

SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket Nos. DRB 08-155, 08-156,
08-159, 08-167, 08-244, 08-245,
08-246, and 08-247

District Docket Nos. VII-07-26E,
VII-07-27E, VII-07-29E,
VII-07-30E, VII-07-31E,
VII-07-32E, VII-07-40E and
XIV-07-231E

IN THE MATTER OF
RUSSELL T. KIVLER
AN ATTORNEY AT LAW

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Decision

Decided: October 21, 2008

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

These eight matters came before us on certifications of
default filed by the District VII Ethics Committee (DEC) (seven

cases) and the Office of Attorney Ethics (OAE) (one case), pursuant to R. 1:20-4(f).

Generally, the seven DEC matters arise out of the same fact pattern, that is, respondent's agreement to represent clients, his receipt of retainers from them, his subsequent failure to do any work for his clients, his failure to communicate with them, his refusal to refund their retainers, and his failure to cooperate with disciplinary authorities by not replying to the grievances and not participating in the investigations. The single OAE matter is based on respondent's failure to comply with R. 1:20-20, after he was suspended for three months, on January 10, 2007.

In light of respondent's repeated refusal to conform his conduct to the standards governing New Jersey attorneys and to cooperate with disciplinary authorities and participate in the disciplinary process, we recommend that he be disbarred.

Respondent was admitted to the New Jersey bar in 1973. From September 30 to October 7, 2002, and from September 26 to October 4, 2005, he was on the Supreme Court's list of ineligible attorneys for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF).

Respondent has been suspended from the practice of law since January 10, 2007. He has an extensive disciplinary history.

On May 3, 2005, respondent was reprimanded for gross neglect, pattern of neglect, lack of diligence, failure to communicate with the client, failure to explain the matter to the extent reasonably necessary for the client to make an informed decision about the representation, failure to expedite litigation in three client matters, and failure to supervise a junior attorney. The Court order also directed him to provide proof of fitness to practice law, as attested to by a mental health professional approved by the OAE, and to complete a course in law office management. In re Kivler, 183 N.J. 220 (2005).

On October 13, 2006, the Court temporarily suspended respondent from the practice of law because, contrary to the terms of the May 2005 order, he failed to provide proof of fitness to practice law. In re Kivler, 188 N.J. 342 (2006). He was reinstated on November 2, 2006. In re Kivler, 188 N.J. 477 (2006).

On December 7, 2006, in a default matter, respondent received a Supreme Court reprimand, based on his violations of

RPC 1.16(d) (upon termination of representation, failure to refund unearned retainer) and RPC 8.1(b) (knowing failure to respond to a lawful demand for information from a disciplinary authority).

On January 10, 2007, in another default matter, respondent was suspended for three months for gross neglect, lack of diligence, failure to communicate with the client, failure to refund the client's retainer after termination of the representation, and failure to cooperate with disciplinary authorities. Respondent was ordered to return the client's retainer within sixty days of the Court's order. In re Kivler, 189 N.J. 192 (2007). Respondent did not seek reinstatement upon the expiration of the suspension.

The most recent imposition of discipline on respondent, in yet another default matter, occurred on January 18, 2008, when the Court suspended him for three years for gross neglect, pattern of neglect, failure to communicate with the client, deceit and misrepresentation, failure to cooperate with disciplinary authorities, and failure to appear before the Court on its order to show cause. In re Kivler, 193 N.J. 332 (2008).

Respondent, thus, is now before us with a history of four disciplinary proceedings, three of which were defaults. When

those matters are considered together, they show that respondent grossly neglected and failed to communicate with clients in six matters; lacked diligence in three matters; engaged in a pattern of neglect in four client matters; failed to return a retainer in two matters; and failed to cooperate with disciplinary authorities in three of the four disciplinary matters. To this history respondent now adds eight disciplinary actions, all proceeding on a default basis.

Although these eight matters were not consolidated below, we have considered them together for the purpose of discipline because (with the exception of one case) the conduct in each matter took place within the same time frame.

THE LIN GAO MATTER (District Docket No. VII-07-27E)

Service of process was proper. On January 4, 2008, the DEC secretary sent a copy of the formal ethics complaint to respondent's home address, 118 Castleton Road, Delran, New Jersey 08075, via regular and certified mail, return receipt requested. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

On February 21, 2008, the DEC secretary sent a letter to respondent at the same address, via regular and certified mail,

return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

As of April 7, 2008, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The first count of the complaint alleged that, on October 3, 2006, Lin Gao retained respondent to represent her in a collection action filed against her by her landlord. She paid respondent a \$5000 retainer.

