

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 09-326 and 09-349
District Docket Nos. I-2008-14E
and 17E and XIV-2008-431E

IN THE MATTERS OF
ROBERT L. FILAURO
AN ATTORNEY AT LAW

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Decision

Argued: March 2, 2010

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

These matters came before us on certifications of default filed by the District I Ethics Committee ("DEC") and the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-4(f). The first matter arises out of respondent's failure to reply to the grievances filed by two clients. The second matter arises out of his knowing misappropriation of escrow funds. For the reasons expressed below, we determine to reprimand respondent

for his misconduct in the first matter and to recommend his disbarment in the second matter.

Respondent was admitted to the New Jersey bar in 1996. At the relevant times, he maintained an office for the practice of law in Northfield and in Somers Point.

Respondent has no disciplinary history. However, he was temporarily suspended by the Supreme Court on January 3, 2009. In re Filauro, 197 N.J. 417 (2009).

Docket Nos. I-2008-14E & I-2008-17E (Failure-to-Cooperate Matter)

Service of process was proper. On August 10, 2009, the DEC sent a copy of the complaint to respondent, via regular and certified mail, return receipt requested, at (1) his last known office address, 1410 Shore Road, Northfield, New Jersey 08225; (2) the forwarding address for mail directed to the Northfield street address, P. O. Box 581, Somers Point, New Jersey 08244; and (3) an address obtained from the United States Postal Service under the Freedom of Information Act, that is, 600 Fifth Street, Somers Point, New Jersey 08244. All of the letters were returned to the DEC as "undeliverable and/or unknown address."

On August 24, 2009, the DEC served respondent via publication of a notice in that day's edition of The Press of Atlantic City. Respondent did not file an answer to the complaint.

On September 24, 2009, the DEC sent a letter to respondent at the Northfield and Somers Point addresses, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. According to the certification of the record, the letters were returned to the DEC as either "unknown at this address" or "undeliverable." Therefore, on September 24, 2009, the DEC published the letter in that day's edition of The Press of Atlantic City.

As of October 13, 2009, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The Erika Ashley Dabney Grievance

On June 16, 2008, the DEC secretary wrote a letter to respondent, at the address listed in the New Jersey Lawyers Diary, informing him that Erika Ashley Dabney had filed a

grievance and requesting an informal reply within ten days. When respondent did not reply to that letter, the DEC wrote to him again on July 29, 2008, informing him that, if he did not reply in writing, he would be charged with failure to cooperate with the DEC. Respondent remained silent.

On September 16, 2008, the DEC sent another letter to respondent, this time at a post office box provided by the CPF. The letter enclosed the letters previously mailed to respondent and requested that he reply to the grievance within fifteen days.

As a result of respondent's continuing silence, the DEC docketed the matter. On October 14, 2008, the DEC investigator sent a letter to respondent, at the post office box address, via regular and certified mail, return receipt requested. The certified letter was returned as "unclaimed and unable to forward." The regular mail was not returned.

Respondent ignored all communications from the DEC. Based on these facts, he was charged with having failed to cooperate in a disciplinary investigation, contrary to R. 1:20-3(g)(3) and in violation of R. 1:20-3(g)(4) and RPC 8.1(b) (knowingly failing to respond to a lawful demand for information from a disciplinary authority).

The Peter J. San Paolo Grievance

On September 15, 2008, the DEC secretary wrote a letter to respondent, at the address listed in the New Jersey Lawyers Diary, informing him that Peter J. San Paolo had filed a grievance and requesting an informal reply within ten days. When respondent did not reply to that letter, the DEC wrote to him again on October 8, 2008, informing him that, if he did not reply in writing, he might be charged with failure to cooperate with the DEC. Respondent did not reply.

On November 4, 2008, the DEC sent another letter to respondent, this time at a post office box provided by the New Jersey Lawyers' Client Protection Fund. The letter enclosed the letters previously mailed to respondent and requested that he reply to the grievance within fifteen days.

