

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 08-073
District Docket No. IV-06-0012E

IN THE MATTER OF
JOHN SCOTT ANGELUCCI
AN ATTORNEY AT LAW

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Decision
Default

Decided: July 8, 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 IV Ethics Committee (DEC), pursuant to R.
1:20-4(f). The two-count complaint charged respondent with
violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence),
RPC 1.4, presumably (a) (failure to inform clients of where and
how they can communicate with the lawyer), RPC 1.4, presumably (b)
(failure to keep clients reasonably informed about the status of
their matter and to promptly comply with requests for information;

RPC 8.1, presumably (b) (failure to reply to a lawful demand for information from a disciplinary authority), and RPC 8.4, presumably (c) and (d) (conduct involving dishonesty, fraud, deceit or misrepresentation and conduct prejudicial to the administration of justice, respectively). We determine that a prospective six-month suspension is warranted, to begin at the end of respondent's temporary suspensions mentioned below.

Respondent was admitted to the New Jersey bar in 1992. At the relevant time, he maintained a law office in Deptford, New Jersey.

In 2005, respondent was reprimanded, following his conviction for obstructing the administration of law or other governmental function, a disorderly person's offense. Respondent was arrested and charged with resisting arrest, a third-degree crime, following an altercation with Deptford Township police officers. In re Angelucci, 183 N.J. 472 (2005).

On January 4, 2007, respondent was temporarily suspended for failure to cooperate with an ethics investigation by the Office of Attorney Ethics. In re Angelucci, 189 N.J. 98 (2007). The suspension was continued on March 5, 2007, for his failure to comply with a fee arbitration determination. In re Angelucci, 189 N.J. 523 (2007).

Recently, in May 2008, respondent was suspended for six months, in a default matter, for gross neglect, lack of diligence, failure to communicate with the client, failure to provide the client with a writing setting forth the basis or rate of his fee, failure to protect the client's interests by unilaterally terminating the representation, and conduct prejudicial to the administration of justice (failure to appear on a bankruptcy court order to show cause and to refund the client's fee, as ordered by the court). We determined that respondent should be suspended for three months. Because, however, respondent did not appear on the Court's Order to Show Cause issued in that disciplinary matter, the Court enhanced the discipline to a six-month suspension. In re Angelucci, 194 N.J. 512 (2008).

The New Jersey Lawyers' Fund for Client Protection (CPF) report shows that respondent was ineligible for periods of up to two months for failure to pay his annual attorney assessment in 1997, 2001, 2003, 2004, and 2005. He was also ineligible for longer periods: September 20, 1993 to November 13, 1995, and September 21, 1998 to October 4, 2000. More recently, he became ineligible to practice law on September 25, 2006.

Service of process was proper. On November 14, 2000, the DEC mailed copies of the complaint by regular and certified mail to respondent at his last known office address, 876 Cooper Street,

Deptford, New Jersey. Both the regular and certified mailings were returned by the post office, stamped "moved left no address."

On May 16, 2007, the DEC sent a second letter, by regular and certified mail, to respondent's home address, 149 Hampshire Drive, Deptford, New Jersey 08096. The certified mail was returned, stamped "unclaimed." The regular mail was not returned.

On January 8, 2008, the DEC made service by publication in the Gloucester County Times.

As of the date of the certification of the record, January 31, 2008, respondent had not filed an answer to the complaint.

Count One

In August 2005, Theresa Finocchiaro and her fiancé, Mark Wilson, retained respondent to file the required "paperwork" authorizing Wilson's ex-wife's future husband to adopt Wilson's minor child. On September 10, 2005, Finocchiaro and Wilson paid respondent \$200 in cash. When they later inquired about the status of their matter, respondent replied that "he was having problems with his ex-wife" and assured them that "he [would] get to it soon."

On September 24, 2005, Finocchiaro and Wilson paid respondent an additional \$100 and requested proof of the "paperwork" showing respondent's progress on the case.

Respondent replied that "he was in trouble with child support" and promised that "he [would] do it soon." Finocchiaro and Wilson paid respondent an additional \$150 on October 3, 2005.

Thereafter, Finocchiaro and Wilson repeatedly tried to telephone respondent, to no avail. He neither returned their calls, nor forwarded any correspondence to them about the status of their matter.

Subsequently, they learned that respondent had "moved his law practice." He left no forwarding address and did not refund Finocchiaro and Wilson's retainer. From August 2005 to the date of the complaint, September 19, 2006, respondent gave them no information about the status of their case, either orally or in writing, and showed them no evidence that he had pursued their matter.

Count Two

On March 10, 2006, the DEC investigator was in court on an unrelated hearing, when respondent was brought into court on a bench warrant, arrested for his failure to appear before the court. The investigator heard respondent state that his address was 149 Hampshire Drive, Deptford, New Jersey, 08096.

At the conclusion of respondent's matter, the investigator personally served him with a copy of the grievance and advised him of his obligation to reply to the allegations, in writing.

Respondent did not submit a reply. On May 18, 2006, the investigator forwarded a letter, by regular and certified mail, to the address respondent had provided to the court. The letter requested a reply to the grievance and the production of Finocchiaro and Wilson's original file. The certified receipt card was signed by respondent. The regular mail was not returned.

