

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 10-205
District Docket No. I-09-0002E

IN THE MATTER OF
VINCENT J. MILITA, II
AN ATTORNEY AT LAW

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Decision

Argued: September 16, 2010

Decided: November 10, 2010

Andrew D. Cantanese appeared on behalf of the District I Ethics Committee.

Vincent J. Pancari appeared on behalf of respondent.

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

This matter came before us pursuant to R. 1:20-6(c)(1).¹ The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep the client reasonably informed about the status of the

¹ This section provides that a hearing will be held only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation.

matter), and RPC 1.5(b) (failure to provide the client with a writing setting forth the basis or rate of the fee). In our view, a reprimand is the proper sanction for respondent's actions.

Respondent was admitted to the New Jersey bar in 1980. He maintains a law office in Marmora, New Jersey. He has an extensive disciplinary record.

In 1985, respondent was suspended for six months, for misconduct in two matters. In re Milita, 99 N.J. 336 (1985). In the first matter, he asked an assistant prosecutor whether a more favorable plea bargain would result for his client if a contribution were made to the assistant prosecutor's favorite charity. Although the Supreme Court concluded that respondent had not intended to offer a bribe, it found that his conduct was prejudicial to the administration of justice and that it adversely reflected on his fitness to practice law.

In the second matter, respondent visited an adverse witness under police custody in a hospital. When the guard mistakenly led the witness to believe that respondent was the witness' attorney, respondent did not correct the mistake. Within a day, respondent notified the Public Defender's Office of his actions. The Court noted that, although the Public Defender's Office was not representing the witness at the time of the interview, he

was a potential suspect and was represented by the Public Defender's Office in other matters. The Court found that respondent engaged in conduct involving deceit and misrepresentation and that he knew that it was improper to appear to advise someone represented by another attorney.

On February 13, 1986, the Court reinstated respondent to the practice of law, subject to a two-year association with another attorney. In re Milita, 102 N.J. 641 (1986).

In 2003, respondent was reprimanded for failure to treat with courtesy and consideration all persons involved in the legal process. In re Milita, 177 N.J. 1 (2003). In that matter, respondent sent an insulting and sarcastic letter to the victim of his client's criminal conduct.

On June 15, 2004, respondent was suspended for three months for communicating with his client's co-defendant, even though he knew that another lawyer represented the co-defendant. In re Milita, 180 N.J. 116 (2004). Once the co-defendant's attorney learned of respondent's improper communication with his client, he filed several motions. Respondent's client was required to obtain substitute counsel. Respondent caused the unnecessary expenditure of judicial resources, thus engaging in conduct prejudicial to the administration of justice.

On November 8, 2004, the Court reinstated respondent to the practice of law and ordered that he complete a course in professionalism approved by the Office of Attorney Ethics (OAE) and, if deemed appropriate by the OAE director, that he participate in Atlantic County Bar Association activities offered to enhance professionalism in the practice of law. In re Milita, 182 N.J. 1 (2004).

The facts that gave rise to this matter are as follows: In September 2005, while incarcerated at the Atlantic County Justice Facility, grievant Edward Murphy retained respondent. Murphy had been detained for violating his parole, due to a June 2005 arrest. Initially, Murphy retained respondent to obtain his release from prison -- his parole eligibility date had passed -- and also to make property tax payments on Murphy's North Carolina house, during his incarceration. On October 12, 2005, respondent sent a letter to the State Parole Board, requesting Murphy's release.

In either September or October 2005, respondent and Murphy expanded the scope of the representation. Specifically, when respondent agreed to handle the sale of Murphy's North Carolina property, by listing it with a real estate agent. Respondent, however, did nothing to pursue the sale of Murphy's property. He conceded that he wrote only two letters, dated October 12 and

October 14, 2005 (the record does not reveal the substance of the letters or to whom they were addressed). According to respondent, he assumed that, upon Murphy's release from prison, Murphy would handle the sale of the property without respondent's involvement.

On October 14, 2005, pursuant to a power-of-attorney (POA), respondent withdrew funds from Murphy's Commerce Bank account and forwarded a payment to the Carteret County, North Carolina, tax collector.

