

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 08-018 and DRB 08-049
District Docket Nos. IIIA-07-0004E
and XIV-06-0276E

IN THE MATTERS OF
HENRY A. WALSH, JR.
AN ATTORNEY AT LAW

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Decision
Default

Decided: June 25, 2008

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

These matters came before us on certifications of default
filed by the District IIIA Ethics Committee (DEC) and the Office
of Attorney Ethics (OAE), pursuant to R. 1:20-4(f).

In DRB 08-018, the two-count complaint charged respondent
with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of
diligence), RPC 1.4(b) (failure to keep a client reasonably
informed about the status of the matter and promptly comply with

requests for information) and RPC 8.1(b) (failure to reply to requests for information from a disciplinary authority). In DRB 08-049, the complaint charged respondent with practicing law while ineligible (RPC 5.5(a)(1)).

We determine to impose a six-month suspension in DRB 08-018 and a three-month suspension in DRB 08-049. The latter is to begin at the expiration of the six-month suspension.

Respondent was admitted to the New Jersey bar in 1993. At the relevant time, he maintained a law office in Lakewood, New Jersey.

In 2006, respondent was reprimanded, in a default matter, for failure to act with diligence in his pursuit of a disputed insurance claim on behalf of a client, failure to communicate with the client, and failure to reply to the grievance. In re Walsh, 188 N.J. 276 (2006). Respondent was censured in 2007, in another default, for failure to cooperate with disciplinary authorities. In re Walsh, 192 N.J. 445 (2007).

The New Jersey Lawyers' Fund for Client Protection (CPF) report shows that respondent was ineligible to practice law from December 12, 1994 to March 3, 1997, from September 30, 2002 to June 27, 2005, and for a few days in 2007.

DRB 08-018 - District Docket No. IIIA-07-0004E

Service of process was proper. On August 8, 2007, the DEC mailed copies of the complaint by regular and certified mail to respondent's last known office address, as listed in the New Jersey Lawyers' Dairy and Manual, 162 Mountain View Drive, Lakewood, New Jersey 08701. The certified mail receipt was signed by respondent. The regular mail was not returned. Respondent did not file an answer.

On September 28, 2007, the DEC sent respondent a second letter to the same address, by regular and certified mail. The letter notified respondent that, if he did not file an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted, the record would be certified to us for the imposition of discipline, and the complaint would be amended to include a willful violation of RPC 8.1(b). Although the certification of the record states, at both paragraphs 6 and 7, that the regular mail was not returned, presumably it meant that neither the regular nor certified mail was returned. As of the date of the certification of the record, October 25, 2007, respondent had not filed an answer to the complaint.

We now turn to the facts of this matter.

In early 2005, Keith Gajewski retained respondent to represent him in a custody hearing in Monmouth County Superior

Court. Following an April 13, 2005 hearing, the court ordered that custody of the children remain with the mother. The court also determined that Gajewski owed a substantial sum of back child support and noted that respondent had failed to submit a case information statement, as required by the Court Rules. The court rendered its opinion on April 13, 2005, and entered a conforming order on June 13, 2005. Respondent failed to inform Gajewski of both.

Presumably desirous of finding out the outcome of the hearing, Gajewski telephoned respondent on numerous occasions and left messages on his answering machine. Respondent did not reply to the calls.

On July 6, 2005, Gajewski obtained copies of the court's opinion and order directly from the Monmouth County Superior Court Clerk. That month, he retained another attorney, who filed a motion to reconsider the court's order. The motion was denied as untimely.

The first count of the complaint charged that respondent's failure to reply to Gajewski's numerous telephone calls and to apprise him of the court's opinion and order constituted gross neglect, a violation of RPC 1.1(a); that his failure to keep Gajewski reasonably informed about the status of the matter and to promptly comply with his requests for information constituted

a violation of RPC 1.4(b); and that his failure to promptly and diligently pursue Gajewski's custody claim violated RPC 1.3.

The second count alleged that, on February 23, 2007, the investigator/presenter forwarded to respondent a copy of the grievance and requested a reply within ten days. Respondent acknowledged receipt of the letter on February 26, 2007. When respondent did not reply, on March 27, 2007, the presenter sent him a letter by regular mail, informing him that he had to file a reply to the grievance. Respondent failed to do so. The complaint alleged a violation of RPC 8.1(b).

We find that the complaint contains sufficient facts to support a finding of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

The complaint alleged that respondent's failure to reply to Gajewski's numerous telephone calls and to advise him of the court's opinion and order constituted a violation of RPC 1.1(a). Although this conduct clearly constitutes a violation of RPC 1.4(b), it is not typically deemed a violation of RPC 1.1(a). We, therefore, dismiss that charge.

