

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 07-210  
District Docket No. XI-06-028E  
Docket No. DRB 07-217  
District Docket No. XIV-06-389E

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IN THE MATTER OF  
KATHLEEN D. WARGO  
AN ATTORNEY AT LAW

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

Decided: October 30, 2007

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

These matters came before us on two certifications of  
default, one filed by the District XI Ethics Committee (DEC) and  
the other by the Office of Attorney Ethics (OAE), following  
respondent's failure to file answers to the formal complaints. R.  
1:20-4(f). The first count of the complaint in DRB 07-210 charges  
violations of RPC 1.1(a) (gross neglect), RPC 1.1(b) (pattern of  
neglect), RPC 1.4(a) (failure to communicate with the client),

RPC 3.2 (failure to expedite litigation), and RPC 8.4(c) (misrepresentation) (first count). The second count charges a violation of RPC 8.1(b) (failure to cooperate with disciplinary authorities).

The first count of the complaint in DRB 07-217 alleges violations of RPC 1.1(a), RPC 1.3 (lack of diligence), and RPC 1.15(b) (failure to promptly deliver property that the client or a third party is entitled to receive). The second count alleges a violation of RPC 8.1(b).

We determine that respondent should be suspended for one year.

Respondent was admitted to the New Jersey bar in 1987. On January 17, 2007, she was temporarily suspended for failure to cooperate with the OAE. In re Wargo, 189 N.J. 125 (2007). She remains suspended to date.

Later that year, respondent was censured for misconduct in one case, including gross neglect, lack of diligence, failure to communicate with the client, failure to return the client's file, and several instances of misrepresentation. That matter proceeded on a default basis. In re Wargo, 192 N.J. 41 (2007).

I. DRB 07-210 (District Docket No. XI-06-28E)

Service of process was proper. On April 5, 2007, the DEC sent a copy of the complaint, via regular and certified mail, to respondent's home/office address listed in the attorney registration records, 15 Timothy Court, Morristown, New Jersey, 07960. The certified mail was returned as "unclaimed." The regular mail was not returned.

On May 3, 2007, the DEC sent a letter to the same address, by regular mail, notifying respondent that, if she did not file an answer to the complaint within five days, the record would be certified directly to us for the imposition of discipline. The regular mail was not returned.

Respondent did not file an answer to the complaint.

The complaint alleges that Land Inventory, Inc., through its president, Robert K. Shaw, retained respondent to file suit against Richard F. Matyskiel. On August 22, 2005, respondent finalized the draft of the complaint, but never filed it.

For the next nine months, respondent misrepresented to Shaw that the complaint had been filed, that the Sheriff's office was having difficulties serving the defendant, and that she was awaiting the scheduling of a proof hearing.

At some point, Shaw contacted the court and the Sheriff's Office, at which time he discovered that respondent's

representations about the filing of the complaint and the problems in serving the defendant were untrue.

Furthermore, according to the complaint, respondent failed to return the "vast majority of the telephone messages left for her by Mr. Shaw."

The complaint charges that respondent's failure to file the complaint on Shaw's behalf and failure to expedite litigation violated RPC 1.1(a) and RPC 3.2; her failure to keep Shaw adequately informed of the status of his case and to return his phone calls violated RPC 1.4(b); her misrepresentations to Shaw about the status of the case violated RPC 8.4(c); and her gross neglect in the Shaw case, "combined with other acts of neglect as alleged in this pleading," violated RPC 1.1(b).

The second count of the complaint alleges that respondent violated RPC 8.1(b) when she failed to reply to several letters from the DEC investigator, requesting information about the grievance.

**DRB 07-217 (District Docket No. XIV-06-389E)**

Service of process was proper. On May 23, 2007, the OAE sent a copy of the complaint, by regular and certified mail, to respondent's home/office address, as listed in the attorney

registration records. Although the certified mail was returned as "unclaimed," the regular mail was not returned.

On July 16, 2007, the OAE sent a letter to the same address, advising respondent that, if she did not file an answer within five days, the record would be certified directly to us for the imposition of discipline. The letter was sent by regular and certified mail. The certified mail receipt was signed by respondent. The regular mail was not returned.

