SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 13-063
District Docket No. XIV-2011-0477E

IN THE MATTER OF	:
DOUGLAS JOSEPH DEL TUFO	:
AN ATTORNEY AT LAW	:

Decision

Argued: July 18, 2013

Decided: August 26, 2013

HoeChin Kim appeared on behalf of the Office of Attorney Ethics.

Respondent 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 disciplinary stipulation between respondent and the Office of Attorney Ethics (OAE). Respondent admitted that he violated RPC 1.5(a) and (b) (unreasonable fee and failure to communicate the basis or rate of the fee in writing), RPC 3.3(a)(2)(knowing failure to disclose a material fact to a tribunal when disclosure is

necessary to avoid assisting a fraudulent act by a client), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.4(d) (conduct prejudicial to the administration of justice). The OAE's position is that a censure or three-month suspension is the appropriate discipline. We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1997. In October 2011, he was admonished for failure to communicate in a matrimonial matter and failure to cooperate with the district ethics committee's investigation of the grievance. In the Matter of Douglas Joseph Del Tufo, DRB 11-241 (October 28, 2011).

In 2012, respondent was reprimanded, on a motion for discipline by consent, for commingling personal and business funds in his attorney trust account and paying personal and business expenses from that account. Respondent had previously been told by the OAE that the practice was a violation of the recordkeeping rules. Respondent was also guilty of additional recordkeeping violations. In re Del Tufo, 210 N.J. 183 (2012).

Respondent has been temporarily suspended, on two occasions (July 2011 and July 2012), for failure to comply with fee

arbitration determinations. In re Del Tufo, 207 N.J. 36 (2011) and In re Del Tufo, 211 N.J. 156 (2012). He was reinstated on both occasions, after he paid the fee arbitration awards and the sanctions imposed by the Board. In re Del Tufo, 207 N.J. 343 (2011), and In re Del Tufo, 212 N.J. 99 (2012).[1]

The Stone Matter

Respondent was appointed to a five-year term as the municipal public defender for the Township of Roxbury, beginning in January 2006 and ending in December 2010. He was re-appointed, beginning in January 2011. He was paid $10,000 annually, regardless of the number of clients assigned to him.

In July 2010, Brittany Stone was cited for several motor vehicle offenses, including driving while intoxicated, driving with a suspended license, failing to maintain a safe lane, and driving an unregistered vehicle. Stone was required to appear in Roxbury Township Municipal Court on July 8, 2010. She

[1] Although these temporary suspensions are not "discipline," we included them here to provide a more complete picture of respondent's propensity to disregard his legal obligations. See discussion, infra.

applied for indigency status and requested a public defender to represent her.

By letter dated July 8, 2010, the Honorable Carl F. Wronko, J.M.C., approved Stone's application, advised her that respondent was the public defender assigned to her case, scheduled a trial for August 19, 2010, and instructed her to pay the $200 public defender fee, prior to trial.

By letter dated July 9, 2010, the municipal prosecutor for Roxbury Township provided discovery to respondent in connection with Stone's summonses. When Stone failed to appear for her trial, a warrant was issued for her arrest. In March 2011, Stone posted bond and appeared in municipal court. Respondent was again appointed as her public defender. Stone paid the $200 public defender fee to the court.

On May 12, 2011, Stone appeared in court and requested an adjournment, which was granted. By letter dated May 13, 2011, respondent, as a private attorney, filed his "Notice of Representation, Demand for Discovery, Entry of Plea" with the municipal court, on Stone's behalf. In or about June 2011, respondent resigned as the municipal public defender.

On July 6, 2011, Stone spoke to Patricia Palazzola, the Roxbury court administrator. Stone told Palazzola that she had paid respondent $350 to represent her as a private attorney, "as he could not represent her as a public defender because her case involved driving while intoxicated." Stone stated that respondent wanted an additional $400 to represent her on July 7, 2011 (presumably, her trial date). When Stone asked Palazzola if she was "being scammed," she was advised to raise the question with the judge.

On July 7, 2011, Judge Wronko questioned Stone and respondent. Stone told the judge that she had paid respondent $300 the last time she had been in court, May 12, 2011. Respondent could not explain how he had become Stone's private attorney, while still appointed as her public defender.

Thereafter, the new Roxbury Township municipal public defender assumed Stone's representation. Respondent returned the $300 fee to Stone, in December 2011.

