

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 12-323  
District Docket No. VB-2010-0018E

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IN THE MATTER OF  
DANIEL G. LARKINS  
AN ATTORNEY AT LAW

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Decision

Decided: March 27, 2013

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 VB Ethics Committee (DEC), pursuant to R.  
1:20-4(f). A seven-count complaint charged respondent with  
having violated RPC 1.1(b) (pattern of neglect), RPC 1.2(failure  
to abide by the client's decisions concerning the scope of the  
representation), RPC 1.3 (lack of diligence), RPC 1.4(b) and (c)  
(failure to communicate with the client and failure to explain  
the matter to the extent reasonably necessary for the client to  
make informed decisions about the representation), RPC 1.16(d)

(failure to turn over file to client upon termination of representation), and RPC 8.1(b)(failure to cooperate with an ethics investigation). We determine to impose a censure.

Respondent was admitted to the New Jersey bar in 1983. On October 8, 2009, he received an admonition for gross neglect, lack of diligence, failure to communicate with the client, and failure to promptly return the client file upon termination of the representation. In the Matter of Daniel G. Larkins, DRB 09-155 (October 8, 2009).

Service of process was proper in this matter. According to the September 6, 2012 certification of service from the DEC, on January 3, 2012, the DEC sent a copy of the complaint to respondent at his law office address, 47 Summit Avenue, Hackensack, New Jersey 07601, in accordance with the provisions of R. 1:20-4(d) and R. 1:20-7(h). The certified mail envelope was returned marked "not deliverable as addressed, unable to forward." The regular mail was returned marked "other."

On January 31, 2012, the DEC served respondent at another address, 95 Jefferson Avenue, Lodi, New Jersey 07644. The certified mail green card was returned indicating delivery, with an illegible signature.

On February 3, 2012, a woman called the DEC stating that she was respondent's ex-girlfriend and that respondent no longer lived at that address. She stated that her daughter had signed for the mail.

On February 20, 2012, the DEC published a notice in the New Jersey Law Journal and, on the following day, in the Star Ledger. The notice informed respondent of the filing of the complaint against him and that he was required to file a verified answer within twenty-one days, pursuant to R. 1:20-4(e).

The time within which respondent was to file an answer has expired, but no answer was filed.

In 2001, Sandra M. Allen retained respondent to represent her in a personal injury action and workers' compensation claim for injuries sustained in an on-the-job automobile accident, in January 2001.

According to the complaint, in 2001, Allen and respondent met regularly. Also, respondent called her frequently with case updates. From 2002 on, however, respondent ceased communicating with her. By 2007, Allen was ready to file a grievance against respondent for his lack of communication with her. After the two

met, however, respondent gave her his word that the matter was progressing.

In March and, again, in August 2008, Allen made repeated calls to respondent's office to meet regarding her case. Respondent failed to keep her adequately advised about the status of her matter, for which he was charged with having violated RPC 1.4(b).

In addition, respondent failed to explain to Allen "the various problems he was having with her matter, or the errors he had made and what steps he was taking to rectify them." On those occasions when respondent replied to Allen's questions about her case and why it was taking so long, he gave her insufficient information for her to make an informed decision about "how to move forward with her claim," for which he was charged with having violated RPC 1.4(c).

Allen's case was eventually dismissed without prejudice for plaintiff's failure to answer interrogatories. Respondent supplied late answers, but he failed to file a motion to restore the complaint. According to the ethics complaint, once respondent realized his error, he "filed several motions to restore, and eventually one was granted. The defendant filed for reconsideration, however, and the restoration was vacated."

Next, respondent filed an appeal, which was administratively dismissed (for which no reason is provided in the complaint). The restoration of the complaint remained vacated. Respondent advised the DEC investigator that he thought that Allen could still move to restore her case, "a rather important fact" that he failed to share with Allen, for which he was charged with having violated RPC 1.3.

According to the complaint, respondent also "failed to work closely with Grievant to establish the scope and objectives for the representation of a claim. Indeed, it appears that Grievant was left entirely in the dark on not only the scope and objectives of Respondent's representation, but as to any facts whatsoever about her claim," for which he was charged with having violated RPC 1.2.

On October 6, 2011, Allen terminated the representation in a letter to respondent. In that letter, she requested the return of her file. Respondent failed to do so, for which he was charged with having violated RPC 1.16(d).

Respondent advised the DEC investigator that problems with Allen's case "came about during a very difficult time for me. I have been struggling with both physical and emotional problems. I have Meniere's disease, a sometimes disabling inner ear

disorder. I also suffer from depression and had received help through the New Jersey Lawyers' Assistance Program." The DEC charged respondent with having failed to withdraw from the representation, once his physical or mental condition materially impaired his ability to represent Allen, a violation of RPC 1.16(a)(2).

The complaint also charged respondent with a pattern of neglect, when respondent's "conduct in this matter [is] combined with the other acts of neglect set forth in this pleading," a violation of RPC 1.1(b).

On November 9, 2010, the DEC investigator wrote to respondent, seeking his written reply to the grievance.<sup>1</sup> Thereafter, respondent's attorney contacted the investigator and requested that he be permitted to reply to the grievance after respondent's April 18, 2011 hearing in another, prior ethics matter. The investigator agreed to that arrangement.