Respondent did not file an answer to the complaint.

On March 22, 2005, respondent represented Wai Hing Sein in the sale of real property located in Jersey City, New Jersey. Darin Pinto represented the buyer, 109 Bowers Street Associates, LLC.

At the closing, the parties agreed that respondent would hold \$40,000 in escrow to "facilitate receipt of a No Further Action Letter from the Department of Environmental Protection for removal of an oil tank and sidewalk remediation."

On March 23, 2005, respondent deposited the \$40,000 in her trust account. On April 8, 2005, she deposited \$1,000 in her trust account, representing "money the buyer provided for the closing."

On April 11, 2005, respondent properly disbursed \$31,358.91 to TADCO Engineering & Environmental Services, LLC, an oil tank remediation firm, in partial payment of its fee for the tank

removal and sidewalk restoration. That payment reduced the amount of the monies escrowed to \$9,641.09, leaving a balance of \$5,100 owed to TADCO.

Between March 27, 2006 and May 15, 2006, Pinto attempted to reach respondent by phone and by e-mail to request that she disburse the \$5,000 balance to TADCO, to no avail.

On May 17, 2006, Pinto wrote to respondent requesting that she pay TADCO and reminding her of her ethical duty not to release the escrow to her client, the seller. Respondent ignored Pinto's letter, as well as his additional attempt, on May 19, 2006, to have her forward payment to TADCO. Therefore, on May 25, 2006, the buyer was forced to pay TADCO out of his own funds.

On July 7, 2006, Pinto filed suit against respondent, seeking reimbursement for the buyer's out-of-pocket payment to TADCO. When respondent did not file an answer to Pinto's complaint, a default judgment was entered against her.

The OAE's investigation revealed that the balance of the escrow funds was kept intact in respondent's trust account. Upon respondent's temporary suspension, the funds were transferred to the Superior Court Trust Fund.

The first count of the complaint charges respondent with gross neglect, lack of diligence, and failure to promptly deliver funds or property that the client or a third party is

entitled to receive, violations of RPC 1.1(a), RPC 1.3, and RPC 1.15(b), respectively.

The second count of the complaint alleges that, from August 10, 2006 to November 4, 2006, respondent ignored the OAE's numerous requests for a written reply to the Pinto grievance. Furthermore, she failed to appear at the OAE's office for a demand audit of her attorney trust and business records, scheduled for December 18, 2006.

On January 8, 2007, the OAE petitioned the Court for respondent's temporary suspension. Respondent did not oppose the petition, which was granted on January 17, 2007.

Two months later, respondent finally provided a written reply to the grievance. In April 2007, she appeared at the OAE for the demand audit.

The second count of the complaint charges respondent with failure to cooperate with disciplinary authorities, a violation of RPC 8.1(b).

Following a review of the record, we find that, with the exceptions noted below, the facts recited in the two complaints support the charges of unethical conduct. Because of respondent's failure to file answers, the allegations of the complaints are deemed admitted. R. 1:20-4(f)(1).

The first exceptions are the charges that respondent failed to expedite litigation and engaged in a pattern of neglect in the Shaw case (DRB 07-210). Because there was no litigation to expedite, we dismiss the charged violation of RPC 3.2. We also dismiss the charge that respondent violated RPC 1.1(b). At least three instances of neglect are required for a finding of a pattern of neglect. In the Matter of Donald M. Rohan, DRB 05-062 (June 8, 2005) (slip op. at 12-16). Here, only one instance of neglect has been established.

The remaining charges in DRB 07-210 are fully supported by the facts alleged in the complaint. Respondent grossly neglected the Shaw case, failed to communicate with her client, made misrepresentations to him for a period of nine months, and failed to cooperate with the DEC's investigation of the grievance, violations of RPC 1.1(a), RPC 1.4(b),<sup>1</sup> RPC 8.4(c), and RPC 8.1(b), respectively.

