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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 07-413  
District Docket No. XI-06-032E

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IN THE MATTER OF :  
: ANTHONY J. GIAMPAPA :  
: AN ATTORNEY AT LAW :  
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Decision

Argued: February 21, 2008

Decided: April 17, 2008

John Pogorelec appeared on behalf of the District XI Ethics Committee.

Respondent waived appearance.

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

This matter came before us on a recommendation for a reprimand filed by the DEC. The complaint charged respondent with violating RPC 1.1, presumably (a) (gross neglect), RPC 1.3 (lack of diligence), and RPC 1.4, presumably (b) (failure to keep a client reasonably informed about the status of the matter or to comply

with reasonable requests for information). We determine that a censure is the proper discipline for respondent's misconduct.

Respondent was admitted to the New Jersey bar in 1973. At the relevant time, he maintained a law office in Clifton, New Jersey.

Respondent was twice privately reprimanded in 1988. In a real estate matter, he improperly disbursed to his client trust funds to which he believed his client was entitled, without receiving authorization from the seller of the property. In the Matter of Anthony J. Giampapa, DRB 84-382 (June 27, 1988). In another matter, respondent engaged in a social and/or business relationship with his client's spouse and communicated directly with her on the subject of the representation of his client, knowing that she was represented by counsel and without obtaining that counsel's consent. He also concealed from his client the nature of his relationship with the client's spouse. In the Matter of Anthony J. Giampapa, DRB 85-210 (June 30, 1988).

In November 2007, we determined to admonish respondent for failing to return his client's telephone calls, failing to return the balance of funds from his client's refinancing of a real estate loan, and failing to turn over his client's file, despite repeated requests from his client and the client's new

attorney. In the Matter of Anthony J. Giampapa, DRB 07-178 (November 15, 2007).

The New Jersey Lawyers' Fund for Client Protection form shows that, from September 25, 2006 to January 5, 2007, respondent was on the list of ineligible attorneys for failure to pay his annual attorney assessment.

The facts of this matter are as follows.

Pascual and Eloina Savignano, who testified via interpreter, retained respondent, on June 25, 2004, to file a breach of contract action against Black Horse Construction, a contractor whom they had hired to make repairs on their home. The Savignanos paid respondent a \$1,000 retainer. Afterwards, respondent sent an inspector to their house to examine the work that had been performed by the contractor. However, respondent never provided them with a copy of the inspector's report.<sup>1</sup>

According to Eloina, they never received any correspondence from respondent showing that he had done any work on their

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<sup>1</sup> Respondent failed to reply to the DEC's investigator's requests for information in this matter and to provide requested discovery. Nevertheless, he tried to introduce a copy of the inspector's report at the DEC hearing. The DEC upheld the presenter's objections to the document, despite respondent's claim that he had lost the Savignanos' file when he moved his practice, but had fortuitously found it in time for the DEC hearing. The DEC found the report irrelevant, particularly because respondent admitted that he did not forward it to his clients.

behalf. As of the date of the DEC hearing, respondent had not sent them any information about the status of their case.

Beginning in 2004, the Savignanos frequently attempted to contact respondent about the status of the case. They would either stop at his office three- to four-times a month or telephone him just as often. On the rare occasions they spoke to respondent, he led them to believe that their case was proceeding properly, and told them not to worry, that they would just have to wait.

In 2005 and 2006 the Savignano's attempts to contact respondent dwindled. In 2006, Pascual recalled trying to contact respondent approximately twenty times, but that respondent returned only one of his calls.

As of the date of the DEC hearing, Pascual did not know whether he still had a case against the contractor. Pascual claimed that he was unsuccessful in his attempts to hire another attorney, because no one wanted to take his case. He never requested a refund of his retainer.

For his part, respondent explained that the Savignanos were referred to him by a Spanish-speaking immigration lawyer, Michelle Alcalde, who had an office in the same building as respondent. Alcalde had initially met with the Savignanos. During the early stages of the matter, she had conducted the "day-to-

day" contact with them because they could confer in Spanish. Respondent would compensate Alcalde for her time. After Alcalde moved from the building, respondent had difficulty communicating with the Savignanos because of the language barrier.

