

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 09-394  
District Docket Nos. XIV-2008-474E  
and XIV-2009-226E

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

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Decision

Decided: April 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 Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-4(f). It arises out of respondent's alleged violations of RPC 5.5(a) (practicing while suspended), R. 1:20-20(b)(3), (b)(4), and (b)(11) (requiring suspended attorneys to comply with certain obligations), and RPC 8.1(b) (failure to cooperate

with disciplinary authorities), as well as his alleged violations of RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4(a) and (b) (failure to communicate with the client) in two client matters. For the reasons stated below, we recommend that respondent be disbarred.

Respondent was admitted to the New Jersey bar in 1993. He is presently suspended and has an extensive disciplinary history.

In 2006, respondent received a reprimand, in a default matter, for gross neglect, lack of diligence, and failure to communicate with the client, as well as failure to cooperate with disciplinary authorities by refusing to reply to a grievance filed against him by his client. In re Walsh, 188 N.J. 276 (2006).

In 2007, respondent was censured, in a default matter, for failure to cooperate with disciplinary authorities, by refusing to participate in the district ethics committee's investigation of a grievance filed by his client. In re Walsh, 192 N.J. 445 (2207).

In 2008, in two default matters, respondent received (1) a six-month suspension for failure to communicate with his client and failure to cooperate with disciplinary authorities and (2) a

three-month suspension for practicing while ineligible. In re Walsh, 196 N.J. 161 (2008). The six-month suspension stemmed from respondent's failure to communicate with his client, whom he had represented in a custody case, and his failure to reply to the grievance filed by the client. Specifically, respondent did not inform his client that the court had ordered custody of the children to remain with their mother and had found that respondent's client owed "a substantial sum of back child support." In addition, respondent failed to answer or return his client's "numerous" telephone calls. Finally, although respondent acknowledged receipt of the grievance, he never provided a reply to the district ethics committee investigator.

The three-month suspension, which was ordered to run consecutively to the six-month suspension, was based on respondent's practicing while ineligible between September 30, 2002 and June 27, 2005. In addition, the Supreme Court ordered that, prior to respondent's reinstatement, he "shall submit proof of his fitness to practice law as attested to by a mental health professional approved by the Office of Attorney Ethics."

Respondent remains suspended from the practice of law.

Service of process was proper. On May 29, 2009, the OAE sent a copy of a formal ethics complaint to respondent's last

known address, 3233 Fletcher Avenue, Apt. 380, Lincoln, Nebraska 68504, via regular and certified mail, return receipt requested. On June 5, 2009, "Carla Hoback" signed for the certified letter. The letter sent via regular mail was not returned.

On July 10, 2009, the OAE sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. According to the certification of the record, the United States Postal Service confirmed that the certified mail was delivered on July 20, 2009.

On September 2, 2009, the OAE sent a copy of an amended formal ethics complaint to respondent's last known address, 3233 Fletcher Avenue, Apt. 380, Lincoln, Nebraska 68504, via regular and certified mail, return receipt requested. The receipt was returned with an illegible signature. The letter sent via regular mail was not returned.

On November 20, 2009, the OAE sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to

do so, the record would be certified directly to us for the imposition of sanction. On an unidentified date, respondent signed for the certified letter.

As of December 15, 2009, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

According to the first count of the amended complaint, on July 23, 2008, the Supreme Court entered its order suspending respondent for six months, effective August 21, 2008. On August 27, 2008, however, respondent attended a case conference at the Ocean County courthouse, where he negotiated consent orders on behalf of five clients. On August 28, August 29, and September 3, 2008, he appeared before Ocean County Superior Court Judge Ronald E. Hoffman on behalf of seven clients.

Between November 15, 2008 and February 18, 2009, the OAE left voice-mail messages for respondent on the answering machine connected to his office telephone number. The voice-mail greeting identified the number as that of the law office of Henry A. Walsh, Jr., and requested that the caller leave a name and number so that the call could be returned.

Based on these facts, the amended complaint charged respondent with having violated RPC 5.5(a) (practicing while

suspended), R. 1:20-20(b)(1) (practicing law in any form and appearing before a court), R. 1:20-20(b)(3) (furnishing legal services), R. 1:20-20(b)(4) (using a sign suggesting that the attorney "has, owns, conducts, or maintains a law office or office of any kind for the practice of law, or that the attorney is entitled to practice law"), and R. 1:20-20(b)(11) (notice of suspension).

The second count of the amended complaint identified numerous attempts on the part of the OAE to contact respondent by telephone, certified and regular mail, and personal visits to his New Jersey office and residence. These attempts took place between November 15, 2008 and March 23, 2009.

