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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-096

IN THE MATTER OF
GERALD M. LYNCH
AN ATTORNEY AT LAW

Decision
Default [R. 1:20-4(f)]

Decided: August 14, 2007

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

This matter came before us on a certification of default
filed by the District VIII Ethics Committee (DEC), pursuant to
R. 1:20-4(f). The two-count complaint alleged that respondent
grossly neglected a family law matter, resulting in his client's
arrest for failure to pay alimony. The complaint charged
violations of RPC 1.1(a) (gross neglect), RPC 1.2 (failure to
abide by a client's decisions concerning the scope and
objectives of the representation), RPC 1.3 (lack of diligence),
RPC 1.4(b) (failure to keep the client reasonably informed about
the status of the matter), and RPC 8.1(b) (failure to cooperate
with the ethics investigation).

In addition, without any elaboration, the complaint charged a violation of RPC 5.5 (unauthorized practice of law), cited in conjunction with RPC 8.1(b). As reflected in respondent's ethics history, he was placed on the ineligible list for a second time, on September 26, 2005, for failure to pay the annual attorney assessment to the New Jersey Lawyers' Fund for Client Protection. His name was removed from the list on February 22, 2006. During that time, specifically in 2006, respondent sent two letters, on his office letterhead, to his client and to his adversary in the matter that gave rise to this disciplinary proceeding. Presumably, the charge of a violation of RPC 5.5 is intended to relate to respondent's practicing law during that period of ineligibility.

Respondent was admitted to the New Jersey bar in 1977. In 1999, he was admonished for failure to communicate with the client, failure to promptly deliver funds that the client is entitled to receive, and failure to comply with the DEC's requests for information about the grievance.

On October 8, 2003, respondent was temporarily suspended for about a month for failure to comply with a Supreme Court order directing him to cooperate fully with the OAE's investigation of a pending matter. In re Lynch, 177 N.J. 566

(2003). He was reinstated on November 12, 2003. In re Lynch, 178 N.J. 22 (2003).

In May 2005, respondent was reprimanded, in a default case, for failure to cooperate with the investigation of a matter alleging that he practiced law while ineligible. In re Lynch, 183 N.J. 260 (2005).

On December 1, 2005, we voted to impose another reprimand on respondent, this time for practicing while ineligible and failing to cooperate with the ethics investigator. When the Supreme Court reviewed our decision, it noted that respondent had been placed on the ineligible list in September 2005, and that, at oral argument before us, on October 20, 2005, respondent's counsel had explained that respondent was not present because he was trying a case in Middlesex County. On its own motion, the Court then issued an order to show cause why respondent should not be disbarred or otherwise disciplined for practicing law while ineligible. On March 20, 2006, the Supreme Court censured respondent. In re Lynch, 186 N.J. 246 (2006).

Effective February 7, 2007, in another default matter, respondent was suspended for six months for failure to maintain proper attorney books and records and failure to cooperate with the investigation of a pending disciplinary matter. In re Lynch, 189 N.J. 196 (2007).

Service of process was proper. On August 18, 2006, the DEC sent a copy of the complaint, by both certified and regular mail, to respondent's last known office address listed in the records of the New Jersey Lawyers' Fund for Client Protection, 22 Kirkpatrick Street, PO Box 915, New Brunswick, New Jersey, 08903, and to his home address, 5 Pucillo Lane, Somerset, New Jersey 08873. Respondent signed the card for the certified mail sent to his office. The regular mail was not returned.

On September 26, 2006, the certified mail sent to respondent's home address was returned marked "Refused; Unable to Forward". The regular mail to that address was not returned.

Respondent did not file an answer to the complaint.

The complaint alleged that, in July 2005, Bert Erdel, the grievant, retained respondent to seek a reduction of Erdel's alimony payments to his ex-wife. The ex-wife had filed a motion to enforce litigant's rights, presumably as a result of Erdel's failure to make the alimony payments.

On August 10, 2005, respondent wrote to the court requesting an adjournment of the August 12, 2005 motion date, but failed, thereafter, to confirm the status of his request. He also failed to file a response to the ex-wife's motion. According to the complaint, respondent misrepresented to Erdel

that the matter had been adjourned and "falsely led him to believe that he would respond to the motion."

On August 31, 2005, the court ordered Erdel to pay, within thirty days, a \$13,000 alimony arrearage (accruing at \$2,000 per month, pursuant to the divorce judgment), as well as \$2,000 in attorney's fees.

At some later point, respondent told Erdel that the court had ordered him to pay the arrearages, but did not disclose to Erdel that he had not filed a response to the motion. Erdel then gave respondent \$10,000 to pay the arrearage.

In October 2005, the ex-wife filed another motion to enforce litigant's rights. Respondent did not inform Erdel of the filing of that motion.

On November 10, 2005, the court entered another order for the payment of a \$19,000 arrearage, accrued as of October 31, 2005, to be satisfied within seven days. All future payments were to be made through the Probation Department. The court again directed Erdel to pay the \$2,000 counsel fee awarded in August 2005, granted additional attorney's fees for the second motion, and issued a warrant for Erdel's arrest for failure to comply with its prior order.

On November 29, 2005, the ex-wife's attorney, W.S. Gerald Skey, wrote to respondent about Erdel's failure to pay the

\$19,000 and the \$2,000 legal fee. Skey announced his intention to seek the execution of the bench warrant.