The complaint did not specify what actions respondent did or did not take in connection with Gajewski's custody hearing. Apparently, respondent appeared at the hearing and took whatever

action was warranted up to that point. Also, Gajewski's dissatisfaction with the outcome and respondent's failure to file a case information statement on behalf of his client do not establish gross neglect. Finally, the assertion in paragraph 10 of the complaint that "Respondent's failure to promptly and with reasonable diligence pursue the custody claim of the grievant constitutes a violation of R.P.C. 1.3," does not, without more, establish that respondent violated that rule. We, therefore, dismiss that charge as well.

The complaint did, however, contain sufficient facts to establish a violation of RPC 8.1(b) for respondent's failure to reply to the grievance.

The only issue left for determination is the proper quantum of discipline for respondent's violations of RPC 1.4(b) and RPC 8.1(b).

Generally, in default matters, a reprimand is imposed for failure to communicate with the client and failure to cooperate with disciplinary authorities, even if this conduct is accompanied by other, non-serious ethics infractions. See, e.g., In re Van de Castle, 180 N.J. 117 (2004) (attorney failed to cooperate with disciplinary authorities, failed to communicate with the client, and grossly neglected an estate matter); In re Goodman, 165 N.J. 567 (2000) (attorney failed to cooperate with

disciplinary authorities, failed to keep the client apprised of the status of the matter, and grossly neglected the case; prior private reprimand (now an admonition)); and In re Lampidis, 153 N.J. 367 (attorney failed to comply with the DEC's investigator's requests for information about the grievance, failed to communicate with the client, and failed to pursue discovery in a personal injury lawsuit).

However, respondent's ethics history for similar types of misconduct – a 2006 reprimand for lack of diligence, failure to communicate with the client and failure to cooperate with ethics authorities and a 2007 censure for failure to cooperate with disciplinary authorities – demonstrates that he has not learned from prior mistakes. Moreover, this is respondent's third default (with a companion fourth default).

Based on respondent's ethics infractions, his ethics history, and his continuing disregard for the ethics system, we determine that a six-month suspension is warranted in this matter.

Member Doremus did not participate.

DRB 08-049 - District Docket No. XIV-06-276E

Service of process was proper. On October 31, 2007, the OAE served a copy of the complaint by UPS ground service and regular mail sent to respondent's last known office address, listed in the New Jersey Lawyers' Diary and Manual as 162 Mountain View Drive, Lakewood, New Jersey 08701-5854. The attorney registration records also list this address as respondent's office and residence.

On November 1, 2007, UPS confirmed delivery of the complaint. The regular mail was not returned. Respondent did not file an answer.

On December 19, 2007, the OAE sent respondent a second letter, by regular mail, advising him that, if he did not file an answer by December 31, 2007, the allegations of the complaint would be deemed admitted, the matter would be certified to us for the imposition of sanction, and the Court would likely suspend him. The regular mail was not returned.

On January 18, 2008, OAE First Assistant Counsel John Janasie telephoned respondent and informed him that "he was overdue on his Answer," that he, Janasie, "did not see how he could have any factual dispute with the allegations," and that "the Supreme Court would take a dim view of him if he defaulted on this matter." Respondent promised to work on the answer and

to file it promptly. As of the date of the certification of the record, February 1, 2008, respondent had not filed an answer.

Respondent was admitted to the New Jersey bar in 1993, the Connecticut bar in 1983, and the Pennsylvania bar in 1985. He practiced law in Pennsylvania until 2001, when he moved his practice to New Jersey. Respondent's New Jersey office has also been his residence since May 2000.

In 2001, respondent gave up his Pennsylvania practice and began working for the New Jersey Office of the Public Defender, Parental Representation Unit. He has worked there continuously since that time. He has handled some criminal assignments through the Public Defender's Office and a few other matters in his private practice.

As indicated above, the CPF records show that respondent was declared ineligible to practice law in New Jersey, among other dates, from September 30, 2002 to June 27, 2005. The complaint charged that, during that ineligibility period, respondent practiced law, a violation of RPC 5.5(a).

In response to the OAE's inquiry in this matter, on August 8, 2006, respondent submitted an explanation that mentioned his employment with the Public Defender's Office since January 1, 2002. In his letter, respondent admitted that his ineligibility was based on his failure to timely pay his annual assessment to

the CPF. He explained that, after he moved to New Jersey in 1999, he continued to practice law in Pennsylvania from two different offices, and that he filed his New Jersey attorney registration statements from Pennsylvania. In 2000, he moved to a larger office in the same building, had the same mail carrier, and filed his change of address forms with the post office. Nevertheless, he claimed, he did not recall receiving the annual assessment form.