On February 19, 2009, the OAE succeeded in reaching respondent by telephone. During that conversation, respondent was informed of the grievance alleging that he had practiced law while suspended. At that time, respondent provided the OAE with his new address in Lincoln, Nebraska.

On February 20, 2009, the OAE sent a copy of the grievance to respondent at his Nebraska address, via regular and certified mail, return receipt requested. In the letter, respondent was directed to provide the OAE with a written response to the grievance by March 13, 2009. On March 2, 2009, respondent

signed for the certified letter. The letter sent via regular mail was not returned.

On March 23, 2009, the OAE again wrote to respondent at his Nebraska address, via certified mail, return receipt requested. The letter informed him that, if he did not reply to the grievance by March 31, 2009, a formal ethics complaint charging him with failure to cooperate with disciplinary authorities could be filed against him. Although respondent signed for the certified letter on March 31, 2009, he did not reply to the grievance.

Based on these facts, the amended complaint charged respondent with having violated RPC 8.1, presumably (b) (failure to cooperate with disciplinary authorities).

The third count of the amended complaint addressed respondent's representation of Andrea Stokes in a parental rights termination action. He was assigned to this case by the Public Defender's Office.

During the trial, Stokes repeatedly told respondent that, if the court ruled against her, she wanted to appeal the decision. On March 13, 2008, the court terminated Stokes's parental rights. At this point, respondent reminded Stokes that she could appeal the decision.

After the trial, Stokes telephoned respondent's office on a number of occasions to ask about the status of the appeal. Respondent neither answered nor returned her calls.

On February 26, 2009, Richard Foster, of the appellate section of the Public Defender's Office of Parental Representation, called Stokes and informed her that a brief had been filed with the Appellate Division on behalf of her co-defendant. Foster asked Stokes if she wanted to appeal the trial court's decision. She stated that she did.

According to the ethics complaint, it was trial counsel's responsibility to (1) notify the appellate section of the Public Defender's Office of the client's desire to appeal a decision, (2) file a notice of appeal, and (3) forward the case file and transcript to the appellate section within forty-five days of the trial court's decision. Respondent did not undertake any of these responsibilities.

On March 17, 2009, Foster filed a motion for leave to file a notice of appeal as within time, on behalf of Stokes. The amended ethics complaint does not state whether the motion was granted.

Based on these facts, respondent was charged with having violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of



diligence), and RPC 1.4(a) and (b) (failure to communicate with the client.

The fourth count of the complaint concerned respondent's handling of a matter on behalf of another client, Cara Young, who was involved in a parental rights termination case. During the trial and afterward, Young repeatedly told respondent that, if the court ruled against her, she wanted to appeal the decision.

On January 31, 2008, the trial court terminated Young's rights. In respondent's presence, Young signed a notice of right to appeal form. Thereafter, Young visited and emailed respondent's office on "numerous occasions" to ask about the status of the appeal. Respondent told Young that he had "filed for two extensions of time to file the appeal."

On March 13, 2008, Deputy Public Defender Sadie L. Davis wrote to respondent and informed him that the time within which to file a notice of appeal would expire on March 16, 2008. In October of that year, Young obtained a copy of the appellate brief that had been filed on behalf of her co-defendant. She called Richard Foster and told him that she wanted to appeal the court's decision.

The amended complaint charged that it was respondent's obligation to file a notice of appeal and to forward the case file and trial transcript to Foster's office, within forty-five days of the court's decision. He did not fulfill these obligations.

On November 10, 2008, Foster filed a notice of motion for leave to appeal as within time, on behalf of Young. The amended complaint does not state whether or not the motion was granted.

The fourth count of the amended complaint alleged that, in either October or November 2008, after respondent was suspended from the practice of law, Foster telephoned respondent at his business number and left a voice-mail message regarding the Young file. The voice-mail greeting stated that the caller had reached the law office of Henry Walsh.

Based on these facts, the fourth count of the amended complaint charged respondent with having violated RPC 1.1(a), RPC 1.3, RPC 1.4(a) and (b), and R. 1:20-20(b)(4).

The fifth and final count of the amended complaint alleged that the OAE sent the grievance to respondent by certified and regular mail. "An 'agent' of the respondent" signed for the certified letter. The regular mail was not returned. Respondent did not reply to the grievance.

On May 29, 2009, the OAE telephoned respondent's law office and left a voice-mail message, instructing him to contact that office. Respondent did not return the call or contact the OAE.

Based on these facts, the fifth count of the amended complaint charged respondent with having violated RPC 8.1, presumably (b).

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).

Respondent violated R. 1:20-20(b)(1), RPC 5.5(a)(1), and R. 1:20-20(b)(3) when he made numerous court appearances on behalf of twelve clients and negotiated consent orders on behalf of five of them, between August 27, and September 3, 2008. Inasmuch as the order suspending him, effective August 21, 2008, had been entered nearly one month earlier (July 23, 2008), respondent was well aware that he was prohibited from practicing law during this time.

