SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-041
District Docket No. IIIA-2005-0004E

IN THE MATTER OF	
JOHN J. MCLOUGHLIN, JR.	
AN ATTORNEY AT LAW	

Decision

Argued: March 15, 2007

Decided: April 26, 2007

Debra Himber appeared on behalf of the District IIIA Ethics Committee.

Respondent waived appearance for oral argument.

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 filed by the District IIIA Ethics Committee (DEC). The

complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1:20-20(b)(10) (presumably, R. 1:20-20(b)(10)) (failure to comply with rules governing suspended attorneys), and RPC 1:20-3(g)(3) (presumably, R. 1:20-3(g)(3)), more properly, a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

For the reasons expressed below, we determine to dismiss the complaint.

Respondent was admitted to the New Jersey bar in 1986. He was suspended for three months, effective April 26, 2004, after he stipulated that he purchased a small amount of cocaine for personal use. In re McLoughlin, 179 N.J. 226 (2004). To date, he has not applied for reinstatement.

The facts are not in dispute. On October 2, 2001, grievant, William Jones, was injured at the hospital where he was employed, when he fell while the floor was being waxed. On January 25, 2002, Jones retained respondent, whom he knew socially, to represent him in a personal injury claim against the company responsible for waxing the floor. Although respondent performed some legal services, he failed to file the complaint before the expiration of the statute of limitations. Respondent had written the date of the injury on a note in Jones' file. When he reviewed the note, he mistakenly read the

date as October 12, 2001, instead of October 2, 2001, and failed to file the complaint on time.

At some point, respondent met with Jones and informed him that the statute of limitations had expired and that Jones could consult another attorney about filing a legal malpractice claim against respondent.[1] Respondent also told Jones about his upcoming suspension for cocaine possession. Although the record is unclear about the date of the meeting between respondent and Jones, respondent testified that he believed it took place within a month or two of November 2003, and that he had put off telling Jones about the expiration of the statute of limitations for "at least a few weeks."

As mentioned above, respondent was suspended effective April 26, 2004. By letters dated April 25, 2004, he informed six clients, including Jones, that he had been suspended. Jones testified that, although he never received respondent's letter, respondent had informed him of the suspension when they discussed the lapsing of the statute of limitations. As it

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[1] Although Jones consulted a legal malpractice attorney, he did not pursue a claim against respondent.

turned out, respondent had transposed Jones' street number and sent the letter to the wrong address.

On March 14, April 5, and May 25, 2005, the DEC investigator sent letters to respondent's law office, directing him to reply to the grievance. Because respondent was suspended, however, he had closed his law office. He, therefore, did not receive those letters. He admitted that he received an October 18, 2005 letter that the investigator had sent to his home address. Respondent asserted that he failed to reply to that letter because he was overwhelmed with personal problems. He was experiencing financial and marital difficulties and had moved from the marital home on two occasions. He stated that, although he intended to reply to the investigator, he did not.

Respondent explained that he had not applied for reinstatement because he had not filed his most recent income tax returns. According to respondent, he owes his accountant "a few thousand dollars" and must pay him for prior work before the accountant will prepare new tax returns.[2] Respondent earns money

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[2] R. 1:20-21(f)(10) requires attorneys filing petitions for reinstatement to enclose copies of their income tax returns for the past three years. We note, parenthetically, that an

by driving a limousine, installing windows, and delivering pizza.

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attorney's failure to file income tax returns may be cause for discipline. See, e.g., In re McManus, 179 N.J. 415 (2004). There are not enough facts for us to find that respondent's failure to file income tax returns was unethical. It is possible that he obtained extensions of time to file them. Furthermore, respondent was not put on notice of a potential violation for this conduct and the issue was not litigated at the DEC hearing.

The DEC found that, by failing to file Jones' complaint before the expiration of the statute of limitations, respondent violated RPC 1.3. The DEC dismissed the remaining charges. In the DEC's view, respondent was guilty of simple, not gross, neglect. In addition, the DEC determined that respondent notified Jones of his impending suspension during their meeting and that, although he attempted to send written notice as well, he sent the letter to the wrong address. The DEC, thus, found no clear and convincing evidence that respondent had failed to notify Jones of his suspension. Finally, observing that respondent had not received the investigator's letters sent to his office and, thus, that he had failed to reply to only one letter sent to his home, the DEC determined that respondent's "failure to cooperate under these circumstances should only be considered to be an aggravating factor."

