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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-279
District Docket No. I-06-007E

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

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

Decided: December 14, 2006

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

Pursuant to R. 1:20-4(f), the District I Ethics Committee
("DEC") certified the record in this matter directly to us for
the imposition of discipline, following respondent's failure to
file an answer to the formal ethics complaint. The complaint
charged respondent with violating RPC 1.3 (lack of diligence),
RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or
misrepresentation), and failure to cooperate with disciplinary
authorities, (charged as a violation of R. 1:20-3(g)(4), more
properly a violation of RPC 8.1(b)). Respondent's conduct arose

out of his mishandling of a matrimonial matter. We determine to impose a three-month suspension.

Service of process was proper. In June 2006, the DEC secretary sent a copy of the complaint by certified and regular mail to respondent's office address, Suite 102, 2300 New Road, Northfield, New Jersey 08225. The regular mail was not returned. The certified mail receipt was returned showing delivery. The signature is illegible. However, the DEC secretary's supplemental certification stated that, from the secretary's prior dealings with respondent, he recognized the signature on the green card as respondent's.

In August 2006, the DEC secretary sent a second letter to respondent, advising him that, if he did not file an answer to the complaint within five days, the allegations of the complaint would be deemed admitted, and the matter would be certified to us for the imposition of discipline. The letter further served to amend the complaint to charge respondent with violating RPC 8.1(b). (As noted above, respondent had already been charged with violating R. 1:20-3(g)(4).) The letter was sent via certified and regular mail to the above address, and to P.O. Box 136, Northfield, New Jersey 08225.¹ The certified mail was

¹ The secretary's certification states that respondent gave him the latter address telephonically.

returned as unclaimed. The regular mail was not 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 in a matrimonial matter. In the Matter of Harry E. Franks, Jr., DRB 01-286 (November 1, 2001).

In July 2006, we considered another default involving respondent. We found him guilty of failure to abide by a client's directives, lack of diligence, failure to communicate with the client, misrepresentation, and failure to cooperate with the DEC. Respondent received a censure. In re Franks, 188 N.J. 386 (2006).

Respondent has been ineligible to practice law since September 25, 2006, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection.

In 2001, respondent began representing David Gross in a matrimonial matter. Over the next four years, child visitation and child support issues were intermittently the subject of additional court proceedings. Respondent handled these matters.

Count One

Gross contended that respondent failed to inform him of relevant events during the course of the representation.

Respondent either did not communicate with him regarding matters requiring Gross' personal response or failed to convey Gross' replies to the appropriate parties. In a certification of counsel, date-stamped as filed with the Superior Court on February 14, 2005, respondent admitted not carrying out Gross' directives.

The complaint charged respondent with violating RPC 1.3.

Count Two

Due to the seriousness of the allegation in count two, and the fact that in a default proceeding the precision of the language in the complaint is vital to ensure that respondent had notice of the charge, we set forth the facts verbatim:

1. Grievant complains that certifications which were date stamped as 'filed' with the Superior Court of New Jersey, Atlantic County were not, in fact, filed. Specifically, a Certification of Counsel date stamped as 'Filed, February 14, 2005, Superior Court of New Jersey, County of Atlantic' and attached hereto as Exhibit E2 and an Amended Certification of Plaintiff date stamped as 'Filed, March 10, 2005, Superior Court of New Jersey, County of Atlantic' and attached hereto as Exhibit F were both alleged to have not been found by the Clerk of Court when a written inquiry was submitted by grievant asking for confirmation of said filings. See written

inquiry to court attached hereto as Exhibits G1 & G2.

[Cct2¶1.]²

Count two went on to allege that, on July 29, 2005, respondent advised Gross of an August 2, 2005 mediation, which would be followed by an August 5, 2005 court date. Several days later, respondent admitted to Gross that he had lied about the scheduling of both the mediation and the court date.

The complaint charged respondent with violating RPC 8.4(c).