Murphy was released from prison in the fall of 2005. On January 7, 2006, he was again arrested. He retained respondent to represent him in connection with both his June 2005 and January 2006 arrests. Pursuant to the POA, respondent withdrew funds from Murphy's bank account and, on January 19, 2006, posted Murphy's \$100,030 bail.

Over the following months, respondent and Murphy spoke on more than one occasion about the pending criminal charges. Respondent admitted, however, that he had no discussions with Murphy about the North Carolina property. Although respondent believed that, once Murphy was no longer incarcerated, Murphy would handle the sale of the property, respondent never communicated this understanding to Murphy, either in writing or orally.

On April 4, 2006, respondent represented Murphy in connection with a plea agreement. On April 7, 2006, the "Judiciary" issued a \$95,000 bail refund, which Murphy acknowledged receiving. Murphy, however, failed to appear at the subsequent June 23, 2006 sentencing date. The court, therefore, issued a bench warrant for his arrest. Thereafter, respondent took no further action on Murphy's behalf and did not try to contact him.

In November 2007, Murphy was arrested in North Carolina and was eventually extradited to New Jersey. In March 2008, for the first time since failing to appear for his June 2006 sentencing proceeding, Murphy contacted respondent. In May 2008, Murphy was sentenced to a four-year custodial term. Murphy claimed that, as part of their agreement, respondent was to obtain credit for Murphy's time-served in North Carolina, while awaiting extradition, but complained that respondent had failed to take any action in that regard.

Murphy further claimed that, during the spring of 2008, respondent, was to resume efforts "to maintain and sell" the North Carolina property. Respondent's file included tax bills for the property that he received in 2008 and 2009, for which there was no record of payment and no record that he had

communicated with Murphy about the bills. Some of the tax bill envelopes remained unopened.

In the fall of 2008, Murphy wrote several letters to respondent requesting an update on respondent's efforts to sell the North Carolina property and an accounting of all of his funds under respondent's control. Respondent failed to provide a "timely" reply to update the status of the sale of the North Carolina property. Also as of the date of the complaint, respondent had not provided to Murphy a "detailed accounting" of his funds. Respondent admitted that he had not done so, but asserted a belief that Murphy had received all of the bail money to which he had been entitled. Respondent also claimed that he had provided services on the criminal charges that exceeded the fee that Murphy claimed that he had paid.

In a February 12, 2009 letter to the DEC secretary, respondent admitted that he did "little or nothing" to pursue the sale of the "now-abandoned" North Carolina property, once Murphy was released from prison. He further admitted that he failed to seek jail credit for the time that Murphy spent in custody in North Carolina, while awaiting extradition to New Jersey. According to respondent, his caseload was so large that he "simply put [Murphy's] various unopened letters aside in a stack of unanswered letters from various state prisoners in a

clustered corner of [his] main desk vainly hoping to get to them sometime in the uncertain future."

In a March 30, 2009 letter to the DEC investigator, respondent wrote: "a weekly inundation of prospective new criminal clients delayed and prevented me from timely getting back to older cases requiring follow-up work such as occurred with Mr. Murphy's matters after he failed without cause to appear for sentencing and left the State without communicating with counsel."

Respondent's fees were \$500 for his initial services to contact the State Parole Board and to pay real estate taxes for the North Carolina property and \$4000 to defend Murphy on the June 2006 and January 2007 charges leading to his arrests.

Respondent admitted that he was guilty of gross neglect (RPC 1.1(a)) and lack of diligence (RPC 1.3) by failing to take any action to accomplish the sale of the North Carolina property after agreeing to do so; by failing to take any action to obtain credit for Murphy's time-served in North Carolina; and by failing to open or reply to numerous letters from Murphy or tax bills from North Carolina, instead simply putting them aside, unopened.

Respondent also admitted that he violated RPC 1.4(b) when he did not confirm his understanding that Murphy would

personally handle the North Carolina property, did not reply to Murphy's fall 2008 letters requesting information about the status of the North Carolina jail credits, and did not provide Murphy with an accounting of his funds.

Respondent further admitted that he failed to provide Murphy with a writing setting forth the basis or rate of his fee, a violation of RPC 1.5(b).