According to respondent, at about the same time that he gave up his Pennsylvania law office, he began accepting work from the Public Defender's Office, representing parents who were defendants in child abuse and neglect cases. He also accepted other DYFS cases in both Monmouth and Ocean Counties. Within a few weeks, in June 2001, he received over forty DYFS cases.

Respondent explained that this sudden enormous caseload required his appearance in court on a virtually daily basis, in addition to all of the other related work. He, therefore, had little time for his private clients. As of the end of 2001, respondent had fifty-nine open DYFS cases. His heavy caseload continued through 2004.

In 2005, when his caseload finally abated, he realized that he had never received any notices from the CPF. He then contacted the CPF to inquire why he had not received the renewal

notices, at which time he was purportedly informed that the CPF records still had him listed at his Bristol, Pennsylvania address, where the forms continued to be mailed. Respondent then filed the required registration forms and paid his back fees.

Respondent concluded by stating:

I swear that at all times between 09/30/2002 and 06/27/2005 I behaved in full compliance with all applicable ethical rules. Despite the duration of my lapse, it was due to a single oversight precipitated by the sudden influx of DYFS cases.

[Ex.2.]

Our review of the complaint satisfies us that it contains sufficient facts to support a finding of unethical conduct. Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

Respondent practiced law while ineligible for failure to pay his annual assessment to the CPF. In doing so, he violated RPC 5.5(a). Although he provided an explanation for his failure to pay his annual attorney assessment, this was not his first period of ineligibility, as noted above. He, therefore, should have had a heightened awareness of his obligation to notify the CPF of his new address and of his failure to pay his annual assessment for a period of nearly three years.

Practicing law while ineligible, without more, is generally met with an admonition if the attorney is unaware of the ineligibility or advances compelling mitigating factors. See, e.g., In the Matter of William C. Brummel, DRB 06-031 (March 21, 2006) (attorney practiced law during a four-month period of ineligibility; the attorney was unaware of his ineligible status); In the Matter of Richard J. Cohen, DRB 04-209 (July 16, 2004) (attorney practiced law during a nineteen-month ineligibility; he did not know he was ineligible); In the Matter of William N. Stahl, DRB 04-166 (June 22, 2004) (attorney practiced law while ineligible and failed to maintain a trust and a business account; mitigating factors were the attorney's lack of knowledge of his ineligibility, his prompt action in correcting his ineligible status, and the absence of self-benefit; in representing the clients, the attorney was moved by humanitarian reasons); In the Matter of Samuel Fishman, DRB 04-142 (June 22, 2004) (while ineligible to practice law, attorney represented one client in a lawsuit and signed a retainer agreement in connection with another client matter; the attorney also failed to maintain a trust and a business account; mitigating factors were the attorney's lack of knowledge of his ineligibility, his contrition at the hearing, his quick action in remedying the recordkeeping deficiency, and the lack of disciplinary history); In the Matter of Douglas F.

Ortelere, DRB 03-377 (February 11, 2004) (attorney practiced law while ineligible during periods of ineligibility that ranged from one day to eleven months, failed to communicate with the client, and delayed the payment of the client's medical expenses as well as the disbursement of the client's share of settlement proceeds; in mitigation, the attorney was suffering from depression at the time of the misdeeds and had no disciplinary history since his admission to the bar in 1983); In the Matter of Juan A. Lopez, Jr., DRB 03-353 (December 1, 2003) (attorney practiced law while ineligible for nine months; the attorney was not aware that he was ineligible); In the Matter of David S. Rudenstein, DRB 02-426 (February 4, 2003) (admonition by consent for attorney who, for a period of eleven months, practiced law while ineligible); and In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (admonition for attorney who practiced law while ineligible for two and one-half years, was guilty of numerous recordkeeping deficiencies, and failed to satisfy a client's medical bill out of trust funds for three and a half years; mitigating factors included that the attorney was suffering from depression at the time, was going through bankruptcy and divorce proceedings, was no longer practicing law in New Jersey, had paid all sums due to the CPF, and showed contrition for his ethics infractions).

A reprimand is usually imposed when the attorney has an extensive ethics history, has been disciplined for conduct of the same sort, has also committed other ethics improprieties, or is aware of the ineligibility and practices law nevertheless. See, e.g., In re Kaniper, 192 N.J. 40 (2007) (attorney practiced law during two periods of ineligibility; although the attorney's employer gave her a check for the annual attorney assessment, she negotiated the check instead of mailing it to the CPF; later, her personal check to the CPF was returned for insufficient funds; the attorney's excuses that she had not received the CPF's letters about her ineligibility were deemed improbable and viewed as an aggravating factor); In re Perrella, 179 N.J. 499 (2004) (attorney advised his client that he was on the inactive list and then practiced law; the attorney filed pleadings, engaged in discovery, appeared in court, and used letterhead indicating that he was a member in good standing of the Pennsylvania bar); In re Lucid, 174 N.J. 367 (2002) (attorney practiced law while ineligible; the attorney had been disciplined three times before: a private reprimand in 1990, for lack of diligence and failure to communicate with a client; a private reprimand in 1993, for gross neglect, lack of diligence, conduct prejudicial to the administration of justice, and failure to cooperate with disciplinary authorities; and a reprimand in 1995, for lack of diligence, failure to communicate

