SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 08-118, 08-173, and 08-176
District Docket Nos. XIV-06-486E, VC-07-031E, and XIV-07-240E

IN THE MATTERS OF	:
JULIO A. RICHARDS	:
AN ATTORNEY AT LAW	:

Decision

Decided: July 23, 2008

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

These matters came before us on two certifications of default filed by the Office of Attorney Ethics ("OAE") and one filed by the District VC Ethics Committee ("DEC"), pursuant to R. 1:20-4(f). We determine that respondent's conduct in DRB 08-173 and DRB 08-176 warrants a reprimand and a three-month

suspension, respectively, and that his conduct in DRB 08-118 requires his disbarment.

Respondent was admitted to the New Jersey bar in 1988. He was temporarily suspended, on February 6, 2007, for failure to cooperate with the OAE's investigation in one of the matters now before us. In re Richards, 189 N.J. 258 (2007). He remains suspended to date. He has no other ethics history.

I. DRB 08-173 (District Docket No. VC-07-031E)

Service of process was proper. On February 7, 2008, the DEC sent a copy of the complaint, by certified and regular mail, to respondent's home address in Newton, New Jersey. The certified mail return receipt was returned to the DEC signed by Deborah Richards. The regular mail was not returned.

On March 28, 2008, the DEC sent a second letter, by certified and regular mail, to the same address. That letter advised respondent that, unless he filed an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record in the matter would be certified directly to us for the imposition of discipline. The certified mail return receipt was returned to the DEC with an illegible signature. The regular mail was not returned.

Respondent did not file an answer to the complaint. The OAE then certified the record directly to us for the imposition of discipline, pursuant to R. 1:20-4(f).

In December 2004, Generoso Della Vecchia retained respondent to represent him in a personal injury claim. Respondent failed to prepare a written fee agreement; failed to communicate with Della Vecchia and to keep him informed about the status of his matter; failed to file a lawsuit, allowing the statute of limitations to expire; and failed to cooperate with the DEC investigator.

The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with a client), RPC 1.6(c)(2) (disclosure of confidential information), RPC 1.16(d) (failure to protect client's interests upon termination of the representation), and R. 1:20(3)(g)(3), more properly RPC 8.1(b) (failure to cooperate with disciplinary authorities).

The facts recited in the complaint fully support some of the charges of unethical conduct. Because of respondent's failure to file an answer, the charges supported by the facts are deemed admitted. R. 1:20-4(f).

Although the record in this matter is sparse and the complaint is brief, the allegations support findings that respondent was guilty of gross neglect and lack of diligence for permitting the statute of limitations to expire, that he failed to communicate with a client, and that he failed to cooperate with disciplinary authorities.

We determine to dismiss the RPC 1.6(c)(2) charge, however, as not applicable. That rule allows an attorney to reveal information necessary to establish a defense to a disciplinary complaint against the attorney. No facts support this allegation. In addition, we dismiss the charged RPC 1.16(d) violation because the complaint did not allege that either Della Vecchia or respondent had terminated the representation.

Although the complaint alleged that respondent failed to set forth, in writing, the basis of his fee, it did not charge him with violating RPC 1.5. Under R. 1:20-4(b), the complaint must specify the ethics rules alleged to have been violated. We are, thus, precluded from finding a violation of RPC 1.5.

Generally, an admonition is imposed for gross neglect, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities, even when these violations are accompanied by other, non-serious infractions, so

long as the attorney has no disciplinary record and does not default. See, e.g., In the Matter of Howard M. Dorian, DRB 95-216 (August 1, 1995) (admonition for attorney who did not inform his client that her case had been mistakenly dismissed as settled, took no action to restore it, did not reply to her inquiries about the matter, failed to withdraw as counsel, delayed the return of her file for almost five months, and failed to cooperate with the investigation of the grievance) and In the Matter of Richard J. Carroll, DRB 95-017 (June 26, 1995) (admonition for attorney who lacked diligence in handling a personal injury action, failed to properly communicate with the client, and failed to comply with the new lawyer's numerous requests for the return of the file; the attorney also failed to reply to the grievance).

If the attorney defaults, then a reprimand is the likely result. See, e.g., In re Van de Castle, 180 N.J. 117 (2004) (attorney grossly neglected an estate matter, failed to communicate with the client, and failed to cooperate with disciplinary authorities); In re Goodman, 165 N.J. 567 (2000) (attorney failed to cooperate with disciplinary authorities, grossly neglected a personal injury case for seven years by failing to file a complaint or to otherwise prosecute the

client's claim, and 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 communicate with the client, and failed to comply with the DEC's investigator's requests for information about the grievance).