In January 2006, respondent wrote a letter to Erdel with the instruction to bring him a check for \$2,000, but did not advise Erdel of the court order about the arrearage. By letter dated January 10, 2006, respondent sent the \$2,000 check to Skey.

Two days later, Skey informed respondent that the bench warrant had been sent to the sheriffs' office. Skey enclosed a copy of the order for the arrest. Respondent did not forward the order to Erdel or warn him of the impending arrest.

On March 16, 2006, Erdel was arrested for contempt of court and failure to pay alimony. From his new attorney he learned, that day, about the two prior court orders.

The complaint also alleged that respondent never replied to the DEC investigator's request for information about the grievance.

Following a review of the record, we find that the facts recited in the complaint support the charges of unethical conduct. Because of respondent's failure file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f).

Respondent's failure to take any steps to protect his client's interests amounted to gross neglect and lack of diligence, violations of RPC 1.1(a) and RPC 1.3, respectively.

Respondent also failed miserably to keep his client informed about urgent aspects of the case. Erdel was so ill-informed that he was arrested in March 2006, with no prior warning. Respondent's failure to keep his client informed about the case was a violation of RPC 1.4(b).

We also find that respondent violated RPC 5.5 by writing two letters about the case, in January 2006, when he was ineligible to practice law. This conduct was all the more disturbing because respondent had twice been disciplined for practicing while ineligible.

Finally, respondent failed to cooperate with the DEC's investigation of the grievance, and also allowed this matter to proceed as a default by not filing an answer, thereby violating RPC 8.1(b).

On the other hand, the record does not support a finding of a violation of RPC 1.2, as charged in the complaint. We, therefore, dismiss that charge.

Similarly, although the complaint alleged that respondent misrepresented to Erdel that he would file a response to the motion, nothing in the record suggests that respondent had no

intentions of doing so, when he made that statement to Erdel. It is just as likely that, through neglect, respondent failed to act.

Ordinarily, conduct involving gross neglect, even if accompanied by other violations, such as lack of diligence and failure to communicate with the client, warrants 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 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 E. Steven Lustig, DRB 00-003 (April 10, 2000) (admonition for gross neglect in a matrimonial matter and failure to adequately communicate with the client); 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); 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).

In default matters, the appropriate level of discipline is elevated to address the attorney's failure to cooperate with disciplinary authorities, an aggravating factor. In the Matter of Robert J. Nemshick, DRB 03-364, 03-365, and 03-366, (March 11, 2004) (slip op. at 6).

Moreover, the presence of a substantial ethics history, as in this case, requires substantial enhancement of the sanction that otherwise would be appropriate for violations committed by an attorney with a stainless disciplinary record. See In re McClure, 182 N.J. 312 (2005) (one-year suspension, in a default

matter, for failure to file an affidavit in compliance with R. 1:20-20, a violation whose threshold is presumptively a reprimand; the attorney had received an admonition and two concurrent six-month suspensions, one of which stemmed from a default matter).

This is respondent's sixth encounter with the disciplinary system. In the course of eight years, he has managed to compile a sizable ethics record: an admonition in 1999, a temporary suspension in 2003, a reprimand in 2005, a censure in 2006, and a six-month suspension in 2007, which he is still serving. In all those matters, he flouted every level of the disciplinary system -- the district ethics committees, the OAE, this Board, and the Court -- by either not cooperating with ethics investigations, not filing answers to complaints, or not adhering to the provisions of a Court order.

Compounding this appalling behavior was respondent's obvious unconcern in continuing to practice law while ineligible, even in the face of a then-pending matter before us addressing that very offense. We are referring to respondent's representation of a client at a trial, on the same day that we held oral argument on a matter charging that he had practiced law during a period of ineligibility.

In view of respondent's demonstrated failure to learn from his prior mistakes, as seen by his significant disciplinary record, and manifest indifference toward disciplinary authorities (this is his third default) and clients alike (respondent's inaction caused Erdel to be arrested for defaulting on obligations unknown to him), we determine that a lengthy suspension -- three years -- is required in this case.

Members Frost, Lolla, and Stanton voted to disbar respondent. They note that, in this case, respondent was grossly negligent and incredibly uncommunicative in representing a client who was involved in an alimony payment dispute as part of a matrimonial action. The client ended up going to jail because respondent failed to inform him that payment orders and a bench warrant had been issued against him by the court. This is the fifth case in which respondent has failed to cooperate with ethics authorities, and it is the third case in which he has defaulted in replying to the complaint against him. It is also at least the third time respondent has practiced law while on the ineligible list.

The dissenting members believe that respondent's refusal to learn from his past mistakes and his persistent and pervasive contempt for the attorney disciplinary process render him

fundamentally unfit to practice law and make him a danger to his clients. In their view, respondent should be disbarred.

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 O'Shaughnessy, Chair

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

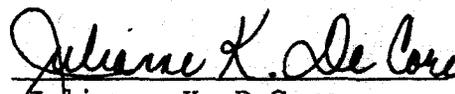
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Gerald M. Lynch
Docket No. DRB 07-096

Decided: August 14, 2007

Disposition: Three-year suspension

Members	Disbar	Three-year Suspension	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:	3	6			


Julianne K. DeCore
Chief Counsel