

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-284
District Docket Nos. IIB-2007-044E
and IIB-2007-045E

IN THE MATTERS OF
JOHN LOUIS BLUNT
AN ATTORNEY AT LAW

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Corrected
Decision

Argued: November 19, 2009

Decided: December 16, 2009

Ari N. Weisbrot appeared on behalf of the District IIB Ethics Committee.

Robert E. Rochford appeared on behalf of respondent.

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

These matters were before us on a recommendation for discipline (reprimand) filed by the District IIB Ethics

Committee ("DEC").¹ The complaints alleged gross neglect in four client matters. We determine to impose a reprimand for respondent's conduct in two of the matters.

Respondent was admitted to the New Jersey bar in 1988. On September 5, 2002, he received a reprimand for counseling a client to enter into a sham contract of sale that was used as an exhibit to an affidavit in a litigation matter. In re Blunt, 174 N.J. 294 (2002).

On June 9, 2006, respondent received a reprimand for negligent misappropriation, recordkeeping violations, and failure to cooperate with ethics authorities. In re Blunt, 187 N.J. 71 (2006).

I. The Tana Complaint – Docket Number IIB-2007-045E

In November 2004, Ana Tana retained respondent to transfer ownership of her home from her late husband and herself to her name only, as the sole surviving owner of the property that they shared as tenants by the entirety. On April 8, 2005, Tana paid respondent \$150 for the preparation of a new deed in her name.

¹ The matters were originally before us as a default. We granted respondent's motion to vacate the default and remanded the matters to the DEC for the filing of an answer and a hearing.

Respondent testified that Tana's husband, Peter, was a family friend from childhood. Respondent had represented Peter in numerous matters, over the years. Because they were such good friends, respondent never charged Peter for legal services. After Peter married Ana, just a few years prior to his death, respondent and Ana became good friends as well and she came to rely on his advice. After Peter's death, respondent agreed to help Ana with Peter's estate, including probating the will, free of charge, except for the \$150 that he accepted for the preparation of the deed.

At the DEC hearing, Tana testified that she signed the deed on January 14, 2005. Respondent furnished ethics authorities with a copy of the January 14, 2005 deed that he had prepared for Tana and that bore her signature. Although signed, the deed was not witnessed. Respondent conceded that he never completed the execution of the deed and never recorded it. He admitted that he should have done so and that his conduct amounted to gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

Also, respondent failed to adequately communicate with Tana, during the representation. On five to ten occasions, Tana attempted to obtain information about her matter, but respondent

failed to reply to her requests for information. Respondent admitted that his failure to keep Tana informed about the matter violated RPC 1.4(b).

The complaint also charged respondent with having failed to provide Tana with a writing that set forth the rate or basis of his fee, a violation of RPC 1.5(b). At the DEC hearing, respondent admitted that he had not regularly represented Tana and that, therefore, his failure to memorialize their \$150 fee arrangement violated that rule.

Respondent was also charged with having failed to terminate the representation, once his physical or mental condition materially impaired his ability to represent Tana, a violation of RPC 1.16(a)(2).² Respondent admitted that, as a result of the health problems discussed below, he improperly failed to terminate the representation, thereby violating that rule.

Although the complaint recited no facts in support of a charge of failure to cooperate with the DEC's investigation, it alleged that respondent did so, citing RPC 1:20-3(g)(4) (more properly, a violation of RPC 8.1(b)). Without adding any further

² The complaint also alleged that such conduct violated RPC 1.16(b)(4). As seen below, we found that paragraph of the rule inapplicable to the facts of this case.

details about the facts underlying the charge, respondent admitted having failed to cooperate with ethics authorities.

II. The Callazzo Complaint³ – Docket No. IIB-2007-044E

The complaint charged respondent with a sole violation of RPC 1.5(b) for his failure to set forth in writing the rate or basis of his legal fee.

Joann Callazzo retained respondent to represent her son, who was incarcerated. Callazzo paid respondent a total of \$925 toward a \$1,500 retainer, but respondent did not provide a "signed retainer agreement that established the scope of respondent's representation." Respondent admitted having accepted the case and the \$925 and also admitted that, by not memorializing his fee agreement with Callazzo, he violated RPC 1.5(b).

Respondent offered mitigation for his actions in the Tana and Callazzo matters. Specifically, respondent suffers from a genetic blood disorder, hemochromatosis, which causes an

³ This second complaint alleged misconduct in three client matters, Hilzner, Kovach, and Callazzo. At the hearing, the DEC granted the presenter's motion to dismiss the charges in the Hilzner and Kovach matters. The grievants had become uncooperative with the DEC by failing to reply to its inquiries and to appear to testify.

overproduction of iron in his blood. The iron is stored in his bones, organs and tissue, slowly disintegrating them.