As a result of respondent's continuing silence, the DEC docketed the matter. On November 19, 2008, the DEC investigator sent a letter to respondent, at the post office box address, via regular and certified mail, return receipt requested. The certified letter was returned as "unclaimed and unable to forward." The regular mail was returned because the post office box had been "closed."

On March 9, 2009, the DEC sent another letter to respondent, at a home address obtained from the OAE. The letter went unanswered.

Respondent ignored all communications from the DEC. Moreover, effective January 3, 2009, he was temporarily suspended from the practice of law for failure to satisfy a district fee arbitration committee award.

Based on these facts, the DEC charged respondent with having failed to cooperate in a disciplinary investigation, contrary to R. 1:20-3(g)(3) and in violation of R. 1:20-3(g)(4) and RPC 8.1(b) (knowingly failing to respond to a lawful demand for information from a disciplinary authority).

Docket No. XIV-2008-431E (Knowing Misappropriation Matter)

Service of process was proper. On September 16, 2009, the OAE served respondent with the complaint via publication of a notice in that day's edition of The Press of Atlantic City and the New Jersey Law Journal. As of November 9, 2009, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

Office of Board Counsel ("OBC") obtained an address for respondent that is different from the addresses used by the DEC:

12 North Thurlow Avenue, Margate, New Jersey 08402. On December 9, 2009, OBC obtained a telephone number for the Margate address. A message was left for respondent to call the office. He returned the call later that day and spoke to OBC Deputy Chief Counsel Isabel Frank.

Respondent informed Frank that (1) he had received the complaint in both the DEC and OAE matters; (2) he was aware that he is in default in both matters; (3) he understood that one of the matters alleges knowing misappropriation and that the allegations would be deemed admitted if the default were not vacated; and (4) he understood that the penalty for knowing misappropriation is disbarment. Nevertheless, respondent stated that he had no intention of filing a motion to vacate either default.

According to the one-count complaint, as of August 31, 2009, respondent had abandoned his law practice and his whereabouts were unknown.

On April 27, 2006, the Superior Court of New Jersey, Atlantic County, Chancery Division, entered an order of dismissal in the matter captioned Nooruddin Chowdhury and Mohammed Hossain v. Dotoro, Inc., by and through its majority shareholder Jill Jones. Respondent represented Dotoro in that

matter. Among other things, the order required respondent to maintain \$25,000 in an interest-bearing account until the "expiration of six months' time without the institution of any proceedings respecting the escrow by Plaintiffs or by third party in interest Moni Nuruzzuman. In such event, Defendant through counsel, shall cause the balance of the escrowed funds, with accrued interest, to be divided equally between Plaintiffs and the aforesaid third party interest."

Pursuant to the terms of the order, on June 7, 2006, Equity Plus Title Agency, LLC, issued a \$25,000 check payable to "Robert L. Filauro Esq., Escrow Account." The next day, respondent opened a personal savings account at Commerce Bank and deposited the Equity check into that account.

As of June 30, 2006, the balance in respondent's trust account was \$596.33. The business account balance was \$1,659.41.

The \$25,000 in respondent's personal savings account remained inviolate until August 9, 2006, when he transferred \$1000 from that account to his business account. Between August 11 and September 28, 2006, respondent transferred an additional

\$12,000, in even-dollar amounts, from his savings account to his business account. As of September 30, 2006, the balance in the savings account was down to \$12,104.39.

By December 31, 2006, respondent had made eight more transfers, again in even-dollar amounts, totaling \$5750, reducing the personal savings account balance to \$6,360.82. On December 31, 2006, the balance in his business account was \$366.31. The balance in his trust account was \$200.

By March 31, 2007, respondent had made twelve additional transfers from his savings to business account, in even dollar amounts, and totaling \$6361. As of March 31, 2007, the balance in his trust account was \$71,612.63, but, within a week, it had dropped to \$462.63.

Based on these facts, the complaint alleged that respondent had "used the \$25,000.00 escrow funds for his own personal benefit, knowing he was unauthorized to do so."