The following day, April 19, 2011, respondent notified the investigator that he was no longer represented by counsel and would proceed in this ethics matter pro se. According to the

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<sup>1</sup> The complaint details several occurrences that slowed the ethics matter, including its pending, at different times, with three different ethics committees. The original grievance letter is dated March 23, 2009.

complaint, during a conversation with the ethics investigator, respondent admitted that the allegations of the grievance were true, but he sought to excuse them for his own personal problems that arose during the representation.

On August 2, 2011, the DEC investigator wrote to respondent, demanded documents related to the grievance, and advised him that his failure to do so could result in a complaint for failure to cooperate with ethics authorities. Respondent did not reply, for which he was charged with having 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 2001, respondent was retained to prosecute Allen's personal injury and workers' compensation claims, after she was injured in an on-the-job motor vehicle accident.

Due to a lack of diligence on respondent's part, respondent's complaint was dismissed for failure to answer interrogatories. Although he tried thereafter to put the case back on track, he was unsuccessful. It remained dismissed after

his appeal was denied. For his lack of attention to the case, respondent is guilty of having violated RPC 1.3.

Although communications between respondent and Allen were adequate early in the case, within a year of his retention, respondent was ignoring her requests for information. On those occasions when he offered information, it was incomplete. Therefore, Allen could not make an informed decision about the propriety of terminating the representation. Respondent, thus, violated RPC 1.4(b) and (c).

Respondent also failed, upon Allen's termination of the representation, to promptly return her file, in violation of RPC 1.16(d).

Respondent was charged with having failed to terminate the representation, as required by RPC 1.16(a)(2), due to an alleged physical or mental condition that materially impaired his ability to represent Allen. The complaint contains respondent's statement that problems in the case arose during a "difficult time" for him and while he suffered from other maladies, including Meniere's disease, which he had described as a "disabling" inner ear disorder. He also suffered from depression and a problem for which he sought help from the Lawyers' Assistance Program. These admittedly "disabling" problems



required respondent to terminate the representation. His failure to do so violated RPC 1.16(a)(2).

Finally, after relieving his attorney and deciding to proceed pro se, respondent failed to cooperate with the ethics investigation of the grievance, a violation of RPC 8.1(b).

Respondent was also charged with having engaged in a pattern of neglect. Three instances of neglect are required to form a pattern. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). When we consider the gross neglect present in the admonition matter, only one instance of gross neglect is present. There is no gross neglect charge here. Even if there had been, the tally of neglect would still be two, which is insufficient to form a pattern. We, thus, dismiss the RPC 1.1(b) charge.

Finally, respondent was charged with having failed to abide by Allen's decisions regarding the scope of the representation, in violation of RPC 1.2. The factual basis in the complaint for that charge is conclusory - that respondent "failed to work closely with Grievant to establish the scope and objectives for the representation of a claim." Nowhere in that count of the complaint dealing with RPC 1.2 is it established that respondent failed to adhere to any client directives from Allen. Rather, it

states that respondent left the client in the dark about the matter, which is more appropriately addressed by RPC 1.4, above. For lack of clear and convincing evidence, we dismiss the RPC 1.2 charge.

In short, each of respondent's violations generally leads to an admonition. At times, the combination of the within violations may still result in an admonition. In In re McCarthy, 205 N.J. 470 (2011), a default case involving misconduct similar to that of respondent, a reprimand was imposed. McCarthy lacked diligence, failed to communicate with the client, failed to return client property upon termination of the representation (a \$250 real estate escrow), and failed to cooperate in the ethics investigation. McCarthy, however, had no prior discipline.

In another default case, In re Porwich, 205 N.J. 230 (2011), the attorney received a censure for lack of diligence, failure to communicate with the client, failure to cooperate in the underlying ethics investigation, as well as failure to return the client file. The attorney was censured, based on the presence of an earlier (1999) reprimand for the same type misconduct.

Here, in aggravation, respondent has a prior admonition for the same sort of misconduct presented in this complaint. It is

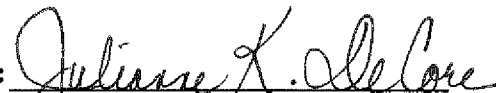
mitigation, but it is also a violation because he had an obligation to withdraw.

For the default nature of this proceeding, at least a reprimand is required. In aggravation, this is respondent's second disciplinary matter involving the same sort of misconduct, for which he was previously sanctioned. Although we are aware that respondent was experiencing personal and health problems at the time, those problems required that he withdraw from the representation. We, therefore, are unable to recognize that factor as mitigation. We determine that a censure, the same discipline imposed in Porwich, is warranted 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:

  
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Daniel G. Larkins  
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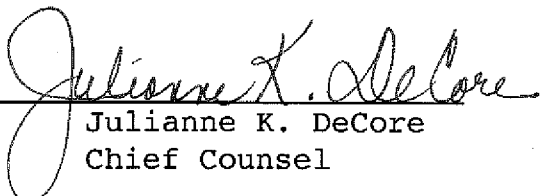
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Decided: March 27, 2013

Disposition: Censure

<b>Members</b>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Gallipoli			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			9			

  
Julianne K. DeCore  
Chief Counsel