As of the date of the complaint, September 19, 2006, respondent had not replied to the grievance.

Count Three

On July 9, 2004, the court issued a bench warrant for respondent's arrest for failure to pay child support. The court issued a separate bench warrant for respondent's arrest for his failure to appear at a civil hearing. That warrant was vacated on March 10, 2006, when respondent appeared before the court.

Also, in 2005, respondent was not registered with the IOLTA Fund in New Jersey, in violation of R. 1:28A-2. Subsection (a) of that rule provides, in relevant part:

Every attorney who practices in this State shall maintain in a financial institution in

New Jersey, in the attorney's own name . . .
an IOLTA non-interest-bearing trust account
or accounts for all clients' funds that are
not placed at interest for the benefit of
the client.

Subsection (a)(2) provides:

Funds shall be deposited in an IOLTA non-
interest-bearing trust account authorized by
this Rule when an attorney determines that a
trust account deposit will not be placed at
interest for a client. Such a determination
shall be made whenever an attorney determines
that either (A) the amount of the funds or
the period of time that the funds are held,
if deposited in an interest-bearing account,
would not earn interest in excess of the cost
incurred to secure such interest, or (B)
because of particular costs in accounting,
administration, or attribution of income, as
may occur when multiple parties or clients
pool advance payments against the costs of
litigation in a single fund, a client's funds
should not be deposited in an interest-
bearing account because they will not realize
income. No ethical impropriety will attend an
attorney's depositing such funds in an IOLTA
non-interest-bearing trust account in
accordance with this Rule.

. . . .

[The Fund Trustees] shall annually report the
names of all attorneys failing to comply with
the provisions of this Rule to the Supreme
Court for inclusion on a list of those
attorneys deemed ineligible to practice law
in New Jersey by Order of the Court.

Respondent was ordered administratively ineligible due to
his non-compliance with IOLTA in 1999 and 2000 to 2003. He had

not registered for 2006. In addition, during a portion of his representation of Finocchiaro and Wilson, he was ineligible to practice law for failure to pay the CPF. Also during that time, respondent's child support arrearages totaled \$35,000. As of July 2006, the arrearages amounted to \$42,761, exceeding the amount of child support payable for six months, a violation of R. 5:7-5(e)(1).¹

The ethics complaint contains sufficient facts to 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).

Respondent's conduct in the Finocchiaro and Wilson matter is reminiscent of the conduct in his earlier default matter, DRB 07-262, which led to his six-month suspension. In that case, he was retained for a bankruptcy matter, did not provide the client with a writing setting forth the basis or rate of the fee, and requested a cash retainer. After the client made two installment payments, she was unable to contact respondent because he had closed his office. Although there was an indication that

¹ This rule provides that, "if a child support arrearage equals or exceeds the amount of child support payable for six months . . . and the obligor is found to possess a license in the State of New Jersey, including a license to practice law, and attempts to enforce the support provisions through income withholding . . . have been exhausted . . . the obligor's licenses may be revoked or suspended. . . ."

respondent had performed some services for her, the client was left to handle her own bankruptcy matter. In the Matter of John Scott Angelucci, DRB 07-262 (December 20, 2007) (slip op. at 5).

Here, among other infractions, we find that respondent's conduct was tantamount to an abandonment of his clients' interests. After they paid respondent \$450 in three installments, he disappeared without doing any work on their behalf and without providing them with his new address.

We note that respondent's conduct in DRB 07-262 occurred after his conduct in this matter (there, he was retained in January 2006; here, in 2005). Although it cannot be said that he failed to learn the mistakes that he made in that matter, his unethical conduct as a whole establishes his penchant for failing to conform to the rules of the profession.

Respondent's violations in the Finocchiaro and Wilson matter include failure to take any action on his clients' behalf (gross neglect and lack of diligence), failure to keep his clients informed about the status of their matter, failure to advise them how and when to communicate with them, and failure to reply to the grievance, violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), and RPC 8.1(b).

The complaint also charged respondent with violating RPC 8.4. The complaint did not cite any specific subsections, but

recited the language of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) and (d) (conduct prejudicial to the administration of justice). It did not specifically identify which of respondent's actions violated these rules. Instead, it referred to his general conduct of accepting fees from his clients and not performing any work, not refunding any portion of their fees, and assuring his clients that he would get around to their cases "soon." It is possible that the complaint intended to charge the latter statements as misrepresentations. Because, however, of the lack of clarity and specificity in the complaint, R. 1:20-4(b) precludes us from making any findings in this context. That rule requires the complaint to "set forth sufficient facts to constitute fair notice of the nature of the alleged unethical conduct, specifying the ethical rules alleged to have been violated."

For the same reason, we refrain from making a finding that respondent practiced law while ineligible; the complaint did not cite the applicable rule, RPC 5.5(a).