Because the default nature of this proceeding requires increased discipline, In re Kivler, 193 N.J. 332, 342 (2008), we determine that a reprimand is warranted for respondent's conduct in the Della Vecchia matter.

II. DRB 08-176 (District Docket No. XIV-07-240E)

Service of process was proper. On January 31, 2008, the OAE sent a copy of the complaint, by certified and regular mail, to respondent's home address in Newton, New Jersey, and to his office address in Bloomfield, New Jersey. The certified mail return receipt from the Newton mailing was returned to the OAE signed by Deborah Richards, indicating delivery on February 2, 2008. The Newton regular mail envelope was not returned. The certified mail sent to the Bloomfield address was returned

marked "Unclaimed." The Bloomfield regular mail envelope was not returned.

On February 25, 2008, the OAE sent a second letter, by certified and regular mail, to both addresses. That letter advised respondent that, unless he filed an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record in the matter would be certified directly to us for the imposition of discipline. The certified mail return receipt from the Newton mailing was signed by Deborah Richards, indicating delivery on February 28, 2008. The regular mail envelope sent to Newton was not returned. The certified mail addressed to Bloomfield was returned marked "Unclaimed." The regular mail envelope sent to Bloomfield was not returned.

Respondent did not file an answer to the complaint. The OAE then certified the record directly to us for the imposition of discipline, pursuant to R. 1:20-4(f).

As previously mentioned, on February 6, 2007, respondent was temporarily suspended for failure to cooperate with the OAE. The order of suspension required him to comply with R. 1:20-20, including the obligation to file with the OAE, within thirty days of the suspension order, a detailed affidavit specifying

how he had complied with the terms of the suspension order and with R. 1:20-20.

Because respondent failed to file the affidavit of compliance, the OAE, by letter dated August 14, 2007, notified him of this requirement. Respondent did not reply to the letter or file the required affidavit. Moreover, on January 29, 2008, OAE staff visited respondent's former office in Bloomfield and his home in Newton. Because respondent was not home, OAE staff left at his residence an envelope containing a copy of the temporary suspension order, a copy of R. 1:20-20, and OAE contact information. Respondent did not file the required affidavit or contact the OAE.

The complaint charged respondent with violating RPC 8.1(b) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Following a review of the record, we find that the facts recited in the complaint fully support the charges 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 OAE submitted a memorandum, urging us to recommend respondent's disbarment, citing as aggravating factors the default nature of this proceeding and respondent's disciplinary history.

The OAE observed that a reprimand is the presumptive sanction for failure to file an affidavit of compliance with R. 1:20-20, and that we have exercised a policy of enhancing this discipline in default matters. The OAE argued that respondent has shown a complete disregard for the disciplinary system, continuing to "thumb his nose" at it, particularly given his three defaults in the matters now before us.

As previously mentioned, in default cases, the discipline is enhanced to reflect the attorney's lack of cooperation with the disciplinary system. In re Kivler, supra, 193 N.J. at 342. Although a reprimand is the presumptive discipline for R. 1:20-20 violations, the discipline imposed in cases in which attorneys have failed to comply with R. 1:20-20 is often a suspension because of the attorney's disciplinary history or the default nature of the proceeding. See, e.g., In re Wyskowski, 186 N.J. 471 (2006) (three-month suspension for attorney whose ethics history included a temporary suspension for failure to comply with a fee arbitration determination); In re Girdler, 179 N.J. 227 (2004) (three-month suspension; ethics history included a private reprimand, a public reprimand, and a three-month suspension); In re McClure, 182 N.J. 312 (2005) (one-year suspension for attorney who had received an admonition and two

concurrent six-month suspensions); In re King, 181 N.J. 349 (2004) (one-year suspension for attorney with an extensive ethics history, including a reprimand, a temporary suspension for failure to return an unearned retainer, a three-month suspension in a default matter, and a one-year suspension; the attorney remained suspended since 1998, the date of the temporary suspension); and In re Mandle, 180 N.J. 158 (2004) (one-year suspension for attorney whose ethics history included three reprimands, a temporary suspension for failure to comply with an order requiring that he practice under a proctor's supervision, and two three-month suspensions; in three of the matters, the attorney failed to cooperate with disciplinary authorities). All of the above matters proceeded as defaults. But see In re Moore, 181 N.J. 335 (2004) (reprimand, in a default matter, for attorney who had received a one-year suspension).

