

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 09-316
District Docket No. III-08-024E

IN THE MATTER OF
JOHN P. MORRIS
AN ATTORNEY AT LAW

:
:
:
:
:
:
:

Decision

Argued: January 21, 2010

Decided: March 16, 2010

Dean J. Buono appeared on behalf of the District III Ethics Committee.

Vincent J. Pancari appeared on behalf of respondent.

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

This matter came before us on a recommendation for discipline (three-month suspension), filed by the District IIIB Ethics Committee ("DEC"). The complaint charged respondent with violating RPC 1.3 (lack of diligence), RPC 3.2 (failure to expedite litigation), RPC 1.4(b) (failure to keep a client reasonably informed about the status of the matter or to promptly comply with reasonable requests for information), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

We determine that a censure is the proper discipline for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1974. He maintains a law office in Bridgeton, New Jersey.

In 1996, respondent received an admonition for gross neglect, lack of diligence, and failure to communicate in an estate matter. In the Matter of John P. Morris, DRB 95-444 (February 20, 1996).

In 1998, following a motion for discipline by consent, respondent was reprimanded for gross neglect in another estate matter. There, he failed to take any substantial action for a period of eleven years, including failing to prepare and file an inheritance tax return, open an estate account, and deposit checks forwarded to the estate. Ultimately, respondent made restitution to the estate for its losses, which totaled more than \$8,000. In re Morris, 152 N.J. 155 (1998).

In 2008, respondent was admonished for engaging in a conflict of interest (RPC 1.7(a)(2)). He failed to withdraw from the representation of a criminal client after becoming aware that his wife and the client were engaged in a romantic relationship. In re Morris, 196 N.J. 534 (2008).

Respondent did not dispute the charges in this matter. He entered into a stipulation of facts and, at the July 10, 2009

DEC hearing, testified about mitigating circumstances that prevented him from timely filing an appellate brief on his client's behalf.

According to the stipulation, respondent admitted that (1) he lacked diligence in preparing a brief and appendix on behalf of Jonathon Hutchinson¹ (RPC 1.3); (2) he failed to expedite litigation, in that his efforts to undertake a detailed review and analysis of the trial record "with presentation of legal arguments so as to effectively present an appellate argument" resulted in delaying the litigation, rather than expediting it (RPC 3.2); (3) he misrepresented to his client and client's mother the completion and filing dates for the brief and appendix (RPC 8.4(c)); and (4) he failed to keep his client reasonably informed about the status of the matter (RPC 1.4(b)).

More specifically, in January 2005, respondent represented Hutchinson in a criminal trial. Hutchinson had been charged, in a fourteen-count indictment, with sexual assault and endangering the welfare of a minor. On February 4, 2005, a "hung jury" ended the matter in a mistrial.

Hutchinson's case was re-tried on July 26, 2005. On August 4, 2005, the second jury announced that it was deadlocked. The

¹ The grievant in this matter is Hutchinson's mother, Patty Poplaski.

judge dismissed the jury for the day and instructed it to return on Friday, August 5, 2004, to resume deliberations in the morning.

Following deliberations, the jury acquitted Hutchinson of eleven of the fourteen counts, but found him guilty of three counts alleging that he had committed the criminal offense of endangering the welfare of a child "[by engaging in sexual conduct]."

After the verdict, respondent filed a motion for a new trial and a motion for judgment of acquittal based on various grounds, including that the judge had directed the jury to return to continue deliberating, without providing it with additional instructions. The motions were argued on October 21, 2005. On November 14, 2005, the judge denied the motions.

In the latter part of 2005, in a timely manner, respondent filed a notice of appeal and an application for bail, pending prosecution of the appeal. The trial judge granted respondent's application for bail.

Shortly after the sentencing, Hutchinson's family obtained funds to put towards the cost of the transcripts for the second trial. Respondent paid the balance due of \$3,756.