On October 10, 2006, respondent was temporarily suspended from the practice of law. He did not notify Gao of the suspension.

Gao called respondent on multiple occasions, but could not reach him. Respondent did not return her calls and did nothing to advance her interests in the collection action.

According to the complaint, respondent's conduct constituted gross neglect (RPC 1.1(a)), a pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), and failure to

communicate with the client (RPC 1.4, presumably (b)). In addition, the complaint charged that respondent's failure to notify Gao of his suspension constituted a violation of R. 1:20-20(b)(10).

The second count of the complaint charged respondent with having violated RPC 8.1(b) (failure to cooperate with disciplinary authorities), based on his failure to reply to the DEC secretary's and the DEC investigator's requests for information about the grievance.

THE JULIO A. AVILES MATTER (District Docket No. VII-07-29E)

Service of process was proper. On January 8, 2008, the DEC secretary sent a copy of the formal ethics complaint to respondent's home address, 118 Castleton Road, Delran, New Jersey 08075, via regular and certified mail, return receipt requested. The certified mail receipt was returned with an illegible signature. The letter sent via regular mail was not returned.

On February 22, 2008, the DEC secretary sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he

failed to do so, the record would be certified directly to us for the imposition of sanction. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

As of April 7, 2008, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The first count of the complaint alleged that, in June 2005, Julio A. Aviles retained respondent to represent him in an employment action before the Office of Administrative Law (OAL). He paid respondent a \$500 retainer.

On October 10, 2006, respondent was temporarily suspended from the practice of law. He did not notify Aviles of the suspension.

On unidentified dates, two hearings were scheduled to take place before the OAE. Respondent failed to appear at either hearing. Aviles retained new counsel, but respondent failed to forward Aviles' records to the new attorney.

According to the complaint, respondent's actions constituted gross neglect (RPC 1.1(a)), a pattern of neglect (RPC 1.1(b)), and lack of diligence (RPC 1.3). In addition, the

complaint charged that respondent's failure to notify Aviles of his suspension constituted a violation of R. 1:20-20(b)(10).

The second count of the complaint charged respondent with having violated RPC 8.1(b), based on his failure to reply to the DEC secretary's and the DEC investigator's requests for information about the grievance.

THE ELIZABETH ALFANO MATTER (District Docket No. VII-07-26E)

Service of process was proper. On January 4, 2008, the DEC secretary sent a copy of the formal ethics complaint to respondent's home address, 118 Castleton Road, Delran, New Jersey 08075, via regular and certified mail, return receipt requested. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

On February 20, 2008, the DEC secretary sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

As of April 7, 2008, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The first count of the complaint alleged that, in 2001, Elizabeth Alfano retained respondent to represent her in a workers' compensation matter. A hearing was scheduled for January 2, 2003. Respondent failed to appear at the hearing.

Thereafter, he sent Alfano a letter, referring her to another attorney. However, respondent failed to forward Alfano's file to the new attorney.

The complaint alleged that Alfano called respondent on multiple occasions but could not reach him. Respondent did not reply to her calls and did nothing to represent her in connection with her workers' compensation claim.

According to the complaint, respondent's actions constituted gross neglect (RPC 1.1(a)), a pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), and failure to communicate with the client (RPC 1.4, presumably (b)). In addition, the complaint charged that respondent's failure to forward Alfano's file to new counsel constituted a failure to surrender papers and property to which the client is entitled, a violation of RPC 1.16(d).

The second count of the complaint charged respondent with having violated RPC 8.1(b), based on his failure to comply with the DEC secretary's and the DEC investigator's requests for information about the grievance.

THE MICHAEL FRASCELLA/ANTHONY RERES MATTER (District Docket No. VII-07-30E)

Service of process was proper. On February 22, 2008, the DEC secretary sent a copy of the formal ethics complaint to respondent's home address, 118 Castleton Road, Delran, New Jersey 08075, via regular and certified mail, return receipt requested. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

On April 7, 2008, the DEC secretary sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

As of June 9, 2008, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The first count of the complaint alleged that, on October 6, 2006, Michael Frascella and Anthony Reres retained respondent to represent them in a collection action. Frascella paid respondent a \$1000 retainer.

