

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 10-074  
District Docket No. VA-2007-0044E

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IN THE MATTER OF  
GABRIEL F. GONZALEZ  
AN ATTORNEY AT LAW

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Corrected Decision

Decided: August 16, 2010

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 VA Ethics Committee ("DEC"), pursuant to R. 1:20-4(f). It was originally the subject of a July 1, 2008 agreement in lieu of discipline ("ALD") between respondent and the Office of Attorney Ethics ("OAE"). After respondent failed to complete the diversion, a complaint was filed. The complaint charged respondent with violating RPC 8.1(b) (failure to cooperate with ethics authorities), RPC 8.4(b) (criminal act that reflects adversely on the attorney's fitness as a lawyer), and RPC 8.4(d) (conduct prejudicial to the administration of justice). Specifically, respondent left obscene and threatening

messages on a former client's answering machine and later threw a hammer through the client's closed living room window. We determine to impose a three-month suspension.

Respondent was admitted to the New Jersey bar in 1997. He has no prior discipline. He has been ineligible to practice law since September 24, 2007, for failure to pay the Supreme Court Lawyers' Fund for Client Protection ("CPF") annual attorney assessment for 2007.

Service of process was proper in this matter. On August 20, 2009, the DEC sent a copy of the complaint to respondent's home address, 2671 Bancroft Avenue, Union, New Jersey 07083-6333, by certified and regular mail. According to the certification of service, the certified mail was returned unclaimed. The regular mail was not returned.

On October 15, 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 sanction, pursuant to R. 1:20-4(f). The letter was sent by certified and regular mail to respondent's home address. Once again, the certified mail was returned unclaimed. The regular mail was not returned.

Respondent did not file an answer to the complaint.

In April 2004, Vasilios Maglares retained respondent to represent him and his company, VFM Development Group, LLC, to defend a home-repair contract in a consumer fraud action. The claim against Maglares was dismissed, but a May 9, 2006 trial resulted in a judgment against VFM. Thereafter, respondent notified Maglares that he would not pursue an appeal of the judgment.

Three years later, on March 14, 2007, the sheriff executed upon the judgment, by levying on a VFM bank account. Maglares immediately contacted respondent, claiming surprise and asserting that respondent was supposed to have appealed the judgment years earlier. The complaint does not allege that respondent was retained to file an appeal.

At about 9:00 p.m. in that evening, respondent met Maglares at Maglares' house. Respondent appeared intoxicated and acted in a belligerent manner toward Maglares, but left without incident. Several hours later, at 2:00 a.m., respondent made three calls to Maglares' home telephone, leaving messages that included numerous expletives, sexually explicit obscenities, and threats of physical violence, including a threat on Maglares' life.

About an hour later, at 3:00 a.m., respondent drove back to Maglares' house and threw a hammer through his living room

window, shattering it. Maglares peered through the broken window just in time to see respondent drive off.

On March 28, 2007, respondent was charged with fourth-degree criminal mischief (N.J.S.A. 2C:17-3(b)(2)) and making terroristic threats (N.J.S.A. 2C:12-3) a third-degree crime. The matter was later transferred to Cedar Grove Municipal Court. In exchange for a plea of guilty, the terroristic threat charge was downgraded to harassment, a petty disorderly persons' offense, and the criminal mischief charge was dismissed. Respondent admitted making the telephone calls and throwing the hammer through Maglares' window.

Under the terms of the ALD that followed, respondent agreed to pay Maglares \$500 restitution for the window, send Maglares a letter of apology, attend weekly Alcoholics Anonymous meetings for one year, and attend the State Bar Association's November 17, 2008 session "Diversionary Legal Education Course."

Thereafter, respondent failed to report to the OAE about his completion of the ALD requirements. In letters dated September 25, October 21 and October 30, 2008, the OAE reminded respondent of his duties under the ALD, stated that he had failed to report to the OAE, and directed him to reply to the OAE. Respondent failed to do so.

In February 2009, the OAE learned that respondent had changed his address with the CPF in October 2008. On February 11 and March 2, 2009, the OAE sent respondent noncompliance letters that directed him to contact that office and warned that a complaint would issue, if he did not.

Following the March 2, 2009 letter, respondent sent the OAE a personal certification of reasons for his failure to comply with the terms of the ALD. In essence, respondent stated that he had hoped to comply with the ALD, but that his depression and alcoholism had intervened. In September 2008, he had sold his house and had hoped to repay Maglares with the proceeds of sale. However, he had been required to borrow \$11,000 from family members to complete the sale. Penniless and unemployed, he had then moved in with a sister. The certification did not state when respondent intended to complete the terms of the ALD.

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).

Maglares, a former client, contacted respondent to complain about his failure to file an appeal in a consumer fraud action that

respondent had apparently refused to handle. After meeting with Maglares at Maglares' house, respondent, in the middle of the night, left obscene messages and a death threat on Maglares' answering machine. He returned to the house an hour later, at 3:00 a.m., and threw a hammer through Maglares' living room window.

For purposes of the disciplinary matter, the DEC revived the criminal mischief charge, which had been dismissed, and the terroristic threat charge, which had been downgraded to a disorderly persons' violation.<sup>1</sup> According to the ethics complaint, respondent's threats of violence against Maglares, combined with his act of throwing a hammer through Maglares' living room window, were either intended to terrorize Maglares or made in reckless disregard of the risk of causing terror, in violation of (N.J.S.A. 2C:12-3) (terroristic threats). In addition, respondent's purposeful, knowing or reckless tampering with Maglares' property constituted criminal mischief (N.J.S.A. 2C:17-3B(2)).

Even if the DEC had not revived the charges, a disorderly persons' offense, such as respondent's, can establish a

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<sup>1</sup> In In re Rigolosi, 107 N.J. 192, 206 (1987), the Court held that even an acquittal of criminal charges is not "res judicata" in a subsequent disciplinary proceeding, based substantially on the same charge or conduct."

violation of RPC 8.4(b). See, e.g., In re Magid, 139 N.J. 449 (1995), and In re Principato, 139 N.J. 456 (1995) (attorneys reprimanded after convictions for simple assault, a disorderly persons' offense, involving acts of domestic violence) and In re Power, 114 N.J. 540 (1989) (attorney reprimanded following his guilty plea to obstructing the law, a disorderly persons' offense).

We, therefore, find respondent guilty of a violation of RPC 8.4(b) by his terroristic threats (N.J.S.A. 2C:12-3) and criminal mischief (N.J.S.A. 2C:17-3B(2)).

We dismiss, however, the charge that respondent failed to cooperate with ethics authorities (RPC 8.1(b)). Respondent's decision not to abide by the terms of the ALD subjected him to the filing of a formal ethics complaint on the conduct that was the subject matter of the ALD. RPC 8.1(b) addresses failure to "respond to a lawful demand for information from an admissions or disciplinary authority." The aborted ALD did not constitute a demand for information. Rather, it required compliance. Failure to comply results in a breach of the ALD and its subsequent revocation, as in this case. Because RPC 8.1(b) is inapplicable in this instance, we dismiss that charge. We also dismiss the

charged violation of RPC 8.4(d), as respondent's conduct was not of the sort that RPC 8.4(d) is meant to address.