On the other hand, the complaint clearly and sufficiently recited facts supporting violations of RPC 8.4(d) (conduct prejudicial to the administration of justice), namely, the two bench warrants issued for his arrest: one for his failure to appear at a hearing and the other for his failure to pay child

support. Also, there will be no due process violation concluding that, by failing to comply with the IOLTA requirements stated in R. 1:28A-2, respondent's conduct was improper. Although the complaint did not correlate this conduct to a particular RPC, it did cite R. 1:28A-2, which is a violation of the recordkeeping rules, R. 1:21-6(a)(2), and, in turn, a violation of RPC 1.15(d).

Finally, we find that respondent's failure to cooperate with the DEC's investigation of the grievance violated RPC 8.1(b).

In sum, respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.4(b), RPC 1.15(d), RPC 8.1(b), and RPC 8.4(d).

We now address the issue of the appropriate degree of discipline for respondent's transgressions.

Attorneys who have violated court orders (RPC 8.4(d)) have generally been reprimanded. See, e.g., In re Holland, 164 N.J. 246 (2000) (attorney who was required to hold in trust a fee in which she and another attorney had an interest took the fee, in violation of a court order); In re Milstead, 162 N.J. 96 (1999) (attorney disbursed escrow funds to his client, in violation of a court order); and In re Hartmann, 142 N.J. 587 (1995) (attorney intentionally and repeatedly ignored court orders to pay opposing counsel a fee, resulting in a warrant for the attorney's arrest; the attorney also exhibited discourteous and abusive conduct toward a judge, with intent to intimidate her).

For gross neglect, lack of diligence, failure to communicate with the client, and failure to cooperate with disciplinary authorities, an admonition is usually imposed if the conduct is confined to one matter and the attorney does not have a disciplinary record. See, e.g., In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (attorney's inaction caused a trademark application to be deemed abandoned on two occasions and failed to comply with the client's requests for information about the case; violations of RPC 1.1(a), RPC 1.3, and RPC 1.4(a)); In the Matter of Howard M. Dorian, DRB 95-216 (August 1, 1995) (attorney did not inform his client that her case had been mistakenly dismissed as settled, took no action to restore it, did not reply to the client's inquiries about the case, and failed cooperate with the investigation of the grievance; also, the attorney failed to withdraw as counsel and delayed the return of the client's file for almost five months); and In the Matter of Richard J. Carroll, DRB 95-017 (June 26, 1995) (attorney mishandled a personal injury action, failed to properly communicate with the client, and failed to reply to the grievance; the attorney also failed to comply with the client's new lawyer's numerous requests for the return of the file).

An admonition is also the typical form of discipline for violations of RPC 1.15(d). See, e.g., In the Matter of Jeff E.

Thakker, DRB 04-258 (October 7, 2004) (admonition for failure to maintain an attorney trust account in a New Jersey banking institution); In the Matter of Arthur G. D'Alessandro, DRB 01-247 (June 17, 2002) (admonition for recordkeeping deficiencies); and In the Matter of Marc D'Arienzo, DRB 00-101 (June 29, 2001) (admonition for failure to use trust account and to maintain required receipts and disbursements journals, as well as client ledger cards).

Here, several factors aggravate respondent's conduct. He practiced law while ineligible, has an ethics record consisting of a reprimand, a six-month suspension, and two temporary suspensions, and has reaffirmed his disregard for ethics authorities by again failing to file an answer to a formal ethics complaint (the 2008 matter also proceeded on a default basis). In a default matter, the appropriate discipline for the found ethics violations is enhanced to reflect the attorney's failure to cooperate with disciplinary authorities as an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366 (March 11, 2004) (slip op. at 6).

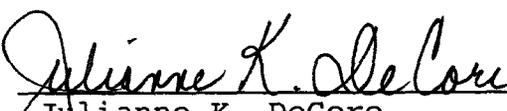
For the totality of respondent's conduct -- violation of court orders requiring him to pay child support and to appear at a civil hearing; gross neglect, lack of diligence, and failure to communicate with clients in the Finocchiaro and

Wilson matter; and failure to comply with IOLTA requirements -- aggravated by his disciplinary record, his practicing law while ineligible, and his defaulting in this case, we determine that a six-month suspension, to begin when he is reinstated from his temporary suspensions, is the suitable measure of discipline. See, e.g., In re Kearns, 187 N.J. 250 (2006) (six-month suspension for attorney who, in a real estate matter, engaged in gross neglect, displayed lack of diligence, failed to communicate with the client, failed to cooperate with disciplinary authorities, and engaged in conduct prejudicial to the administration of justice; the attorney also improperly terminated the client's representation; the disciplinary matter proceeded as a default; prior reprimand, three-month suspension, and temporary suspension).

Members Baugh and Clark 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
Chief Counsel

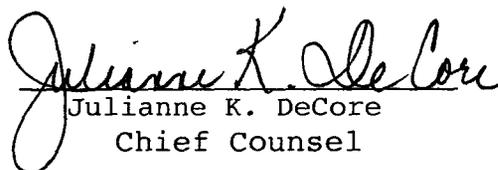
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of John Scott Angelucci
Docket No. DRB 08-073

Decided: July 8, 2008

Disposition: Six-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:		7				2


Julianne K. DeCore
Chief Counsel