

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 09-404  
District Docket No. VA-08-057E

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IN THE MATTER OF :  
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DONALD S. ROSANELLI :  
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AN ATTORNEY AT LAW :  
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Decision

Decided: May 12, 2010

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

This matter came before us on a certification of default filed by the District VA Ethics Committee ("DEC"), pursuant to R. 1:20-4(f). The complaint charged respondent with violating RPC 1.1 (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to keep a client reasonably informed about the status of the matter or to comply with reasonable requests for information), RPC 1.5 (reasonable fee - failure to perform the work for which he was retained or failure to make restitution),<sup>1</sup>

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<sup>1</sup> RPC 1.16(d) (upon termination of the representation, failure to refund any advance payment of fee that has not been earned),  
(footnote cont'd on next page)

and RPC 8.1 (failure to respond to a lawful demand for information from a disciplinary authority).

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

Respondent was admitted to the New Jersey bar in 1981. He no longer maintains a law office in New Jersey. He currently resides in Tampa, Florida.

In 2003, respondent was suspended for six months, based on his 2001 guilty plea to an accusation charging him with endangering the welfare of a child by possessing child pornography (N.J.S.A. 2C:24-4b(5)(b)), thereby violating RPC 8.4(b) (commission of a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer). He was reinstated in 2004. In re Rosanelli, 179 N.J. 289 (2004).

In 2009, respondent was temporarily suspended for failure to satisfy a fee arbitration determination resulting from the representation that gave rise to the current ethics charges. He remains suspended to date. In re Rosanelli, 200 N.J. 439 (2009).

Service of process was proper. On October 1, 2009, the DEC mailed copies of the ethics complaint to respondent, by regular and certified mail, at 10 Formosa Avenue, Tampa, Florida, 33606.

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(footnote cont'd)

which was not charged in the complaint, is the more applicable rule.

The certified mail was returned marked "unclaimed." The regular mail was not returned.

On November 6, 2009, the DEC sent a second letter to the same address, by regular and certified mail. The letter notified respondent that, if he did not file an answer, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of sanction, and the complaint would be deemed amended to include a willful violation of RPC 8.1(b). The certified mail was returned marked "unclaimed." The regular mail was not returned.

As of the date of the certification of the record, December 3, 2009, respondent had not filed an answer to the ethics complaint.

On January 18, 2007, Sheila King retained respondent, at a fee of \$5,000, to represent her daughter, Lakeshia, in an Essex County criminal matter. King gave respondent \$2,500 and agreed to make monthly payments of \$500, beginning in February 2007. King made two additional payments. Afterwards, respondent failed to communicate with King or with her daughter. Also, he missed a court appearance. King, therefore, stopped payment on the third installment. On May 9, 2007, she informed respondent that she was "terminating their agreement."

The complaint alleged facts establishing that King had difficulty communicating with respondent. Specifically, it stated, "[f]or example," that respondent called King "on Sunday, a date when he knew she had to work . . . [and] apparently also primarily used his cell phone to communicate and Ms. King was never given an office phone number." The complaint alleged further that respondent stopped communicating with King or with Lakeshia and that, according to King, when respondent failed to appear for court "dates," the court questioned whether Lakeshia was represented by counsel. After King and Lakeshia waited in court all day for respondent to appear, another attorney resolved Lakeshia's matter. In addition, the complaint alleged that respondent "apparently" failed to provide King with a statement of services, despite her request for it.

On September 17, 2007, King filed for fee arbitration, requesting the return of a portion of the \$3,500 that she had paid respondent. Respondent failed to appear at the April 16, 2008 fee arbitration hearing.

According to the fee arbitration determination (incorporated by reference into the ethics complaint as exhibit A), respondent had presented King with a writing setting forth his flat fee of \$5,000. King paid respondent \$3,500. He succeeded in obtaining a "modest" bail reduction for Lakeshia.

Thereafter, respondent failed to appear at two hearings and failed to inform the court that he would not appear. In addition, he did not communicate with King or with Lakeshia. On numerous occasions, respondent scheduled meetings with Lakeshia at the prison, but failed to appear or to notify her that he would not come.

Based on the services respondent provided to Lakeshia, the district fee arbitration committee determined that respondent was entitled to only \$500 and directed him to return \$3,000 to King.

Respondent never reimbursed King. When King learned that respondent had moved to Virginia, she went there to pursue the return of the fee through the Virginia courts. The Virginia court entered a judgment against respondent, which he failed to satisfy. Although the Virginia court informed King that respondent had moved to Florida, she did not pursue her collection efforts there.

The complaint stated that respondent initially had a telephone conversation with the presenter, in which he acknowledged that King "was 'right'." However, respondent did not cooperate with the DEC's investigation and did not submit a written reply to the grievance.

According to the complaint, respondent no longer practices law in New Jersey, but has not requested to be placed on inactive status. He has been ineligible to practice law in New Jersey since September 2009 and remains temporarily suspended for failure to satisfy the fee arbitration award to King.

We find that the facts recited in the complaint support most of 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's failure to appear at scheduled court proceedings resulted in Lakeshia having to obtain the assistance of another attorney. He also failed to appear at scheduled meetings with his client without informing her that he would be absent. Furthermore, King had difficulty communicating with respondent. He telephoned her when he knew that she would be unavailable for the call and did not provide her with his office telephone number. Unquestionably, respondent failed to protect his client's, interests and failed to communicate with his client, thereby violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4(b) (failure to communicate with the client).

Respondent also failed to cooperate with the DEC's

investigation by not submitting a written reply to the grievance and not filing a verified answer to the ethics complaint (RPC 8.1(b)).

