

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 08-058  
District Docket No. X-07-050E

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IN THE MATTER OF  
RICHARD W. BANAS  
AN ATTORNEY AT LAW

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Decision  
Default

Decided: June 20, 2008

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 X Ethics Committee ("DEC"), pursuant to R.  
1:20-4(f). The complaint alleged that respondent grossly  
neglected an appeal of a murder conviction, failed to  
communicate with the client, and lied to the client about the  
status of the appeal. We voted to impose a six-month suspension.

Respondent was admitted to the New Jersey bar in 1978. On May 10, 1996, he was reprimanded for improperly retaining as legal fees a \$5,000 payment intended to obtain bail for his client. In re Banas, 144 N.J. 75 (1996). On February 26, 1999, the Court suspended him for three months, in a default case, for gross neglect, lack of diligence, failure to communicate with the client, failure to utilize a written fee agreement, and failure to cooperate with ethics authorities. In re Banas, 157 N.J. 18 (1999). He was reinstated on February 8, 2000. In re Banas, 162 N.J. 361 (2000).

On May 2, 2008, respondent was censured, in a default matter, for lack of diligence and failure to communicate with a client. In re Banas, N.J. (2008).

Although respondent is current with the New Jersey Lawyers' Fund for Client Protection annual attorney assessments, he has been placed on the Supreme Court's list of ineligible attorneys six times since 1998, most recently from September 24 to October 1, 2007.

Service of process was proper. On November 19, 2007, the DEC sent respondent a copy of the complaint, by both certified and regular mail, to his last known home address, as listed in the OAE attorney registration system, 16 Hanover Road, East

Hanover, New Jersey 07936. The certified mail was returned unclaimed. The regular mail was not returned.

On December 28, 2007, 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, pursuant to R. 1:20-4(f). The letter was sent to respondent's home address by certified and regular mail. The certified mail receipt was returned indicating delivery on December 29, 2007. The signature on the receipt is illegible. The regular mail was not returned.

Respondent did not file an answer to the complaint.

On September 1, 2003, Joseph Ulysse, the grievant, retained respondent to appeal the July 8, 2003 conviction of Ulysse's son for a double murder. The son had been sentenced to a sixty-year prison term, without parole.

At their September 1, 2003 meeting, Ulysse gave respondent \$7,000 in cash toward his \$15,000 legal fee for the appeal. When they met again, a few days later, Ulysse gave respondent an additional \$500 toward his fee.

On September 25, 2003, respondent filed a notice of appeal and case information statement with the Appellate Division.

On February 2, 2004, the Appellate Division entered an order dismissing the appeal for lack of prosecution, as respondent had failed to file a brief.

Over the next several years, Ulysse contacted respondent on numerous occasions, asking for a status update. On those occasions when respondent replied to Ulysse's requests for information, he repeatedly told Ulysse that the matter was proceeding apace. For example, over two years after the appeal's dismissal, in November 2006, respondent advised Ulysse that oral argument had been scheduled for January 16, 2007. The day after the "scheduled" oral argument, January 17, 2007, Ulysse again contacted respondent, who advised him that oral argument "went well" and that he was awaiting the court's decision in the matter. When Ulysse asked for a copy of the appellate brief, respondent promised to provide him one. Respondent later told Ulysse that he had placed a copy of the brief in Ulysse's mailbox.

Ulysse denied that respondent had left the brief in his mailbox and requested another copy. Respondent advised Ulysse that he would have to obtain one from "Trenton," perhaps a reference to the Appellate Division.

Between January and April 2007, respondent made up various excuses as to why the court still had not rendered its decision,

including an April 2007 claim that he had contracted tuberculosis.

Finally, respondent failed to reply to the original grievance, sent to him on August 1, 2007, despite having been given repeated opportunities to do so.

The complaint charged respondent with having violated RPC 1.1(a) and (b) (gross neglect and pattern of neglect), RPC 1.3 (lack of diligence) RPC 1.4(a) through (c) (failure to communicate with the client), RPC 8.4(a) (violate or attempt to violate the RPCs), RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), and RPC 8.1(b) (failure to cooperate with ethics investigation).