When conduct involving criminal acts is not of the utmost seriousness, admonitions and reprimands have been imposed. See, e.g., In the Matter of Michael E. Wilbert, DRB 08-308 (November 11, 2008) (admonition for possession of eight rounds of hollow-point bullet ammunition, a violation of N.J.S.A. 2C:39-3(f), and possession of an over capacity ammunition magazine, in violation of N.J.S.A. 2C:39-3(j), fourth-degree crimes for which the attorney was admitted into a pre-trial intervention program); In the Matter of Marc D'Arienzo, DRB 04-151 (December 10, 2004) (admonition for attorney who possessed a small amount of marijuana; when responding to an alarm at a residence, police found the house open and entered looking for a burglar; in the open the police found marijuana, a "bong," and a marijuana pipe); In re Thakker, 177 N.J. 228 (2003) (reprimand for an attorney who pled guilty to harassment, in violation of N.J.S.A. 2C:33-4(a), a petty disorderly persons' offense; the attorney harassed a former client, telephoning her repeatedly, after she told him to stop; additionally, the attorney was abusive to the police officer who responded in the matter; despite that police officer's warning, the attorney continued to call the former



client and the police officer); In re Press, 200 N.J. 437 (2009) (reprimand for criminal mischief; seven complaints alleged that twice in May 2007 and twice in June 2007 the attorney purposely or knowingly damaged personal property of another; specifically, the attorney snapped off the windshield wipers of seven vehicles; the attorney was admitted into a pretrial intervention program; in his disciplinary proceeding, the attorney stipulated that his commission of fourth-degree criminal mischief violated RPC 8.4(b)); In re Murphy, 188 N.J. 584 (2006) (reprimand imposed on attorney who twice presented his brother's driver's license to police in order to avoid prosecution for DUI charges, in violation of RPC 8.4(b), RPC 8.4(c), and RPC 8.4(d); in addition, the attorney failed to cooperate with the OAE investigation of the matter (RPC 8.1(b)); In re LaVergne, 168 N.J. 409 (2001) (reprimand for attorney found guilty in municipal court of theft by failure to make required disposition of property received, a disorderly persons' offense, in violation of N.J.S.A. 2C:20-9; the attorney entered into an agreement to purchase an automobile, never made payment, and instead took possession of the vehicle and allowed it to be registered to a new owner); and In re Gonzalez, 142 N.J. 482 (1995) (reprimand for attorney who presented his cousin's

driver's license, rather than his own, when pulled over for speeding; the attorney had feared losing his driving privileges due to the number of points on his own driver's license; the attorney pleaded guilty to speeding and obstructing the administration of law or other governmental function (N.J.S.A. 2C:29-1)).

An attorney who caused \$72,000 worth of damages to his own house, which was the subject of a foreclosure, received a censure. In re Osei, 185 N.J. 249 (2005). Respondent's actions were more serious than Osei's. Although his actions were more impulsive in nature than Osei's, they were extremely serious. The messages he left for his former client were incredibly abusive, obscene, and threatening. Beyond that menacing, there was his additional act of returning in the wee hours of the morning to throw a hammer through the living room window of Maglares' occupied house. The potential for either injury or death from that projectile was considerable. Fortuitously, no one was harmed. For the seriousness of respondent's actions, we find that at least a censure would be required. But respondent has also allowed this matter to proceed to us as a default. Enhanced discipline is, thus, warranted. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6). We,

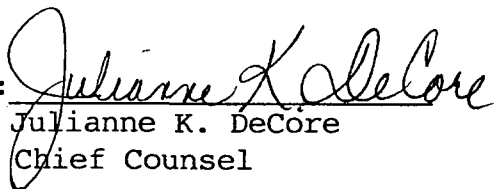
therefore, determine to impose a three-month suspension in this case.

Finally, because respondent indicated that he suffers from depression and alcoholism, we require him, prior to reinstatement, to submit proof of fitness to practice law, as attested by a mental health professional approved by the OAE. We also require him to enroll in an OAE-approved alcohol treatment program and to submit proof of attendance to the OAE, on a schedule to be determined by that office.

Member Stanton 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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

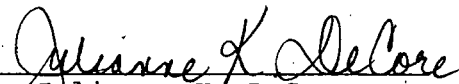
In the Matter of Gabriel F. Gonzalez  
Docket No. DRB 10-074

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Argued: May 20, 2010  
Decided: August 12, 2010  
Disposition: Three-month Suspension

Members	Disbar	Three-month 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