Respondent failed to perform any services on his clients' behalf and failed to communicate with them. Accordingly, Frascella filed a fee arbitration request, seeking the return of the \$1000 retainer. Respondent did not attend the arbitration hearing. Although the fee arbitration panel ordered respondent to refund the \$1000 to Frascella, respondent did not do so.

In addition, respondent "failed to respond to disciplinary authorities, including the Committee's Secretary, and th[e] investigator's efforts to contact Respondent in writing."

According to the complaint, respondent's "failure to take any action whatsoever with regard to the matter entrusted to him" constituted gross neglect (RPC 1.1(a)), a pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), and failure to communicate with the client (RPC 1.4(b)). In addition, the complaint charged that respondent's failure to perform any

services on behalf of his clients constituted a violation of RPC 1.2(a), inasmuch as he "failed to take action 'impliedly authorized to carry out the representation.'"

The complaint also charged respondent with having violated RPC 3.4(c), based on his failure to pay the fee arbitration award. According to the complaint, respondent "ignored his professional legal obligations by not participating in the fee arbitration, and his responsibility to pay the required award."

Finally, respondent was charged with a violation of RPC 8.1(b), based on his repeated failure to participate in disciplinary proceedings against him.

THE SHARISKE D. LEESON MATTER (District Docket No. VII-07-31E)

Service of process was proper. On February 22, 2008, the DEC secretary sent a copy of the formal ethics complaint to respondent's home address, 118 Castleton Road, Delran, New Jersey 08075, via regular and certified mail, return receipt requested. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

On April 7, 2008, the DEC secretary sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to

file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

As of June 9, 2008, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The first count of the complaint alleged that, on August 22, 2006, Shariske D. Leeson retained respondent to represent her in a domestic violence action. Leeson paid respondent a \$1750 retainer.

Respondent failed to perform any services on Leeson's behalf and failed to communicate with her. Accordingly, Leeson filed a fee arbitration request, seeking the return of her \$1750 retainer. Respondent did not attend the arbitration hearing. The panel ordered the refund of the \$1750 to the client, but respondent failed to do so.

In addition, respondent "failed to respond to disciplinary authorities, including the Committee's Secretary, and th[e] investigator's efforts to contact Respondent in writing."

According to the complaint, respondent's "failure to take any action whatsoever with regard to the matter entrusted to him" constituted gross neglect (RPC 1.1(a)), a pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), and failure to communicate with the client (RPC 1.4(b)). In addition, the complaint charged, respondent's failure to perform any services on behalf of his client constituted a violation of RPC 1.2(a), inasmuch as he "failed to take action 'impliedly authorized to carry out the representation.'"

The complaint also charged respondent with having violated RPC 3.4(c), based on his failure to pay the fee arbitration award. According to the complaint, respondent "ignored his professional legal obligations by not participating in the fee arbitration, and his responsibility to pay the required award."

Finally, respondent was charged with a violation of RPC 8.1(b), based on his repeated failure to participate in disciplinary proceedings against him.

THE CLIFFORD T. CICOGNA MATTER (District Docket No. VII-07-32E)

Service of process was proper. On February 27, 2008, the DEC secretary sent a copy of the formal ethics complaint to respondent's home address, 118 Castleton Road, Delran, New

Jersey 08075, via regular and certified mail, return receipt requested. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

On April 7, 2008, the DEC secretary sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

As of June 9, 2008, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The first count of the complaint alleged that, in September 2005, Clifford T. Cicogna retained respondent to represent him and a company called Thomas A. Caserta, Inc. (the company) in several litigation matters. Cicogna paid respondent a \$5000 retainer.

Respondent failed to perform any services on Cicogna's behalf and failed to communicate with him. Accordingly, Cicogna filed a fee arbitration request, seeking the return of his \$5000

retainer. Respondent did not attend the arbitration hearing. The panel awarded Cicogna \$5000, but respondent did not pay the award.

In addition, respondent "failed to respond to disciplinary authorities, including this Committee's Secretary, and th[e] investigator's efforts to contact Respondent in writing."