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)).

Respondent was retained to represent Ulysse's son in an appeal from a conviction for a double murder, for which the son was serving a sixty-year prison term. To that end, Ulysse paid respondent \$7,500 immediately upon retaining him, on September 1, 2003.

Respondent thereafter filed a timely notice of appeal, but took no further action in his client's behalf. He failed to file a

required appellate brief. In February 2004, the Appellate Division dismissed the appeal.

After the appeal was dismissed, respondent took no steps to have the appeal reinstated. In so doing, respondent grossly neglected the matter (RPC 1.1(a)) and lacked diligence (RPC 1.3) in handling it.

Respondent also made repeated misrepresentations to Ulysse, long after the appeal's dismissal, in order to fool him into complacency about it. In November 2006, respondent lied that the matter was scheduled for oral argument the following January. After that date passed, respondent lied again, claiming to have attended the non-existent oral argument and to have done well for Ulysse's son.

So, too, when Ulysse requested a copy of the required appellate brief, respondent promised him one. He later lied about having placed a brief in Ulysse's mailbox. When Ulysse challenged respondent's assertion that he had delivered the brief, respondent advised him that he would obtain another copy from "Trenton."

Respondent also made up various phony excuses, between January and April 2007, for the alleged lack of a ruling from the Appellate Division. As mentioned above, the appeal had been dismissed years earlier, in 2004.

In their final communication, which took place in April 2007, respondent told Ulysse that he had contracted tuberculosis. While that might be true, respondent's pattern of misrepresentations to Ulysse throughout the representation leaves considerable doubt about the veracity of that health claim. In any case, respondent's persistent lies about the status of the appeal, long after its dismissal, violated RPC 8.4(c).

Respondent's years-long concealment of the truth about the dismissal of the appeal also violated RPC 1.4(c).<sup>1</sup> That rule required respondent to explain the matter to the extent reasonably necessary for Ulysse to make informed decisions about the representation. Had Ulysse been aware that his son's appeal had been dismissed for lack of prosecution in early 2004, he could have sought other means to have it reinstated. As it stands, Ulysse learned of the dismissal years later.

Finally, respondent failed to cooperate with disciplinary authorities in the investigation of the matter, a violation of RPC 8.1(b).

We dismissed the charge of a pattern of neglect (RPC 1.1(b)), as a single instance of gross neglect cannot form the

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<sup>1</sup> Although the complaint also cites RPC 1.4(a) and (b), section (c) most closely fits respondent's misconduct.

basis of a pattern. If the instance of gross neglect from respondent's prior disciplinary matter is also considered, the sum total is two neglected matters. For a finding of a pattern of neglect at least three instances of neglect are required. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16).

In all, respondent's misconduct violated RPC 1.1(a), RPC 1.3, RPC 1.4(c), RPC 8.4(a), RPC 8.4(c), and RPC 8.1(b).

Only the issue of discipline remains. For us, the most serious aspect of respondent's misconduct had to do with his repeated misrepresentations to Ulysse about the status of the case. Respondent's lies were troubling, were perpetrated over a period of years, and the potential harm to the client was great. Here, an individual's liberty was at stake. Respondent was retained to handle not a "run-of-the-mill" case, but the appeal of a double-murder conviction. His client had already been incarcerated. Both Ulysse and the son fully expected respondent's zealous representation. The value of an attorney in situations dealing with a client's liberty is nearly incalculable.

When an attorney falsely represents to a client that the case is proceeding smoothly, public confidence in the bar is undermined. In re Cohen, 120 N.J. 304, 306 (1990). "Clients must



not suffer the consequences of being told their case [is] under control when it [is] not." In re Goldstein, 97 N.J. 545, 549 (1984).

