

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 08-301  
District Docket No. XIV-2007-0269E

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IN THE MATTER OF :  
ANDREW J. BREKUS :  
AN ATTORNEY AT LAW :  
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Decision

Argued: January 15, 2009

Decided: May 28, 2009

Nitza I. Blasini appeared on behalf of the Office of Attorney Ethics.

Respondent did not appear for oral argument, despite proper service.

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

This matter came before us on a disciplinary stipulation between respondent and the Office of Attorney Ethics ("OAE"). Respondent stipulated that he engaged in gross neglect (RPC 1.1(a)), lack of diligence (RPC 1.3), failure to communicate with the client (RPC 1.4(b)), and failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation (RPC 1.4(c)).

The OAE recommended a three-month suspension. We determine that a censure is sufficient discipline for respondent's infractions.

Respondent was admitted to the New Jersey and the Pennsylvania bars in 1986. He was admonished in New Jersey, in 2000, for failure to advise his client about a potential malpractice claim against him, to advise her to consult with independent counsel about the claim, and to advise her that separate representation in the agreement to settle the malpractice claim was appropriate, violations of RPC 1.8(a) and RPC 1.8(h). In the Matter of Andrew J. Brekus, DRB 00-187 (September 25, 2000).

In 2006, respondent was reprimanded for failure to comply with our directive stemming from his earlier admonition. Specifically, respondent did not promptly pay the balance of an oral agreement with his client to settle a potential malpractice claim against him, did not provide to the OAE proof of that payment, and did not reply to the grievance, violations of RPC 8.4(d) and RPC 8.1(b). In re Brekus, 186 N.J. 409 (2006).

In September 2008, on a motion for reciprocal discipline, we voted to impose a one-year suspension on respondent, retroactive to the effective date of his Pennsylvania suspension, January 4, 2008, with reinstatement in New Jersey

conditioned on his reinstatement in Pennsylvania. In the Matter of Andrew J. Brekus, DRB 08-184 (December 9, 2008). The matter is pending with the Court. An order to show cause has been scheduled for June 2, 2009. There, we found respondent guilty of violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(b) (failure to keep a client reasonably informed about the status of a matter or to comply with reasonable requests for information), RPC 1.4(c) (failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions about the representation), RPC 1.5 (b) (failure to provide a client with a writing setting forth the basis or rate of the fee), RPC 1.15(a) (holding property of clients or third persons in the lawyer's possession in connection with a representation separate from the lawyer's own property - commingling), RPC 1.16(a)(1) (failure to withdraw if the representation will result in violation of the Rules of Professional Conduct), RPC 1.16(d) (failure to protect a client's interests upon termination of the representation), RPC 5.5(a) (unauthorized practice of law - practicing while ineligible), RPC 7.1(a)(1) (making false or misleading communications about the lawyer's services), RPC 8.4(c) (misrepresentations to the client), and RPC 8.4(d) (conduct prejudicial to the administration of justice - misrepresenting

that he was on active status in New Jersey on his Pennsylvania annual registration form). In addition to mishandling two client matters, respondent violated a number of the Pennsylvania Rules of Disciplinary Enforcement, including failure to notify clients and others of his transfer to inactive status.

Since September 24, 2007, respondent has been ineligible to practice law for failure to pay his annual assessment to the New Jersey Lawyers' Fund for Client Protection.

At the time, relevant to this matter, respondent maintained a law office in Turnersville, New Jersey. He represented a minor, Jatue Richardson, in connection with a March 14, 1992 automobile accident. In 1994, respondent filed a lawsuit in the Superior Court of New Jersey on behalf of Jatue, her parents (Steve and Musu), and her brother, (Joseph Bryou).

In 1996, Jatue's parents signed an undated document, releasing all of their claims in the accident. The release was forwarded to NJ ARC, Sylvia Carter, and CNA Insurance Company.

On May 13, 1997, respondent informed Steve Richardson, Jatue's father, that he had filed a lawsuit on behalf of his children "to have the settlement entered into, on their behalf, placed on the record before a Judge to have the settlement monies for your children placed into the Burlington County Surrogate's Court until they reach the age of eighteen."

By letter dated September 12, 1997, respondent requested that the Richardsons sign a new release. He informed Steve that he was in the process of scheduling a court hearing about the settlement of his children's claims. The Richardsons and their minor son, Joseph Bryou, received their portion of the settlement proceeds.

Jatue understood that she would be eligible to receive the proceeds of her settlement in 2000, when she turned eighteen.<sup>1</sup> However, she did not receive it at that time or at any time thereafter. Although Jatue tried to contact respondent, he failed to return her telephone calls and to reply to her letters.