Respondent also violated R. 1:20-20(b)(4) when he failed to take down the sign on his law office door that read "Walsh Law Office." The sign remained in place as of April 2009. Finally,

respondent violated R. 1:20-20(b)(11) when he continued to practice law, instead of informing his clients and the Ocean County assignment judge that he had been suspended, as required by that rule.

In addition, respondent violated RPC 8.1(b) when he failed to reply to the grievance that had been filed against him in this matter and when he rebuffed all but one attempt by the OAE to communicate with him, between November 15, 2008 and March 23, 2009, concerning the grievance. As for the one conversation that respondent had with the OAE, he was informed of the grievance and he provided the OAE with his Nebraska address. Still, he ignored all communications from the OAE directed to that address.

In the Stokes and Young matters, respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b). In both cases, his clients informed him that they wanted to appeal an adverse decision, if it was entered against them. In both cases, the clients received an adverse decision and informed respondent, again, that they wanted to appeal the determinations. Even though it was respondent's obligation to notify the appellate section of the Public Defender's Office of his clients' desire to appeal the courts' determinations, to file a notice of appeal on each

client's behalf, and to transfer their files to the appellate section, he failed to fulfill any of his responsibilities in both cases. His inaction resulted in the failure of the clients' notices of appeal to be filed on time. Ultimately, motions had to be filed on each client's behalf, seeking leave to appeal out of time.

Respondent's lack of attention to, and perhaps even concern for, his clients' cases constituted, in each matter, gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

Moreover, respondent ignored Stokes's attempt to communicate with him about the status of her appeal, a violation of RPC 1.4(b).<sup>1</sup> The amended complaint does not allege that respondent failed to communicate with Young. Rather, in the same paragraph that identifies her contacts to him, the amended complaint alleges that he informed her that he had filed for two

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<sup>1</sup> The RPC 1.4(a) and RPC 1.4(b) charges, asserted in the amended complaint, were, in all likelihood, the result of a typographical error, with the OAE intending to charge RPC 1.4(b) and RPC 1.4(c), which were formerly designated RPC 1.4 (a) and RPC 1.4 (b).

extensions of time. Thus, we cannot find that respondent violated RPC 1.4(b) as to Young.

As to current RPC 1.4(c), we determine to dismiss the charge as to the Stokes and Young matters. The rule requires a lawyer to "explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation." Nothing in the amended complaint suggests that there was anything for respondent to explain. Both clients informed him that they wanted to file an appeal, which respondent failed to do.

Finally, as stated previously, respondent's failure to reply to the grievance in this matter, despite his knowledge of it, constituted a knowing failure "to respond to a lawful demand for information from . . . [a] disciplinary authority," a violation of RPC 8.1(b).

To conclude, respondent violated RPC 1.1(a) and RPC 1.3 in two client matters. He violated RPC 1.4(b) in one client matter. He also violated RPC 5.5(a), R. 1:20-20(b)(1), (b)(3), (b)(4), and (b)(11), and RPC 8.1(b).

Practicing law while suspended is a grave offense. The measure of discipline for this infraction ranges from a lengthy suspension to disbarment, depending on the attorney's level of

cooperation with the disciplinary authorities, the presence of other misconduct, and the attorney's disciplinary history. See, e.g., In re Wheeler, 140 N.J. 321 (1995) (two-year suspension imposed where the attorney practiced law while suspended, made multiple misrepresentations to clients, displayed gross neglect and pattern of neglect, engaged in negligent misappropriation and in a conflict of interest situation, and failed to cooperate with disciplinary authorities); In re Beltre, 130 N.J. 437 (1992) (three-year suspension imposed where the attorney appeared in court after having been suspended, misrepresented his status to the judge, failed to carry out his responsibilities as an escrow agent, lied to us about maintaining a bona fide office, and failed to cooperate with an ethics investigation); In re Cubberley, 178 N.J. 101 (2003) (three-year suspension for attorney who solicited and continued to accept fees from a client after he had been suspended, misrepresented to the client that his disciplinary problems would be resolved within one month, failed to notify the client and the courts of his suspension, failed to file the affidavit of compliance required by R. 1:20-20(a), and failed to reply to the OAE's requests for information; the attorney had a significant disciplinary history); In re Kasdan, 132 N.J. 99