In an October 15, 2007 certification supporting his prior motion to vacate the default in these matters, respondent detailed his troubles. Hemochromatosis is a genetic disease whose most virulent form skips a generation. Respondent has the most virulent form. His grandfather, a retired police officer, died unexpectedly from it at age fifty-two. The grandfather's brother died at age fifty-one. Both were in excellent physical condition, until their bodies simply collapsed. In contrast, it was not until age seventy that respondent's father showed signs of the disease, when he lost control of the right side of his body. The father, too, was a retired police officer and former Marine.

Respondent, six-foot-six in stature, was a varsity basketball player at St. Joseph's University when, at age nineteen, his lung unexpectedly collapsed, the first major sign of the disease. At the time, the cause of the collapse was unknown. A few years later, respondent's right shoulder collapsed in like fashion. In the late 1990s, respondent suffered blackouts, extreme sweating, and intense fatigue. Only

then was it discovered, at a Naval Hospital specializing in blood disorders, that he suffered from hemochromatosis.

This incurable disease is effectively untreatable, except in "the crudest, nearly medieval manner. To reduce the level of iron in my blood, my doctors bleed me," respondent stated. In about 2003, respondent suffered a total collapse of his knee, because iron deposits ate away the bone, muscle, and cartilage.

In addition, respondent testified that, after a colostomy, he suffered bouts of depression and sought help from Alcoholics Anonymous and the Lawyers Assistance Program in order to curb his increased consumption of alcohol.

According to respondent, at one point he determined, on his own, that he should practice law only with the help of a proctor. His ethics counsel agreed to assist him in that manner, despite the fact that a proctor had not been ordered in his prior disciplinary matters. Respondent has practiced with Robert E. Rochford's assistance since about mid-2005.

In the Tana matter, the DEC found respondent guilty of having violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 1.16 (a)(2) and (b)(4), and failing to cooperate with ethics authorities, a violation of RPC 8.1(b).

Respondent's admission of guilt notwithstanding, the DEC found him not guilty of having failed to utilize a written fee agreement (RPC 1.5(b)), because he had represented Peter Tana for many years and was friendly with Ana Tana as well. The DEC also noted that, although respondent failed to record the new deed, Tana benefited from his having probated Peter's will free of charge.

In the Callazzo matter, the DEC found respondent guilty of the single charge, that of a violation of RPC 1.5(b).

The DEC recommended a reprimand, rejecting respondent's counsel's argument for no discipline. Counsel claimed that the misconduct took place during the same time period as the misconduct in the prior disciplinary matters.⁴

Ancillary to the DEC's recommendation, Office of Board Counsel ("OBC") received an October 16, 2009 letter from the presenter, rescinding his recommendation for either an admonition or a reprimand, in favor of a suspension. The presenter stated that his prior recommendation had been "based

⁴ A review of respondent's disciplinary history reveals that his 2002 reprimand included misconduct displayed in 1997 and 1998. The 2006 reprimand included conduct that occurred between 2001 and 2003. The within infractions were committed from late 2004 to early 2005.

solely on the representations" of respondent's counsel and respondent that respondent would finalize and record the Tana deed prior to the hearing. The OBC then sent an October 20, 2009 letter to respondent's counsel, asking for an explanation.

By letter dated November 1, 2009, counsel denied that he and respondent had promised the presenter that the deed would be recorded. Rather, counsel understood that they were not to record the deed. He cited two instances, at the hearing, when he and respondent were told not to record the deed. In one instance, the panel chair took the time to advise Tana that, if she still sought the recordation of the deed, she would have to retain another attorney to do it. A review of the record indicates that counsel is correct in this regard.

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

Respondent grossly neglected, lacked diligence, and failed to communicate with client Tana, and admitted having violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b), respectively.

Respondent also admitted that he violated RPC 1.16(a)(2) and (b)(4) in the Tana matter. With regard to RPC 1.16 (a)(2), respondent acknowledged that his health problems were so severe

that he should have withdrawn from the representation. Because he did not do so, he ran afoul of the rule.

Respondent's admission regarding RPC 1.16 (b)(4), however, lacks foundation. That paragraph rule states that a lawyer may withdraw from representing a client "if the client insists upon taking action that the lawyer considers repugnant or with which the lawyer has a fundamental disagreement." There is no factual suggestion in the record – much less factual support – that the client's actions were inappropriate. We, thus, dismiss that charge.

Respondent also admitted having failed to cooperate with ethics authorities during the investigation of the Tana grievance, a violation of R. 1:20-3(g)(4), more properly RPC 8.1(b). Here, too, the record does not contain any factual support for that charge. We, therefore, dismiss it as well.