Here, respondent's disciplinary history consists only of a temporary suspension for failure to cooperate with the OAE's investigation. Thus, this case is similar to Wyskowski, in which the attorney, who also had been temporarily suspended, received a three-month suspension.

Because of the default nature of the within matter and respondent's disciplinary history, we determine that a three-

month suspension is the appropriate level of discipline for respondent's violations of RPC 8.1(b) and RPC 8.4(d).

III. DRB 08-118 (Docket No. XIV-06-486E)

Service of process was proper. On February 8, 2008, the OAE sent a copy of the complaint, by certified and regular mail, to respondent's home address in Newton, New Jersey. The certified mail return receipt was returned to the OAE with an ineligible signature, indicating delivery on February 16, 2008. The regular mail envelope was not returned.

On March 13, 2008, the OAE sent a second letter, by certified and regular mail, to the same address. That letter advised respondent that, unless he filed an answer within five days of the date of the letter, the allegations of the complaint would be deemed admitted and the record would be certified directly to us for the imposition of discipline. The certified mail was not claimed. The regular mail envelope was not returned.

Respondent did not file an answer to the complaint. The OAE then certified the record directly to us for the imposition of discipline, pursuant to R. 1:20-4(f).

On September 1, 2006, respondent deposited in his trust account an $18,500 settlement check for his client, Wisline Derival.[1] Prior to that deposit, the trust account balance was only $13.97.

Five days later, on September 6, 2006, respondent issued a $4,000 trust account check to a client, Quincy Heywood, for an unrelated matter. Respondent endorsed that check (number 1532) with his own name and deposited it in his business account. The complaint offers no explanation for respondent's endorsing and depositing in his business account a check made payable to a client.

Also on September 6, 2006, respondent issued a $3,000 trust account check to another client, Jean Marc Petit Homme, for an unrelated matter. Petit Homme endorsed that check (number 1530).

On September 8, 2006, respondent issued a $1,000 trust account check (number 1534) to himself.

Derival was not aware of these disbursements for purposes unrelated to his settlement and did not consent to them.

After respondent made the above disbursements, only $10,513.97 remained in his trust account. According to the client

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[1] The record also refers to the client as Derival Wisline.

ledger sheet that respondent provided to the OAE, he was obligated to disburse the following amounts from the Derival settlement proceeds:

Respondent's legal fees	$4,111.11
Legal fees to Lord & Kobrin pursuant to agreement	$2,055.55
Escrow for Medical Bills	$1,500.00
Net to Derival	$10,833.34
Total	$18,500.00

An August 28, 2006 letter from Craig J. Kobrin, Esq., to respondent stated that the law firm of Lord & Kobrin was to receive one-third of the contingent fee in the Derival matter.

On September 12, 2006, when respondent's trust account balance was only $10,513.97, he issued a $10,833.34 check payable to Derival, resulting in a negative balance of $319.37 in the trust account. Although the bank honored the check, it notified the OAE of the overdraft.

The complaint charged that respondent invaded and misappropriated $2,055.55 from Lord & Kobrin's legal fees and $1,500 from the escrowed medical payments by failing to maintain those funds intact in his trust account.

By letter dated October 2, 2006, the OAE asked respondent to explain the overdraft. Respondent replied, in an October 16, 2006 letter, that his office had accidentally deposited a client

check in his business account, instead of his trust account, resulting in the overdraft. He further indicated that, the day after the overdraft, he had made a deposit in his trust account to correct this mistake.

Not satisfied with this explanation, on October 25, 2006, the OAE asked respondent to produce copies of his August and September 2006 trust account statements. Although respondent provided the August 2006 statement, he did not produce the September 2006 statement, despite a subsequent November 17, 2006 request by the OAE.

By letter dated December 26, 2006, the OAE scheduled a January 17, 2007 demand audit. Respondent failed to appear at the demand audit or to communicate with the OAE.

The complaint charged respondent with the knowing misappropriation of client and/or escrow funds, a violation of RPC 1.15(a), RPC 8.4(c), and the principles of In re Wilson, 81 N.J. 451 (1979), and In re Hollendonner, 102 N.J. 21 (1985); failure to safeguard funds, a violation of RPC 1.15(a); failure to promptly notify a client or third party of the receipt of funds, designated as another violation of RPC 1.15(a), but, more properly, a violation of RPC 1.15(b); and failure to cooperate with disciplinary authorities, a violation of RPC 8.1(b).