In late May 2007, the assistant criminal case manager informed respondent "that he had received a Notice of Dismissal

from the Appellate Division and he had scheduled a date for appearance in Court the next week with the Prosecutor, Respondent and Jon Hutchinson." During that appearance, the prosecutor consented to the continuation of bail. However, because the appeal had been dismissed in or around April 2006, the trial judge revoked Hutchinson's bail. Respondent could not explain why he had not learned of the dismissal until thirteen months later. He claimed, however, that the dismissal had occurred during a point of great turmoil in his personal life.

Respondent met with Hutchinson, after his incarceration at the Cumberland County jail. He also met with Hutchinson's mother and sister at his office. Respondent informed them that he would seek to have Hutchinson's appeal reinstated, which he believed would be granted if he attached a "merits" brief setting forth "substantial appellate grounds."

Sometime in 2008, respondent met with Hutchinson's mother, at which time he informed her that the issues on appeal were complicated. He explained that he had to set forth an effective argument to deal with the legal obstacle that a "jury's 'mixed' or 'inconsistent' verdict would not be a successful ground for reversal on appeal." Respondent believed that he had to prepare a comprehensive and detailed brief to effectively present the grounds for appeal which, in his view, would result in the

reversal of Hutchinson's conviction. He, therefore, believed that he needed to include references to the trial record and to advance "the same arguments as in the post-verdict Motions."

According to the stipulation, at a meeting with Hutchinson's mother, in 2008, respondent gave her a handwritten note "setting forth the time frame [February 14, 2008] within which respondent projected that he would be able to finish the appellate brief." Respondent did not complete the brief until a year later, however. Respondent stipulated that his "failure to meet the time frames, proposed by [him] resulted in misrepresentation of the completion date and in violation of RPC 8.4(c) as that was 'conduct involving . . . misrepresentation.'"

On January 5, 2009, respondent telephoned Hutchinson's mother to inform her that he was finalizing the brief. On January 22, 2009, he explained to her that the final version of the brief was almost complete.

At the DEC hearing, respondent explained that, in order to show the Appellate Division that Hutchinson was wrongly convicted, in his view, he had to conduct a detailed review of the trial transcripts, of the evidence, and of the jury instructions, which he believed were improper. The trial took five days and there were two days of jury selection. Respondent

reviewed the transcripts three or four times. He stated that he analyzed every day of the proceedings and constantly researched the law.

Respondent spent "additional extensive amount[s] of time," in December 2008 and January 2009, finalizing the brief that included, among other things, five grounds for the reversal of the guilty verdict, as detailed in the stipulation. The final version of the sixty-five-page brief and 126-page appendix (appended to the stipulation) were provided to Hutchinson's new attorney, Jeffrey Zucker, sometime in February 2009. Respondent strove to include all appropriate appellate arguments in the brief. Zucker found that respondent's brief was "a good brief" and so informed Hutchinson. Respondent and Zucker discussed, at length, the appellate issues in the matter.

Respondent admitted that he was troubled by the fact that finalizing the brief and appendix in Hutchinson's matter "took much too long." He stated that it is something that he "will always carry" with him. He testified that he takes great pride in his practice and in providing proper representation for his clients. He was sorry about the anguish he caused Hutchinson and his family. He added that Hutchinson, in addition to being saddled with the stigma of a sexual offense, "is stuck with

Megan's Law" for at least fifteen years, if not the rest of his life.

Respondent claimed that personal circumstances explained his delay in the appeal, although they did not excuse it. In 2004, he learned that his wife was having an affair. In that same year, his wife filed a domestic violence complaint and criminal charges against him. She also filed a complaint with DYFS, alleging that he was sexually abusing their eight-year-old daughter. The result of his wife's actions was that, from June 2004 to February 2006, respondent was denied contact with his children. Eventually, all of the charges against him were found to be without merit and were dismissed.

On February 14, 2006, respondent's ex-wife asked him to take custody of their children, which he did, from February 14, 2006 to December 2008. As of December 2008, his ex-wife and her paramour were no longer together. The children then returned to live with their mother, in Cherry Hill. In the interim, in 2007, respondent was dragged into a court battle between his ex-wife and her parents. His ex-wife had tried to deny them visitation with the children.

