

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 09-046
District Docket No. VC-07-0036E

IN THE MATTER OF
RICHARD M. ROBERTS
AN ATTORNEY AT LAW

:
:
:
:
:
:
:

Decision

Argued: April 16, 2009

Decided: June 19, 2009

Joanne Juliano Giger appeared on behalf of the District VC Ethics Committee.

Thomas R. Ashley appeared on behalf of respondent.

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

The District VC Ethics Committee ("DEC") submitted this matter to us under R. 1:20-6(c)(1), which provides as follows:

A hearing shall be held only if the pleadings raise genuine disputes of material fact, if the respondent's answer requests an opportunity to be heard in mitigation, or if the presenter requests to be heard in aggravation. In all other cases the pleadings, together with a statement of

procedural history, shall be filed by the trier of fact directly with the Board for its consideration in determining the appropriate sanction to be imposed.

Here, respondent's answer denied some of the allegations. Therefore, review under R. 1:20-6(c)(1) would be inappropriate. Because the parties subsequently entered into a written stipulation, in which respondent admitted the allegations of the complaint, we determined to treat this case as if it were submitted on a disciplinary stipulation. Our task is to decide which Rules of Professional Conduct respondent violated and to assess the appropriate quantum of discipline for his ethics infractions.¹

The complaint charged respondent with violating RPC 1.1, presumably (a), (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of the matter or to comply with requests for information), and RPC 1.5, presumably (b), (failure to provide a client with a writing setting forth the basis or rate of the fee). We determine that a censure is appropriate discipline in this case.

Respondent was admitted to the New Jersey bar in 1971. He maintains a law office in West Caldwell, New Jersey.

¹ Because the DEC submitted this matter pursuant to R. 1:20-6(c)(1), it did not make a recommendation for discipline.

Respondent received a private reprimand in 1993 for failure to provide his client with a writing setting forth the basis or rate of his fee, failure to reinstate his client's complaint after its dismissal until after the client filed a grievance, and failure to keep the client informed about the status of the matter or to respond to the client's numerous requests for information. In the Matter of Richard M. Roberts, DRB 93-342 (November 23, 1993).

In 2002, respondent was admonished for failure to provide his client with a writing setting forth the basis or rate of his fee. In the Matter of Richard M. Roberts, DRB 02-148 (July 8, 2002).

At our February 2009 session, we considered two disciplinary matters addressing respondent's conduct toward four clients. The two matters were consolidated for purposes of discipline (a three-month suspension). There, we found that respondent failed to provide his clients with writings setting forth the basis or rate of the fee in three matters (RPC 1.5(b)), grossly neglected two matters (RPC 1.1(a)), lacked diligence in three matters (RPC 1.3), failed to communicate with clients in two matters (RPC 1.4(b)), engaged in a conflict of interest in one matter (RPC 1.9 (a)), and made a misrepresentation in one matter (RPC 8.4(c)). We further found,

as aggravating factors, that respondent made misrepresentations to a tribunal, failed to take responsibility for his misconduct by trying to blame others, and was less than forthcoming in his testimony before the DEC. In the Matter of Richard M. Roberts, DRB 08-362 and DRB 08-363 (April 7, 2009). These matters are pending with the Court.

The parties stipulated to the following facts:

On June 2, 2005, Ella Street retained respondent to pursue a bail reduction for her grandson, Brian Mellette. She used a credit card to pay respondent's fee of \$1,000. During its investigation, the DEC found a copy of the credit card receipt in respondent's file.

Respondent did not provide Street with a writing setting forth the basis or rate of his fee, even though he had not regularly represented either Street or Mellette.

Street later tried to obtain information about the status of the matter, but could not reach respondent directly. She received "misinformation and no information from [respondent's] staff," in response to her inquiries.

Ultimately, Street contacted the court and discovered that, on or about June 16, 2005, respondent had filed a motion for bail reduction, returnable on June 27, 2005. However, he did not appear at the bail reduction hearing. Street further

learned that respondent filed a second motion, which was returnable on August 2, 2005, but did not appear for that hearing either. Street tried to contact respondent several times about the hearing. She spoke to his secretary, who did not convey accurate information to her.

Mellette also obtained "misinformation" from respondent's staff about the status of his matter. He ultimately retained another attorney to pursue his bail reduction.

On March 13, 2007, Street filed a grievance against respondent. Respondent replied to the grievance by letter dated July 23, 2007. Respondent stated that he had filed "several bail motions," but had not appeared at the hearings "because he was under the mistaken impression" that Street had not paid his fee. Respondent's letter to the DEC investigator stated, in relevant part:

This office was paid via credit card information which was taken over the phone. As a result of my misunderstanding on the bookkeeping aspect, I was under the impression that the fee for the bail was not in fact paid. I did file several bail motions but did not appear because, as I said [sic] was under the impression that the fee for the bail motion in fact was not paid, but again my failure to appear was because [sic] my mistaken impression that the monies were in fact not paid.

[Ex.D.]

In December 2007, respondent refunded the \$1,000 retainer to Street.

Respondent's counsel's position is that an admonition is appropriate discipline here because of the de minimis nature of respondent's infraction, which, counsel argued, was the result of a misunderstanding. According to counsel, the fact that respondent filed two bail motions reflected that he was pursuing Mellette's motion for bail reduction in "an expeditious and conscientious manner. But for [respondent's] misunderstanding as to whether he had received a retainer for his services, [respondent] would have fulfilled his obligation in the same manner." Counsel added that respondent's infraction was not willful or ill-motivated, but the result of an error. Counsel noted that, once respondent learned of the error, he refunded Street's fee in its entirety.

Following a review of the record, we are satisfied that the clear and convincing evidence establishes that respondent was guilty of unethical conduct.

