SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-058
District Docket No. VIII-05-017E

IN THE MATTER OF	
JOSÉ CAMERON	
AN ATTORNEY AT LAW	

Decision

Argued: May 10, 2007

Decided: July 30, 2007

Howard Duff appeared on behalf of the District VIII Ethics Committee.

Richard Simon appeared on behalf of respondent.

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

This matter came before us on a recommendation for discipline (reprimand) filed by the District VIII Ethics Committee ("DEC"). The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.16(d) (failure to protect a client's

interests after termination of the representation), and RPC 8.4(a) (violating the Rules of Professional Conduct). We agree that a reprimand constitutes appropriate discipline.

Respondent was admitted to the New Jersey bar in 1978. He has no history of discipline. At the relevant time, he maintained a law office in Perth Amboy, New Jersey.

At the outset, we note that respondent is a former member of the same district ethics committee (Middlesex County) that heard this matter. Nothing, however, suggests that he was given preferential treatment: the DEC rejected his request for the dismissal of all ethics charges and recommended that he be disciplined for his infractions. We find, thus, that this case was properly venued in Middlesex County.

José Guardado, the grievant in this matter, testified through an interpreter.

Based on a recommendation from friends, Guardado retained respondent to represent him and his wife in a personal injury matter resulting from a 1999 automobile accident. In August 2000, respondent filed a suit on their behalf. After the Guardados' 2004 divorce, however, the wife's per quod claim became moot.

According to Guardado, during the course of the representation, respondent informed him that "the case was in

court" and that everything was proceeding smoothly. Respondent repeatedly assured him that they would "win the case." What respondent did not inform Guardado is that the lawsuit had been dismissed twice – on March 31, 2001, for failure to serve the defendant, and on October 22, 2004, for failure to provide answers to interrogatories.

At some point, Guardado realized that his case was taking longer than expected, leading to his dissatisfaction with respondent's services. Therefore, on February 20, 2004, Guardado retained Alan Grening, from the firm of Garces & Grabler, to take over his case. Guardado understood that Grening would obtain his file from respondent. Indeed, by letter dated March 17, 2004, Garces & Grabler asked respondent for Guardado's file, to no avail.

After respondent did not comply with the March 17, 2004 request for the file, Guardado made an appointment to see him on July 7, 2004, presumably to obtain his file. Because, however, respondent seemed "optimistic" about the case at that meeting, Guardado neither instructed him to turn over the file to Garces & Grabler, nor mentioned that he had retained that firm. Believing that his case would be resolved shortly, Guardado notified Grening that he intended to keep respondent as his counsel.

At the July 7, 2004 meeting with respondent, Guardado signed an authorization for the release of medical records to

State Farm Indemnity Company. Respondent mailed the release to an attorney, Gregory P. Helfrich, on July 9, 2004.

By letter dated July 14, 2004, respondent asked Guardado to call his office to schedule an appointment to answer interrogatories. Guardado recalled meeting with respondent to reply to questions "under oath", but could not recall when.

After a short period of time, Guardado again saw no progress on his case. In addition, respondent did not reply to his numerous telephone calls or show up for a scheduled appointment. Therefore, Guardado once again asked Garces & Grabler to take over his case and obtain his file from respondent.

Guardado could not recall when he had signed an authorization for the transfer of the file to Garces & Grabler, but a copy of the authorization was attached to the March 17, 2004 letter that Garces & Grabler had previously sent to respondent.

By letter dated November 23, 2004, Garces & Grabler again asked respondent for the Guardado file. When respondent ignored that request, Guardado filed a grievance against him on January 3, 2005. Allegedly, respondent was waiting for a substitution of attorney form. Although, in his reply to the grievance, respondent acknowledged that Garces & Grabler had asked for the file on March 17 and November 23, 2004, he later denied receiving the March 17, 2004 request, as seen below.

Grening confirmed that his firm's several attempts to obtain the file had been unsuccessful. He discovered from the court that, on October 22, 2004, Guardado's case had been dismissed for the second time, but did not learn the reason for the dismissal (failure to answer interrogatories) until he obtained a copy of the court order from defendant's counsel. Respondent had not supplied the answers to interrogatories until October 21, 2004, the day before the return date of the dismissal motion. Along with the interrogatories, respondent had requested that the defendant withdraw its motion to dismiss. Notwithstanding the defense attorney's purported agreement in that regard, the court dismissed the complaint. Afterwards, respondent took no action to have it reinstated.

