

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 12-274
District Docket No. IIIB-2011-014E

IN THE MATTER OF
JOSEPH S. CHIZIK
AN ATTORNEY AT LAW

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Decision

Argued: November 15, 2012

Decided: January 11, 2013

Coleen McGuigan appeared on behalf of the District IIIB Ethics Committee.

Respondent's counsel waived appearance for oral argument.

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

This matter was before us on a recommendation for discipline (six-month suspension) filed by the District IIIB Ethics Committee (DEC). Respondent was charged with having violated RPC 1.1, presumably (a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to adequately communicate with the client), RPC 1.16(d) (failure to return file upon termination of representation), and RPC 8.1(b) (failure to

cooperate with ethics authorities). We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1976. On May 27, 1997, he received a reprimand for lack of diligence and failure to communicate with clients. In re Chizik, 149 N.J. 377 (1997). On July 23, 1988, he received a private reprimand for lack of diligence and failure to communicate with the client.

Respondent admitted all of the essential facts contained in the complaint, both in his answer and testimony before the DEC.

In 2001, Aretha Henderson retained respondent to file a personal injury action for injuries that she sustained in a December 22, 2000 automobile accident.

In August 2002, while that matter was pending in respondent's office, Henderson was injured in a second automobile accident, for which she retained respondent as well.

On August 9, 2004, respondent filed a complaint in the second accident case. On February 25, 2005, the complaint was dismissed for lack of prosecution, according to court records attached to the complaint. Respondent never informed Henderson that the complaint had been dismissed.

In April 2005, the first accident case was settled. Henderson received \$23,800 for her injuries.

Every few months, from about 2006 onward, Henderson reached out to respondent, seeking information about her unresolved second accident matter.¹ Respondent told Henderson that he "was handling it," but respondent failed to provide her with information about the status of that matter, including information about his contact with the insurance company involved.

In 2006, Henderson sought information from respondent about scheduling a surgery for her knee, the second such surgery related to her injuries. Respondent advised her that he was "working on" taking the insurance company to court over the issue.

On August 8, 2008, respondent filed a new complaint in the second accident. That complaint, too, was dismissed for lack of prosecution, on February 27, 2009. Respondent admittedly failed to disclose to Henderson that the second complaint had been dismissed.

¹ Respondent admitted, in error, the allegation of paragraph nine of the complaint, charging him with having failed to advise Henderson, from 2006 on, about both accident matters. In fact, the first accident matter had long since been settled.

When, in October 2010, Henderson sought information about settlement discussions with the insurance company, particularly respondent's claim that the insurance carrier had "put more money on the table", respondent failed to reply to her requests for information.

Respondent conceded that his failure to prosecute the two complaints, failure to reschedule arbitration, and failure to pursue the claim for a second surgery constituted gross neglect and lack of diligence.

At the DEC hearing, respondent admitted that he had failed to turn over Henderson's client files to her or to her new attorney, after she terminated the representation, on January 24, 2011. In fact, those files remained in respondent's possession until the day of the DEC hearing, when respondent's counsel turned them over directly to Henderson.

Respondent also conceded that he did not reply to the ethics investigator's initial requests for information about the grievance.

At the DEC hearing, Henderson testified about her experience with respondent and his representation for the second accident claim. She was perplexed by respondent's failure to act on her behalf, asking "why he did this" to her. She claimed that, ten years after the accident, she was still in great pain

and that she required more surgeries to repair her back and her knee.

She testified:

I asked him, should I get another lawyer? Maybe I should get another lawyer. No, no, Aretha, I can take care of you, I'll do my best, I will do whatever I have to do to get you your surgery, to get you a settlement. And it was lies. It was all lies.

I haven't seen this man in a year and a half until today. A year and a half. I took Mr. Bruce [sic] January the 24th, 2011 and he still wouldn't release my files to Mr. Bruce. He can't even do my case, he can't even go on with my case because of him.

So he had problems. I have mental problems. I have to take medicine for the rest of my life because of Joe Chizik. I just don't understand; why did he have to do this to me? I don't understand.

[1T15-6 to 1T16-3.]²

In mitigation, respondent suffers from depression and did so at the time of Henderson's matters. He sought treatment from two psychologists, Dr. John Diepold and, later, a Dr. Atkins, who is still treating him.

² "1T" refers to the transcript of the May 30, 2012 DEC hearing.