In January 2006, respondent's ex-wife's paramour, whom he represented on criminal charges, filed an ethics complaint

against him. That matter was finally resolved in October 2008. In re Morris, supra, 196 N.J. 534 (admonition).

After respondent's ex-wife resumed custody of their children, respondent began seeing them on weekends and, at times, during the week. Not having primary custody of the children gave him more time to focus on his work and to devote to Hutchinson's brief. He spoke extensively with Hutchinson's attorneys about the issues on appeal and learned that Hutchinson's appeal had been reinstated.

The DEC accepted respondent's testimony in mitigation, found him to be a very capable attorney, and also found that he did an excellent job representing Hutchinson at the trial level. The DEC noted that the appeal involved difficult and significant issues. The DEC considered that respondent was distracted by difficult personal problems, including a contested divorce and frivolous allegations that he had abused his child. However, the DEC did not find that that these factors excused respondent from filing a timely brief in the appeal. The DEC remarked that his failure to do so resulted in the dismissal of Hutchinson's appeal, which triggered the revocation of Hutchinson's bail and led to his incarceration.

The DEC found further that, even if respondent's personal problems had distracted him from practicing law, causing him to

miss the original deadline to file his brief, he was on notice, in May 2007, when he received notice from the Appellate Division, that he had to file the brief. Notwithstanding this notice and his repeated promises to Hutchinson and Hutchinson's mother that he would get the appeal reinstated, he did not complete the brief for an additional twenty-two months.

In evaluating the proper discipline, the DEC considered respondent's prior ethics history: in 1996, an admonition for failing to properly handle an estate; in 1998, a reprimand for again improperly handling an estate matter and failing to file an inheritance tax return; and in 2008, an admonition for a conflict of interest for representing a criminal defendant who had an affair with his wife. The DEC determined that a three-month suspension was the proper discipline for the violations to which respondent stipulated: RPC 1.3, RPC 3.2, RPC 1.4(b), and RPC 8.4(c).

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

The stipulated facts and respondent's admissions to the complaint clearly and convincingly establish that he lacked diligence in pursuing Hutchinson's appeal, failed to expedite

litigation by taking an inordinate amount of time to analyze the issues on appeal and to prepare the brief, failed to keep his clients informed about the status of the matter, and made a misrepresentation to Hutchinson's mother. As to the latter, respondent stipulated that his failure to meet the time frame proposed to Hutchinson's mother "resulted in misrepresentation of the completion date and in violation of RPC 8.4(c) as that was 'conduct involving . . . misrepresentation.'"

The only issue left for determination is the proper quantum of discipline for respondent's violations of RPC 1.3, RPC 3.2, RPC 1.4(b), and RPC 8.4(c).

The discipline imposed on attorneys guilty of similar violations has ranged from a reprimand to a short-term suspension, depending on other factors present, such as the attorney's ethics history or the number of other violations committed. See, e.g., In re Daly, 195 N.J. 6 (2008) (reprimand for an attorney appointed to represent a New York defendant in connection with New York state drug charges, while another attorney represented the same defendant on corresponding federal charges; the attorney failed to obtain a sentence reduction for the defendant despite numerous requests from the defendant and the defendant's other attorney; Daly acknowledged "blowing off" the case, but explained that many other things were going on in

his life, including his hectic law practice and personal problems involving his wife's serious health issues; Daly was guilty of violating RPC 1.3 and RPC 1.4(b); In re Bullock, 166 N.J. 5 (2001) (reprimand for attorney who timely filed a notice of appeal in his client's personal injury action but failed to timely file a brief or seek an extension in which to do so; after the appellate division dismissed the case, the attorney failed to seek relief from the order of dismissal; the attorney also failed to inform his client for a period of nineteen months about the dismissal and sent his client misleading letters); and In re Gaffney, 133 N.J. 65 (1993) (reprimand for attorney who failed to file an appellate brief in a criminal matter and failed to reply to various orders of an appellate judge, resulting in a finding that the attorney was in contempt of court; the attorney was found guilty of violating RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 3.2, and RPC 8.1(b)). Daly, Bullock, and Gaffney had no disciplinary history at the time.