with a client, and failure to prepare a written fee agreement); In re Hess, 174 N.J. 346 (2002) (in a default matter, attorney practiced law while ineligible and failed to cooperate with disciplinary authorities; the attorney had received a prior admonition for practicing law while ineligible and failing to maintain a bona fide office in New Jersey); In re Ellis, 164 N.J. 493 (2000) (one month after being reinstated from an earlier period of ineligibility, the attorney was notified of his 1999 annual assessment obligation, failed to make timely payment, was again declared ineligible to practice law, and continued to perform legal work for two clients; he had received a prior reprimand for unrelated violations); In re Kronegold, 164 N.J. 617 (2000) (attorney practiced law while ineligible; an aggravating factor was the attorney's lack of candor to us about other attorneys' use of his name on complaints and letters and about the signing of his name in error); In re Namias, 157 N.J. 15 (1999) (attorney practiced law while ineligible, displayed lack of diligence, and failed to communicate with a client; the attorney was unaware of his ineligibility); and In re Maioriello, 140 N.J. 320 (1995) (attorney practiced law while ineligible for one year, failed to maintain proper trust and business account records in nine matters, exhibited a pattern of neglect and lack of diligence, and failed to

communicate with clients in six of the matters; the attorney claimed that he had not received the payment notice from the Fund).

Suspensions have been imposed where the attorneys' conduct was viewed as more serious. See, e.g., In re Schwartz, 163 N.J. 501 (2000) (three-month suspension for attorney who, aware of her seven-year ineligibility, handled approximately ten cases; she also failed to maintain a bona fide office and violated RPC 8.4(c) by appearing in court in a bankruptcy matter, thereby misrepresenting to the court that she was an attorney in good standing) and In re Van Sciver, 158 N.J. 4 (1999) (three-month suspension for attorney who practiced law while ineligible by appearing in municipal court cases on three occasions in a six-month period; the attorney also failed to cooperate with disciplinary authorities by not answering the complaint and not appearing at the district ethics committee hearing; the attorney had been transferred to disability inactive status prior to his suspension).¹

Respondent's misconduct in this matter, when viewed in conjunction with his ethics history, would probably warrant no more than a censure. However, his pattern of indifference toward the ethics system, beginning with his first disciplinary matter, a 2006 default, continuing with his 2007 default, and extending

¹ The matter could not proceed on a default basis because the attorney was served with the complaint prior to the effective date of the default rule (R. 1:20-4(f)).

to these two default matters, warrants the imposition of more severe discipline. We were particularly troubled by the fact that, despite assurances to the OAE that he would file an answer, respondent continued to show utter disregard for the disciplinary system. We, therefore, determine that, like Schwartz and Van Sciver, respondent should be suspended for three months. The suspension is to run consecutively to the six-month suspension imposed in DRB 08-018.

We also require that, prior to his reinstatement, respondent provide proof of fitness to practice law, as attested by an OAE-approved mental health professional.

Member Doremus 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
Julianne K. DeCore
Chief Counsel

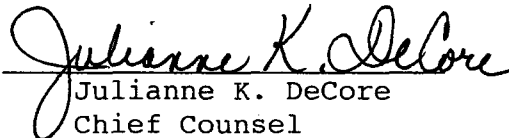
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matters of Henry A. Walsh, Jr.
Docket Nos. DRB 08-018

Decided: June 25, 2008

Disposition: Three-month suspension

Members	Disbar	Six-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan		X				
Clark						X
Doremus		X				
Lolla		X				
Stanton		X				
Wissinger		X				
Total:		8				1


Julianne K. DeCore
Chief Counsel

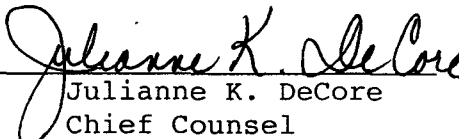
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matters of Henry A. Walsh, Jr.
Docket Nos. DRB 08-049

Decided: June 25, 2008

Disposition: Three-month suspension

Members	Disbar	Three-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan		X				
Clark						X
Doremus		X				
Lolla		X				
Stanton		X				
Wissinger		X				
Total:		8				1


Julianne K. DeCore
Chief Counsel