, determine to dismiss the RPC 4.1 charge.

In summary, respondent grossly neglected and lacked diligence in a client matter and failed to adequately communicate with the client, violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(c), respectively.

Conduct involving gross neglect and lack of diligence, even when combined with other infractions, such as failure to communicate with clients, ordinarily results in an admonition. See, e.g., In re Russell, 201 N.J. 409 (2009); In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008); and In re Dargay, 188 N.J. 273 (2006).

In aggravation, respondent has a disciplinary record: a 2002 reprimand and a 2007 three-month suspension. His prior brushes with disciplinary authorities should have served as a warning that any future misconduct would be looked upon harshly. For this reason, an elevation to a reprimand is warranted here.

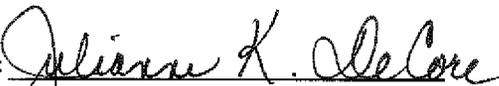
There is the additional element of the default, for which greater discipline is required. In a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with

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). We, therefore, vote to impose a censure.

Vice-Chair Frost recused herself.

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

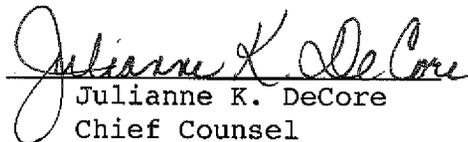
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Stuart David Felsen
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Disposition: Censure

Members	Disbar	Censure	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