Following a full review of the record, we are satisfied that the facts alleged in the complaint and admitted by respondent clearly and convincingly support a finding that respondent was guilty of unethical conduct.

Respondent failed to provide his client with a written retainer agreement, thereby violating RPC 1.5(b); failed to update him about the status of the North Carolina property and to communicate with him about who would sell the property, failed to provide him with an accounting of his funds, and failed to reply to his letters, all in violation of RPC 1.4(b); and engaged in gross neglect and lacked diligence by failing to take any action to sell the North Carolina property, to pay the North Carolina tax bills, and to obtain credit for Murphy's time-served in North Carolina, violations of RPC 1.1(a) and RPC 1.3.

The only issue left for determination is the proper quantum of discipline.

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In re Russell, 201 N.J. 409 (2009) (admonition for attorney whose failure to file answers to divorce complaints against her client caused 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) (admonition imposed when attorney's inaction in a personal injury suit caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; also, the attorney did not communicate with the client about the status of the case); In re Dargay, 188 N.J. 273 (2006) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar conduct); In the Matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005) (admonition for attorney who did not disclose to the client that the file had been lost,

canceled several appointments with the client for allegedly being unavailable or in court when, in fact, the reason for the cancellations was his inability to find the file, and then took more than two years to attempt to reconstruct the lost file); In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also failed to comply with the client's requests for information about the case); In re Uffelman, 200 N.J. 260 (2009) (reprimand for attorney guilty of gross neglect, lack of diligence, and failure to communicate with a client; although the attorney had no disciplinary record, the reprimand was premised on the extensive harm caused to the client, who was forced to shut down his business for three months because of the attorney's failure to represent the client's interests diligently and responsibly); In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); In re Zeitler, 165 N.J. 503 (2000) (reprimand for attorney guilty of lack of diligence and failure to communicate with clients; extensive ethics history: admonition, reprimand, and one- and two-year suspensions); In re Gordon, 139 N.J. 606 (1995)

(reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

Here, as in Aranguren, respondent is also guilty of violating RPC 1.5(b) (failure to provide client with a writing setting forth the basis or rate of the fee). A violation of this rule, even when accompanied by other, non-serious ethics offenses, generally results in an admonition. See, e.g., In the Matter of Joel C. Seltzer, DRB 09-009 (June 11, 2009) (attorney failed to memorialize the basis or rate of his fee; in another client matter, he failed to promptly deliver funds to a third party); In the Matter of Alfred V. Gellene, DRB 09-068 (June 9, 2009) (in a criminal appeal, the attorney failed to furnish the client with a writing setting forth the basis or rate of his fee; the attorney also lacked diligence in the matter); In the Matter of David W. Boyer, DRB 07-032 (March 28, 2007) (in an estate matter, the attorney failed to provide a client with a writing setting forth the basis or rate of his fee); and In the Matter of Carl C. Belgrave, DRB 05-258 (November 9, 2005) (attorney retained to represent the buyer in a real estate

transaction failed to state in writing the basis of his fee, resulting in confusion about whether a \$400 fee was for the real estate closing or for a prior matrimonial matter for which the attorney had provided services without payment; recordkeeping violations also found).

Respondent's overall ethics transgressions, viewed in isolation, might have merited an admonition. We find, however, that this case is similar to the Aranguren matter where the attorney received a reprimand for similar misconduct and had a comparable ethics history (admonition and a six-month suspension). Although respondent's ethics history is somewhat more extensive (a six-month suspension, a reprimand, and a three-month suspension), his prior ethics infractions were of a different nature. Thus, this is not a case where the attorney failed to learn from prior mistakes. Nevertheless, his propensity to violate the Rules of Professional Conduct requires more than an admonition. We find that, because respondent provided Murphy with significant legal services and held a mistaken belief that, once Murphy was released from prison, he would assume responsibility for the North Carolina property, a reprimand is sufficient discipline here.

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: 
for

Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Vincent J. Milita, II
Docket No. DRB 10-205

Argued: September 16, 2010

Decided: November 10, 2010

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			


By Julianne K. DeCore
Chief Counsel