In DRB 07-217 (the Pinto matter), the exceptions are the charges of gross neglect and lack of diligence, which more specifically address an attorney's conduct in representing a client. Here, there is no indication that respondent grossly neglected the client's representation or lacked diligence in

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<sup>1</sup> Subsection (a) of RPC 1.4 was redesignated as subsection (b), effective January 1, 2004.



protecting his interests. More properly, respondent's failure to release the escrow funds was a violation of RPC 1.15(b).

In the Pinto matter, we find that respondent's indifference toward her professional and ethical obligations was astounding. She agreed to hold \$40,000 in escrow until the completion of the tank removal and sidewalk restoration. For a period of two months, Pinto repeatedly asked respondent to pay TADCO, the company that performed the above services. Respondent disregarded each one of those requests. Consequently, Pinto's client was forced to pay TADCO out of pocket.

Even Pinto's later suit against respondent did not spur her into action. When she failed to file an answer to Pinto's complaint, a default judgment was entered against her. Only after she was temporarily suspended were the funds released from her custody and, even then, not of her own accord. The Court's order of suspension contained the standard provision that all funds maintained in trust by respondent were to be transferred by the financial institution to the Superior Court Trust Fund.

In addition to repeatedly disregarding Pinto's requests, respondent ignored the OAE's numerous attempts to obtain her written reply to the grievance, ignored the OAE's demand audit of her attorney records, and ignored the OAE's motion for her temporary suspension. Only after she was suspended did she react

by giving the OAE a reply to the grievance and producing her attorney records for that office's inspection. Obviously undaunted by the Court's suspension of her license, respondent then proceeded to default in these two matters.

We find that her overall conduct toward the disciplinary process was an egregious violation of RPC 8.1(b).

What sort of discipline is then appropriate for a respondent who is incapable - worse yet, unwilling - to learn, from her own experience, that failure to cooperate with disciplinary authorities may sideline a lawyer whose conduct is under scrutiny? It is clear to us that respondent does not value her privilege to practice law. Even after her temporary suspension, when one would expect some form of redemption, she kept on slighting the disciplinary process, as seen from her choice to default in these two matters.

An attorney who, like respondent, failed to answer allegations that, viewed alone, would not have led to a suspension, was suspended for six months. In re Gallo, 186 N.J. 247 (2006). The complaint in that matter alleged lack of diligence in a workers' compensation case, failure to communicate with the client, failure to return the client's file, and failure to cooperate with the investigation of the grievance. Ordinarily, such conduct would have resulted in a

reprimand. Gallo's sole discipline, imposed sixteen years before, consisted of a reprimand for recordkeeping violations and negligent misappropriation.

When the Court issued an order to show cause as to why Gallo should not be disciplined, Gallo requested an adjournment, which the Court denied. Gallo then failed to appear on the return date of the order to show cause.

In suspending Gallo for six months, the Court stated:

And the Court having declined to grant respondent's informal request to adjourn the Order to Show Cause and respondent thereafter having failed to appear on the return date of the Order to Show Cause;

And the Court having determined from its review of the record that the appropriate quantum of discipline for respondent's unethical conduct is a six-month suspension from practice.

[Id. at 247.]

Six months later, two other disciplinary matters involving Gallo were before the Court. In both instances Gallo had failed to file an answer. One matter, involving the representation of three clients, addressed allegations of gross neglect, pattern of neglect, failure to return client files, and failure to cooperate with disciplinary authorities; the other matter dealt with a single violation: failure to cooperate with the

investigation of a grievance. The Court ordered Gallo's disbarment, citing his history of defaults and failures to appear before the Court:

And JAMES J. GALLO having failed to appear on the Order to Show Cause issued in these matters;

And the Court having determined that respondent's unethical conduct and his history of defaults and failures to appear on the Court's Orders to Show Cause warrant his disbarment; In re Kantor [citation omitted];

[In re Gallo, 188 N.J. 478, 478 (2006)].