Respondent conceded that he violated RPC 1.5(b), RPC 3.3(a)(2), RPC 8.4(c), and RPC 8.4(d).

The Peralta Matter

In August 2010, Erick Peralta was cited for several motor vehicle violations, including driving while intoxicated. Peralta applied for indigency status and requested a public defender to represent him.

By letter dated September 2, 2010, Judge Wronko approved Peralta's application for a public defender, advised him that respondent would represent him, set the trial for October 28, 2010, and instructed Peralta to pay the $200 public defender fee, prior to the trial. Peralta paid the $200 fee to the court.

On or about October 27, 2010, respondent met with Peralta. Peralta hired respondent as a private attorney, agreeing to pay him $1,500 for representation in Roxbury Municipal Court. Peralta paid respondent $1,000 toward the fee. Both respondent and Peralta signed a fee agreement.

Peralta's case was scheduled for trial, on the public defender's list, for June 16, 2011.[2] When the case was called, Judge Wronko was advised that respondent would be representing

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[2] The stipulation does not explain what happened to the October 28, 2010 trial date.

Peralta as a private attorney. At no time between October 27, 2010 and June 16, 2011, did respondent inform the court that he was representing Peralta as a private attorney. Judge Wronko adjourned the trial until July 21, 2011. Judge Wronko also directed respondent to provide a letter, explaining how he had become Peralta's private attorney, after he had been assigned to be his public defender, and to provide a letter of representation. Respondent was given one week to submit the letter.

Respondent failed to comply with Judge Wronko's directions. By letter dated June 28, 2011, Judge Wronko requested that respondent clarify, as soon as possible, whether the new municipal public defender would be representing Peralta or whether respondent would be representing him as a private attorney.

As noted previously, on July 7, 2011, the judge questioned respondent about his private representation of Stone. Judge Wronko stated that he would refer the Stone and Peralta matters to disciplinary authorities.

By letter dated July 19, 2011, and submitted on July 21, 2011, the new date of the Peralta trial, respondent requested that Judge Wronko defer decision on his cases until disciplinary

authorities had disposed of the matters referred by the judge. By letter dated July 21, 2011, Judge Wronko advised respondent that, based on the issues raised in the Stone and Peralta matters, he was disqualifying himself in the Peralta case and forwarding it to another court for disposition.

When contacted (by whom is not revealed in the stipulation), Peralta stated that, when he met with respondent to discuss his case, respondent suggested that an expert witness could be used to rebut the breathalyzer test results. Respondent told him that the expert witness would cost $400. Peralta hired respondent as his private attorney and paid the $1,500 retainer to respondent, along with an additional $400 for the expert witness.

In July 2011, as a result of the events before Judge Wronko, Peralta hired another attorney, who ultimately tried his case in another court. Peralta asked respondent for a refund of his money, at least twice, but respondent has provided neither the money nor an itemized bill reflecting how the funds were used.

Respondent conceded that he violated RPC 1.5(a), RPC 3.3(a)(2), RPC 8.4(c), and RPC 8.4(d).

Respondent provided a letter-brief to us, setting forth mitigating factors, specifically, his ready admission of wrongdoing, his contrition and remorse, his cooperation with disciplinary authorities, and subsequent remedial measures. As to this last factor, respondent explained that, in June 2010, he was divorced and that, two months later, his father passed away. Since August 2010, he has been involved in post-judgment litigation with his ex-wife, who has filed approximately eighty-four motions against him, since June 2010. He asserted that responding to her motions "was a full time job and [his] practice suffered." In addition, "at the time of this," (presumably, the within ethics matters and respondent's dealings with his ex-wife), he was taking care of his ex-girlfriend, who had multiple surgeries on her ears. His practice suffered, as a result of his caring for her.

Respondent has contacted the Lawyers' Assistance Program and is seeing a therapist. In addition, he completed an ethics seminar. He attached to his letter-brief a letter from his treating therapist and proof of completion of the ethics course.

Following a de novo review of the record, we are satisfied that the stipulation supports a finding that respondent was guilty of most of the admitted violations.

Respondent conceded that he violated RPC 1.5(a) and (b), RPC 3.3(a)(2), RPC 8.4(c), and RPC 8.4(d). As to most of those, respondent's admissions were proper. RPC 3.3(a)(2), however, applies to an attorney's failure to disclose a material fact to a tribunal where disclosure is necessary to prevent an illegal, criminal or fraudulent act by the client. There is no indication in the record that respondent's clients, Stone and Peralta, were attempting to perpetrate a fraud on the court. It is respondent's conduct that was improper. Thus, RPC 3.3(a)(2) does not apply here. Therefore, despite respondent's concession that he violated RPC 3.3, we do not find the violation in either matter.