The complaint also charged respondent with violating RPC 1.5 because he failed "to perform the work he was retained to complete and [as of the date of the complaint, September 18, 2009] failed to make restitution." We find, however, that such conduct more properly violated RPC 1.16(d) (failing to refund any advance payment of a fee that has not been earned or incurred), instead of RPC 1.5. Although the complaint did not specifically cite RPC 1.16(d), it alleged sufficient facts to put respondent on notice of a potential finding of a violation of that rule. Accordingly, there will be no due process violations in finding respondent guilty of the more appropriate rule for failing to refund an unearned retainer.

In sum, respondent is guilty of gross neglect, lack of diligence, failure to communicate with the client, failure to return an unearned retainer, and failure to cooperate with disciplinary authorities. The only issue left for determination is the proper quantum of discipline for these ethics offenses.

Generally, in default matters, reprimands are imposed for

conduct similar to respondents.<sup>2</sup> See, e.g., In re Swidler, 192 N.J. 80 (2007) (attorney grossly neglected one matter and failed to cooperate with the investigation of an ethics grievance); In re Van de Castle, 180 N.J. 117 (2004) (attorney grossly neglected an estate matter, failed to cooperate with disciplinary authorities, and failed to communicate with the client); In re Goodman, 165 N.J. 567 (2000) (attorney failed to cooperate with disciplinary authorities and grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the client's claim; the attorney also failed to keep the client apprised of the status of the matter; prior private reprimand (now an admonition)); and In re Lampidis, 153 N.J. 367 (attorney failed to pursue discovery in a personal injury lawsuit or to otherwise protect his client's interests, failed to comply with the DEC's investigator's requests for information about the grievance, and failed to communicate with the client).

A censure was imposed in In re Romaniello, \_\_\_\_\_ N.J. \_\_\_\_\_ (2007). In that default matter, the attorney was found guilty of gross neglect, lack of diligence, failure to communicate with \_\_\_\_\_

<sup>2</sup> Typically, the discipline in default matters is enhanced to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Nemshick, 180 N.J. 304 (2004).



the client, failure to promptly disburse property belonging to a third party, commingling, failure to maintain a bona fide office, and failure to cooperate with disciplinary authorities. Romaniello had been retained in 1998 to file a disability claim with the Social Security Administration ("SSA"). The attorney completed the application and accepted the designation as his client's representative before the SSA. Afterwards, he failed to communicate with his client or with the SSA, leaving his client to handle the matter without representation. Eventually, the client terminated his representation.

After the case was concluded, the SSA inadvertently sent the attorney a check, which included a legal fee in excess of the amount permitted by law. The attorney failed to reply to his client's and the SSA's requests for the return of the fees inadvertently released to him. It became his client's obligation to collect the overpayment made to the attorney.

We found that the attorney's transgressions, standing alone, merited only an admonition. However, significant aggravating factors were present. After the attorney applied for and was designated as his client's representative, he left his client to proceed without representation before the SSA. Moreover, even though there was no clear and convincing evidence that the attorney had knowingly misappropriated the overpayment

made by the SSA, his subpoenaed bank records showed that he had received payment from the SSA, that he had deposited the funds into his business account, and that the funds were missing. In addition, the attorney had permitted the disciplinary matter to proceed on a default basis. The attorney's license to practice law had been administratively revoked, in September 2006, for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection for seven years. The attorney, who had been admitted in 1992, had no history of discipline.

Respondent's misconduct is similar to Romaniello's. Both kept money to which they were not entitled. Both failed to protect their clients' interests, failed to communicate with their clients, and were ultimately discharged by their clients. Unlike Romaniello, respondent has an ethics history. However, respondent's six-month suspension occurred seven years ago for unrelated misconduct. Therefore, this is not a situation where he did not learn from prior mistakes. Romaniello was also guilty of commingling funds and not having a bona fide office, factors not present in this matter.

Moreover, it appears that Romaniello's client's damages were greater than those of respondent's client's. Respondent was able to obtain a modest bail reduction for his client and another attorney ultimately resolved Lakeshia's matter. In

comparison, Romaniello's client was left to represent himself before the SSA and was ultimately responsible for collecting the overpayment made to his attorney. One last aggravating factor exists here - respondent never satisfied the fee arbitration award in King's favor.

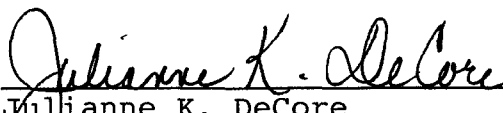
As indicated previously, respondent currently resides in Florida and has been ineligible to practice law in New Jersey since September 2009. He, therefore, cannot cause further injury to clients in this state, at least for the moment.

On balance, we find respondent's circumstances to be sufficiently similar to Romaniello's, such that a censure is appropriate for this respondent. A censure is also in line with the precedent cited above.

Members Wissinger and Zmirich 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 these matters, 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 Donald S. Rosanelli  
Docket No. DRB 09-404

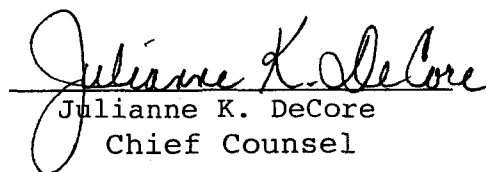
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Decided: May 12, 2010

Disposition: Censure

<b>Members</b>	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh			X			
Clark			X			
Doremus			X			
Stanton			X			
Wissinger						X
Yamner			X			
Zmirich						X
<b>Total:</b>			7			2

  
Julianne K. DeCore  
Chief Counsel