See also In re Kantor, 180 N.J. 226 (2004) (attorney disbarred for abandoning clients, defaulting on the disciplinary matter, and failing to appear on the Court's order to show cause; the attorney's ethics record consisted of a reprimand and a three-month suspension); In re Devin, 181 N.J. 344 (2004) (attorney disbarred in a default matter alleging solely failure to reply to the DEC's requests for information about a grievance; the attorney had accumulated an impressive ethics record: two reprimands, two three-month suspensions (one of them imposed in a default case), and a temporary suspension for failure to cooperate with an OAE investigation; the attorney did not appear on the Court's order to show cause); and In re Gavin, 181 N.J.

342 (2004) (disbarment for attorney who compiled an extensive disciplinary record: two reprimands, two three-month suspensions, and a six-month suspension; all but one of those matters were defaults; although the attorney's last violations were not serious (failure to promptly release the balance of an estate's funds to the beneficiaries and failure to communicate with them) the Court disbarred the attorney based on its "review of the record and on the basis of respondent's failure to appear on the Court's Order to Show Cause . . . ." Id. at 343).

As can be seen from the above, respondents who exhibit a pattern of disrespect for disciplinary authorities are treated with the utmost severity -- and deservedly so.

We now turn to the measure of discipline that respondent's violations, taken in isolation, would require.

In the first default, respondent grossly neglected the Shaw case, failed to communicate with the client, misrepresented the status of the case for nine months, and failed to cooperate with the investigation of the grievance. In the second default, she repeatedly ignored Pinto's requests that she pay TADCO out of the escrow and continually defied the disciplinary process.

An attorney who failed to promptly deliver funds to which a third party was entitled and failed to cooperate with the investigation of the grievance received a reprimand. That

discipline resulted even in the presence of a disciplinary record, although of a non-serious serious nature. See In re Dorian, 176 N.J. 124 (2003) (reprimand for attorney who for months failed to satisfy a medical lien out of funds escrowed for that purpose and who failed to cooperate with the investigation of the grievance; prior admonition and reprimand).

For gross neglect, lack of diligence, failure to communicate with clients, and misrepresentation about the status of the case a reprimand, too, is the appropriate form of discipline. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney no action in the client's behalf, did not inform the client about the status of the matter and the expiration of the statute of limitations, and misled the client that a complaint had been filed); In re Onorevole, 170 N.J. 64 (2001) (attorney grossly neglected a matter, failed to act with diligence, failed to reasonably communicate with the client, and made misrepresentations about the status of the case; prior admonition and reprimand); In re Till, 167 N.J. 276 (2001) (attorney engaged in gross neglect and misrepresentation; for over a nine-month period, the attorney lied to the client about the status of the case; no prior discipline); and In re Riva, 157 N.J. 34 (1999) (attorney grossly neglected a matter, thereby causing a default judgment to be entered against the clients,

failed to take steps to have the default vacated, and misrepresented the status of the case to the clients; no prior discipline).

Standing alone, respondent's conduct in the first matter (gross neglect, lack of diligence, failure to communicate with the client, misrepresentations, and failure to cooperate with the DEC investigator), together with her failure to promptly release escrow funds in the second matter, would probably warrant no more than a censure (or perhaps a three-month suspension because of the pattern of misrepresentations to Shaw). However, because she has been disciplined before and has exhibited an egregious pattern of indifference toward the ethics system, beginning with her first disciplinary matter (a default), continuing with her failure to cooperate with the OAE in connection with the Pinto grievance (for which she was temporarily suspended), and extending to the two current matters (also defaults), more severe discipline is required.

Therefore, in keeping with the Court's recent trend to view such conduct with less tolerance than in the past, we determine that the appropriate form of discipline for respondent's overall conduct is a prospective one-year suspension. Prior to reinstatement, respondent should submit proof of completion of twelve hours of Professional Responsibility courses.

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  
Julianne K. DeCore  
Chief Counsel



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

In the Matters of Kathleen D. Wargo  
Docket Nos. DRB 07-210 and DRB 07-217

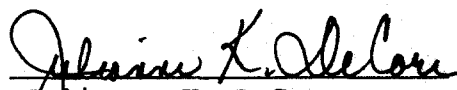
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Decided: October 30, 2007

Disposition: One-year suspension

Members	One-year Suspension	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				
<b>Total:</b>	8				1

  
Julianne K. DeCore  
Chief Counsel