Grening testified that he could not proceed on Guardado's behalf without first obtaining from respondent a substitution of attorney and the file. Grening believed that respondent had eventually hand-delivered the file on April 22, 2005, three months after the filing of the grievance. However, respondent still had not signed a substitution of attorney. Therefore, on July 15, 2005, Grening sent him a substitution of attorney form. Grening had the "reply to" box checked off for the Plainfield office. In addition, he enclosed a return envelope for respondent's convenience. Even then respondent did not return the form.

On August 12, 2005, Grening sent a second request for the form. He received verbal confirmation from respondent's staff that both of his letters had been received. On September 12, 2005, Grening faxed a third request to respondent's office, explaining that he needed the form to file a motion to reinstate the complaint. He also called respondent's office to caution that, if respondent did not comply with his request, he would be forced to file an order to show cause.

On October 24, 2005, after Grening prepared the motion, but before he filed it, he received the signed substitution of attorney form via Lawyers' Service.

Respondent's reply to the grievance, dated April 15, 2005, included a copy of a February 28, 2005 letter to Garces & Grabler that purportedly enclosed a copy of the Guardado file, asked for a substitution of attorney form for his signature, and requested a one-third share of the legal fees and reimbursement for costs. The letter also attached a copy of an undated receipt for the file, signed by a Garces & Grabler employee. Respondent had sent the file to Garces & Grabler's Perth Amboy office, a circumstance of which Grening was unaware. Grening testified that he was also unaware that respondent had requested a substitution of attorney form from Garces & Grabler. Grening explained that, had he known of

respondent's request, he would have forwarded a substitution of attorney at that time.

Eventually, by way of motion, Grening had Guardado's complaint reinstated, at a cost to Guardado of $330. Grening explained that the costs had increased because the motion had not been filed within the required time.

As to the merits of the case, Grening testified that Guardado had requested respondent to refer him to another doctor after his chiropractic treatment had proved ineffective. Respondent had not done so. Eventually, Guardado required back surgery in 2004. For coverage, he had to rely on his health insurance carrier. Respondent's PIP file had been closed because additional medical treatment had not been requested for several years.

Grening added that several documents had not been forwarded with Guardado's file: the medical release signed by Guardado on July 7, 2004; respondent's July 12, 2004 letter to Guardado regarding a deposition; respondent's July 14, 2004 letter to Guardado asking him to make an appointment to answer interrogatories; respondent's September 6, 2000 letter to the sheriff's office about service of the summons and complaint; respondent's February 28, 2005 letter to Garces & Grabler requesting a substitution of attorney (with an attached undated

acknowledgment of receipt of file); and the October 22, 2004 order of dismissal.

For his part, respondent testified that he is a municipal court judge in Perth Amboy. He has also served for four years as an arbitrator and as a district ethics committee member.

According to respondent, on February 2, 2003, he was involved in a motor vehicle accident, which required medical treatment. The accident aggravated injuries from a 1990 condition. He was totally disabled for about one month after the accident. Thereafter, for six months to one year, he worked only part-time, a few hours per day, and relied on an administrative assistant to help him run his office. He was evasive about the effect of his injuries on his ability to properly represent Guardado.

As to Guardado's case, respondent testified that he attempted to serve the summons and complaint in a timely fashion. However, he was unable to demonstrate, at the DEC hearing, that he had sent the required payment to the sheriff's office or that his staff had contacted that office to determine if the summons and complaint had been served. He added that, when he learned from his staff that service had not been made, he had the defendant served through Guaranteed Subpoena on November 21, 2001, almost nine months after the first dismissal of the

complaint. Respondent denied that he ever received either the court's notice of intent to dismiss the complaint or the order of dismissal for lack of prosecution.

From November 2001 to February 2004, respondent's prosecution of the case consisted of sending interrogatories to the defendant. Although he claimed that he had requested reports from Guardado's doctor, he had no documentation to substantiate this claim. He never took the defendant's deposition or even sent her a notice of deposition.

