

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-267
District Docket No. VB-2008-0024E

IN THE MATTER OF
JEFFREY A. FOUSHEE
AN ATTORNEY AT LAW

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Decision

Decided: December 17, 2009

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

This matter was before us on a certification of default filed by the District VB Ethics Committee ("DEC"), pursuant to R. 1:20-4(f). The complaint charged respondent with a pattern of neglect, lack of diligence, and failure to communicate with the client in an employment discipline action. Due to respondent's demonstrated disdain for the disciplinary system, we recommend his disbarment.

Respondent was admitted to the New Jersey bar in 1988. On June 3, 1997, he was suspended for three years for misconduct in

four cases, including gross neglect, failure to communicate with clients, failure to prepare written fee agreements, and failure to cooperate with ethics authorities. In re Foushee, 149 N.J. 399 (1997). On June 5, 2000, respondent received a three-month suspension for third degree possession of cocaine, a violation of N.J.S.A. 2C:35-10a(1). In re Foushee, 156 N.J. 553 (2000). He was reinstated on August 15, 2003.

Service of process was proper in this matter. On May 13, 2009, the DEC sent a copy of the complaint, by both certified and regular mail, to respondent's address listed in the Office of Attorney Ethics registration system, 1064 Clinton Avenue, Room 176, Irvington, New Jersey 07111. The certified mail card was returned unclaimed. The regular mail was not returned.

On June 17, 2009, the DEC sent respondent a "five-day" letter, notifying him that, unless he filed an answer to the complaint within five days of the date of the letter, the matter would be certified directly to us for the imposition of discipline, pursuant to R. 1:20-4(f). The letter was sent to the same office address by certified and regular mail. The certified mail was returned unclaimed. The regular mail was not returned.

Respondent did not file an answer to the complaint.

The conduct that gave rise to this matter is as follows. In July 1995, Renee Hashin-Copeland, the grievant, retained respondent to represent her in an employment disciplinary action taken against her by the City of Newark, where she was employed as a police officer.

According to the complaint, after an adverse July 1, 1995 ruling, respondent failed to timely file an appeal of the New Jersey Department of Personnel Merit System Board's ("Merit Board") determination.

On December 28, 2005, the Merit Board sent a final notice of disciplinary action to Hashin-Copeland at respondent's office. On March 9, 2006, respondent wrote a reply letter to the Merit Board, acknowledging receipt of its letter. In his letter, respondent explained that his secretary had quit without notice, on January 2, 2006, and that his new secretary had discovered, on February 23, 2006, that the appeal had never been filed.

Respondent then requested a hearing on the appeal, but the Merit Board denied the request as out of time. The Merit Board's decision also stated that there was no further right of review in the administrative system and that any further review would have to take place in a judicial forum.

Respondent never filed a judicial action on Hashin-Copeland's behalf, never notified her that the appeal had been denied, and had no further communications with her about the status of her case. Rather, Hashin-Copeland learned about the appeal denial on her own.

Hashin-Copeland filed her grievance against respondent on August 16, 2008. The DEC investigator sent respondent the grievance and written requests for information about the case on September 12, 2008, December 18, 2008, and March 28, 2009. Respondent failed to reply to any of the investigator's letters.

The complaint charged respondent with gross neglect and pattern of neglect (RPC 1.1(a) and (b)), lack of diligence (RPC 1.3), failure to adequately communicate with the client (cited as RPC 1.4(a), but more appropriately RPC 1.4(b)), and failure to cooperate with an ethics investigation (RPC 8.1(b)).

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).

Respondent was retained to represent Hashin-Copeland in an employment discipline action. The representation began in 1995,

but the notice of the Merit Board's final action was not sent to respondent until December 28, 2005. He had twenty days from that date to file an appeal of the determination. He failed to do so. Thereafter, he took no steps to cure his inaction, namely, to file an action in court.

Respondent also failed to keep his client adequately informed about the events in her case. Copeland had to resort to self-help to learn about the status of her appeal. Additionally, respondent ignored the ethics investigator's repeated written requests for information about the case, a violation of RPC 8.1(b).