As to RPC 8.4(c), respondent's conduct toward the clients and the court was dishonest. He was already being paid to represent Stone and Peralta as a public defender, having been appointed by Judge Wronko.

Furthermore, respondent engaged in conduct prejudicial to the administration of justice, a violation of RPC 8.4(d). He did not disclose to the judge that the character of the representation had changed and, in addition, wasted judicial resources. Not only was the court's time taken up by having to

address the ramifications of his misconduct, but, resolution of the clients' matters was no doubt delayed.

An attorney who attempted to collect a legal fee from an indigent client whom he was assigned by a court to represent received a reprimand. In re Muckelroy, 118 N.J. 451 (1990). A municipal court judge assigned Muckelroy to represent an indigent. The last sentence of the court order read: "There are no counsel fees under this ORDER." In the Matter of William L. Muckelroy, DRB 87-093 (November 7, 1989) (slip op. at 6). This provision notwithstanding, Muckelroy sent the client a cover letter with a promissory note for $1,500 in legal fees "so that in the event you do not become indigent [sic] in the future, you will be able to pay your obligation for my professional services." Ibid. The client refused to sign the note. Ibid. Muckelroy admitted that, at the time that he sent the letter, he was aware that the client was indigent and that the client had been assigned to him only because of his indigent status. Ibid.

Muckelroy's associate represented the client in the municipal court appearance. Through his associate, Muckelroy again asked the client to sign the promissory note, which the client refused to do. Ibid. A year later, even though the client never signed the promissory note, he received a letter from a

collection agency stating that it would take any steps necessary to enforce collection of the $1,500 owed to Muckelroy in legal fees. Id. at 6-7.

We found that Muckelroy's letter was misleading, deceptive, and in direct conflict with the court order. Id. at 8. We agreed with the district ethics committee's finding of a violation of RPC 8.4(c) and RPC 8.4(d). Ibid. In mitigation, we considered that Muckelroy, formerly a corporate attorney, had never before handled an indigent assignment or a criminal case. Id. at 9. In addition, he had no history of discipline.

Respondent's misconduct was more serious than Muckelroy's. Although Muckelroy unsuccessfully attempted to collect a fee from his client, respondent succeeded in collecting fees from two clients. In addition, unlike Muckelroy, respondent is experienced in the field of criminal law and, as the municipal public defender, clearly had represented indigent clients. Furthermore, he did not disclose to Judge Wronko that he had converted the assigned representation to one of a private attorney -- and not because the clients had so requested, but because he, dishonestly, had either suggested or persuaded the clients to do so.

We cannot overlook, also, that respondent is not a newcomer to the disciplinary system. He has received an admonition and a

reprimand. Although the admonition and reprimand were imposed after the events in this matter, they evidence his tendency to disregard the rules of the profession. In addition, as noted previously, respondent has twice been temporarily suspended for failure to comply with a fee arbitration determination. Considering that we imposed our full $500 sanction in each instance, respondent did not present a hard-luck story about his failure to comply with the fee committee's decision. Although these temporary suspensions are not "discipline," they are further evidence of respondent's penchant for disregarding his legal obligations.

When we add to the mix respondent's violation of RPC 1.5(a) and (b), which he admitted, and which, standing alone, would generally merit an admonition, see, e.g., In the Matter of Angelo R. Bisceglie, Jr., DRB 98-129 (September 24, 1998) (admonition for attorney who billed a Board of Education for work not authorized by the Board, although it was authorized by its president; the fee charged was unreasonable, but did not reach the level of overreaching) and 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), we

determine that a three-month suspension is warranted in this case. We are aware of respondent's mitigation. We remain convinced, nevertheless, that his serious improprieties, coupled with his disciplinary history, require the imposition of a three-month suspension.

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
Bonnie C. Frost, Chair

By: Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Douglas J. Del Tufo
Docket No. DRB 13-063

Argued: July 18, 2013

Decided: August 26, 2013

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Disqualified	Did not participate
Frost		X			
Baugh		X			
Clark		X			
Doremus		X			
Gallipoli		X			
Yamner		X			
Zmirich		X			
Total:		7			

Julianne K. DeCore
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Chief Counsel