He stated that, sometime in February 2004, the defendant's attorney notified him that the complaint had been dismissed for lack of prosecution on March 31, 2001 (the first dismissal). He then filed a motion to have the complaint reinstated, which was granted. He met with Guardado, in September and October 2004, to answer interrogatories propounded by the defendant.

Respondent confirmed that Guardado had not informed him of his desire to transfer the case to Garces & Grabler. He acknowledged that Guardado had continued to cooperate with him to reply to discovery requests.

As to the second dismissal, respondent claimed that, on October 1, 2004, the defendant filed a motion to dismiss the complaint for failure to provide discovery. Prior to the October 22, 2004 return date of the motion, respondent submitted answers

to interrogatories. Through discussions with defense counsel, respondent believed that the motion would be withdrawn. Respondent claimed that, because he had not received the order dismissing the complaint, he assumed that the motion had been withdrawn. Respondent claimed that, because he had not received the order dismissing the complaint, he assumed that the motion had been withdrawn. Although he testified that he had no recollection of having seen his adversary's November 10, 2004 letter enclosing the court's October 22, 2004 order of dismissal, he later admitted that he "probably" received it. His position was that the complaint had been dismissed by mistake, inasmuch as his adversary had agreed to withdraw the motion.

Respondent admitted that, from the time he learned that Garces & Grabler was taking over the case (November 2004) until he received the substitution of attorney, some seven months later, he did not attempt to reinstate the complaint because he thought that he had already filed a substitution of attorney. It was not until July 2005, when his adversary called him to try to settle the case that he realized that he was still the attorney of record. He further claimed that Garces & Grabler had instructed him, in November 2004, to do no further work on the case.

Respondent could not recall whether he had received Grening's August 12, 2005 letter or September 12, 2005 fax about the

substitution of attorney form that Grening had sent to him in mid-July 2005. He claimed, however, that he had signed the substitution of attorney in July 2005, and had arranged for it to be hand-delivered to Garces & Grabler's Perth Amboy office at that time.

Respondent admitted that any costs incurred as a result of Garces & Grabler's reinstating the complaint were his responsibility.

Respondent asserted that the statement, in his reply to the grievance, that he had received both of Garces & Grabler's letters requesting the return of the file was in error. He also asserted that he never received a written authorization from Guardado to release his file, but felt obligated to turn it over because of the filing of the grievance and his knowledge of its significance, acquired during his service on the committee.

In sum, respondent disclaimed having received the court's notice to dismiss or the March 31, 2001 dismissal for failure to serve the defendant; the dismissal order of October 2004; Garces & Grabler's March 17, 2004 letter asking for the turnover of the file; and Garces & Grabler's August 12, 2005 letter and September 12, 2005 fax requesting a signed substitution of attorney. Later, he conceded that he must have received the August 12 and September 12, 2005 communications because he had

called Garces & Grabler to alert it that he had hand-delivered the substitution of attorney to the Perth Amboy office.

Gloria Santos, respondent's former secretary, testified that, in 2004, she was employed by respondent. At his request, she had photocopied Guardado's file, had prepared the receipt for the file, and had personally delivered it to the Perth Amboy offices of Garces & Grabler on February 28, 2005. At that time, she had requested from the receptionist a substitution of attorney form. According to Santos, as of July 15, 2005, respondent had not received the form. She testified that, after respondent telephoned Garces & Grabler on that date, someone faxed a copy to him, which he signed, and which she then hand-delivered to Garces & Grabler's Perth Amboy office.

The DEC found that respondent's testimony was, at times, less than credible. It found that, despite having a good address for the defendant, respondent did not serve the complaint on her until November 26, 2001, more than one year after filing the complaint, and before having the complaint reinstated. The complaint was reinstated on March 24, 2004. The DEC noted that the complaint had been dismissed again, on October 22, 2004, and that respondent had failed to have it reinstated.

The DEC did not find credible respondent's assertions that he had not received various notices and documents, including the

court's notices of the dismissal of the complaint, the defendant's notice of motion to dismiss the complaint, and the requests from new counsel for the turnover of Guardado's file.

The DEC found, however, that, until the time that respondent had been served with a copy of the grievance, Guardado's notice to him to stop working on the case had not been clear. At that time, respondent had promptly turned over Guardado's file to successor counsel. The DEC rejected respondent's contention that he was "crippled" by not having received a substitution of attorney form from Garces & Grabler, as he could have executed and forwarded such a form himself.