More severe discipline was imposed on attorneys with disciplinary histories. See, e.g., In re Wood, 177 N.J. 514 (2003) (censure for an attorney who grossly neglected a matter and failed to communicate with his client: the attorney allowed a matrimonial appeal to be dismissed and failed to take any steps to have it reinstated; his ethics history included an

admonition and a reprimand in a default matter); In re Nealy, 196 N.J. 152 (2008) (three-month suspension where, in one of two matters, the attorney failed to file an appellate brief, resulting in the dismissal of his client's criminal appeal, did not inform his client of the dismissal, leading him to believe that the appeal was still pending; in another matter, the attorney failed to take any action to reopen his client's bankruptcy case to obtain a discharge of tax obligations until after the grievance was filed, more than two and one-half years after he had been retained, and failed to communicate with the client; the attorney violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 8.4(c); his ethics history included a private reprimand and two reprimands); In re Kantor, 178 N.J. 69 (2003) (three-month suspension in a default matter where the attorney filed the notice of appeal in his client's personal injury matter but failed to file the brief, causing the dismissal of the case; the attorney took no further action on the client's behalf and failed to advise her of the dismissal, failed to provide her with a written retainer agreement or otherwise communicate the basis or rate of his fee, and over the course of a two-year period wrote to her only once and canceled scheduled appointments with her; he also failed to cooperate with

disciplinary authorities; prior reprimand and a temporary suspension).

In the present matter, we were torn between a censure and a three-month suspension, given respondent's ethics history (two admonitions and a reprimand). However, we note that respondent's admonition and reprimand for grossly neglecting estate matters were issued more than ten years ago (1996 and 1998, respectively). Moreover, respondent's 2008 admonition arose from an offense unlike those charged here: a conflict of interest for failing to withdraw from representing a criminal client, after he became aware that the client and his wife were involved in a romantic relationship.

Respondent, like Daly, who received only a reprimand for lacking diligence in his representation of a criminal client, presented significant mitigating circumstances. Daly's wife suffered from severe health problems during the relevant period. Here, respondent was embroiled in a highly contentious divorce. His former wife filed frivolous criminal charges against him and charges with DYFS. In addition, for a period of close to three years, respondent had primary custody of his children.

Nevertheless, unlike Daly, respondent has a history of final discipline (two admonitions and a reprimand). Daly had only a temporary suspension, based on pending criminal charges

at the time we considered his ethics case. Moreover, Daly did not violate RPC 8.4(c), misconduct that typically merits greater discipline.

Bullock also received a reprimand and, like respondent, misled his client. He failed to inform the client, for nineteen months, that his civil case had been dismissed. Respondent's misconduct, however, occurred in the context of a criminal matter. In prior cases, we considered that, generally, the harm to a criminal client differs greatly from the harm to a civil client. The criminal client's personal liberty is at stake, when the attorney fails to take prompt action on his or her client's behalf. In the Matter of Walter D. Nealy, DRB 08-009 and 08-101 (June 10, 2008) (slip op. at 21). Moreover, Bullock had no ethics history.

Kantor received a three-month suspension for his misconduct in a civil case that bore many similarities to respondent's misconduct here. However, the discipline in Kantor was enhanced to reflect the default nature of the proceedings before the us.

In Nealy, the attorney also received a three-month suspension. However, that matter was more serious, in that two separate matters were involved, where only one matter was involved here. Nealy had a prior private reprimand (the

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

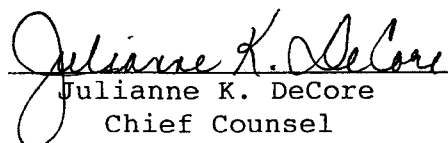
In the Matter of John P. Morris
Docket No. DRB 09-316

Argued: January 21, 2010

Decided: March 16, 2010

Disposition: Censure

Members	Disbar	Suspension	Censure	Reprimand	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