

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-399
District Docket No. IV-08-024E

IN THE MATTER OF
ANDREW J. BREKUS
AN ATTORNEY AT LAW

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Decision

Decided: May 13, 2010

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

This matter came before us on a certification of default filed by the District IV Ethics Committee ("DEC"), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter and to promptly comply with reasonable requests for information), RPC 8.4(c) (misrepresentation), RPC 1.16(d) (upon termination of the representation failure to surrender papers and property to which

the client is entitled), and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

For the reasons expressed below, we determine that a one-year suspension is the proper discipline for respondent.

Respondent was admitted to the New Jersey and Pennsylvania bars in 1986. In 2000, he was admonished for failing to advise his client about a potential malpractice claim against him and the desirability of consulting with independent counsel about the claim, violating RPC 1.8(a) and RPC 1.8(h). In the Matter of Andrew J. Brekus, DRB 00-187 (September 25, 2000).

In 2006, respondent was reprimanded for failure to comply with our directive, stemming from his earlier admonition, that he pay the balance due under an oral agreement with his client to settle a potential malpractice claim against him and provide proof of such payment to the Office of Attorney Ethics, as well as failure to reply to the grievance and to turn over the client's file, thereby violating RPC 8.4(d) and RPC 8.1(b). In re Brekus, 186 N.J. 409 (2006).

In 2009, on a motion for reciprocal discipline, respondent received a one-year suspension, effective September 1, 2008, for gross neglect, lack of diligence, failure to keep a client reasonably informed about the status of a matter or to comply with the client's reasonable requests for information, failure

to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation, failure to provide a client with a writing setting forth the basis or rate of the fee, commingling personal and trust funds, failure to withdraw from the representation if it will result in a violation of the Rules of Professional Conduct, failure to protect a client's interests upon termination of the representation, practicing law while ineligible, making false or misleading communications about the lawyer's services, conduct involving dishonesty, fraud deceit or misrepresentation, and conduct prejudicial to the administration of justice. Specifically, in addition to mishandling two client matters, respondent violated a number of the Pennsylvania Rules of Disciplinary Enforcement, including failure to notify clients and others of his transfer to inactive status. In re Brekus, 199 N.J. 511 (2009). Respondent remains suspended.

Also in 2009, respondent received a censure, after he stipulated to gross neglect, lack of diligence, and failure to communicate with the client during his representation of a minor, in 1994, in connection with a 1992 automobile accident. Specifically, respondent filed a lawsuit on behalf of the minor, her parents, and her brother. He then obtained a settlement for his client's parents and brother. In 2000, his client should

have received her portion of the settlement, which was to have been placed with the county surrogate until she reached the age of majority. However, her case was dismissed for lack of prosecution, no escrow account was ever established for her with the surrogate's office, and respondent did not communicate with her. In assessing discipline, we considered as mitigation that respondent's misconduct in the matter occurred in-between his first two ethics matters, for which he had already been disciplined and, as aggravation, that his client never received any monies from her settlement. In re Brekus, 199 N.J. 510 (2009).

Service of process was proper. On May 22, 2009, the DEC mailed copies of the ethics complaint by regular and certified mail to respondent at 215 Croft Ridge Drive, Broomall, Pennsylvania, 19008. The regular mail was not returned. On May 26, 2009, respondent accepted and signed for the certified mail. Respondent did not file an answer within the allotted time.

On June 29, 2009, the DEC sent a second letter to respondent, by regular mail, this time to 213 Croft Ridge Drive. According to the certification of the record, the mail was not returned and was "presumably delivered to the same address where Respondent previously accepted the certified mail." The letter notified respondent that, if he did not reply within five days,

the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). As of the date of the certification of the record, December 7, 2009, respondent had not filed an answer to the ethics complaint.

In August 2001, Peter Perri retained respondent to pursue personal injury and workers' compensation claims for him arising from a July 2001 injury sustained in a fall from a roof. Respondent failed to take any action on Perri's behalf. He did not file a complaint to toll the statute of limitations for the personal injury claim and never filed a claim petition with the Division of Workers' Compensation. The complaint charged respondent with violating RPC 1.1(a) and RPC 1.3. Furthermore, the complaint charged him with violation RPC 1.1(b), when his neglect in this matter is considered with his neglect in his prior ethics matters.

After Perri signed the retainer agreement, he repeatedly tried to contact respondent, to no avail. On the few occasions that Perri spoke with respondent, respondent misrepresented to him that he was working on the file, when he had done nothing.