The DEC found respondent guilty of lack of diligence and gross neglect, but not of failure to protect his client's interests on termination of the representation.

In mitigation, the DEC considered that none of the dismissals in Guardado had been with prejudice; that respondent had served on the district ethics committee; that this is the only blemish in his twenty-nine-year career; and that his infractions were devoid of moral turpitude.

The DEC recommended that respondent be reprimanded and that he reimburse Guardado $267, the amount incurred as a result of respondent's "delinquencies."

Following a de novo review of the record, we find that the DEC's conclusion that respondent's conduct was unethical is fully supported by clear and convincing evidence. We are not persuaded, however, that respondent deliberately mishandled the Guardado suit. The record conveys a sense that this is an instance of a case that "slipped through the cracks." In fact, had respondent so admitted, his conduct might have been viewed more leniently. Instead, we find that his explanations were somewhat implausible.

As the DEC properly concluded, respondent's testimony was at times vague, occasionally less then credible, and at variance with his answer to the complaint. For example, as to respondent's own injury, he was unable to establish how long he had worked part-time, how many hours per week he had worked during that time, or how his injury had prevented him from properly attending to Guardado's case. Respondent explained only that, generally, he was unable to supervise his staff or attend to his cases as well as when he worked on a full-time basis.

Respondent also wavered in his testimony regarding the receipt of certain documents. As the presenter properly noted, respondent denied receiving the initial court notice of intent to dismiss the complaint for failure to prosecute; the March 2001 order of dismissal; Garces & Grabler's March 17, 2004

request for the file; the October 22, 2004 order dismissing the complaint for failure to answer interrogatories; the July 15, 2005 letter from Grening enclosing a substitution of attorney for signature; the August 12, 2005 letter from Grening following up on that request; and the September 12, 2005 fax from Grening requesting the return of a duly signed substitution of attorney. It is difficult to believe that respondent's office did not receive any of those documents, particularly since its address had not changed. We note also that, at one point, respondent admitted that he may have received some of the documents, although he did not recall receiving them.

Another example of inconsistent statements is seen in respondent's testimony about his failure to file a motion to reinstate the complaint. He defended such failure by asserting that Garces & Grabler had instructed him to cease working on Guardado's matter. Yet, he said that he considered himself to be the attorney of record until he received the substitution of attorney form. Later, he claimed that he did not act because he thought that he had submitted the substitution form to Garces & Grabler.

Additional inconsistencies included respondent's reply to the grievance, admitting that Garces & Grabler had asked for Guardado's file on two occasions, March 17 and November 22, 2004, and that he had not surrendered it because he was waiting for the

substitution of attorney to be delivered to his office. Respondent later testified that he was waiting for Guardado's authorization to release the file. However, Garces & Grabler's March 17, 2004 letter, sent by certified mail and, according to Grening, by regular mail, included Guardado's authorization to release the file. Respondent denied receiving this letter. In the record is the returned certified envelope indicating that it was unclaimed. Either respondent's office did not claim his certified mail or did not accept this letter because the office had already received it via regular mail. In any event, respondent admitted receiving the second request on November 22, 2004, which relayed the same information. He did not, however, turn over the file at that time.

Equally troubling was respondent's assertion that, on February 28, 2005, he had arranged for the file to be hand-delivered to Garces & Grabler's Perth Amboy office, when it was clear that all correspondence had come from the Plainfield office. Moreover, Grening's initial July 15, 2005 letter had directed respondent to reply to the Plainfield office. Nevertheless, respondent purportedly dealt only with the Perth Amboy office.

The evidence demonstrates to a clear and convincing standard that respondent engaged in lack of diligence and gross neglect by permitting the complaint to be dismissed twice, but only once

taking steps to have it reinstated, three years after the dismissal.

Furthermore, respondent did not disclose to Guardado that the complaint had been dismissed twice, missed a scheduled appointment with Guardado and, at times, did not return his calls. Although the complaint did not charge respondent with violating RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information), we deem the complaint amended to conform to the proofs. In re Logan 70 N.J. 222, 232 (1976).