On May 7, 2007, the parties to the real estate litigation executed a settlement stipulation, dismissal and mutual release. They agreed to divide the \$25,000 as follows: \$12,500 to Moni Nuruzzuman and \$12,500 to the plaintiffs. The document was filed with the court on May 21, 2007.

According to the complaint, "[a]fter several unsuccessful attempts" to have respondent comply with requests for the release of funds from his escrow account, on June 29, 2007, he issued a \$12,500 trust account check to Moni Nuruzzummann. By the next day, the trust account balance was zero. On September 29, 2007, he issued another \$12,500 trust account check to the plaintiffs' attorney.

The facts recited in each complaint support the charges of unethical conduct. Respondent's failure to file an answer in either matter is deemed an admission that the allegations of the complaints are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

In DRB 09-326, respondent ignored all communications from the DEC with respect to the Dabney and San Paolo grievances. He never replied to the DEC's requests for information about the grievances. These actions violated RPC 8.1(b), which prohibits an attorney from knowingly failing to respond to a lawful demand for information from a disciplinary authority.

Ordinarily, admonitions are imposed for failure to cooperate with disciplinary authorities, if the attorney does not have an ethics history. See, e.g., In re Ventura, 183 N.J.

226 (2005) (attorney did not comply with ethics investigator's repeated requests for a reply to the grievance; default case); In the Matter of Kevin R. Shannon, DRB 04-512 (June 22, 2004) (attorney did not promptly reply to the district ethics committee's investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to district ethics committee's requests for information about two grievances); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (attorney did not reply to the district ethics committee's numerous communications regarding a grievance); In the Matter of Grafton E. Beckles, II, DRB 01-395 (December 21, 2001) (attorney did not cooperate with disciplinary authorities during the investigation and hearing of a grievance); In the Matter of Andrew T. Brasno, DRB 97-091 (June 25, 1997) (attorney failed to reply to the ethics grievance and failed to turn over a client's file); and In the Matter of Mark D. Cubberley, DRB 96-090 (April 19, 1996) (attorney failed to reply to the ethics investigator's requests for information about the grievance).

Based on precedent, an admonition would be the appropriate measure of discipline for respondent's failure to reply to the grievances filed by his clients with the DEC. However, in a

default matter, the discipline is ordinarily enhanced to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Kivler, 193 N.J. 332, 342 (2008) ("a respondent's default or failure to cooperate with the investigative authorities operates as an aggravating factor, which is sufficient to permit a penalty that would otherwise be appropriate to be further enhanced"). Thus, we determine to impose a reprimand for respondent's conduct in these matters.

In DRB 09-349, respondent was given \$25,000 to hold in trust for some parties to a certain litigation, which, instead of placing into an interest-bearing escrow account, he used to open a personal savings account. He then proceeded to transfer most of this money to his business account and spend it. He did not maintain the funds inviolate in any kind of account.

Based on these facts, respondent knowingly misappropriated escrow funds, in violation of In re Hollendonner, 102 N.J. 21 (1985). For this misconduct, the measure of discipline is disbarment. In re Hollendonner, supra, 102 N.J. 21. We so recommend to the Court.

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
Julianne K. DeCore
Chief Counsel

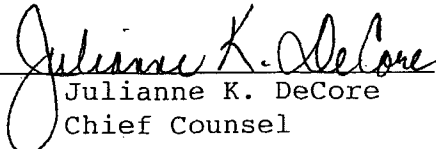
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Robert L. Filauro
Docket No. DRB 09-326

Decided: March 1, 2010

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			
Yanner			X			
Zmirich			X			
Total:			9			


Julianne K. DeCore
Chief Counsel

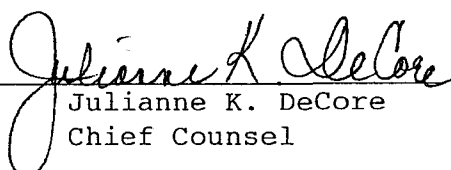
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Robert L. Filauro
Docket No. DRB 09-349

Decided: March 1, 2010

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:	9					


Julianne K. DeCore
Chief Counsel