

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-223
District Docket Nos. IIIB-2010-0027E,
IIIB-2011-0020E, and IIIB-2011-0021E

IN THE MATTER OF
LEONARD H. NIEDERMAYER
AN ATTORNEY AT LAW

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Decision

Decided: December 19, 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 IIIB Ethics Committee (DEC), pursuant to R. 1:20-4(f)(2): A three-count complaint charged respondent with lack of diligence (RPC 1.3), failure to communicate with the client, (RPC 1.4(b)), and failure to cooperate with ethics authorities (RPC 8.1(b)) in three separate client matters. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1991. On October 20, 2011, the Supreme Court temporarily suspended him

for failing to comply with a fee arbitration determination. He remains suspended to date.

Service of process was proper in this matter. According to the certification of service, on May 9, 2012, the DEC sent a copy of the complaint to respondent, in accordance with the provisions of R. 1:20-4(d) and R. 1:20-7(h), at 31 Carnation Street, Browns Mills, New Jersey 08015. Respondent personally signed the certified mail card. The regular mail was not returned.

On June 4, 2012, the DEC sent a "five-day letter" to respondent at his Browns Mills address, advising him that, unless the DEC received his answer within five days of the date of the letter, the entire record would be certified directly to us for the imposition of discipline. Neither the certified mail receipt nor the regular mail was returned before the matter was certified to us.

The time within which respondent may answer has expired and no answer has been filed.

I. The Marrero Matter

In February 2009, Paula Marrero retained respondent to file a Chapter 13 bankruptcy petition. Marrero paid respondent a \$3,000 fee.

Although respondent filed a bankruptcy petition, he failed to list Marrero's outstanding automobile loan as a debt on her bankruptcy schedules, after which the automobile finance company sought relief from the "automatic stay," in order to collect its debt.

Marrero tried several times to contact respondent about the status of her bankruptcy, in general, and the finance company's motion, in particular. Respondent did not reply to her requests for information. Hearing nothing, Marrero had little choice but to appear pro se, on the March 2010 return date of the finance company's motion for relief from the automatic stay. According to the complaint, respondent did not communicate with Marrero again.

The complaint alleged that respondent's inaction constituted a violation of RPC 1.3 and that his failure to keep his client informed about the status of her case constituted a violation of RPC 1.4(b).

II. The Idell Matter

In November 2010, George Idell retained respondent to represent him in a bankruptcy matter, for which he paid respondent \$750. On February 8, 2011, Idell signed a bankruptcy petition that respondent had prepared for him.

Thereafter, in 2011, respondent assured Idell, who was about to move out of state, that he had filed the petition. The petition, however, had not yet been filed.

Sometime thereafter, respondent informed Idell that the petition had not yet been filed. On July 13, 2011, he filed the petition with the bankruptcy court.

Idell's several attempts, between February and July 2011, to obtain information from respondent about the status of his petition went unanswered.

Respondent also ignored written requests from the DEC investigator, requesting information about the Idell grievance. The complaint contains no more information about those written requests.

According to the complaint, respondent's failure to immediately file the bankruptcy petition violated RPC 1.3; his failure to keep his client reasonably informed about the status of the case and to reply to his reasonable requests for information violated RPC 1.4 (a), more properly (b); and his failure to reply to the DEC investigator's requests for information about the grievance violated RPC 8.1(b).

III. The Fox Matter

On February 7, 2011, Robert Fox retained respondent to represent him a bankruptcy matter, for which he paid him \$635.

On February 12, 2011, Fox signed a bankruptcy petition that respondent had prepared for him. At that time, respondent also advised Fox that he would immediately file the petition, because Fox was scheduled to move out of state. Between February and June 2011, respondent advised his client that a bankruptcy hearing in his matter had been delayed, due to a court backlog.

On June 22, 2011, a lien was placed on Fox' bank account, presumably by a creditor, after which respondent told Fox that the petition had never been filed. Respondent finally filed it on June 28, 2011.¹

In addition, respondent failed to reply to Fox' several attempts to obtain information about the status of his bankruptcy matter.

According to the complaint, respondent's failure to immediately file the bankruptcy petition constituted a violation of RPC 1.3; his failure to reply to Fox' reasonable requests for information about the case violated RPC 1.4 (a), more properly

¹ Respondent was not charged with having lied to Fox about the status of the case (RPC 8.4(c)).

(b); and his failure to reply to the DEC investigator's requests for information about the grievance violated RPC 8.1(b).

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).

In the Marrero matter, respondent was retained in February 2009, to file a Chapter 13 petition. Due to his failure to include Marrero's auto loan as a debt in the bankruptcy schedules, the lender sought relief from the court to collect on its debt. Respondent then failed to appear at the finance company's March 2010 hearing on its motion for relief from the automatic stay, which Marrero handled pro se. Respondent, thus, violated RPC 1.3.

In addition, despite Marrero's several attempts to reach respondent for information about her matter, she never heard from him after March 2010. By failing to reply to her requests for information about the matter, respondent violated RPC 1.4(b).

In the Idell matter, respondent failed to file a bankruptcy petition for his client, from February 8, 2011 to July 31, 2011, meanwhile ignoring the client's several requests for information

about the case, violations of RPC 1.3 and RPC 1.4(b), respectively.

In the Fox matter, respondent prepared a bankruptcy petition for his client, who signed it in February 2011 and gave it to respondent for immediate filing. After a lien was placed on Fox' bank account, on June 22, 2011, respondent filed the petition a few days later. In the interim, respondent failed to reply to Fox' several requests for information about the case.

Respondent's failure to immediately file the petition, which would have avoided the lien, constituted a lack of diligence, a violation of RPC 1.3. His failure to reply to his client's reasonable requests for information about the case violated RPC 1.4(b).

In addition, in both the Idell and Fox matters, respondent failed to cooperate in the ethics investigation, violations of RPC 8.1(b).

Conduct involving lack of diligence and failure to communicate with clients in a single client matter, even when combined with other infractions such as gross neglect, a charge not present here, 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). Even when more than one client matter is

involved, an admonition has been imposed. See, e.g., In the Matter of Jonathan Saint-Preux, DRB 04-174 (July 19, 2004) (where the attorney lacked diligence in two immigration matters by failing to appear at hearings in each case, thereby causing orders for deportation to be entered against the clients; the attorney also failed to keep the clients informed about the negative developments in their cases, in violation of RPC 1.4(a)).

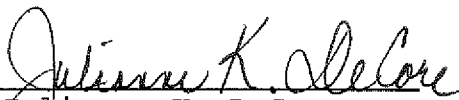
So, too, failure to cooperate with ethics authorities, by itself, would warrant no more than an admonition where, as here, the attorney does not have an ethics history. See, e.g., In the Matter of Lora M. Privetera, DRB 11-414 (February 21, 2012); In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011); and In the Matter of Marvin Blakely, DRB 10-325 (January 28, 2011).

In aggravation, however, respondent allowed this matter to proceed to us as a default. In a default matter, the appropriate discipline for the found ethics violations (an admonition here) 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). As such, we determine that a reprimand is the appropriate sanction for respondent's misbehavior.

Member Doremus 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

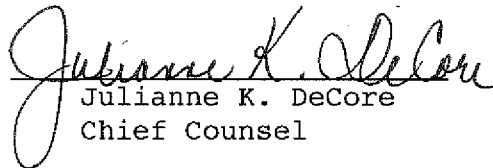
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Leonard H. Niedermayer
Docket No. DRB 12-223

Decided: December 19, 2012

Disposition: Reprimand

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			X


Julianne K. DeCore
Chief Counsel