Following a review of the record, we find that the facts recited in the complaint fully support the charges 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 record demonstrates that respondent knowingly misappropriated $1,500 that he should have held in escrow for his client's medical bills. Respondent's client ledger card indicated that he was required to retain a $1,500 reserve for unpaid medical bills. By disbursing all of Derival's settlement funds, respondent invaded his client's medical escrow funds.

The Court has held that the invasion of medical escrow funds constitutes knowing misappropriation. In re Cavuto, 160 N.J. 185 (1999). In that case, after the attorney settled a personal injury case, he was obligated to disburse more than $12,000 to various medical providers on behalf of his client, Bayne. Almost immediately, Cavuto began to issue checks to himself, depleting almost all of the escrow funds.

Cavuto's defense was that he had simply forgotten to pay the medical bills. He claimed that, in every personal injury case that he handled, except for the Bayne case, the client's personal injury protection carrier paid the medical bills. Thus, he contended, he believed that the case was completed when he

disbursed the settlement funds to Bayne. Moreover, Cavuto claimed, at the time of the settlement, he was suffering from various medical ailments, including forgetfulness, memory loss, and the inability to concentrate for longer than one or two hours.

The Court rejected Cavuto's claims of memory lapse, finding unreasonable his contention that he had forgotten about the obligation to pay his client's medical bills. The Court noted that, at the same time, he was regularly drawing checks against those funds for a period of two months. Therefore, he could not have forgotten because he was, or should have been, reminded of his disbursement obligations every time that he drew a check. The Court further found that Cavuto's medical evidence did not meet the standard required by In re Jacob, 95 N.J. 132 (1984), that is, he had not shown "by competent medical proofs that [he] suffered a loss of competency, comprehension or will of a magnitude that could excuse egregious misconduct that was clearly knowing, volitional and purposeful."

The Court determined that Cavuto

> either knew or had reason to know that he was invading client funds when he immediately started to issue checks to himself and failed to retain the required amount to pay his

client's medical bills. The inference of knowledge is clear and inescapable.

[In re Cavuto, supra, 160 N.J. at 193.]

Although, in the Cavuto opinion, the funds were referred to as client funds, they actually represented escrow funds because they were entrusted to Cavuto to pay third-party medical providers, under the terms of the settlement. Therefore, they were not strictly client funds.

See, also, In re Daly, 170 N.J. 200 (2001) (attorney disbarred for disbursing to himself funds that his client had provided to him in escrow for payment to a court-appointed psychiatrist and a court-appointed attorney in a matrimonial matter) and In re Picciano, 158 N.J. 470 (1999) (attorney held $5,000 in escrow to pay client's medical bill while attorney unsuccessfully tried to obtain doctor's consent to compromise the bill; attorney's failure to retain the escrow funds intact in his trust account and his use of the funds for personal purposes were deemed knowing misappropriation of escrow funds and required his disbarment).

Similarly, here, respondent was required to reserve $1,500 from the Derival settlement proceeds for medical bills. Instead,

he depleted those funds by issuing checks to clients in unrelated matters, thus knowingly misappropriating escrow funds.

The complaint also charged that respondent knowingly misappropriated funds that should have been disbursed as legal fees to Lord & Kobrin. The record does not explain the circumstances giving rise to this obligation, that is, whether Lord & Kobrin were Derival's prior attorneys, whether Lord & Kobrin had referred the case to respondent and were due a referral fee, or other possible scenarios. In any event, the complaint does not allow for the possibility that respondent had a good faith belief that he was not required to maintain those funds in escrow. Respondent and Lord & Kobrin may have had a dispute over the fees, in which case only RPC 1.15(c) would have been violated (failure to segregate funds in which respondent and Lord and Kobrin had an interest).

Because it is clear that respondent's knowing misappropriation of the medical escrow funds requires his disbarment under Wilson and Hollendonner, we need not resolve whether he knowingly misappropriated any legal fees owed to Lord & Kobrin. We, therefore, recommend respondent's disbarment for the knowing misappropriation of the funds earmarked for medical bills alone.

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 Matter of Julio A. Richards
Docket No. DRB 08-118

Decided: July 23, 2008

Disposition: Disbar

Members	Disbar	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:	9					

Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Julio A. Richards
Docket No. DRB 08-173

Decided: July 23, 2008

Disposition: Reprimand

Members	Disbar	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:			9			

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of Julio A. Richards
Docket No. DRB 08-176

Decided: July 23, 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:		9				

Julianne K. DeCore
Chief Counsel