

SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 06-024  
District Docket No. VIII-04-032E

IN THE MATTER OF :  
:  
BARRY W. HOROWITZ :  
:  
AN ATTORNEY AT LAW :

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

Decided: April 12, 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 VIII 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.

On April 8, 2005, the DEC secretary sent a copy of the  
complaint to respondent by certified and regular mail to P.O.  
Box 6918, Monroe Township, New Jersey 08831, and 350 Fifth  
Avenue, Suite 7220, New York, New York 10118. Both certified  
mail letters were returned as "Unclaimed." The letter to the  
New York address sent via regular mail was returned marked "Not

Deliverable As Addressed; Unable To Forward." The regular mail to the Monroe Township address was not returned, and was presumed delivered.

In July 2005, on instruction from the Office of Attorney Ethics ("OAE") Statewide Coordinator, the DEC secretary sent a copy of the complaint to respondent via certified and regular mail at his home address: 12 Sherwood Drive, Monroe Township, New Jersey 08831. The certified mail return receipt card was returned signed. The first name is not respondent's, but the last name appears to be Horowitz. Respondent did not file an answer to the complaint.

Respondent was admitted to the New Jersey bar in 1986. He received a three-month suspension in July 2004, for practicing law while ineligible, lack of diligence, failure to communicate with a client, and failure to cooperate with disciplinary authorities. The matter was before us as a default. In re Horowitz, 180 N.J. 520 (2004). Respondent remains suspended.

Respondent was ineligible to practice law in New Jersey from September 24, 2001 to July 26, 2004, for failure to pay the annual assessment to the New Jersey Lawyers' Fund for Client Protection ("CPF"). He had previously been ineligible from December 12, 1994 to April 27, 1995.

In January 2003, Sean McDermott retained respondent in connection with a personal injury he suffered while a guest in the home of friends. McDermott contacted respondent after reading an advertisement for his services on the internet.

Respondent initially pursued the case in his client's behalf. He contacted the Martins' homeowners' insurance carrier and filed a complaint, which was served on the defendants in May 2003. The Martins' attorney filed an answer in June 2003. Respondent took no further action in McDermott's behalf following the service of the summons and complaint. Specifically, he failed to have McDermott prepare answers to interrogatories and failed to pursue discovery.

In March 2004, as a result of respondent's failure to provide answers to interrogatories, defense counsel filed a motion to dismiss the case without prejudice. Respondent did not oppose the motion, which was granted in March 2004. Thereafter, respondent took no action to restore the case and, furthermore, did not advise McDermott of the dismissal. Rather, McDermott learned of the dismissal in May 2004, when he called the court to check on the status of his case.

In addition to his neglect of McDermott's case, respondent failed to reply to numerous calls and e-mails from or on behalf of McDermott.

After McDermott learned of the dismissal of the complaint, he retained new counsel. In late June 2004, new counsel sent a substitution of attorney to respondent. Respondent did not sign and return the form until August 2004. At that time, he forwarded a portion of his file to the new attorney, but did not send the defendant's answer or motion to dismiss, which were later obtained from defense counsel. The new attorney had the case restored in August 2004. The case was pending as of March 2005, the date of the ethics complaint.

During the time that respondent represented McDermott, he was ineligible to practice law for failure to pay the annual assessment to the CPF.

The complaint charged respondent with violating RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with the client), and RPC 5.5(a)(1) (violation of the rules regulating the legal profession).

Service of process was properly made. 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).

R. 1:28-2(a) requires an attorney licensed to practice law in the State of New Jersey to pay the CPF an annual sum in an

amount determined by the Supreme Court. An attorney who fails to make the annual payment is deemed ineligible to practice law and may be reinstated only upon payment of the arrears and a reinstatement fee.

In January 2003, when McDermott retained respondent, he remained on the ineligible list because he had not paid the amount due to the CPF. Accordingly, he violated RPC 5.5(a)(1) when he undertook McDermott's representation and continued to violate that rule throughout the representation.

Generally, an admonition is imposed when an attorney practices law while ineligible for failure to pay the annual assessment to the CPF. See In the Matter of Richard J. Cohen, Docket No. 04-209 (DRB July 16, 2004) (admonition for practicing during nineteen-month period of ineligibility); In the Matter of William N. Stahl, Docket No. 04-166 (DRB June 22, 2004) (admonition for practicing law while ineligible and failing to maintain a trust and a business account; specifically, the attorney filed a complaint on behalf of a client and made a court appearance on behalf of another client; mitigating factors were the attorney's lack of knowledge of his ineligibility, his prompt action in correcting his ineligibility status, and the absence of self-benefit; in representing the clients, the attorney was moved by humanitarian reasons); In the Matter of

