SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-260
District Docket No. IV-2011-0011E

IN THE MATTER OF

PHILIP N. MULDOON, JR.

AN ATTORNEY AT LAW

Decision

Argued: November 15, 2012

Decided: January 9, 2013

William Mackin appeared on behalf of the District IV Ethics Committee.

Respondent appeared pro se.

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

This matter was before us on a disciplinary stipulation between respondent and the District IV Ethics Committee (DEC). Respondent conceded that he violated RPC 1.4(b) (failure to comply with a client's reasonable requests for information), RPC 1.5(b) and (c) (failure to communicate the basis of rate of the

fee, in writing, and failure to provide a written contingent fee agreement), RPC 5.3(b) (failure to make reasonable efforts to ensure that a nonlawyer's conduct is compatible with the professional obligations of the lawyer), RPC 5.5(a)(1) and R. 1:21-1A(a)(3) (practicing law in violation of the rules regulating the legal profession), RPC 7.1(a)(1) (communication containing a material misrepresentation of fact or law), RPC 8.4(c) and (d) (conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice).

The DEC recommended a reprimand. We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1990. He has no history of discipline.

The facts that gave rise to this matter are as follows:

Shortly after October 31, 1996, Susan Nevins, a long-term employee of Bell Atlantic—New Jersey, now Verizon (Verizon), asked respondent to represent her in an employment discrimination lawsuit against Verizon, under the New Jersey Law Against Discrimination, for failure to accommodate Nevins' "special needs and conditions." Respondent and Nevins orally agreed that respondent would receive a contingent fee, in the

event of a recovery. Nevins was responsible to pay the costs of the litigation, which would be reimbursed from any recovery. Respondent did not communicate his fee to Nevins, in writing. A contingent fee agreement was neither tendered nor executed.

In November 1996, respondent filed a complaint against Verizon. In July 1997, Verizon's counsel served discovery requests on respondent. In late July or early August 1997, respondent and Nevins met to review her initial replies to Verizon's requests for admission and answers to interrogatories.

Between March 1998 and October 1998, Nevins called respondent's office repeatedly to inquire about the status of her answers. During approximately twenty-seven telephone calls in this period, Nevins was advised that the answers were being prepared. She was usually given a time frame for when respondent anticipated forwarding the answers to Verizon's counsel.[1]

On March 10, 1998, respondent told Nevins that the interrogatory answers were completed, had to be copied, and

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[1] The stipulation does not state whether it was respondent or someone else who made these representations to Nevins.

would be sent to Verizon's counsel by the end of the week. fact, they were not completed. On August 3, 1998, respondent told Nevins that the answers were completed and had been sent to Verizon's counsel on July 31, 1998. That was untrue. On August 10, 1998, respondent told Nevins that the answers had been sent to Verizon's counsel on August 7, 1998. Again, that statement was false.

On September 14, 1998, however, respondent disclosed to Nevins that the answers had been written and given to his secretary to type, which would take "a day or so." One week later, respondent's secretary advised Nevins that respondent had not yet given her the answers to be typed.

Nevins' answers to the interrogatories were sent to Verizon's counsel in October 1998. They included a certification page with Nevins' signature and reflected the signature's notarization by respondent's secretary, on October 6, 1998. Nevins did not sign the certification page on that date. Rather, according to the stipulation, respondent "permitted his secretary to improperly notarize the document

attesting that it had been signed by Nevins on October 6, 1998 when she had not signed it on that date."[2]

In early September 1999, Verizon's counsel tendered a $27,500 offer to respondent to settle Nevins' claim. On September 13, 1999, respondent sent a letter to Verizon's counsel, stating that Nevins did not want to settle for that sum.[3] By letter of even date, respondent advised Nevins that the terms of his representation, to which they had agreed at the outset, "contemplated [his] entitlement to be paid" at the rate of $125 per hour. Respondent told Nevins that he had been willing to wait to receive payment, because she was unemployed but, because she had not followed his advice to accept the $27,500 settlement offer, he was concerned that she would never be in a position to pay him. He was no longer willing to wait for payment, which he claimed was due. Respondent demanded that Nevins pay him a $5,000 retainer within a week or he would file a motion to be relieved as counsel. In late October or early November 1999, respondent withdrew as Nevins' counsel.

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[2] This language appears to indicate that, although the date was inaccurate, the signature was genuine.

[3] The stipulation does not state whether respondent actually advised Nevins of the offer. Presumably, he did so.

At all times while representing Nevins, respondent practiced law as a professional corporation. On and after June 7, 1999, while continuing to represent Nevins, he failed to maintain professional liability insurance coverage, as required by R. 1:21-1A(a)(3).