According to the complaint, respondent's "failure to take any action whatsoever with regard to the matter entrusted to him" constituted gross neglect (RPC 1.1(a)), a pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), and failure to communicate with the client (RPC 1.4(b)). In addition, the complaint charged that respondent's failure to perform any services or take any action on behalf of these clients constituted a violation of RPC 1.2(a), inasmuch as he "failed to take action 'impliedly authorized to carry out the representation.'"

The complaint also charged respondent with having violated RPC 3.4(c), based on his failure to comply with the fee arbitration determination. According to the complaint, respondent "ignored his professional legal obligations by not participating in the fee arbitration, and his responsibility to pay the required award."

Finally, respondent was charged with a violation of RPC 8.1(b), based on his repeated failure to participate in disciplinary proceedings against him.

THE ROBERT L. TOTH, JR. MATTER (District Docket No. VII-07-40E)

Service of process was proper. On February 22, 2008, the DEC secretary sent a copy of the formal ethics complaint to respondent's home address, 118 Castleton Road, Delran, New Jersey 08075, via regular and certified mail, return receipt requested. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

On April 7, 2008, the DEC secretary sent a letter to respondent at the same address, via regular and certified mail, return receipt requested. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

As of June 9, 2008, respondent had not filed an answer to the complaint. Accordingly, on that date, the DEC certified this matter to us as a default.

The first count of the complaint alleged that, in August 2006, Robert L. Toth, Jr. retained respondent to "recover certain money Toth claimed was owed him arising out of a business transaction in Mercer County New Jersey." Toth paid respondent a \$1000 retainer.

Respondent failed to perform any services on Toth's behalf and failed to communicate with him. Respondent also either lost or refused to return Toth's documents to him. Accordingly, Toth filed a fee arbitration request, seeking the return of the \$1000 retainer. Once again, respondent did not attend the arbitration hearing. Although the panel directed the refund of the \$1000, respondent failed to do so.

In addition, respondent "failed to respond to disciplinary authorities, including this Committee's Secretary, and this investigator's efforts to contact Respondent in writing."

According to the complaint, respondent's "failure to take any action whatsoever with regard to the matter entrusted to him" constituted gross neglect (RPC 1.1(a)), a pattern of neglect (RPC 1.1(b)), lack of diligence (RPC 1.3), and failure to communicate with the client (RPC 1.4(b)). In addition, the complaint charged that respondent's failure to perform any services or take any action on behalf of Toth constituted a

violation of RPC 1.2(a), inasmuch as he "failed to take action 'impliedly authorized to carry out the representation.'"

The complaint also charged respondent with having violated RPC 1.15(a), based on his failure to return Toth's records to him. According to the complaint, respondent's negligence in either losing or failing to return the documents to his client "has had an adverse impact on the very matter entrusted to the Respondent and Toth personally."

Finally, respondent was charged with a violation of RPC 8.1(b), based on his repeated failure to participate in disciplinary proceedings against him.

THE FAILURE TO COMPLY WITH R. 1:20-20 (District Docket No. XIV-07-231E)

Service of process was proper. On January 29, 2008, OAE Deputy Ethics Counsel Janice L. Richter sent a copy of the formal ethics complaint to respondent's home address, 118 Castleton Road, Delran, New Jersey 08075, via regular and certified mail, return receipt requested. The certified letter was returned as unclaimed. The letter sent via regular mail was not returned.

Also, on January 29, 2008, Richter transmitted the complaint, via regular and certified mail, to respondent's office addresses: 1669 Route 33, Hamilton Square, New Jersey 08690, and 2400 Whitehorse Mercerville Road, Mercerville, New Jersey, 08619. The certified letters to both addresses were returned, marked "not deliverable as addressed." The letters sent regular mail were returned, marked respectively as "forward time exp rtn to send" and "moved left no address unable to forward return to sender."

On February 25, 2008, Richter sent a letter to respondent at his home address, via regular and UPS overnight delivery. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. Respondent accepted the UPS delivery on February 26, 2008. The letter sent via regular mail was not returned.

As of May 1, 2008, respondent had not filed an answer to the complaint. Accordingly, on that date, the OAE certified this matter to us as a default.

On January 10, 2007, the Court entered an order imposing a three-month suspension on respondent, effective February 5, 2007. Upon the expiration of the three months, respondent did

not seek reinstatement. In addition, on January 18, 2008, the Court suspended respondent for three years.