Count Three

Respondent failed to reply to the DEC's requests for information about Gross' grievance.

The complaint states that respondent's failure to cooperate with the DEC's investigation "when combined with other acts of neglect as alleged in this pleading demonstrate a pattern of neglect in violation of Rule 1:20-3(g)(4)."³

Service of process was properly made. The complaint contains sufficient facts to support a finding of unethical conduct. Because respondent failed to answer the complaints, the allegations are deemed admitted. R. 1:20-4(f).

² C refers to the complaint, dated June 14, 2006.

³ As noted above, the proper rule is RPC 8.1(b). The alleged pattern of neglect does not apply here, where only one client matter is at issue.

Respondent violated RPC 1.3 when he failed to diligently pursue Gross' matrimonial matter. 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).

Count two, quoted above, alleges that respondent fabricated documents that he provided to Gross. Two documents, which were date-stamped as filed with the court, could not be located by the court clerk. However, to conclude that respondent fabricated the documents is a quantum leap not supported to a clear and convincing standard by these facts. It is within the realm of possibilities that the documents were lost. We, therefore, make no finding of unethical conduct in this regard.

Count two set forth a second basis for the allegation that respondent violated RPC 8.4(c). Specifically, the complaint charged that respondent lied to Gross about a mediation date and a court date. Here, the language of the complaint is sufficient to establish a violation of RPC 8.4(c) on the basis of his misrepresentations to Gross.

There remains the determination of the quantum of discipline to be imposed for respondent's ethics violations. The Court "has consistently held that intentionally misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472, 488 (1989). This is

typically the discipline imposed even where, in addition to the misrepresentation, the attorney has engaged in gross neglect and lack of diligence, and has failed to communicate with the client -- so long as the attorney has not defaulted and has no ethics history. See, e.g., In re Wiewiorka, 179 N.J. 225 (2004) (attorney reprimanded for gross neglect, lack of diligence, failure to communicate with the client, and conduct involving misrepresentation in one client matter; the attorney was hired to investigate a personal injury claim for the purpose of a possible lawsuit but failed to return phone calls and told the client that he had filed suit when he had not; the statute of limitations had expired); 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; the attorney then failed to act with diligence to have the default vacated and misrepresented the status of the matter to his clients).

Unlike the above cases, however, this matter came before us as a default. Generally, in a default, 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).

This is respondent's second default. As noted above, in October 2006 respondent received a censure for similar conduct. A copy of our decision was sent to respondent on August 31, 2006. The five-day letter from the DEC secretary to respondent in the present matter was sent to him in early August 2006. Respondent chose to ignore disciplinary authorities here, and several weeks later, saw the measure of discipline increased for his default in a matter involving the very same behavior. This is an attorney who either does not "get it" or does not want to "get it."

An additional aggravating factor is respondent's previous discipline. In addition to the pending censure, he was admonished in 2001, the year he began his lengthy representation

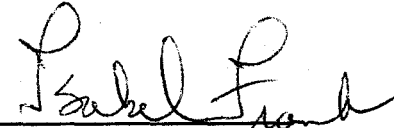
of Gross. Thus, he should have had a heightened awareness of his responsibilities toward his client from the outset.

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, bringing this to the realm of a suspension. Indeed, the censure that we recently determined to impose was apparently not a sufficient message to respondent. Perhaps a suspension will help him understand what is expected of him as a member of the bar and what conduct is clearly unacceptable. We, therefore, determine to impose a three-month suspension on respondent.

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

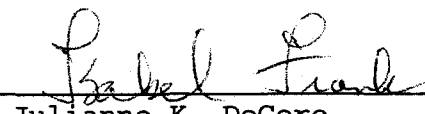
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Harry E. Franks
Docket No. DRB 06-279

Decided: December 14, 2006

Disposition: Three-month suspension

Members	Three-month 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				
Total:	9				

By 
Julianne K. DeCore
Chief Counsel