The complaint charged respondent with violating RPC 1.4 for failing to keep Perri informed about the status of his case and

failing to promptly comply with his reasonable requests for information, as well as RPC 8.4(c) for making misrepresentations to Perri.

On January 13, 2008, Perri asked respondent to provide him with a copy of his file. As of the date of the complaint, respondent had not complied with Perri's request, thereby continuing to cause him prejudice. The complaint charged respondent with violating RPC 1.16(d).

By letters dated October 14, October 24, and December 12, 2008, the DEC investigator requested that respondent contact her and provide her with a reply to the grievance. Respondent failed to comply with the investigator's requests. The complaint charged respondent with violating RPC 8.1(b).

We find that 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).

After being retained to file a workers' compensation claim and personal injury action on Perri's behalf, respondent failed to take any action. Moreover, from the facts alleged in the complaint, it appears that the statute of limitations expired on Perri's claim. We find that respondent engaged in gross neglect

and lack of diligence. Furthermore, respondent was guilty of gross neglect in both of his 2009 cases. Respondent's misconduct in this matter, when considered with his misconduct in his earlier matters, forms the basis for finding a pattern of neglect, a violation of RPC 1.1(b). To find a pattern of neglect at least three instances of neglect must have occurred. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16).

Respondent also failed to adequately communicate with his client, thereby violating RPC 1.4(b). Moreover, when he did eventually communicate with Perri, he made misrepresentations to him, a violation of RPC 8.4(c). Finally, respondent's failure to turn over Perri's file violated RPC 1.16(d) and his failure to cooperate with the DEC investigation violated RPC 8.1(b).

The only issue left for determination is the proper quantum of discipline for respondent's violations of RPC 1.1(a), RPC 1.1(b), RPC 1.3, RPC 1.4(b), RPC 1.16(d), RPC 8.1(b), and RPC 8.4(c).

Three-month suspensions were imposed in the following default cases: In re Franks, 189 N.J. 198 (2007) (attorney guilty of gross neglect, lack of diligence, failure to cooperate with disciplinary authorities, and misrepresentation to the client about a mediation and a court date, which were never

scheduled; the attorney had a prior admonition and a censure, the latter also in a default); In re Lane, 183 N.J. 209 (2005) (attorney accepted a "whistle-blower" claim against the client's former employer, accepted a retainer, and wrote one letter to the employer; the attorney took no further action, never accounted for the use of the retainer, did not reply to her client's requests for information about the status of the claim, misrepresented that the matter was proceeding properly, failed to reply to subsequent counsel's requests for information, violated the recordkeeping rules by using a rubber facsimile signature stamp on a trust account check, and failed to reply to the grievance; the attorney had a prior reprimand); and In re Handfuss, 169 N.J. 591 (2001) (attorney grossly neglected a real estate closing by failing to record the deed for more than three months and failing to make timely payments of insurance premiums, sewer charges and real estate taxes, which resulted in financial injury to client; he also misrepresented to client that the deed had been filed and that the home warranty premium had been paid; the attorney had a prior reprimand).

Six-month suspensions were imposed in the following default cases: In re Kearns, 187 N.J. 250 (2006) (attorney engaged in gross neglect and lacked diligence in a real estate matter by failing to perform any services after accepting a retainer, failing to keep

the client informed about the status of the matter, improperly terminating the representation, failing to cooperate with disciplinary authorities, and engaging in conduct prejudicial to the administration of justice; the attorney's ethics history included a temporary suspension for failure to comply with a fee arbitration award and a three-month suspension); In re Gallo, 186 N.J. 247 (2006) (attorney failed to diligently represent a client in a workers' compensation matter, failed to communicate with the client, failed to return the client's file when the representation ended, and failed to cooperate with disciplinary authorities; prior three-month suspension); In re Landfield (I), 185 N.J. 609 (2006) (in three client matters, attorney engaged in gross neglect and lack of diligence, failed to communicate with clients, failed to cooperate with disciplinary authorities, and failed to set forth in writing the basis or rate of his fee; prior admonition and temporary suspension); In re Landfield (II), 185 N.J. 607 (2006) (misconduct in two client matters; attorney engaged in gross neglect, pattern of neglect, and lack of diligence, failed to communicate with clients, and failed to set forth in writing the basis or rate of his fee); In re Dorian, 185 N.J. 236 (2005) (attorney engaged in gross neglect, failed to abide by a client's decision about the representation, failed to keep a client informed about the status of a matter, failed to explain a matter to the