The DEC recommended a reprimand.

Following a de novo review of the record, we are unable to find clear and convincing evidence of unethical conduct and, therefore, determine to dismiss this matter.

As noted above, the facts are not contested. Respondent admitted that, after agreeing to represent Jones in a personal injury claim, he failed to file a complaint before the statute

of limitations expired. The failure to file a complaint before the expiration of the statute of limitations, without more, does not amount to unethical conduct. In In the Matter of Sandra Taylor, DRB 02-330 (March 3, 2002), the attorney also failed to file a complaint before the expiration of the statute of limitations. In that case, we stated:

> Generally, conduct of this sort, without more, constitutes simple neglect, unless the attorney knows that the statute is about to expire and takes no action. Simple neglect does not amount to unethical conduct. Here, respondent testified that she had not realized that the statute had expired. The DEC made no finding that respondent's testimony in this context was not credible. We, therefore, dismissed the Pearson matter.
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> [Id., slip op. at 11.]

In Taylor, we found respondent guilty of other unethical conduct and determined that a reprimand was the appropriate level of discipline. The Court agreed and imposed a reprimand. In re Taylor, 176 N.J. 123 (2003).

Here, respondent testified that he misconstrued his notation in the file concerning the date of Jones' injury. His failure to file the complaint within the deadline was inadvertent. When he learned of his mistake, he informed his client about it and counseled him to consult an attorney about a potential malpractice action against respondent. In our view, respondent's

conduct constituted simple, not gross, neglect. As noted in Taylor, supra, simple neglect does not rise to the level of an ethics violation. We, thus, determine to dismiss the charges that respondent violated RPC 1.1(a) and RPC 1.3.

The complaint also alleged that respondent failed to notify Jones of his impending suspension. The Court has held that attorneys who fail to comply with R. 1:20-20 violate RPC 8.1(a) (failure to cooperate with disciplinary authorities) and RPC 8.4(d) (conduct prejudicial to the administration of justice). See, e.g., In re Girdler, 179 N.J. 227 (2004). Here, the undisputed facts reveal that, sometime toward the end of 2003, respondent orally notified Jones of his future suspension. Respondent also sent a letter to Jones, on April 25, 2004, the day before the effective date of his suspension. He sent the letter to the wrong address, however. Because Jones had actual notice of respondent's suspension, and because respondent attempted to comply with R. 1:20-20, we dismiss the charge that he failed to notify Jones of his suspension.

Similarly, we dismiss the charge that respondent failed to cooperate with the DEC. The investigator sent three letters, dated March 14, April 5, and May 25, 2005, respectively, to respondent's law office. Because respondent had been suspended

on April 26, 2004, he was prohibited from practicing law at that time, was not at his office, and did not receive those letters. Although respondent did not reply to the October 18, 2005 letter sent to his home, he obtained counsel and filed an answer to the formal ethics complaint. This is not a situation in which an attorney repeatedly or willfully ignored an investigator's attempts to contact him. To be sure, respondent should have replied to the October 18, 2005 letter from the investigator. In our view, his failure to do so, however, did not rise to the level of an ethics violation.

One additional point warrants mention. Respondent testified that he delayed telling Jones for several weeks about the expiration of the statute of limitations. Although in some cases, the failure to communicate significant information to a client may be deemed a misrepresentation by silence, Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984), the relatively short delay in this case does not rise to that level. Moreover, respondent was not put on notice of this potential violation and the issue was not litigated before the DEC.

Based on the foregoing, we unanimously determine to dismiss the complaint against respondent.

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 John J. McLoughlin, Jr.
Docket No. DRB 07-041

Argued: March 15, 2007

Decided: April 24, 2007

Disposition: Dismiss

Members	Disbar	Dismiss	Censure	Reprimand	Admonition	Did not participate
O'Shaughnessy		X				
Pashman		X				
Baugh		X				
Boylan		X				
Frost		X				
Lolla		X				
Pashman		X				
Stanton		X				
Wissinger		X				
Total:		9				

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel