

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 07-407 and 08-060
District Docket Nos. XIV-06-453E
and XIV-06-047E

IN THE MATTERS OF
FRANKLIN H. BARNES IV
AN ATTORNEY AT LAW

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Decision
Default [R. 1:20-4(f)]

Decided: June 10, 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 Office of Attorney Ethics ("OAE"), pursuant to R.
1:20-4(f). We determine to impose two consecutive three-month
suspensions.

authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice). The complaint in DRB 08-060 charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.15(a) (failure to safeguard funds), RPC 1.15(b) (failure to promptly deliver funds to third parties), and two counts of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

Respondent was admitted to the New Jersey bar in 1992. In 2006, he received a reprimand in a default matter for lack of diligence and failure to cooperate with disciplinary authorities. In re Barnes, 186 N.J. 265 (2006). In that case, respondent, who had represented the seller in a real estate transaction, failed to reply to the request of the buyer's attorney to release escrow funds that he was holding and failed to obtain a discharge of a lis pendens, as he had agreed.

In addition, respondent was temporarily suspended on June 21, 2006, for failure to cooperate with the ethics investigation in one of the matters now before us. In re Barnes, 187 N.J. 88 (2006). He remains suspended to date.

A. DRB 07-407 (District Docket No. XIV-06-453E)

Service of process was proper. On June 6, 2007, the OAE sent a complaint by certified and regular mail to respondent's last known address, which was both his home and his office, in Randolph, New Jersey. The certified mail return receipt was returned to the OAE signed by respondent, indicating delivery on June 12, 2007.

On September 11, 2007, the OAE sent a second letter, by certified and regular mail, to the Randolph address. The letter advised respondent that, unless he filed an answer, 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 was returned to the OAE marked "Unclaimed." The regular mail envelope was not returned.

Respondent did not file an answer to the complaint.

As previously mentioned, on June 21, 2006, respondent was temporarily suspended. 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 has complied with the terms of the suspension order and the court rule. Because respondent failed

to file the affidavit of compliance, the OAE, by letter dated December 15, 2006, notified him of this requirement. Moreover, on December 28, 2006, OAE staff visited respondent at his home, advised him of his failure to file the affidavit, and gave him a copy of the suspension order and of R. 1:20-20. Respondent admitted that he had not notified clients of his suspension and that he had maintained several open client files. He assured the OAE that he would file the affidavit by January 11, 2007. As of June 5, 2007, the date of the formal ethics complaint, respondent had not filed the affidavit.

Following a review of the record, we find that the facts recited in the complaint 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 the imposition of a six-month suspension and citing as aggravating factors the default nature of this proceeding and respondent's disciplinary history, consisting of a reprimand imposed in a default case. 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 this respondent has shown a

complete disregard for the disciplinary system, continuing to "thumb his nose" at it.

As noted by the OAE, in default cases, the discipline is enhanced to reflect the attorney's lack of cooperation with the disciplinary system. In re Nemshick, 180 N.J. 304 (2004). 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 ethics history consists of a reprimand in a default case and a temporary suspension. Thus, this case is similar to Wyskowski, in which the attorney had no ethics history apart from a temporary suspension, and to Girdler, in which the attorney had a private reprimand, a public reprimand, and a three-month suspension. Wyskowsi and Girdler were suspended for three months. Respondent's disciplinary history is not as extensive as that of the attorneys in Mandle, King, and McClure, supra, all of whom received one-year suspensions.

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.

Vice-Chair Frost recused herself. Member Doremus did not participate.

B. DRB 08-060 (District Docket No. XIV-06-047E)

Service of process was proper. On December 11, 2007, the OAE sent a complaint by certified and regular mail to respondent's address in Randolph, New Jersey. The certified mail was returned to the OAE marked "Unclaimed." The regular mail was not returned.

On February 5, 2008, the OAE sent a second letter, by certified and regular mail, to the Randolph address. The letter advised respondent that, unless he filed an answer, 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. In addition, the letter amended the complaint to include another violation of RPC 8.1(b) for failure to file an answer. Neither the certified nor the regular mail was returned.

Respondent did not file an answer to the complaint.

This is the second time that this case was certified to us as a default. On January 25, 2006, we remanded the case to the OAE for an audit and an investigation into a potential knowing

misappropriation charge. After investigating the matter, the OAE concluded that respondent had properly maintained, in his trust account, the funds that he should have been holding in escrow. The OAE, thus, concluded that there was no basis for a charge of knowing misappropriation.