Historically, misrepresentation to clients requires the imposition of a reprimand. In re Kasdan, 115 N.J. 472, 488 (1989). A reprimand may still be appropriate if the misrepresentation is accompanied by other, non-serious infractions, such as gross neglect, lack of diligence, and failure to communicate with the client, as is the case here. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney took no action in the client's behalf, did not inform the client about the status of the matter and the expiration of the statute of limitations, and misled the client that a complaint had been filed); In re Onorevole, 170 N.J. 64 (2001) (attorney grossly neglected a matter, failed to act with diligence, failed to reasonably communicate with the client, and made misrepresentations about the status of the case; prior admonition and reprimand); In re Till, 167 N.J. 276 (2001) (attorney engaged in gross neglect and misrepresentation; for over a nine-month period, the attorney lied to the client about the status of the case; no prior discipline); and In re Riva, 157 N.J. 34 (1999) (attorney grossly neglected a matter, thereby causing a default judgment to be entered against the clients,

failed to take steps to have the default vacated, and misrepresented the status of the case to the clients; no prior discipline).

Admonitions are ordinarily imposed for failure to cooperate with disciplinary authorities. See, e.g., In the Matter of Kevin R. Shannon, DRB 04-512 (June 22, 2004) (attorney did not promptly reply to the DEC investigator's requests for information about the grievance); In the Matter of Keith O. D. Moses, DRB 02-248 (October 23, 2002) (attorney failed to reply to DEC's requests for information about two grievances); In the Matter of Jon Steiger, DRB 02-199 (July 22, 2002) (attorney did not reply to the district ethics committee's numerous communications regarding a grievance); In the Matter of Grafton E. Beckles, II, DRB 01-395 (December 21, 2001) (attorney did not cooperate with disciplinary authorities during the investigation and hearing of a grievance); In the Matter of Andrew T. Brasno, DRB 97-091 (June 25, 1997) (attorney failed to reply to the ethics grievance and failed to turn over a client's file); and In the Matter of Mark D. Cubberley, DRB 96-090 (April 19, 1996) (attorney failed to reply to the ethics investigator's requests for information about the grievance).

An aggravating factor here is the default nature of this proceeding. When an attorney defaults, the appropriate level of

discipline is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In re Nemshick, 180 N.J. 304 (2004) (conduct meriting reprimand enhanced to three-month suspension due to default; no ethics history).

An attorney who exhibited conduct similar to respondent's, and who, like respondent, had an ethics history, was suspended for three months. In re Franks, 189 N.J. 198 (2007). There, the attorney was suspended for three months, in a default matter, for gross neglect and lack of diligence, failure to cooperate with disciplinary authorities during the investigation and processing of the matter, and lying to the client about a mediation and a court date, which, in fact, were never scheduled. The attorney had a prior admonition and a censure, the latter in a default.

Respondent's conduct, however, was more egregious than Franks' because respondent displayed a pattern of misrepresentations and, in addition, a pattern of defaulting in ethics matters. The matters that led to his 1999 three-month suspension and to his 2008 censure also proceeded on a default basis. We, therefore, determine that a six-month suspension more adequately addresses the nature of respondent's conduct, his

disciplinary record, and his demonstrated disdain for the disciplinary system.

Member Doremus did not participate.

We also require respondent 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  
O Louis Pashman, Chair

By: Julianne K. DeCore  
Julianne K. DeCore  
Chief Counsel

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Richard W. Banas  
Docket No. DRB 08-058

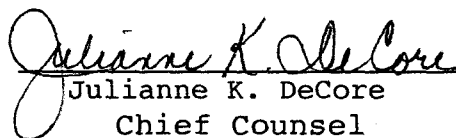
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Decided: June 20, 2008

Disposition: Six-month suspension

<b>Members</b>	Disbar	Six-month Suspension	Reprimand	Dismiss	Disqualified	Did not participate
Pashman		X				
Frost		X				
Baugh		X				
Boylan		X				
Doremus						X
Lolla		X				
Stanton		X				
Wissinger		X				
Total:		7				1

  
Julianne K. DeCore  
Chief Counsel