Respondent stipulated that he violated:

RPC 1.4(b) and RPC 8.4(c) on four occasions in March, August, and September 1998, when he misrepresented to Nevins the true status of her answers to Verizon's interrogatories;

RPC 1.5(b) and (c) by failing to communicate the basis or rate of his fee to Nevins, in writing, and by failing to provide her with a written contingent fee agreement;

RPC 5.3(b) by allowing his secretary to notarize Nevins' signature on the interrogatory certification page, improperly attesting that she had signed the document on October 6, 1998;

RPC 5.5(a)(1) and R. 1:21-1(A)(a)(3) by practicing law in New Jersey for approximately six months without maintaining the required professional liability insurance;

RPC 7.1(a)(1), in that his September 13, 1999 letter to Nevins contained material misrepresentations about their fee agreement; and

RPC 8.4(c) and (d), when he allowed his secretary to notarize the interrogatory certification page, improperly attesting that Nevins had signed the document on October 6, 1998.

The DEC considered the appropriate measure of discipline for each of respondent's infractions. Specifically, the DEC found that respondent's failure to provide a written fee agreement (RPC 1.5(b) and (c)) warranted an admonition. His failure to keep Nivens advised about the status of the interrogatory answers (RPC 1.4(b), RPC 8.4(c)), and his misstatements to her about their fee agreement (RPC 7.1(a)(1)) warranted a reprimand. Respondent's permitting his secretary to take an improper jurat (RPC 5.3(b) and RPC 8.4(c) and (d)) warranted an admonition. Finally, his failure to maintain the required insurance (RPC 5.5(a)(1) and R. 1:21-1A(a)(3)) warranted an admonition.

In the DEC's view, the sum of respondent's misconduct warranted a reprimand or such lesser sanction as we deem appropriate.

Following a de novo review of the record, we are satisfied that the stipulated facts support the RPC violations, with one exception. Respondent stipulated that he violated RPC

7.1(a)(1). That rule is not one that is generally found to have been violated in connection with misrepresentations to clients about their cases but, rather, misrepresentations in the attorney advertising arena.

We now turn to the question of the appropriate form of discipline for the totality of respondent's unethical conduct.

A violation of RPC 1.5(b), even when accompanied by other, non-serious ethics offenses, 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 rate or basis of his fee and, in another client matter, 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 that set forth the basis or rate of his fee; the attorney also lacked diligence in the matter); and In the Matter of David W. Boyer, DRB 07-032 (March 28, 2007) (in an estate matter, the attorney failed to provide the client with a writing setting forth the basis or rate of his fee).

Similarly, a violation of RPC 1.5(c), even when accompanied by other, non-serious ethics offenses, results in an admonition.

See, e.g., In the Matter of Martin G. Margolis, DRB 02-166 (July 22, 2002) (attorney failed to prepare a written fee agreement and took an improper jurat); In the Matter of Alan D. Krauss, DRB 02-041 (May 23, 2002) (attorney failed to prepare a written retainer agreement, grossly neglected a matter, lacked diligence in the representation of the client's interests, and failed to communicate with the client); and In the Matter of Seymour Wasserstrum, DRB 98-173 (August 5, 1998) (attorney failed to prepare a written retainer agreement covering a contingent fee).

As to respondent's misrepresentations to Nevins, on four occasions, he misled her about the status of her answers to interrogatories.[4] No explanation for respondent's misconduct was supplied. Misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). "Truthfulness and professionalism are paramount in an attorney's relationship with the client." Ibid.

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[4] Although the stipulation states that, during approximately twenty-seven phone calls, Nevins was told that her answers were being prepared, the stipulation details only four such messages as being from respondent.

A reprimand may still be imposed even if the misrepresentation is accompanied by other, non-serious ethics infractions. See, e.g., In re Singer, 200 N.J. 263 (2009) (attorney misrepresented to his client, for a period of four years, that he was working on the case; the attorney also exhibited gross neglect and lack of diligence and failed to communicate with the client; no ethics history); In re Wiewiorka, 179 N.J. 225 (2004) (attorney misled the client that a complaint had been filed; in addition, the attorney took no action on the client's behalf and did not inform the client about the status of the matter and the expiration of the statute of limitations); In re Onorevole, 170 N.J. 64 (2001) (attorney made misrepresentations about the status of the case; he also grossly neglected the case, failed to act with diligence, and failed to reasonably communicate with the client; prior admonition and reprimand); and In re Till, 167 N.J. 276 (2001) (over a nine-month period, attorney lied to the client about the status of the case; the attorney also exhibited gross neglect; no prior discipline).