Samuel Fishman, Docket No. 04-142 (DRB June 22, 2004) (admonition for attorney who, while ineligible to practice law, represented one client in a lawsuit and signed a retainer agreement in connection with another client matter; the attorney also failed to maintain a trust and a business account; mitigating factors were the attorney's lack of knowledge of his ineligibility, his contrition at the hearing, his quick action in remedying the recordkeeping deficiency, and the lack of disciplinary history); In the Matter of Juan A. Lopez, Jr., Docket No. 03-353 (DRB December 1, 2003) (admonition for attorney who, for nine months, practiced law while ineligible); In the Matter of David S. Rudenstein, Docket No. 02-426 (DRB February 4, 2003) (admonition by consent for attorney who, for a period of eleven months, practiced law while ineligible); and In the Matter of Judith E. Goldenberg, Docket Nos. 01-449 and 01-450 (DRB March 22, 2002) (admonition by consent for attorney who, while ineligible to practice law, made two appearances before an immigration court; the attorney also lacked diligence in handling one matter).

Respondent's previous suspension was based, in part, on his practicing law while ineligible. Here, in addition to representing McDermott during a period of ineligibility, respondent was under investigation for misconduct in his

representation of another client. Indeed, the similarities in this matter and respondent's prior matter that led to his three-month suspension are striking.<sup>1</sup> In the case that led to his previous encounter with the disciplinary system, respondent undertook the representation of a client in a civil rights/employment matter. He initially pursued the matter, but then inexplicably allowed a summary judgment to be entered against his client and failed to tell the client of the dismissal of the case. Also, he failed to communicate with the client and closed his law office without advising him.

Here, respondent engaged in misconduct nearly identical to that for which he was being investigated, at a time when he should have displayed more circumspect behavior. Instead, he failed to represent McDermott's interests diligently and responsibly by taking no action after the service of the complaint, failing to reply to a motion to dismiss filed by the adversary, failing to take steps to reinstate the complaint, failing to reply to the client's requests for information about the case, and failing to disclose to the client that the complaint had been dismissed. Altogether, his conduct in the McDermott matter violated RPC 1.1(a) (gross neglect), RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with the

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<sup>1</sup> As noted above, that matter, too, proceeded as a default.

client), and RPC 8.4(c) (misrepresentation by silence; "In some situations, silence can be no less a misrepresentation than words." Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984)). Although respondent was not specifically charged with violations of RPC 1.1(a) and RPC 8.4(c), the allegations of the complaint provided sufficient notice of a potential finding of violations of those rules. Furthermore, the facts recited therein fully support a finding that respondent breached those RPCs.

Similarly, although the complaint did not charge respondent with violating RPC 8.1(b) (failure to cooperate with disciplinary authorities) and although the complaint was not amended to include this charge after respondent did not file an answer, given the default nature of this proceeding it is undeniable that respondent failed to cooperate with the ethics system.

Finally, respondent violated RPC 5.5(a) by practicing law while ineligible.

A combination of violations similar to respondent's has resulted in a brief term of suspension. See In re Raines, 176 N.J. 424 (2003) (three-month suspension for lack of diligence, failure to communicate with client, unauthorized practice of law, and failure to cooperate with disciplinary authorities;



prior private reprimand and six-month suspension); In re Bernstein, 144 N.J. 369 (1996) (three-month suspension for gross neglect, lack of diligence, failure to communicate with client, misrepresentations, and failure to cooperate with disciplinary authorities; prior private reprimand for similar misconduct); and In re Ortopan, 143 N.J. 586 (1996) (three-month suspension for gross neglect, lack of diligence, failure to communicate with client, misrepresentations, and failure to cooperate with disciplinary authorities)..

Despite having been disciplined for either identical or similar violations, respondent again engaged in serious unethical behavior, demonstrating that he cannot -- or will not -- comport himself in accordance with the ethical requirements imposed on members of the bar. Furthermore, he has again allowed a matter to proceed on a default basis, thus thumbing his nose at disciplinary authorities. Generally, in a default matter, the discipline is upgraded 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).

In light of the nature of respondent's ethics violations in this matter, his failure to learn from prior mistakes, and his willful disregard of the disciplinary system by allowing this and the prior matter to proceed on a default basis, we determine that a one-year suspension is the appropriate form of discipline in this case.

Chair Maudsley, Vice-Chair O'Shaughnessy, and Member Boylan dissented, voting for a six-month suspension.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board  
Mary J. Maudsley, 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 Barry W. Horowitz  
Docket No. DRB 06-024

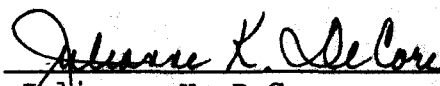
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Decided: April 12, 2006

Disposition: One-year suspension

Members	One-year Suspension	Six-month suspension	Admonition	Disqualified	Did not participate
Maudsley		X			
O' Shaughnessy		X			
Boylan		X			
Holmes	X				
Lolla	X				
Neuwirth	X				
Pashman	X				
Stanton	X				
Wissinger	X				
<b>Total:</b>	6	3			

  
Julianne K. DeCore  
Chief Counsel