The DEC did not find that respondent violated RPC 1.16(d) reasoning that, until the filing of the grievance, respondent had not been given clear notice to stop working on the file. We are unable to agree with the DEC's dismissal of that charge.

RPC 1.16(d) states:

> Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests, such as . . . surrendering papers and property to which the client is entitled . . . .

Even if we were to accept respondent's claim that he did not receive the March 17, 2004 letter from Garces & Grabler requesting the return of the file, it is undisputed that he received the November 22, 2004 letter reiterating that request. Nevertheless, he did not turn over the file until at least

February 28, 2005, after Guardado had filed a grievance against him. In addition, on three occasions, Grening requested that respondent execute and forward a substitution of attorney. Respondent did not do so until October 24, 2005, after he was threatened with an order to show cause. Notwithstanding his claim that the substitution of attorney had already been hand-delivered to the Perth Amboy office in July 2005, respondent never contacted Grening to so advise.

We find that these derelictions, coupled with the failure to have the complaint reinstated after the second dismissal, amount to a failure to protect his client's interests after termination of the representation, a violation of RPC 1.16(d).

We conclude, thus, that respondent violated RPC 1.1(a), RPC 1.3, RPC 1.4(b), and RPC 1.16(d).

Conduct similar to respondent's ordinarily results in an *admonition or a reprimand*, depending on the number of matters involved, the attorney's disciplinary record, and any mitigating factors considered. See, e.g., In the Matter of Howard M. Dorian, DRB 95-216 (August 1, 1995) (admonition by consent 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, and delayed the return of her file for

almost five months; the attorney also failed to cooperate with the investigation of the grievance); 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); In re Garbin, 182 N.J. 432 (2005) (reprimand by consent for attorney who failed to send her client a copy of a motion to enforce litigant's rights filed in his divorce action and failed to inform him of the filing of the motion, which proceeded unopposed; the court then found her client in violation of the final judgment of divorce; the attorney also failed to return the file to either her client or new counsel; prior admonition); In re Taylor, 176 N.J. 123 (2003) (reprimand for attorney who, in five client matters, engaged in gross neglect, lack of diligence, failure to communicate with clients, failure to take steps to protect clients' interests on termination of representation, and failure to provide clients with proper notice of sale of her law practice; in mitigation, the Court considered the attorney's emotional problems at the time, her attempts to close down her practice, and the fact that her conduct was not motivated by indifference to her clients' interests); In re Baiamonte, 170 N.J.

184 (2001) (reprimand for attorney who, in two client matters, engaged in lack of diligence, failure to communicate with clients, failure to expedite litigation, and failure to turn over the clients' files); and In re Gordon, 139 N.J. 606 (1995) (reprimand for lack of diligence and failure to communicate with the clients in two matters; in one of the matters, the attorney also failed to return the file to the client; prior reprimand).

Here, respondent's conduct involved only one matter. In addition, this is his first encounter with the disciplinary system in his thirty-year legal career. On the other hand, he allowed the complaint to be dismissed twice and, as a former member of a district ethics committee and a municipal court judge, he should have had a heightened awareness of his duty toward clients, the bar, and the judicial system as a whole.

We are aware that respondent advanced, as mitigation, his injuries from a 2003 accident. He testified that he was totally disabled for about one month after the accident and that, for about six months to one year, he worked only on a part-time basis, relying on an administrative assistant to assist him in running his office. Nevertheless, a lawyer whose physical condition materially impairs the lawyer's ability to represent the client has an obligation to withdraw from the representation. RPC 1.16(a)(2). If respondent's injuries from

his 2003 accident materially affected his ability to properly represent Guardado, he had an obligation, under the rules of the profession, to terminate the representation. We, therefore, decline to view respondent's injuries as a circumstance mitigating his inaction.

On balance, we are persuaded that an admonition is insufficient to address respondent's ethics infractions, viewed in the context of his status as a former committee member and a municipal court judge. We, therefore, determine that a reprimand is the appropriate quantum of discipline in this case.

Member Baugh 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
William J. O'Shaughnessy, Chair

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of José M. Cameron
Docket No. DRB 07-058

Argued: May 10, 2007

Decided: July 30, 2007

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh					X
Boylan		X			
Frost		X			
Lolla		X			
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		8			1

Julianne K. DeCore
Chief Counsel