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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 07-014
(formerly DRB 01-229)
District Docket No. XIV-05-320E
(formerly IIA-00-005E)

IN THE MATTER OF
DONALD V. ROMANIELLO
AN ATTORNEY AT LAW

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

Decided: May 24, 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 Office of Attorney Ethics, pursuant to R. 1:20-
4(f). We determine to impose a censure.

Previously, in 2001, we reviewed this matter on a
certification of default filed by the District IIA Ethics
Committee (DEC), after respondent failed to file an answer to
the formal ethics complaint. Essentially, the complaint alleged
that respondent had been negligent in his representation of a
client before the Social Security Administration ("SSA") and had

failed to return an overpayment from the SSA. We determined to vacate the default and to remand the case to the DEC for a full investigation. We directed the DEC to determine whether respondent knew or should have known of the SSA's determination that he had received excess funds, and whether he had received a check from the SSA and presented it for payment. We also wanted the investigation to determine whether respondent was practicing law at a time when he allegedly failed to maintain a bona fide office.

The OAE took over the investigation in June 2005. By letter dated September 29, 2006, OAE Assistant Ethics Counsel, Michael J. Sweeney, advised us that the OAE had been unable to locate respondent to conduct an investigation. The OAE then subpoenaed his bank records. They revealed that he had received payment from the SSA, had deposited the funds in his business account, and had utilized them. However, the OAE was unable to conclude by clear and convincing evidence that respondent's use of the funds had constituted knowing misappropriation. In addition, because the OAE could not locate respondent, it could not reply to our inquiry on whether he was practicing law without a bona fide office. The OAE, thus, asked that we proceed with the matter based on the charges set forth in the complaint, to which respondent had previously defaulted (DRB 01-229).

In November 2006, Office of Board Counsel remanded the matter to the OAE for service by publication. The complaint was served on respondent, in accordance with R. 1:20-4(d), by publication in The Record, on December 13, 2006, and in the New Jersey Lawyer, on December 18, 2006. As of the date of the OAE's certification of the record, respondent had not filed an answer, despite proper service by publication.

Respondent was admitted to the New Jersey bar in 1992. He has no history of discipline.

In September 2006, respondent's license to practice law was administratively revoked, pursuant to R. 1:28-2(c), for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF") for seven consecutive years. That rule provides that such revocation "shall not, however, preclude the exercise of jurisdiction by the disciplinary system in respect of any misconduct that occurred prior to [the] Order's effective date."

Count One

In May 2000, the DEC sent a copy of a grievance to respondent, asking him to submit a reply within ten days. The grievant was Alan Rakocy. The record does not reveal the address to which the letter was sent or the method of delivery, but it

was not returned to the sender. Respondent did not reply to the grievance.

In July 2000, the DEC investigator sent "a certified final letter" and a copy of the grievance to respondent to his home address, directing him to reply within ten days.¹ In July 2000, the investigator received the certified mail receipt. The record does not provide any information about the signature on the receipt. Respondent did not reply to the letter.

From May 2000 through September 2000, the DEC made numerous attempts to contact respondent by telephone at his last known business address and at his last known home address. Those attempts were unsuccessful.

Count Two

In 1998, Rakocy retained respondent to file a disability claim with the SSA on his behalf. Respondent completed the application and accepted the designation as Rakocy's representative before the SSA. Thereafter, he failed to communicate with the SSA and Rakocy. Respondent did not reply to Rakocy's numerous requests for information during the course

¹ According to the complaint, the "letter informed respondent that the letter sent by regular mail had not been returned to presenter by the Post Office." This may be a reference to the May 2000 letter.

of the proceeding, and left him to handle the matter without representation. Respondent also failed to reply to the SSA's letters.

According to the complaint, despite respondent's designation as Rakocy's representative before the SSA, he "failed to participate to conclusion in pursuing [his] claim." At an undisclosed time, Rakocy terminated respondent's services.

Following the completion of Rakocy's case, the SSA inadvertently sent to respondent a \$2,645.50 check, which included \$1,322.75 in legal fees in excess of the amount allowed by law. Thereafter, respondent failed to reply to Rakocy's and the SSA's requests for the return of the fees inadvertently released to him by the SSA. Furthermore, respondent did not acknowledge letters from the SSA and calls from Rakocy, advising him that Rakocy had appealed the payment of any fee above \$250, as well as the inadvertent overpayment to him. According to the SSA, Rakocy is obligated to collect the overpayment from respondent. In August 2000, the DEC investigator unsuccessfully attempted to locate respondent by visiting his last known office address.