extent reasonably necessary to permit the client to make informed decisions about the representation, made a misrepresentation to the client, and failed to cooperate with disciplinary authorities; prior admonition, reprimand, and three-month suspension); In re Onorevole, 185 N.J. 169 (2005) (attorney guilty of gross neglect, lack of diligence, pattern of neglect, failure to communicate with the client, and failure to cooperate with disciplinary authorities; prior admonition and two reprimands); In re Johnson, 183 N.J. 222 (2005) (attorney engaged in gross neglect and lacked diligence in a criminal matter, failed to keep the client reasonably informed about the status of the matter, failed to explain the matter to the extent reasonably necessary to permit the client to make informed decisions about the representation, failed to expedite litigation, made misrepresentations to the client, and failed to cooperate with disciplinary authorities); and In re Cubberley, 178 N.J. 103 (2003) (attorney accepted a \$2000 retainer to obtain a site plan approval for his client; afterwards the client heard nothing further from the attorney, who failed to return her retainer; the attorney's conduct involved gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities; the attorney filed a motion to vacate the default in his ethics case, but did not cooperate with his attorney and did not file a timely or

properly verified answer to the complaint after having been given several extensions to do so; the attorney's ethics history included an admonition, two reprimands, a temporary suspension for failure to cooperate with the attorney designated to supervise his practice, a three-month suspension, and a six-month suspension).

Significantly greater discipline was imposed in default cases where the attorneys had extensive ethics histories and failed to appear on the Court's order to show cause. See, e.g., In re Banas, 196 N.J. 447 (2008) (three-year suspension; we voted to impose a six-month suspension for the attorney's gross neglect, lack of diligence, failure to communicate with the client, failure to cooperate with disciplinary authorities, violating or attempting to violate the Rules of Professional Conduct, and conduct involving dishonesty, fraud, deceit or misrepresentation; the attorney was retained to represent a client in an appeal from a conviction for a double murder, for which the client was serving a sixty-year prison term; the attorney timely filed a notice of appeal but failed to file a brief, leading to the dismissal of the appeal; the attorney took no steps to have the case reinstated, and was guilty of a pattern of misrepresentations to the client; he also failed to explain the matter to the extent reasonably necessary for the

client to make informed decisions about the representation and failed to cooperate with disciplinary authorities; the attorney's ethics history included a reprimand, a three-month suspension in a default, and a censure in a default) and In re Kivler, 193 N.J. 332 (2008) (three-year suspension in the attorney's third default matter; the attorney was guilty of gross neglect, pattern of neglect, failure to communicate with the client, misrepresentation, and failure to cooperate with disciplinary authorities; the attorney was retained to file a complaint in a personal injury matter for an elderly client but failed to file suit on her behalf or take any action to preserve her claims; in a meeting with the client, the attorney misrepresented that he could not locate her file, promised to send her information, but failed to do so, and misrepresented that the case was proceeding apace when the statute of limitations had long since expired; the attorney also failed to return the client's calls seeking information about her case and failed to reply the DEC's requests for information about the grievance; a pattern of neglect was found when the attorney's misconduct in the matter was combined with two instances of neglect present in his prior disciplinary matters; the attorney's ethics history included two prior reprimands, a


three-month suspension, and a temporary suspension; we had voted to impose a one-year suspension).

Based on respondent's significant ethics history (an admonition, a reprimand, a censure, and a one-year suspension), the numerous ethics violations present here (gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, failure to turn over the client's file, misrepresentation, and failure to cooperate with disciplinary authorities) and the default nature of these proceedings, he deserves the same discipline that we voted to impose in Kivler (a one-year suspension in a third default involving gross neglect, pattern of neglect, failure to communicate, misrepresentation, failure to cooperate with disciplinary authorities; two prior reprimands, a three-month suspension, and a temporary suspension).

Members Wissinger and Zmirich 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 these matters, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

By: 
Julianne K. DeCore
Chief Counsel

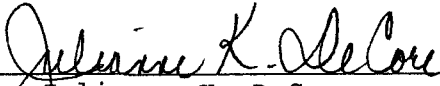
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Andrew J. Brekus
Docket No. DRB 09-399

Decided: May 13, 2010

Disposition: One-year suspension

<i>Members</i>	Disbar	One-year Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Clark		X				
Doremus		X				
Stanton		X				
Wissinger						X
Yamner		X				
Zmirich						X
Total:		7				2


Julianne K. DeCore
Chief Counsel