On December 30, 2004, Ronald Maas, counsel for Fidelity National Title, filed a grievance with the OAE, alleging that, in numerous real estate transactions, respondent, as the closing attorney, had failed to pay fees to Weichert Title Agency ("Weichert") for title services, had failed to promptly record post-closing documents, such as deeds and mortgages, and had failed to provide Weichert with post-closing documents, as required by title commitments.

The OAE's investigation revealed that respondent failed to remit title premiums in five matters (Estaban, Robinsky/Lockman, Mabey, Petruzziello, and Kramer), failed to timely pay title premiums in nineteen matters (Maguire, Wu, Palmieri, Santulli/DiBenedetto, Rosen, Colon, Asdal, Barnes, Yasharpour/Rim, Albanese, Shenton, Saltos, Eddy/Vecchio, Seborowski, Konopi, Alexander, Caglarli, Smith, and Pyle), failed to submit documents in nineteen matters (Wong, Palmieri, Santulli/DiBenedetto, Rosen, McLaughlin, Colon, Asdal, Barnes, Yasharpour/Rim, Albanese,

Shenton, Saltos, Caglarli, Pyle, Eddy, Konopi, Seborowski, Alexander, and Smith), and failed to file necessary documents to close the mortgages in three matters (Wu, Palmieri, and Esteban).

Respondent did not explain why he failed to remit timely payments or provide post-closing documents to Maas.

This matter was originally investigated by the District X Ethics Committee ("DEC"). On January 7, 2005, the DEC sent the grievance to respondent, directing that he reply within ten days. Respondent failed to reply to that letter, as well as the DEC's subsequent attempts to obtain his cooperation.

After we remanded the matter to the OAE, that office sent an April 18, 2006 letter to respondent requesting certain records and files. Because respondent failed to reply to that letter, the OAE notified respondent, on May 11, 2006, of a demand audit scheduled for June 8, 2006, at the OAE's office. On June 8, 2006, respondent left a telephone message at the OAE's office, indicating that he was out of town and unable to attend the demand audit. Respondent asked the OAE to reschedule the demand audit and provided his cell phone number. The OAE left a message informing respondent that his request for an adjournment had been denied and that the OAE planned to file a motion with the Court for his immediate temporary suspension.

On June 15, 2006, the OAE filed the motion, which the Court granted on June 21, 2006. This is the order temporarily suspending respondent referenced in respondent's ethics history.

On December 29, 2006, OAE staff personally served a subpoena on respondent, directing him to bring certain client files to the OAE's office on January 11, 2007. Respondent failed to appear on that date. As of the date of the complaint, he had not provided any of the client files. The OAE's subsequent efforts to obtain documents from respondent were not successful.

The complaint alleged that respondent failed to provide the OAE with proof that all client monies had been maintained in his trust account for each real estate transaction, from the date of deposit until he disbursed the funds to Maas. The complaint charged that respondent violated RPC 1.15(a), citing his "failure to safeguard by willful failure to account to the OAE for client funds."

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct, except for RPC 1.15(a). Because of respondent's failure to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

After serving as settlement agent in at least twenty real estate transactions, respondent failed to perform routine post-closing procedures. In some instances, he did not promptly record deeds and mortgages; in many others, he did not provide the title insurance company with the closing documents; and in other transactions, he failed to pay the title insurance fee.

Respondent, thus, was guilty of gross neglect, a pattern of neglect, lack of diligence, and failure to promptly disburse funds, all in violation of RPC 1.1(a) and (b), RPC 1.3, and RPC 1.15(b). Respondent's failure to reply to both the DEC and the OAE or to file an answer to the formal complaint constituted violations of RPC 8.1(b).

In our view, the complaint does not contain sufficient facts to support a finding that respondent violated RPC 1.15(a) (failure to safeguard funds). This charge appears to be based on respondent's failure to satisfy the OAE that he had maintained escrow funds in his trust account from the time they were deposited until they were disbursed. The OAE acknowledged, however, that respondent had maintained the funds there at all times. Rather, respondent's failure to demonstrate to the OAE that the funds remained intact in his trust account constituted a failure to cooperate with disciplinary authorities, which the

complaint also charged. We, thus, dismiss the charge that respondent violated RPC 1.15(a).