Respondent also admitted, but the DEC dismissed, the charge that he failed to utilize a written fee agreement in the Tana matter, an alleged violation of RPC 1.5(b). Respondent's admission of guilt notwithstanding, the DEC correctly found that respondent's numerous previous representations of Peter Tana without charging a fee, and his desire to help Ana, negated the need for a writing. We agree with the DEC.

In the Callazzo matter, respondent conceded that, because he did not regularly represent Callazzo, a writing setting forth the rate or basis of his fee was required by RPC 1.5(b).

In summary, in Tana, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(a)(2). In Callazzo, he violated RPC 1.5(b).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the seriousness of the attorney's disciplinary history. See, e.g., In re Russell, N.J. (2009) (attorney admonished for failure to file answers to divorce complaints against her client caused a default judgment to be entered against him; the attorney also failed to explain to the client the consequences flowing from her failure to file answers on his behalf); In the Matter of Keith T. Smith, DRB 08-187 (October 1, 2008) (attorney admonished when inaction in a personal injury action caused the dismissal of the client's complaint; the attorney took no steps to have it reinstated; the attorney also failed to communicate with the client about the status of the case); In re Dargay, 188 N.J. 273 (2006) (admonition for

attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar conduct); In the Matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005) (admonition for attorney who did not disclose to the client that the file had been lost, canceled several appointments with the client for allegedly being unavailable or in court when, in fact, the reason for the cancellations was his inability to find the file, and then took more than two years to attempt to reconstruct the lost file; violations of RPC 1.4(a) and RPC 1.3 found); In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also failed to comply with the client's requests for information about the case; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(a)); In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); In re Zeitler, 165 N.J. 503 (2000) (reprimand for attorney guilty of lack of diligence and failure to communicate with clients; extensive ethics history); In re Gordon, 139 N.J. 606 (1995)

(reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

Conduct involving violations of RPC 1.5(b), even when accompanied by other, non-serious ethics offenses, also 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; in another client matter, he 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, violations of RPC 1.5(b) and RPC 1.3, respectively); 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, a violation of RPC 1.5(b)); and In the Matter of Carl C. Belgrave, DRB 05-258 (November 9, 2005) (attorney was retained to represent the buyer in a real estate transaction,

and failed to state in writing the basis of his fee, resulting in confusion about whether a \$400 fee was for the real estate closing or for a prior matrimonial matter for which the attorney had provided services without payment; recordkeeping violations also found).

As can be seen from the cases above, were it not for respondent's disciplinary history, an admonition might have adequately addressed the totality of his misconduct in these two matters. However, he has a history: two prior reprimands, one in 2002 and another in 2006. As indicated earlier, where a disciplinary history is present, a reprimand is warranted.

We are aware that, in mitigation, there is respondent's medical history. He suffers from a debilitating blood disease that at times has crippled him, adversely affecting his ability to practice law. In additional mitigation, respondent voluntarily limited his practice to include the informal use of a proctor.

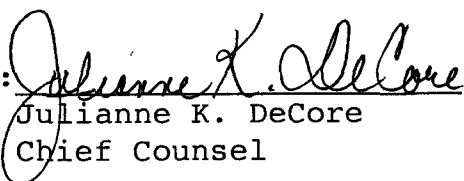
On the other hand, respondent should have withdrawn from the representation, when his physical and mental condition materially impaired his ability to represent Tana. RPC 1.16(a)(2) required him to do so.

Balancing the mitigation presented against respondent's failed duty to withdraw from the representation, we determine that a reprimand is the proper degree of discipline in this case. We also require respondent to be indefinitely monitored by a proctor approved by the Office of Attorney Ethics and to submit, within sixty days of the date of this decision, proof of fitness to practice law, as attested by an OAE-approved health practitioner.

Vice-Chair Frost would have imposed an admonition. Member Clark 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

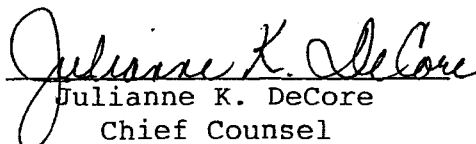
In the Matter of John L. Blunt
Docket No. DRB 09-284

Argued: November 19, 2009

Decided: December 16, 2009

Disposition: Reprimand

Members	Disbar	Suspension	Reprimand	Admonition	Disqualified	Did not participate
Pashman			X			
Frost				X		
Baugh			X			
Clark						X
Doremus			X			
Stanton			X			
Wissinger			X			
Yamner			X			
Zmirich			X			
Total:			7	1		1


Julianne K. DeCore
Chief Counsel