The OAE's investigation revealed that, on February 13, 1997, respondent filed an initial complaint on Jatue's behalf. However, no escrow account was ever established on her behalf with the Burlington County Surrogate's Office. Jatue's case was dismissed for lack of prosecution. The court files relating to the matter were destroyed in August 1999.

The stipulation is silent on the economic harm, if any, that Jatue might have suffered as a result of respondent's inaction.

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<sup>1</sup> The stipulation is silent about the amount of the settlement.

In recommending a three-month suspension, retroactive to the effective date of respondent's Pennsylvania suspension for unrelated violations, the OAE considered, as mitigation, that respondent cooperated with the OAE and that he admitted his misconduct. As an aggravating factor, the OAE considered his ethics history.

Following a de novo review of the record, we are satisfied that the stipulation presents clear and convincing evidence that respondent violated RPC 1.1(a), RPC 1.3, and RPC 1.4(b), as stipulated. The stipulated facts, however, do not establish that respondent violated RPC 1.4(c).

Conduct involving gross neglect, lack of diligence, and failure to communicate with clients ordinarily results in either an admonition or a reprimand, depending on the gravity of the offenses, the harm to the clients, and the attorney's disciplinary history. See, e.g., In re Dargay, 188 N.J. 273 (2006) (admonition for attorney guilty of gross neglect, lack of diligence, and failure to communicate with the client; prior admonition for similar misconduct); 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; violations of RPC 1.4(a) and RPC 1.3 found); 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 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 recommending discipline, the OAE relied on the following cases, in which three-month suspensions were imposed: In re Raines, 176 N.J. 424 (2003) (default matter; the attorney lacked diligence, failed to communicate with the client, engaged in the unauthorized practice of law, and failed to cooperate with disciplinary authorities; prior private reprimand and six-month suspension); In re Bernstein, 144 N.J. 369 (1996) (attorney engaged in gross neglect, lack of diligence, failure to communicate with the client, misrepresentations, and failure to cooperate with disciplinary authorities; the attorney had a prior private reprimand for similar misconduct); and In re



Ortopan, 143 N.J. 586 (1996) (attorney grossly neglected a workers' compensation case, engaged in lack of diligence, failed to communicate with the client, failed to deliver the file to the new attorney, and failed to participate in the ethics proceedings against him; the attorney was temporarily suspended at the time for failure to pay a fee arbitration award).

In the instant matter, respondent began representing this client in 1994, filed a lawsuit and, at some point, obtained settlement proceeds for Jatue's brother and parents. Therefore, he did take some action in Jatue's matter. However, in 2000, Jatue should have received her portion of the settlement. She never did. Her case was dismissed because of respondent's neglect. In addition, respondent did not communicate with her.

In assessing the proper discipline to impose, we considered that the conduct in respondent's other ethics matters occurred in 1998 (admonition), 2000-2001 (reprimand), and 2003-2006 (pending one-year retroactive suspension). Therefore, the conduct in this matter occurred in-between the first two ethics matters, for which respondent has already been disciplined. Because this matter involved only one client matter, it is unlikely that, had we considered this matter with his second disciplinary case, respondent would have been suspended. Moreover, even if the cases had been heard chronologically,

respondent's ethics history would have consisted only of an admonition. Thus, when respondent's ethics infractions in this matter are considered with his prior admonition, we find that the three-month suspension recommended by the OAE is too severe. We note that attorney Aranguren received only a reprimand for similar misconduct (lack of diligence, failure to communicate, and failure to provide client with a writing setting forth the basis or rate of his fee), even though his ethics history consisted of an admonition and a six-month suspension.

Ordinarily, a reprimand would have been adequate discipline for respondent's current transgressions, coupled with his disciplinary record at the time (an admonition). However, because of the economic harm to Jatue — she never received any monies from the settlement — we find that a censure is warranted here.

Members Boylan, Baugh, Clark, and Lolla did not participate.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs and

actual expenses incurred in the prosecution of this matter, as provided in R. 1:20-17.

Disciplinary Review Board  
Louis Pashman, Chair

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

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SUPREME COURT OF NEW JERSEY  
DISCIPLINARY REVIEW BOARD  
VOTING RECORD

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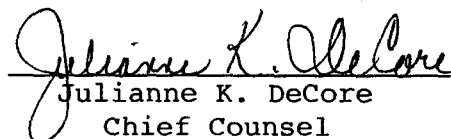
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Argued: January 15, 2009

Decided: May 28, 2009

Disposition: Censure

Members	Disbar	Suspension	Censure	Dismiss	Disqualified	Did not participate
Pashman			X			
Frost			X			
Baugh						X
Boylan						X
Clark						X
Doremus			X			
Lolla						X
Stanton			X			
Wissinger			X			
Total:			5			4

  
Julianne K. DeCore  
Chief Counsel