The complaint charged respondent with violating RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4, presumably (a) (failure to communicate with a client), RPC

1.15(b) and (c) (failure to promptly disburse property belonging to a third party and failure to keep separately property in which both the attorney and another person claim an interest), RPC 5.5(a) (failure to maintain a bona fide office), R. 1:21, presumably 1(a) (failure to maintain a bona fide office), RPC 8.1(b) (failure to cooperate with disciplinary authorities), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation, specifically, his taking at least \$1,322.75 without Rakocy's agreement).

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

The most serious charge in the complaint is that respondent violated RPC 8.4(c). The complaint alleged that "[r]espondent's lack of response to [Rakocy's] dismissal of his services together with his failure to respond or return the overpayment of fees constitutes a taking of at least \$1322.75 without [Rakocy's] agreement [and] is conduct involving dishonesty, fraud deceit or misrepresentation in violation of R.P.C. 8.4(c)." Although the allegations of the complaint are deemed admitted under R. 1:20-4(f), we are unable to find a violation

of RPC 8.4(c). The conduct to which this allegation refers is an intentional, dishonest act. The OAE's certification to us expressly stated that the OAE could not prove by clear and convincing evidence that respondent was guilty of knowing misappropriation. On this record, thus, the allegation that respondent intentionally and improperly retained SSA's funds cannot be sustained. We, therefore, dismiss that charge.

Respondent's conduct, however, violated the other charged RPCs: RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 1.15(b) and (c), RPC 5.5(a), and RPC 8.1(b).

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 the Matter of Susan R. Dargay, DRB 06-124 (September 19, 2006) (admonition for gross neglect, lack of diligence, and failure to communicate with a client in a matrimonial matter; prior admonition); 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 Janathan 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 Aranquren, 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).

Respondent's failure to maintain a bona fide office, standing alone, would result in an admonition. See, e.g., In the Matter of Wayne D. Lonstein, DRB 05-123 (June 17, 2005)

admonition for failure to maintain a bona fide office; in mitigation, we considered that the attorney had no prior discipline and that the current rule no longer requires a New Jersey practitioner to maintain a bona fide office in New Jersey if an office is maintained in the United States).²

Likewise, failure to promptly deliver funds to clients or third persons or to keep separately funds in which the attorney and another person claim an interest will lead to an admonition. In the Matter of Douglas F. Ortelere, DRB 03-377 (February 11, 2004) (attorney failed to promptly deliver balance of settlement proceeds to client after her medical bills were paid); In the Matter of Louis N. Caggiano, Jr., DRB 02-094 (May 22, 2002) (attorney deposited into trust account settlement check made payable to attorney and client without first obtaining client's endorsement or permission); In the Matter of E. Steven Lustig, DRB 02-053 (April 19, 2002) (for three-and-a-half years, attorney held in his trust account \$4,800 earmarked for the payment of a client's outstanding hospital bill); and In the Matter of Steven S. Neder, DRB 99-081 (May 27, 1999) (admonition

² Prior to the 2004 amendment to R. 1:21-1(a), abolishing the requirement that an attorney who practices in New Jersey maintain a bona fide office in this state, the discipline for failure to have a bona fide office was usually a reprimand. In re Kasson, 141 N.J. 83, 88 (1995).

by consent for attorney who did not transmit to a wife funds that a husband, the attorney's client, had given him for that purpose and who took his fee from funds that the husband gave him to pay the wife's legal fees; the attorney violated RPC 1.15(b) and (c)).

Viewed in isolation, or even combined among themselves, respondent's transgressions would merit an admonition. Here, in addition to determining the discipline for the totality of respondent's conduct, we must take into account several aggravating factors. After applying for and accepting SSA's designation as Rakocy's representative, respondent left Rakocy to proceed without representation before the SSA. Further, although the OAE cannot prove that respondent was guilty of violating RPC 8.4(c), we cannot ignore that the funds are missing. Finally, respondent allowed this matter to proceed on a default basis. We, therefore, determine that a censure is the suitable quantum of discipline in this case.

As noted above, respondent's license to practice law was administratively revoked, in September 2006, for failure to pay the annual assessment to the CPF for seven consecutive years. Should respondent subsequently be successful in having his license restored, he is to practice law under the supervision of a proctor for one year.

Member 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
Chief Counsel

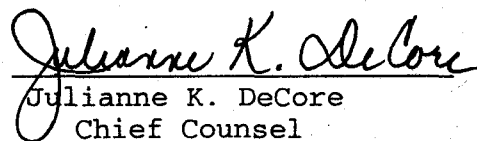
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Donald V. Romaniello
Docket No. DRB 07-014

Decided: May 24, 2007

Disposition: Censure

Members	Censure	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy	X				
Pashman	X				
Baugh					X
Boylan	X				
Frost	X				
Lolla	X				
Neuwirth	X				
Stanton	X				
Wissinger	X				
Total:	8				1


Julianne K. DeCore
Chief Counsel