The Court's January 10, 2007 order directed respondent to comply with R. 1:20-20, which, among other things, required him, within thirty days of the Court's order, to file with the Director of the OAE "the original of a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of [R. 1:20-20] and the Supreme Court's order." Respondent failed to comply with this requirement.

On August 14, 2007, the OAE wrote to respondent, advising him of his responsibility to file the R. 1:20-20 affidavit and requesting a response by August 30, 2007. The letter was sent to respondent's Delran, Mercerville, and Hamilton Square addresses, via regular and certified mail. All of the certified letters were returned as unclaimed. The letters sent via regular mail were not returned. Respondent neither replied to the OAE's letter nor filed the required affidavit.

On August 16, 2007, an OAE representative went to respondent's home in Delran. Respondent was not home. At the time, the representative saw, on respondent's doorstep, mail that was addressed to him. The representative left on the

doorstep an envelope addressed to respondent. The envelope contained a copy of the temporary suspension order and R. 1:20-20, as well as OAE contact information.

On the same date, an OAE representative went to respondent's office addresses in Hamilton Square and Mercerville. Respondent no longer maintained an office at the Hamilton Square location. However, although respondent was not present at the Mercerville office and his office door was locked, the OAE representative found on the premises two signs identifying respondent's law office.

On January 8, 2008, an OAE representative visited the Mercerville address again. This time, the office appeared to be vacant and the signs had been removed. However, as of January 25, 2008 (the date of the complaint), respondent still had neither contacted the OAE nor filed the R. 1:20-20 affidavit.

The complaint alleged that respondent has "willfully violated the Supreme Court's order and has failed to take the steps required of all suspended or disbarred attorneys, including notifying clients and adversaries of the suspension and providing pending clients with their files." The complaint charged respondent with having violated RPC 8.1(a) and (failure

to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice).

Following a review of the record in each of the eight matters before us, we find that the facts recited in all of the complaints support the charges of unethical conduct. Respondent's failure to file an answer in each matter is deemed an admission that the allegations of the eight complaints are true and that they provide a sufficient basis for the imposition of discipline. R. 1:20-4(f)(1).

For ease of reference, all cases will be analyzed together, according to the RPCs charged.

RPC 1.1(a), RPC 1.1(b), and RPC 1.3

RPC 1.1(a) prohibits an attorney from handling a matter in such a way that his or her conduct constitutes gross negligence. RPC 1.3 requires an attorney to act with reasonable diligence and promptness in representing a client. Respondent grossly neglected and lacked diligence in his handling of all seven client matters. He did nothing to represent Gao, Frascella/Reres, and Toth in their collection matters; he failed to attend two OAL hearings on behalf of Aviles; he failed to attend a workers' compensation hearing on behalf of Alfano; he

did nothing to represent Leeson in the domestic violence action; and he did nothing to represent Cicogna and his company in the several litigation matters.

RPC 1.1(b) prohibits an attorney from exhibiting a pattern of neglect in the handling of legal matters generally. A pattern of neglect requires at least three acts of negligence. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). In this case, respondent's neglect in these seven client matters establishes an overwhelming pattern of neglect on his part.

RPC 1.4(b)

RPC 1.4(b) requires a lawyer to keep a client reasonably informed about the status of a matter and to promptly comply with reasonable requests for information. Respondent violated this rule in six client matters by virtue of his failure to communicate with his clients.

RPC 8.1(b)

RPC 8.1(b), among other things, addresses an attorney's failure to respond to a lawful demand for information from a disciplinary authority. Respondent violated this rule in all

seven client matters. He also violated the rule in the OAE matter.

In the client matters, respondent failed to comply with the DEC's requests for information about the grievance, including telephone calls and letters. In the OAE matter, his failure to comply with R. 1:20-20 is a per se violation of RPC 8.1(b). R. 1:20-20(c).

RPC 1.2(a)

Respondent was charged with having violated RPC 1.2(a) in the Frascella/Reres, Leeson, Cicogna, and Toth matters. The charges arose out of respondent's failure to "take action 'impliedly authorized to carry out the representation.'" We dismiss the RPC 1.2(a) charge in each of these matters.