Finally, when respondent's neglect of this matter is combined with his gross neglect in two prior disciplinary matters, a pattern of neglect emerges. A finding of a pattern of neglect requires at least three instances of neglect. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Thus, respondent is guilty of having violated RPC 1.1(b).

For a pattern of neglect, a reprimand ordinarily ensues. See, e.g., In re Weiss, 173 N.J. 323 (2002) (lack of diligence, gross neglect, and pattern of neglect); In re Balint, 170 N.J. 198 (2001) (in three matters, the attorney engaged in lack of

diligence, gross neglect, pattern of neglect, failure to communicate with clients, and failure to expedite litigation); and In re Bennett, 164 N.J. 340 (2000) (lack of diligence, failure to communicate in a number of cases handled on behalf of an insurance company, gross neglect, and pattern of neglect).

The aggravating factors here are significant, however. First, there is respondent's prior disciplinary record, which consists of a June 5, 2000 three-month suspension for cocaine possession, and more significantly, a three-year suspension, on June 3, 1997, for identical misconduct to that seen here, gross neglect, failure to communicate with clients, and failure to cooperate with ethics authorities, all encompassing four client matters.

Most troubling, however, is respondent's pattern of willful disregard for the disciplinary system, which permeates almost his entire career as an attorney of this state. The four matters that culminated in his three-year suspension proceeded to us as a default. There, respondent basically abandoned his clients and then ignored the ethics authorities' repeated requests for information about the matters. We stated then that respondent's "whereabouts appear to be unknown. He has not in any way cooperated with the ethics system, despite his awareness that his

conduct was being questioned." In the Matter of Jeffrey A. Foushee, DRB 96-317 (January 23, 1997) (slip op. at 6).

In 1998, respondent allowed another matter to proceed on a default basis. Fortunately for him, on May 5, 1998, the Court determined to impose no new discipline, as the misconduct had occurred during the same period as the events that led to his three-year suspension.

In 1999, respondent was served with, and received, a motion seeking final discipline for his criminal conviction on the cocaine possession charges. He allowed that matter to proceed to us with nary a reply. He was fortunate to receive only a three-month suspension, the standard sanction for such misconduct.

Respondent has, once again, willfully turned a blind eye toward the disciplinary system. He ignored the ethics investigator's four requests for information about the grievance, during the investigation of Hashin-Copeland's matter, and failed to file an answer to the complaint, allowing it to proceed as a default. Our 1997 observation about respondent seems to have been prescient. When meting out a three-year suspension, we stated, "[i]t is obvious that respondent does not value his privilege to practice law."

It is our unshaken belief that this respondent's pattern of unethical behavior and of total contempt for the attorney disciplinary system are now worthy of disbarment. See, e.g., In re Kantor, 180 N.J. 226 (2004) (attorney disbarred for abandoning clients, defaulting on the disciplinary matter, and failing to appear on the Court's order to show cause; the attorney's ethics record consisted of a reprimand and a three-month suspension); In re Devin, 181 N.J. 344 (2004) (attorney disbarred in a default matter alleging only attorney's failure to reply to the DEC's requests for information about a grievance; the attorney had accumulated an impressive ethics record: two reprimands, two three-month suspensions (one of them imposed in a default case), and a temporary suspension for failure to cooperate with an OAE investigation; the attorney did not appear on the Court's order to show cause); and In re Gavin, 181 N.J. 342 (2004) (disbarment for attorney who compiled an extensive disciplinary record: two reprimands, two three-month suspensions, and a six-month suspension; all but one of those matters were defaults; although the attorney's last violations were not serious (failure to promptly release the balance of an estate's funds to the beneficiaries and failure to communicate with them) the Court disbarred the attorney based on its "review of the record and on

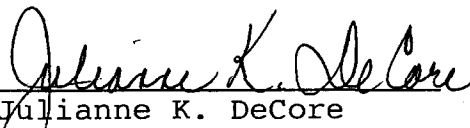
the basis of respondent's failure to appear on the Court's Order to Show Cause" Id. at 343).

For respondent's serious disciplinary history, repeated abandonment of clients, and his utter disdain for the discipline system, we recommend his disbarment.

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 Jeffrey Foushee
Docket No. DRB 09-267

Argued: November 19, 2009

Decided: December 17, 2009

Disposition: Disbar

<i>Members</i>	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