Respondent stipulated that, although he had not represented Mellette or Street in the past, he did not provide them with a writing setting forth the basis or rate of his fee, a violation of RPC 1.5(b). Respondent then failed to provide the services for which he had been retained, that is, securing a reduced bail

for Mellette. He twice filed a motion for bail reduction, but twice failed to appear on the return date of the motions. Respondent claimed that he did not appear at "several" hearings because of his "mistaken impression" that Street had not paid his fee.

We do not accept respondent's claim. If his contention were true, then he would not have filed more than one motion. Moreover, if he or his staff had properly communicated with Street, or if he had looked at his records, he would have discovered that Street had, in fact, paid the fee. Respondent is, therefore, guilty of lack of diligence and failure to communicate with his client, violations of RPC 1.3 and RPC 1.4(b).

We do not find, however, clear and convincing evidence that respondent engaged in gross neglect. He did not completely ignore the matter; he filed two motions, although he did not follow through on them.

The stipulation also asserted that both Street and Mellette were given "misinformation" by respondent's staff. Neither the stipulation nor the complaint identified the nature of the "misinformation" or which RPC might have been violated. We, therefore, make no finding of impropriety in this regard.

Respondent's misconduct in this matter was not part and parcel of the same misconduct that occurred in DRB 08-362 and DRB 08-363, for which we determined to impose a three-month suspension. When respondent was retained by Street, June 2, 2005, grievances had already been filed in the Chill matter, District Docket No. VC-05-0023E (May 10, 2005) and the Muslim matter, District Docket No. VC-05-0003E (July 14, 2004). There, we found that respondent failed to provide both clients with retainer agreements and that he lacked diligence as to Chill. Respondent had already been privately reprimanded and admonished for similar misconduct.

With the exception of respondent's admonition, in which we found a violation of RPC 1.5(b), all of his ethics matters have included some form of neglect of client cases (gross neglect, lack of diligence, failure to expedite litigation), thereby establishing that respondent has engaged in a pattern of neglect over the years. Furthermore, this is an attorney who has not learned from his prior mistakes and who has repeatedly failed to conform his behavior to that required by the Rules of Professional Conduct.

The only issue left for determination is the proper quantum of discipline. Generally, conduct involving lack of diligence and failure to communicate (and, in some cases, gross neglect,

which is not present here) results in either an admonition or a reprimand, depending on the gravity of the offenses, the harm to the clients, and the attorney's disciplinary history. See, e.g., In re Dargay, 188 N.J. 273 (2006) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar misconduct); In the Matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005) (admonition for attorney who did not disclose to the client that the file had been lost, canceled several appointments with the client for allegedly being unavailable or in court when, in fact, the reason for the cancellations was his inability to find the file, and then took more than two years to attempt to reconstruct the lost file; violations of RPC 1.4(b) and RPC 1.3 found); In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also failed to comply with the client's requests for information about the case; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(a)); In the Matter of Vincenza Leonelli-Spina, DRB 02-433 (February 14, 2003)(admonition for gross neglect, lack of diligence, and failure to communicate with the client); In the Matter of Jeri L. Sayer, DRB 99-238 (January 11, 2001)(admonition for attorney

who displayed gross neglect, lack of diligence, and failure to communicate with the client); a workers' compensation claim was dismissed twice because of the attorney's failure to appear in court; thereafter, the attorney filed an appeal, which was dismissed for her failure to timely file a brief); In the Matter of Jonathan H. Lesnik, DRB 02-120 (May 22, 2000)(admonition for failure to file an answer in a divorce matter, resulting in a final judgment of default against the client; the attorney also failed to keep the client informed about the status of the case); In re Aranquren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis or rate of the fee; prior admonition and six-month suspension); In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

Respondent's conduct was similar to that of the attorney in Aranquren (reprimand for lack of diligence, failure to communicate with the client, and failure to memorialize the

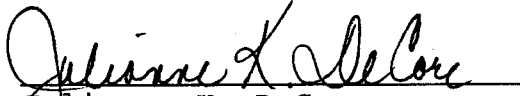
basis or rate of the fee; prior admonition and six-month suspension), albeit more serious. Even though Aranguren had a prior six-month suspension compared to respondent's three-month suspension, this is respondent's fourth time before us for the same type of misconduct. Respondent's counsel argued, in mitigation, that respondent's inaction was the result of a misunderstanding over the payment of the fee and noted respondent's refund of the entire fee amount. As indicated earlier, however, had respondent spoken to his client or reviewed the file, he would have seen that the fee had been paid.

We also consider, in aggravation, the harm to the client. This case did not involve the neglect of a civil matter where monetary restitution could be made. By failing to appear at the bail reduction hearings, Mellette was deprived of his liberty, at least temporarily. In addition, although respondent reimbursed the fee in full, he failed to do so until nine months after Street filed a grievance, which was two and one-half years after Street had retained him. Weighing these circumstances against the fact that the public will be protected once respondent is suspended in DRB 08-362 and DRB 08-363, and that only one client matter was involved, we find that a censure is justified in this case.

As in respondent's prior matter, we determine to require him to take an ICLE course in law office management, to provide to the Office of Attorney Ethics, prior to reinstatement, proof of fitness to practice law and, upon reinstatement, to practice under the supervision of an OAE-approved proctor for a two-year period.

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

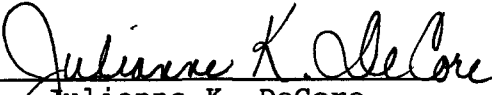
In the Matter of Richard M. Roberts
Docket No. DRB 09-046

Argued: April 16, 2009

Decided: June 19, 2009

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger			X			
Zmirich			X			
Total:			8			


Julianne K. DeCore
Chief Counsel