Conduct similar to respondent's generally results in the imposition of either an admonition or a reprimand, depending on the number of real estate transactions involved and on the attorney's disciplinary history. See, e.g., In the Matter of Diane K. Murray, DRB 98-342 (September 26, 2000) (admonition for failure to record a deed and to obtain title insurance for fifteen months and two and a half years after the closing, respectively; the attorney also failed to reply to the client's numerous requests for information about the matter and to reconcile her trust account records in a timely fashion; the attorney violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), and RPC 1.15(d)); In the Matter of Charles Deubel, III, DRB 95-051 (May 16, 1995) (admonition for failure to record a deed for fifteen months after the closing of title, a violation of RPC 1.3); In the Matter of Laura P. Scott, DRB 96-091 (May 2, 1996) (admonition for attorney who did not remit certain fees to the title company and to the mortgage company until six months after the closing; the attorney also failed to reply to her clients' numerous requests for information on potential unpaid closing costs and to deposit \$500 in cash into either her trust account

or her business account, from which the closing proceeds would then be disbursed; finally, the attorney did not submit to her clients proof of \$97 in "reimbursement for costs/fees," and did not reimburse them for that amount; the attorney violated RPC 1.3, RPC 1.4(a), RPC 1.15(b), and RPC 1.15(d)); In re Leff, 181 N.J. 333 (2004) (reprimand for recordkeeping violations, gross neglect, lack of diligence, and pattern of neglect for failure to complete four real estate transactions, causing delays in the delivery of escrow funds); In re Jodha, 174 N.J. 407 (2002) (reprimand for attorney who did not promptly complete post-closing procedures; the attorney did not record the deed, pay the title insurance premium, pay the real estate taxes or refund escrow funds to his client until nine to twenty months after the closing; the attorney also failed to correct accounting deficiencies noted during a 1998 random audit by the OAE); In re Mandle, Jr., 167 N.J. 609 (2001) (reprimand for attorney who, while practicing law under the supervision of a proctor, failed to represent a client diligently by not recording a deed and mortgage for five months after the closing and not properly disbursing the closing funds, instead allowing them to remain stagnant in his trust account; the attorney also failed to cooperate with the investigation of the ethics matter; the

attorney had received two prior reprimands for conduct that included gross neglect, pattern of neglect, lack of diligence, failure to cooperate with disciplinary authorities, and failure to communicate with a client); and In re Butler, 152 N.J. 448 (1998) (reprimand imposed on attorney who failed to timely record mortgages and mortgage discharges and to pay title policy premiums in nine real estate matters; the attorney also delayed payment of other fees in some of those matters; the attorney was guilty of gross neglect, pattern of neglect, lack of diligence, failure to safeguard property, and recordkeeping violations).

Here, we find as aggravating factors the number of real estate transactions (about twenty) that respondent failed to complete, respondent's prior reprimand, and the default nature of this matter. Indeed, this is respondent's third default. Under Nemshick, supra, discipline is enhanced in default cases. Thus, based on the above aggravating factors, we increase the discipline to a three-month suspension.

The three-month suspensions in both of these matters are to run consecutively and to begin when respondent is reinstated from his temporary suspension.

Vice-Chair Frost recused herself. 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 this matter, as provided in R. 1:20-17.

Disciplinary Review Board
Louis Pashman, Chair

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

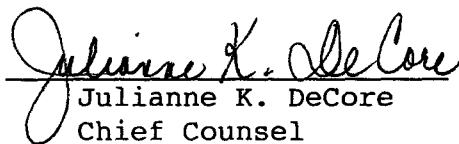
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Franklin H. Barnes, IV
Docket No. DRB 07-407

Decided: June 10, 2008

Disposition: Three month suspension

Members	Disbar	Three-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:		6			1	1


Julianne K. DeCore
Chief Counsel

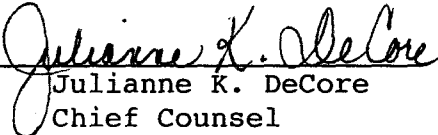
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Franklin H. Barnes, IV
Docket No. DRB 08-060

Decided: June 10, 2008

Disposition: Three month suspension

Members	Disbar	Three-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:		6			1	1


Julianne K. DeCore
Chief Counsel