RPC 1.2(a) pertains to the scope of a lawyer's representation of the client. In particular, the rule states: "A lawyer may take such action on behalf of the client as is impliedly authorized to carry out the representation." This rule does not apply to a situation where a lawyer is retained by a client and then fails to do anything to carry out that representation – a scenario better suited for charges of gross neglect and lack of diligence. Rather, RPC 1.2(a) is intended

to give the lawyer "some discretion in selecting the means of achieving the client's objectives." Kevin H. Michels, New Jersey Attorney Ethics: The Law of New Jersey Lawyering 14:3-1(b) (2008) at 277. RPC 1.2(a) is, therefore, inapplicable to the facts of these matters.

RPC 3.4(c)

Respondent was charged with having violated RPC 3.4(c) in the Frascella/Reres, Leeson, and Cicogna matters. The charges stemmed from respondent's failure to comply with the fee arbitration awards entered against him.

The Court has found that an attorney who fails to abide by a fee arbitration award violates RPC 3.4(c) and RPC 8.4(d) (conduct prejudicial to the administration of justice). In re Harris, 182 N.J. 594, 603-05 (2005). In this case, respondent can only be found to have violated RPC 3.4(c), inasmuch as he was not charged with a violation of RPC 8.4(d) for those infractions. R. 1:20-4(b).

RPC 1.15(a) and 1.16(d)

Upon termination of a representation, RPC 1.16(d) requires the attorney to surrender papers and property to which the

client is entitled. By failing to forward Alvano's file to her new attorney, respondent violated this rule.

In the Toth matter, respondent either lost or refused to return Toth's documents to him. Respondent was not charged with a violation of RPC 1.16(d). Rather, he was charged with RPC 1.15(a). We dismiss this charge, however. Among other things, RPC 1.15(a) requires an attorney to safeguard the property of clients and third persons, which is in the possession of the attorney. RPC 1.15(a) does not apply to client documents. Instead, RPC 1.16(d) covers this scenario. Inasmuch as respondent was not charged with having violated this rule, however, R. 1:20-4(b) precludes us from finding that respondent acted contrary to its requirement.

R. 1:20-20

R. 1:20-20(b)(15) requires a suspended attorney, within thirty days of the order of suspension, to provide to the OAE Director "a detailed affidavit specifying by correlatively numbered paragraphs how the disciplined attorney has complied with each of the provisions of this rule and the Supreme Court's order." R. 1:20-20(c) states that the failure to file the

affidavit of compliance constitutes a violation of RPC 8.1(b) and RPC 8.4(d).

R. 1:20-20(b)(4) prohibits a suspended attorney from using a sign that suggests the attorney "has, owns, conducts, or maintains a law office or office of any kind for the practice of law, or that the attorney is entitled to practice law." R. 1:20-20(b)(11) requires all suspended attorneys to notify each client of their suspension and, upon the client's retention of a new attorney, "promptly deliver the file and any other paper or property of the client to the new attorney."

Respondent violated RPC 8.1(b) and RPC 8.4(d) by virtue of his failure to promptly remove his signs from the Mercerville office, and, in general, by his failure to comply with the requirements of R. 1:20-20, including the filing of an affidavit with the OAE Director. R. 1:20-20(c).

In sum, respondent violated RPC 1.1(a), RPC 1.1(b), and RPC 1.3, in the Gao, Aviles, Alfano, Frascella/Reres, Leeson, Cicogna, and Toth matters, and RPC 1.4(b) in all but the Aviles matter. He failed to cooperate with disciplinary authorities (RPC 8.1(b)) in all seven client matters and, in addition, violated that RPC by failing to comply with the requirements of R. 1:20-20, also a violation of RPC 8.4(d). Respondent also

violated RPC 1.16(d) in the Alfano matter and RPC 3.4(c) in the Frascella/Reres, Leeson, and Cicogna matters.

In addition, we note that Leeson, Frascella/Reres, Toth, and Cicogna filed claims with the CPF, seeking reimbursement for the full amount of their retainers. All of their claims were paid in full.

After careful consideration of the records in these eight default matters, we conclude that disbarment is required. Since at least 2005, respondent has repeatedly agreed to represent clients, repeatedly taken their money, repeatedly failed to undertake any work on their behalf, repeatedly refused to refund their retainers, repeatedly refused to comply with the awards of fee arbitration panels, and repeatedly refused to cooperate with the DEC and the OAE, including his refusal to file answers to the multiple ethics complaints filed against him. Given respondent's extensive ethics history, his failure to appear before the Supreme Court on its order to show cause on November 27, 2007, and these eight subsequent defaults, it is readily apparent that he has no regard whatsoever for his obligations to the various arms of the attorney disciplinary system. It is also readily apparent that he has abandoned his clients.

