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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 06-146  
District Docket No. I-05-025E

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IN THE MATTER OF  
HARRY E. FRANKS, JR.  
AN ATTORNEY AT LAW

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

Decided: August 31, 2006

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

This matter came before us as a default, pursuant to R.  
1:20-4(f), following respondent's failure to file an answer to  
the formal ethics complaint. The four-count complaint charged  
violations of RPC 1.2(a) (failure to abide by a client's  
decisions regarding the representation), RPC 1.3 (lack of  
diligence), RPC 1.4(b) (failure to keep a client reasonably  
informed about the status of a matter) and R. 1:20-3(g)(4) (if  
an attorney fails to cooperate in an ethics investigation, the  
Office of Attorney Ethics ("OAE") may move for the attorney's

temporary suspension).<sup>1</sup> We have determined to censure respondent.

Service of process was proper. On March 16, 2006, the DEC secretary sent a copy of the complaint to respondent, via certified and regular mail, to 2300 New Road, Suite 102, Northfield, New Jersey 08225, respondent's office address listed on the attorney registration records. The certified mail return receipt card was signed by K. Garofolo, who is not identified in the record. The regular mail was not returned to the sender.

On April 12, 2006, the DEC secretary sent a second letter to the same address, via certified and regular mail, advising respondent that, if he did not file an answer within five days, the allegations of the complaint would be deemed admitted and the matter would be certified to us for the imposition of sanction. The letter also served to amend the complaint to charge respondent with violating RPC 8.1(b), based on his failure to answer the complaint. Neither the certified mail

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<sup>1</sup> The complaint states: "Respondent's failure to cooperate with the investigation of the Ethics Committee, when combined with other acts of neglect as alleged in this pleading demonstrate [sic] a pattern of neglect in violation of Rule 1:20-3(g)(4)." The more appropriate rule for failure to cooperate with disciplinary authorities is RPC 8.1(b). Furthermore, a charge of pattern of neglect is inapplicable here, as only one client matter is involved.

receipt nor the regular mail was returned. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1989. He was admonished in 2001 for failing to properly withdraw from the representation of a client. Specifically, respondent represented a client in a matrimonial matter, which included a post-judgment motion to permit her to relocate out of New Jersey with the minor children of the marriage. Her ex-husband filed a motion for visitation. Respondent did not file a reply or cross-motion, and suggested to the client that she obtain new counsel. Respondent withdrew from the representation without taking reasonable steps to protect the client's interests or without filing a motion to be relieved as counsel. In the Matter of Harry E. Franks, Jr., DRB 01-286 (November 1, 2001).

According to the complaint, in September 2004, Kimberly Rhoads Beuttel and Dominick Andrews (hereinafter "grievants"), retained respondent in connection with their purchase of a boat and difficulties in keeping it operational. Grievants discussed the boat manufacturer's settlement offer with respondent, and advised him of their decision to reject the offer and to move forward with the filing of a lawsuit.

In February 2005, respondent advised grievants that he had filed a complaint on their behalf. Subsequently, grievants

experienced additional problems with the boat and so advised respondent, who stated that he would file an amended complaint. In July 2005, respondent sent grievants a copy of an amended complaint. Thereafter, grievants learned that respondent had not filed a complaint on their behalf.<sup>2</sup>

During the course of the representation, grievants made numerous telephone calls to respondent seeking information about their case. According to the complaint, respondent "failed to adequately respond" to their inquiries. Furthermore, respondent failed to reply to the DEC's written and verbal requests for a reply to 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 to file an answer, the allegations of the complaint are deemed admitted. R. 1:20-4(f)(1).

Respondent violated RPC 1.2(a), RPC 1.3, and RPC 1.4(b) in his representation of grievants when, despite their directive that the settlement offer be rejected and suit filed, he failed to file the complaint on their behalf, and, thereafter, failed

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<sup>2</sup> According to the investigative report, the complaint did not bear a docket number, which prompted grievants to call the court.

to communicate with them. He also failed to cooperate with the DEC's investigation of this matter, and failed to file an answer to the complaint, in violation of RPC 8.1(b). In addition, respondent violated RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation) when he lied to grievants that he had filed a complaint. Although the complaint did not specifically charge respondent with violating that RPC, the complaint alleged sufficient facts to give respondent notice of such charges and an opportunity to defend against them.

In non-default cases involving similar violations, the Court has imposed reprimands. See In re Wiewiorka, 179 N.J. 225 (2004) (reprimand for gross neglect, lack of diligence, failure to communicate with the client and misrepresentation; the attorney was hired to investigate a personal injury claim for a possible lawsuit but failed to return phone calls and misrepresented to the client that he had filed suit); In re Till, 167 N.J. 276 (2001) (reprimand for gross neglect, lack of diligence and misrepresentation; the attorney failed to take action in representing his client in a "minority shareholder oppression action" and made numerous misrepresentations to her about the status of the case for more than a nine-month period; the attorney lied to the client that the complaint had been filed, that service had been made, that the defendant had failed

to answer the complaint, that he was seeking default judgments, and that he had filed motions to obtain the deposition of her ailing father); and In re Riva, 157 N.J. 34 (1999) (reprimand for attorney who grossly neglected a litigated matter, allowing a default judgment to be entered against the clients and then failed to act with diligence to have the default vacated while also misrepresenting the status of the matter to his clients). Unlike respondent, none of these attorneys had a disciplinary history.

Unlike the above matters, however, this matter came before us as a default. Generally, in a default matter, the discipline is enhanced to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Nemshick, 180 N.J. 304 (2004) (in matter that proceeded as a default, three-month suspension imposed for infractions that usually result in a reprimand; no ethics history).

Here, in addition to the default status as an aggravating factor, respondent has been previously disciplined. He was admonished in 2001, several years before he undertook the representation of grievants in this matter. Thus, this is an attorney who should have had a heightened awareness of his responsibilities toward his clients.

Under these circumstances, it would seem that the typical discipline imposed (reprimand) should be enhanced by two levels - once for the default posture of the case and once for respondent's prior discipline. That would result in respondent's receiving a three-month suspension. However, respondent's prior discipline is only an admonition. In our view, to impose a three-month suspension in this matter would be unduly harsh. We, thus, determine that a censure adequately addresses respondent's ethics offenses in this matter.

Vice-Chair Pashman 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 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 Matter of Harry E. Franks  
Docket No. DRB 06-146

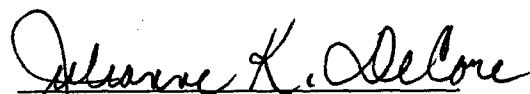
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Decided: August 31, 2006

Disposition: Censure

| Members       | Suspension | Reprimand | Censure | 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