As to respondent's handling of the matter, he claimed that, initially, he had to look into which work permits had been obtained. Afterwards, he hired a construction expert to examine the work that had been performed and to prepare a report. Respondent blamed the Savignanos for the difficulty he encountered obtaining the documentation required for his proofs. He contended that he had drafted a complaint, but could not finalize it because the Savignanos provided him with the wrong documentation. He was able to produce only one letter, purportedly sent to the Savignanos on February 9, 2005. That letter stated that he had not yet received the list of items he had requested the prior week and requested the information as soon as possible. The letter was not a signed copy.

According to respondent, he tried to file a complaint on the Savignanos' behalf, but the court returned it because he had not filed a case information statement. He later prepared the case information statement and re-filed the complaint. He admitted that he could have been more aggressive in the pursuit of the Savignanos' matter but explained that, at that time, he

believed that the better approach was to wait until he had all of the necessary proofs before filing the complaint.

Respondent did not file the complaint until November 20, 2006, after he received the presenter's October 30, 2006 letter requesting a reply to the Savignano's grievance.

Respondent conceded that, in retrospect, it might have been better to have filed the complaint without the proofs or to have suggested to the Savignanos to retain a Spanish-speaking attorney.

Respondent testified that after he received the letters from the presenter, he had no further communications with the Savignanos because of the adversarial nature of the grievance. At the DEC hearing, respondent offered to take whatever measures were necessary to complete the Savignanos' matter. Respondent added that he never sent them a bill.

Respondent denied that he had not adequately communicated with the Savignanos. He explained that, on Pascual's days off from work, Pascual would stop in to his office without an appointment. On occasion, respondent would be in the office. However, many times he was in court, at other places, or had appointments scheduled with other clients and could not stop to talk to Pascual. Respondent stated that, although he did not return all of the Savignanos' calls, he had sufficient contact with them.

In mitigation, respondent offered that, during the relevant time period, he was suffering from a herniated disc in his neck, which required him to take medication and a series of injections, and to attend visits with a specialist. As of the DEC hearing, he was still being treated for pain, had trouble with mobility in his arm, and was undergoing physical therapy. According to respondent, these medical problems "caused [him] to lose a lot of time in the office during 2006."

Respondent explained that he did not inform the presenter about his difficulties in supplying the requested documentation in the matter because he was preoccupied with other things. He received the presenter's letter in November 2006, during the period when the building in which he practiced law was sold. He was moving his practice at that time, as well as going through his personal medical problems. Physically, he was unable to work his usual number of hours. The combination of events at that point in time made it difficult for him to communicate with the presenter "accurately as to what had transpired." He relocated his office in January 2007, a process which had begun in October 2006. It took him a number of months to move thirty-three years of accumulated files and equipment and to hook up the computers and phone system.

The DEC determined that respondent never made himself available to the Savignanos on the multiple occasions when they came to his office to discuss their case, and that he was not responsive to their "repeated" telephone requests for information about the status of their case, thereby violating RPC 1.4(b).

The DEC further found that respondent did very little for the Savignanos until November 2006, when he filed a complaint and, even so, only after the Savignanos had filed an ethics grievance against him. The DEC concluded that respondent's conduct violated RPC 1.1, presumably (a) and RPC 1.3.

In recommending discipline, the DEC considered only respondent's prior admonition as an aggravating factor.

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

Although the Savignanos' testimony was somewhat difficult to understand, the record amply demonstrates that they had problems contacting respondent about their case. From the time that they retained respondent, in June 2004, until they filed a grievance against him, they repeatedly attempted to reach respondent or to meet with him at his office, for the most part to no avail. As of the date of the DEC hearing, neither Eloina



nor Pascual knew the status of their lawsuit. We find, thus, that respondent violated (RPC 1.4(b)).

Respondent was also charged with gross neglect and lack of diligence. Because he failed to comply with the presenter's requests for information about the grievance, he was precluded from entering into evidence the inspection report that he had obtained on the Savignanos' behalf. It appears that respondent did little else to advance his clients' interests. In fact, it was not until after the presenter requested a reply to the Savignanos' grievance, on October 30, 2006, that respondent ultimately filed a complaint (November 20, 2006), almost two and one-half years after he had been retained. In this context, respondent exhibited lack of diligence and gross neglect, violations of RPC 1.3 and RPC 1.1(a). The Savignanos' inability to find another attorney to represent them is certainly an aggravating factor in this matter.