The sanction for the improper execution of jurats, without more, is ordinarily either an admonition or a reprimand. When the attorney witnesses and notarizes a document that has not

been signed in the attorney's presence, but the document is signed by the legitimate party or the attorney reasonably believes it has been signed by the proper party, the discipline is usually an admonition. See, e.g., In the Matter of William J. Begley, DRB 09-279 (December 1, 2009) (as a favor to an acquaintance, attorney witnessed and notarized a real estate deed and affidavit of seller's consideration that were already signed, trusting the acquaintance's story that the signatures were those of his parents, who were too infirm to attend the closing; the son was actually perpetrating a fraud upon his sickly parents at the time; the attorney, who received no fee, had no prior discipline in thirty-five years at the bar) and In the Matter of Richard C. Heubel, DRB 09-187 (September 24, 2009) (attorney prepared a deed for an inter-family real estate transfer and mailed it to the signatory; the deed was returned signed but not notarized; the attorney then notarized the signature outside the presence of the signatory).

However, if there are aggravating factors, such as the direction that a secretary or another person sign the party's name on a document that the attorney then notarizes, harm to the parties, the attorney's personal stake in the transaction or discipline for prior violations, then the appropriate discipline

for an improper jurat is a reprimand. See, e.g., In re LaRussa, Jr., 188 N.J. 253 (2006) (attorney improperly directed a wife to sign a husband's name to a release in a personal injury action and then affixed his jurat to the document); In re Uchendu, 177 N.J. 509 (2003) (attorney signed clients' names on documents filed with the Probate Division of the District of Columbia Superior Court and notarized some of his own signatures on the documents); In re Weiner, 140 N.J. 621 (1995) (attorney guilty of excessive delegation of authority to nonlawyer staff and of condoning his staff's signing of clients' names on documents); In re Rinaldo, 86 N.J. 640 (1981) (attorney permitted his secretaries to sign two affidavits and a certification in lieu of oath, in violation of R. 1:4-5 and R. 1:4-8); and In re Conti, 75 N.J. 114 (1977) (attorney's clients told his secretary that it was impossible for them to come to the attorney's office to sign a deed and instructed her to do "whatever had to be done" to record the deed; the attorney had the secretary sign the clients' names on the deed and then witnessed the signatures and took the acknowledgment).

Here, respondent directed his secretary to improperly notarize a document attesting that Nevins had signed it on a particular day, when, in fact, she had not done so. Therefore,

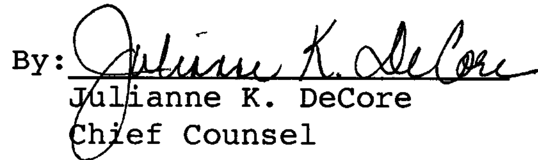
a reprimand is the appropriate discipline for this aspect of respondent's misconduct standing alone. In aggravation, we look to respondent's actions in connection with the lack of a written fee agreement. Although respondent orally agreed to a contingent fee, when it looked like that fee was in jeopardy, he attempted to strong-arm his client into sending him a $5,000 retainer agreement. While his lack of a written fee agreement may have started out as simply an omission, respondent attempted to use his omission to his advantage and to his client's serious detriment. In mitigation, respondent has been admitted to the bar for twenty-two years with no disciplinary record and readily admitted his misconduct by entering into a stipulation with the DEC. In our view, the aggravating and mitigating factors balance each other out.

Taking into account the aggregate of respondent's ethics violations, which include a pattern of misrepresentations to his client, we determine that a censure is the appropriate measure of discipline.

Vice-Chair Frost and members Baugh, Clark, and Wissinger would have imposed a reprimand.

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

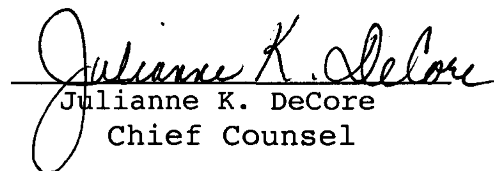
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Philip N. Muldoon, Jr.
Docket No. DRB 12-260

Decided: January 9, 2013

Disposition: Censure

Members	Disbar	Censure	Reprimand	Admonition	Did not participate
Pashman		X			
Frost			X		
Baugh			X		
Clark			X		
Doremus		X			
Gallipoli		X			
Wissinger			X		
Yamner		X			
Zmirich		X			
Total:		5	4		



Julianne K. DeCore
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