(1993) (three-year suspension for attorney who continued to practice law after being suspended and after the Court had expressly denied her request for a stay of her suspension; she also failed to inform her clients, her adversary and the courts of her suspension, failed to keep complete trust records, failed to advise her adversary, of the whereabouts and amount of escrow funds, and engaged in conduct involving dishonesty, fraud, deceit or misrepresentation); In re Olitsky, 174 N.J. 352 (2002) (disbarment for attorney who agreed to represent clients in bankruptcy cases after he was suspended, did not advise them that he was suspended from practice, charged clients for the prohibited representation, signed another attorney's name on the petitions without that attorney's consent, and then filed the petitions with the bankruptcy court; in another matter, the attorney agreed to represent a client in a mortgage foreclosure after he was suspended, accepted a fee, and took no action on the client's behalf; the attorney also made misrepresentations to the court, and was convicted of stalking a woman with whom he had had a romantic relationship, and of engaging in the unauthorized practice of law); and In re Costanzo, 128 N.J. 108 (1992) (attorney disbarred for practicing law while suspended, gross neglect, lack of diligence, failure to keep clients



reasonably informed and to explain matters in order to permit them to make informed decisions about the cases, pattern of neglect, and failure to designate hourly rate or basis for fee in writing). But see In re Lisa, 158 N.J. 5 (1999) (attorney appeared before a New York court during his New Jersey suspension; in imposing only a one-year suspension, the Court considered a serious childhood incident that made the attorney anxious about offending other people or refusing their requests; out of fear of offending a close friend, he agreed to assist as "second chair" in the New York criminal proceeding; there was no venality or personal gain involved; the attorney did not charge his friend for the representation).

In this case, Cubberley justifies the imposition of at least a three-year suspension for respondent's practicing law while suspended. Like Cubberley, respondent failed to notify his clients and the courts of his suspension, failed to file the affidavit of compliance required by Rule 1:20-20(a), and failed to reply to the OAE's requests for information about the grievance. Moreover, like Cubberley, respondent has an extensive disciplinary history (a reprimand, a censure, a three-month suspension, and a six-month suspension; all the matters were defaults). Cubberley had an admonition, two reprimands, a

three-month suspension, and a six-month suspension. Many of the matters were defaults.

Three factors present in this case, however, convince us that respondent should be disbarred. First, all five disciplinary matters brought against him have included a charge of failure to cooperate with disciplinary authorities. Second, respondent has defaulted in all five matters.

In determining the appropriate measure of discipline for respondent's repeated transgressions, we are mindful that "[t]he purpose of the disciplinary review process is to protect the public from unfit lawyers and to promote public confidence in our legal system." In re Gallo, 178 N.J. 115, 122 (2003). Moreover, the "goal of the process is to spur a disciplined attorney, who is redeemable, to comply with the high standards that our profession demands." In re Harris, 182 N.J. 594, 609 (2005). In Harris, the Court detailed the factors that are to be considered when determining the quantum of discipline to be imposed on an errant attorney:

The proper measure of discipline will depend on a number of factors, including the nature and number of professional transgressions, the harm caused by those transgressions, the attorney's ethical history, and whether the attorney is capable of meeting the standards

that must guide all members of the profession.

[Ibid.]

Here, respondent's extensive disciplinary history, which includes a default in every matter brought against him, demonstrates that he is irredeemable. He has no regard for his clients or the disciplinary system. He refused to answer all allegations made against him, thereby demonstrating contempt for the very system designed to protect the public.

Not only has respondent shown contempt for the disciplinary system by refusing to participate in any proceeding instituted against him, he has continued to practice law after having been suspended, demonstrating a lack of regard for the regulations governing the practice of law in this State and a lack of respect for the courts before whom he has practiced, despite the suspension of his license. Moreover, respondent inadequately protected the interests of at least two of his clients.

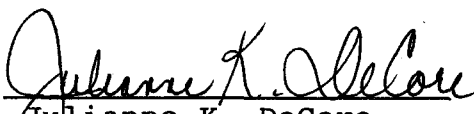
The current suspensions were not enough to protect the public from respondent, as he continued to practice law anyway. Thus, it is unlikely that an additional suspension, however long, will modify his behavior. In short, respondent is not "capable of meeting the standards that must guide all members of

the profession." Ibid. He is a danger to the public, which must be protected from him.

In our view, disbarment would be justified under the particular facts of this case, see, e.g., In re Kivler, 193 N.J. 332 (2008), in order to protect the public and to preserve the integrity of the attorney disciplinary system. We so recommend to the Court.

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 Henry A. Walsh, Jr.  
Docket No. DRB 09-394

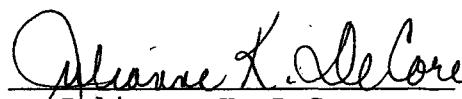
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Decided: April 12, 2010

Disposition: Disbar

Members	Disbar	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:	9					

  
Julianne K. DeCore  
Chief Counsel