Respondent was contrite. About Henderson's testimony, he stated:

How I was screwed up, really, you know, was -- if I could have gotten under the table and crawled out of this room while she was going on I would have done so. It was very painful. Very, very sorry. I don't think -- I think I missed my next appointment with Dr. Atkins, and I don't think I talked to Jim about it. I mean, I certainly deserve to have that tirade directed at me. I really feel terrible. My -- I just lost track of the time in what was going on in this case, and I became irrational.

[1T24-9 to 20.]

The DEC found respondent guilty of all the charged violations, which respondent admitted.

In mitigation, the DEC took into consideration that respondent ultimately stipulated the violations and expressed heartfelt contrition. The DEC recommended a six-month suspension, citing no supporting case law.

The DEC also recommended specific conditions upon reinstatement: respondent's continued treatment with an OAE-approved psychiatrist or psychologist; a proctor for the first six months after reinstatement; and limits on his practice for the first year after reinstatement, comprised of simple wills and estates, simple real estate transactions, and municipal

court matters. The DEC specifically recommended that respondent be prohibited from representing personal injury clients.

Following a de novo review of the record, we are satisfied that the DEC's finding that respondent's conduct was unethical is fully supported by clear and convincing evidence.

Respondent represented Henderson for injuries sustained in two separate automobile accidents. The first accident case settled in 2005, at which time Henderson received a \$23,800 settlement. There are no allegations that respondent improperly handled that case.

In 2002, Henderson was injured in a second automobile accident and retained respondent to file suit in her behalf. In August 2004, respondent filed a complaint, which was dismissed, in February 2005, for lack of prosecution. Respondent filed a second complaint, in August 2008, but it was also dismissed, in February 2009, for the same reason. Respondent conceded that his failure to prosecute those complaints, failure to reschedule an arbitration, and failure to pursue Henderson's insurance claim for a second surgery constituted gross neglect and lack of diligence, violations of RPC 1.1 (a) and RPC 1.3, respectively.

In addition, respondent's admitted failure to reply to Henderson's numerous requests for information about her August

2002 personal injury matter, over a period of years, constituted a violation of RPC 1.4(b).

Respondent also admittedly failed to promptly turn over Henderson's files to subsequent counsel, after Henderson terminated the representation, on January 24, 2011. Those files were finally turned over at the DEC hearing. Respondent's misbehavior in this regard violated RPC 1.16(d).

Finally, respondent admitted that his failure to promptly reply to the ethics authorities' requests for information about the grievance violated RPC 8.1(b).

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).

Admonitions are also routinely imposed for an attorney's failure to cooperate with ethics authorities. See, e.g., In re Ventura, 183 N.J. 226 (2005); In the Matter of Kevin R. Shannon, DRB 04-152 (June 22, 2004); and In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002).

Here, we have the additional element of respondent's failure to turn over the file, upon termination of the

representation. In In re Garbin, 182 N.J. 432 (2005), an attorney received a reprimand for gross neglect, lack of diligence, and failure to return the client file in a matrimonial matter. The attorney had neglected to send the client a copy of a motion in the client's divorce action and to inform the client of the filing of the motion, which proceeded unopposed. The family court found the client in violation of the couple's final judgment of divorce. Thereafter, the attorney failed to return the file to either the client or to subsequent counsel.

Like respondent, Garbin had prior discipline -- in that case, an admonition for lack of diligence and failure to communicate in one client matter and for failure to supervise a nonlawyer employee, who neglected the post-closing aspects of a real estate transaction.

Here, respondent engaged in the same sort of misconduct for which he was previously reprimanded in 1997 and privately reprimanded (the equivalent of a present-day admonition) in 1988. Respondent has had two prior brushes with disciplinary authorities, as opposed to Garbin's sole reprimand. His prior disciplinary matters are remote in time, however, having occurred fifteen and twenty-four years ago, respectively. We

determine, thus, that enhanced discipline beyond the reprimand in Garbin is not warranted.


In mitigation, we considered that respondent stipulated his misconduct and expressed sincere remorse. We, therefore, voted to impose a reprimand, with the following conditions. Respondent is to continue treatment with an OAE-approved mental-health professional and practice law with an OAE-approved proctor until the OAE is satisfied that a proctorship is no longer required. Because respondent will be supervised in his practice of law, we do not believe that any restrictions on the areas in which he can practice are required.

Members Gallipoli, Wissinger, Yamner and Zmirich voted for a censure.

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

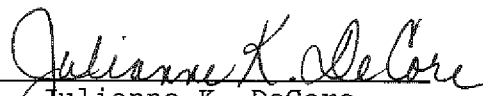
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Disposition: Reprimand

<i>Members</i>	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:		4	5			


Julianne K. DeCore
Chief Counsel