The only issue remaining is the suitable discipline for respondent's ethics violations. Ordinarily, conduct similar to respondent's results in either an admonition or a reprimand, depending on the number of client matters involved, the gravity of the offenses, the harm to the clients, and the attorney's disciplinary history. See, e.g., In the Matter of Anthony R. Atwell, DRB 05-023 (February 22, 2005) (admonition for attorney

who did not disclose to the client that the file had been lost, canceled several appointments with the client for allegedly being unavailable or in court when, in fact, the reason for the cancellations was his inability to find the file, and then took more than two years to attempt to reconstruct the lost file); In the Matter of Ben Zander, DRB 04-133 (May 24, 2004) (admonition for attorney whose inaction caused a trademark application to be deemed abandoned on two occasions; the attorney also 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 Vincenza Leonelli-Spina, DRB 02-433 (February 14, 2003) (admonition for gross neglect, lack of diligence, and failure to communicate with the client); In the Matter of Jeri L. Sayer, DRB 99-238 (January 11, 2001) (admonition for attorney who displayed gross neglect, lack of diligence, and failure to communicate with the client; a workers' compensation claim was dismissed twice because of the attorney's failure to appear in court; thereafter, the attorney filed an appeal, which was dismissed for her failure to timely file a brief); In the Matter of Jonathan H. Lesnik, DRB 02-120 (May 22, 2000) (admonition for failure to file an answer in a divorce matter, resulting in a final judgment of default against the client; the attorney also failed to keep the client informed about the status of the case); In the Matter of Paul

Paskey, DRB 98-244 (October 23, 1998) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client); In the Matter of Ben Payton, DRB 97-247 (October 27, 1997) (admonition for attorney found guilty of gross neglect, lack of diligence, and failure to communicate with the client; the attorney filed a complaint four days after the expiration of the statute of limitations, and then allowed it to be dismissed for lack of prosecution; the attorney never informed the client of the dismissal; the attorney also failed to reply to the client's numerous requests for information about the case); 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 the client in violation of the final judgment of divorce; the attorney also failed to return the file to either the client or new counsel; prior admonition); In re Aranguren, 172 N.J. 236 (2002) (reprimand for attorney who failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; prior admonition and six-month suspension); In re Zeitler, 165 N.J. 503 (2000) (reprimand for attorney guilty of lack of diligence and failure to communicate with clients;

extensive ethics history); 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); and In re Wildstein, 138 N.J. 48 (1994) (reprimand for misconduct in three matters, including gross neglect, lack of diligence, and failure to communicate with clients).

In addition to the above violations, we find that a pattern of a failure to cooperate with ethics authorities has emerged in respondent's recent ethics cases. In DRB 07-178, respondent failed to turn over his trust account records, thereby prompting us to remand the matter to the Office of Attorney Ethics (OAE) for an audit of his trust account records to determine whether trust funds in that matter remained in tact. Similarly, in DRB 07-339, also considered at our February 21, 2008 hearing, we remanded the matter to the OAE because of respondent's failure to turn over his trust account records to the DEC investigator for an audit of his trust account funds.

Here, again, respondent did not reply to the investigator's requests for information or provide requested discovery, thereby making it difficult for the disciplinary system to fully and properly adjudicate the relevant issues. We find this to be a significant aggravating factor.

In this matter, respondent's clients were handicapped by a language barrier. Instead of guiding them through their legal difficulties, respondent strung them along for two and one-half years, without pursuing any action on their behalf until faced with yet another ethics investigation.

Based on the foregoing aggravating circumstances, we believe that a reprimand is insufficient discipline and determine to impose a censure.

Members Lolla, Neuwirth, and 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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

In the Matter of Anthony J. Giampapa  
Docket No. DRB 07-413

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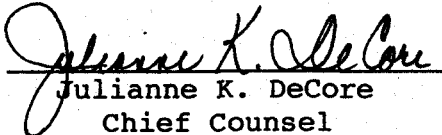
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Argued: February 21, 2008

Decided: April 17, 2008

Disposition: Censure

Members	Disbar	Suspension	Censure	Reprimand	Admonition	Did not participate
O'Shaughnessy			X			
Pashman			X			
Baugh						X
Boylan			X			
Frost			X			
Lolla						X
Neuwirth						X
Stanton			X			
Wissinger			X			
Total:			6			3

  
Julianne K. DeCore  
Chief Counsel