In In re Kivler, supra, 193 N.J. at 342-43, the Court observed that respondent's failure to react to inquiries from disciplinary authorities, his refusal to comply with a restitution order of the Court, and his failure to appear on the Court's order to show cause "demonstrated a significant lack of regard for the disciplinary process in general and for [the] Court in particular." Thus, the Court concluded, respondent's misconduct called for "a significant increase in the sanction" that ordinarily would have been imposed for his misconduct. Id. at 343. Accordingly, he was suspended for three years, which is the maximum fixed term of suspension provided by the Court Rules. R. 1:20-15A(a)(3).¹

At the time the Court entered its three-year-suspension order, it observed that respondent was not yet in the position of not having learned from prior mistakes, as his individual acts of misconduct had occurred within the same time frame. In re Kivler, supra, 193 N.J. at 342. The Court continued:

We do not, therefore, encounter a record of longstanding ethical lapses nor a

¹ An indeterminate suspension prohibits an attorney from seeking reinstatement for a minimum of five years.

record on which one can fairly conclude that respondent has refused to alter his behavior for the better in light of the earlier imposition of discipline. In those circumstances, one might easily conclude that the Kantor doctrine would call for disbarment both because of the risk to the public of continued unrepentant behavior and because of the clear demonstration of unfitness that such a record would bespeak. See 180 N.J. at 323-33, 850 A.2d 473. Respondent's record does not include evidence of such severity.

[Id. at 342-43.]

Unquestionably, respondent's record now includes the evidence of severity that saved him from disbarment in January 2008. He was reprimanded, in May 2005, for gross neglect, lack of diligence, and failure to communicate with the client. Yet, having been disciplined for these ethics offenses in 2005, he proceeded to undertake the representations of Aviles (June 2005), Cicogna (September 2005), and the other clients, except for Alfano (2006), and to repeat his unethical acts. Undeniably, it can now be said that he has not learned from his prior mistakes.

Moreover, respondent's contempt for the disciplinary system went unabated after the Court's January 18, 2008 decision. In early January 2008, he was served with ethics complaints in the Gao, Aviles, and Alfano matters. On January 29, 2008, the OAE

served him with the complaint for his failure to comply with R. 1:20-20. The month following the imposition of the three-year suspension (February 2008), respondent failed to answer the ethics complaints in Frascella/Reres, Leeson, Cicogna, and Toth, and still had not answered the complaints served on him in January. He continued to ignore the DEC and the OAE, forcing all of these records to be certified to us. To this day, respondent continues to ignore the disciplinary system.

In short, respondent was unmoved by the effect of his disrespect toward the Court by failing to appear on its order to show cause, in November 2007. He continues to ignore the system at all levels – the DEC, the fee arbitration committee, the OAE, and this Board. His "significant lack of regard for the disciplinary process in general," id. at 343, increases exponentially, as more and more grievances are filed against him, all of which are met with silence.

Thus, we now conclude that "the Kantor doctrine [calls] for disbarment both because of the risk to the public of continued unrepentant behavior and because of the clear demonstration of unfitness that such a record [bespeaks]." Ibid.

In In re Kantor, 180 N.J. 226 (2004), the Supreme Court disbarred an attorney who had a disciplinary record, abandoned

his clients without warning, failed to answer the ethics complaint, failed to explain his misconduct to us, and failed to appear before the Court on its order to show cause. Kantor had been reprimanded, in 2000, for making a false statement of material fact or law to a tribunal, offering evidence that he knew to be false, and engaging in conduct involving dishonesty, fraud, deceit, or misrepresentation. Id. at 228.

Three years later, Kantor received a three-month suspension for gross neglect, lack of diligence, failure to communicate with his client, failure to communicate the basis or rate of his fee to the client, in writing, and failure to cooperate with disciplinary authorities in one client matter. He also failed to answer the ethics complaint. Ibid.

