

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-275
District Docket No. VII-2008-0021E

IN THE MATTER OF
EDWARD J. CRISONINO
AN ATTORNEY AT LAW

Decision

Argued: November 19, 2009

Decided: December 16, 2009

John S. Eory appeared on behalf of the District VII Ethics Committee.

Justin T. Loughry appeared on behalf of respondent.

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 (reprimand) filed by the District VII Ethics Committee ("DEC"). The complaint alleged that respondent grossly neglected the appeal of a criminal conviction and lied to the

client about the status of the case. We determine to impose a reprimand.

Respondent was admitted to the New Jersey bar in 1987. He has no prior discipline.

The complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to communicate with the client), RPC 3.2 (failure to expedite litigation), and RPC 8.4(c) (conduct involving misrepresentation).

The facts that gave rise to this disciplinary case are as follows:

In February 2004, the Public Defender's Office appealed Matthew Street's criminal conviction for carjacking, for which Street was already serving a fourteen-year sentence.¹

According to Street, on December 1, 2004, he retained respondent to represent him in the appeal. Respondent prepared a substitution of attorney, dated December 1, 2004, which was filed with the Appellate Division on February 7, 2005. Street's family paid respondent approximately \$4,600 for the

¹ Street testified at the DEC hearing via teleconference from prison.

representation, about \$2,200 of which was used for transcripts of the trial.

On February 7, 2005, Street sent respondent a letter requesting an update on the status of his appeal. The letter specifically asked if respondent had completed an appellate brief. The letter also asked about the court date when the matter would be heard.

Respondent testified that he received two thirty-day extensions to file the brief. His second request was dated May 2, 2005. Street recalled having received a copy of the first extension, but not the second one.

In his answer and testimony respondent acknowledged that, despite having been granted the extensions, he failed to file a brief. Therefore, on July 26, 2005, the appeal was dismissed for failure to file a brief. Respondent conceded that, after receiving the dismissal order, he did not forward a copy of it to Street.

According to Street, respondent visited him in prison in about 2005 and informed him that he had filed the appeal and was awaiting an answer from the Appellate Division. On three later occasions, in 2007, respondent visited Street and told him that

the longer it took for the Appellate Division to "read his case," the better it was for him.

At their last meeting, in September 2007, Street informed respondent that he might have to file an ethics grievance against him. According to Street, respondent's reply was that "he would be sending me another copy of the brief, he doesn't understand why I didn't receive it and that he was personally going to check on the brief when he went to Trenton the next week for court."

Street testified that he learned about the dismissal on his own when, in the fall of 2007, his family contacted the Appellate Division directly and learned that the appeal had been dismissed two years earlier.

Respondent recalled having visited Street three times in prison. He admitted that in none of the meetings did he disclose the dismissal to Street. He had no recollection of specifically telling Street that he had filed a brief. He conceded, however, that he led Street to believe that the matter was proceeding apace.

According to respondent, in his final prison visit, which took place in either October or November 2007, he finally informed Street, for the first time, that he had never filed the

appellate brief. He assured Street that he would seek to have the appeal reinstated. Respondent never took any action, however, because Street filed the ethics grievance against him shortly thereafter.

Later, Street filed a pro se motion to vacate the dismissal and reinstate the appeal, complete with a brief that he prepared on his own. The Appellate Division reinstated the appeal on January 10, 2009.

At the time of the DEC hearing in this matter, Street's appeal was back on track and pending in the Appellate Division. At the DEC hearing, respondent offered to assist Street going forward, an offer that Street accepted.²

Respondent presented mitigation for his misconduct. At the time of the Street representation, he and his wife, both in their mid-forties, had two children, ages one and four. Respondent's wife experienced emotional difficulties caring for the two children. As a result, respondent took time away from his solo law practice to assist her. In the process, he, too,

² In a September 23, 2009 letter to us, respondent's counsel stated that respondent participated in "finishing and filing" a June 17, 2009 reply brief in Street's reinstated appeal.

experienced "substantial emotional distress and simple exhaustion."

Respondent apologized to Street for his inaction, stating that the matter "got dismissed as a lot of pressure going on in my household and I kept thinking I would get it reinstated and I didn't."

In mitigation, respondent offered that he volunteers his time, "including bar association service and lecturing at legal education seminars," and has no prior discipline. Respondent also offered letters from several people attesting to his character and good reputation in the legal community.

The DEC found respondent guilty of having violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), RPC 3.2, and RPC 8.4(c).

In recommending a reprimand, the DEC cited the following mitigating factors: respondent's lack of prior discipline; his reputation and good character; his ready admission of wrongdoing; his remorse and contrition; his cooperation with ethics authorities; the isolated nature of the incident; the lack of personal gain; the absence of prejudice to the client, once the appeal was reinstated; and remedial measures to help the client, even after the ethics grievance was filed.

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 conceded that he allowed the appeal of Street's criminal conviction to be dismissed by his failure to timely file an appellate brief. Thereafter, he failed to take corrective measures to reinstate the appeal. He, therefore, violated RPC 1.1(a), RPC 1.3, and RPC 3.2.³ In addition, respondent failed to keep Street informed about the status of the case, a violation of RPC 1.4(b), despite Street's reasonable requests for information.

Finally, as to RPC 8.4(c), although respondent had no recollection of having affirmatively represented to Street that he had filed a brief, he admitted that, by his silence, he led Street to believe, for two years, that the appeal was progressing normally, although it had been dismissed two years earlier. "In some situations, silence can be no less a misrepresentation than words." Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984). By maintaining his silence about the

³ The duty to expedite litigation also applies after trial, including a duty to file an appellate brief after extensions have been granted. ABA Annotated Model Rules of Professional Conduct 326 (5th ed. 2003).

status of the case, respondent obscured the truth and, therefore, violated RPC 8.4(c).

Misrepresentations to clients require the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney took no action on the client's behalf, did not inform the client about the status of the matter and about the expiration of the statute of limitations, and misled the client that a complaint had been filed); In re Onorevole, 170 N.J. 64 (2001) (attorney grossly neglected a matter, failed to act with diligence, failed to reasonably communicate with the client, and made misrepresentations about the status of the case); In re Till, 167 N.J. 276 (2001) (attorney engaged in gross neglect and misrepresentation; for over a nine-month period, the attorney lied to the client about the status of the case); and In re Riva, 157 N.J. 34 (1999) (attorney grossly neglected a matter, thereby causing a default judgment to be entered against the clients, failed to take steps to have the default vacated, and misrepresented the status of the case to the clients).

We have considered mitigating circumstances, including respondent's remorse, child-rearing difficulties at the time, his good character, and his lack of prior discipline.

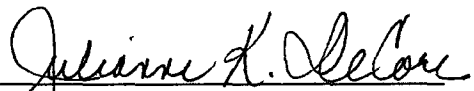
However, there are significant aggravating factors as well. First, Street's liberty was at stake. Second, respondent's silence spanned a two-year period.

A balance of the mitigating factors against the aggravating factors gave us no reason to deviate from the standard discipline for misrepresentation. Thus, we voted to impose a reprimand.

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

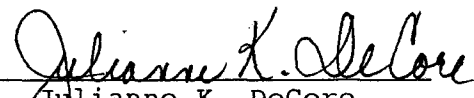
In the Matter of Edward J. Crisonino
Docket No. DRB 09-275

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Disposition: Reprimand

Members	Disbar	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:			8			1


Julianne K. DeCore
Chief Counsel