The formal ethics complaint alleged that Kantor had abandoned his law practice, which had ten active files, without informing his clients or arranging for the transfer of their files. Id. at 228-29. Specifically, Kantor was charged with gross neglect, pattern of neglect, lack of diligence, failure to communicate with his clients, failure to protect his clients' interests upon termination of the representation, and failure to cooperate with disciplinary authorities during the investigation. Id. at 229-30.

Kantor defaulted in the disciplinary proceeding instituted against him. We determined to impose a six-month suspension. Ibid.

The Supreme Court ordered Kantor to appear before it, on April 27, 2004, and show cause why he should not be disbarred or otherwise disciplined. Kantor did not appear. Ibid. The Court declared: "The abandonment of clients by an attorney is a grave breach of our Rules of Professional Conduct, and has warranted our most severe disciplinary sanction - disbarment - particularly when the attorney fails to cooperate with the disciplinary process and to appear in response to an Order to Show Cause issued by this Court." Id. at 230-31. In making this statement, the Court looked to In re Golden, 156 N.J. 365 (1998), where the attorney had abandoned his practice, engaged in gross neglect and lack of diligence, and failed to communicate with his clients. Id. at 231.

Golden had seven active client files at the time "on which he performed little or no work." Ibid. When Golden failed to appear before the Court on its order to show cause, he was disbarred. Ibid. The Court also cited two similar cases: In re Holman, 156 N.J. 371 (1998), and In re Clark, 134 N.J. 522 (1993). Id. at 231-32.

In disbarring Kantor, the Court observed that he had abandoned his clients without notice or the "slightest regard for their welfare." Id. at 232. The Court found that he had "shown an utter disregard for the disciplinary process as evidenced by his decision not to cooperate with the ethics investigation, to answer the complaint, to submit mitigation evidence to the DRB, or to respond to this Court's Order to Show Cause." The Court further noted that, prior to the proceeding before it, Kantor had been cited for failure to cooperate with an OAE investigation and had been disciplined. Finally, Kantor had offered no evidence "in mitigation of his dereliction or in support of his fitness to practice law." Ibid. Thus, the Court concluded, "[t]here is nothing in the record to suggest that he is salvageable as an attorney." Ibid. Kantor was disbarred. Id. at 233.

Respondent stands in the same shoes as Kantor. Although respondent was not charged with abandonment, he effectively abandoned both his practice and his clients. Kantor had seven active files; respondent had at least six. Kantor had failed to cooperate with disciplinary authorities in the past; so has respondent. He already has failed to appear on an order to show cause. The Court's imposition of the maximum fixed term of

suspension, three years, was not enough to garner his attention or respect for ethics authorities. Respondent continues to scoff at the disciplinary system and has ignored ethics complaints filed against him even after the Court's January 18, 2008 decision. Like Kantor, respondent is, in a word, unsalvageable. He is unfit to practice law and has demonstrated an overwhelming lack of interest in the profession and in his clients' well-being.

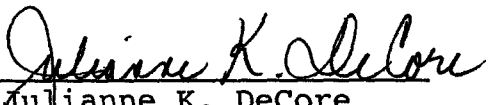
Finally, we consider the CPF's determination that the four clients who filed claims with that office were entitled to full reimbursement of their retainers. R. 1:28-3(a) provides that the trustees of the CPF "may consider for payment all claims resulting from the dishonest conduct of a member of the bar of this state." To the extent that the CPF paid the claims, it may be inferred that respondent had no intention of performing any work for these clients. He simply took their money.

In sum, we recommend that respondent be disbarred for his refusal to conform his conduct to the standards governing attorneys in New Jersey, his repeated refusal to cooperate with disciplinary authorities and participate in the disciplinary process, his abysmal indifference to his clients' welfare, and his utter contempt for all arms of the disciplinary system.

Member Matthew P. Boylan 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

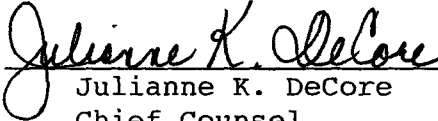
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matters of Russell T. Kivler
Docket Nos. DRB 08-155, DRB 08-156, DRB 08-159, DRB 08-167,
DRB 08-244, DRB 08-245, DRB 08-246, and DRB 08-247

Decided: October 21, 2008

Disposition: Disbar

Members	Disbar	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:	8					1


Julianne K. DeCore
Chief Counsel