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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 06-256  
District Docket No. XIV-03-276E

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IN THE MATTER OF :  
GERALD M. LYNCH :  
AN ATTORNEY AT LAW :

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

Decided: November 28, 2006

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

This matter was before us on a certification of default  
filed by the Office of Attorney Ethics ("OAE") pursuant to R.  
1:20-4(f). The complaint charged respondent with violations of  
RPC 1.15(d) (recordkeeping violations) as a result of his  
failure to (1) prepare a schedule of client ledger accounts and  
reconcile the schedule to the trust account bank statement on a

quarterly basis, (2) maintain appropriate individual client ledgers, and (3) maintain a cash receipts and cash disbursements journal. In light of respondent's egregious disciplinary history, which demonstrates his utter contempt for the disciplinary system, and the default nature of this matter, we determine to impose a six-month suspension for his recordkeeping violations.

At the relevant times, respondent, who was admitted to the New Jersey bar in 1977, practiced law in New Brunswick, New Jersey. In 1999, he was admonished for having violated RPC 1.4(b) (failure to explain matter to client), RPC 1.15(b) (failure to safeguard property), and RPC 8.1(b) (failure to cooperate with disciplinary authorities). In the Matter of Gerald M. Lynch, DRB 99-105 (May 28, 1999). In that case, respondent failed to reject a fee arbitration award, contrary to his client's request, and then failed to inform her of his error. Thereafter, he failed to notify his client that he had received the funds and failed to promptly deliver them to her. Respondent also failed to comply with the district ethics committee's requests for information about the grievance.

On September 30, 2002, respondent was placed on the Supreme Court list of ineligible attorneys for failure to pay the 2002 annual assessment to the New Jersey Lawyers' Fund for Client Protection (CPF). On August 27, 2003, respondent purportedly paid the fees owed. His check bounced, however, and respondent remained on the list.

In October 2003, respondent was temporarily suspended for about a month for his failure to comply with a Supreme Court order directing him to cooperate fully with the OAE's investigation of this matter. Although respondent was reinstated to the practice of law in November 2003, he remained on the ineligible list as a result of his failure to make good on the bounced check. On April 30, 2004, respondent finally replaced the bad check and was removed from the ineligible list.

In May 2005, respondent was reprimanded, in a default matter, for failure to cooperate with disciplinary authorities (RPC 8.1(b)). In re Lynch, 183 N.J. 260 (2005). The complaint in that matter charged respondent with violating RPC 5.5(a) (practicing while ineligible), based on his failure to replace the 2002 bounced check to the CPF. Because, however, the complaint did not allege that respondent practiced law while

ineligible, the charge was dismissed. The reprimand was based only on respondent's failure to reply to the DEC's inquiry regarding his failure to issue a replacement check.

On September 26, 2005, respondent was placed on the ineligible list again, where he remained until February 22, 2006.

On December 1, 2005, we determined to reprimand respondent for practicing while ineligible and failure to cooperate with disciplinary authorities. In that matter, respondent admitted that, despite his ineligibility to practice law between September 2002 and April 2004, he had nevertheless practiced law since September 2003 (except for the period of his temporary suspension between October and November 2003). Moreover, he had ignored the district ethics committee investigator's telephone calls.

When the Supreme Court reviewed our decision, it noted that respondent had been placed on the ineligible list again in September 2005, and that, at oral argument before us on October 20, 2005, respondent's counsel had attributed respondent's absence from the proceeding to his presence at a jury trial in Middlesex County. On its own motion, the Court determined to

review the matter and issued an order directing respondent to show cause why he should not be disbarred or otherwise disciplined for his practicing law while ineligible. On March 20, 2006, the Supreme Court censured respondent. In re Lynch, 186 N.J. 246 (2006).

Service of process was proper. On July 26, 2006, the OAE sent a copy of the complaint to respondent's office address, 22 Kirkpatrick Street, New Brunswick, New Jersey, via regular and certified mail, return receipt requested. On July 28, 2006, an individual named "M. Correa" signed for the certified letter. The letter sent via regular mail was not returned.

On August 21, 2006, the OAE sent a letter to respondent at the same address, via regular mail. The letter directed respondent to file an answer within five days and informed him that, if he failed to do so, the record would be certified directly to us for the imposition of sanction. The letter was not returned.

As of September 8, 2006, respondent had not filed an answer to the complaint. On that date, the OAE certified this matter to us as a default.<sup>1</sup>

According to the one-count complaint, on February 28, 2003, the District VIII Ethics Committee (DEC) received a grievance from Judie Luszc, who claimed that respondent had neglected her personal injury case and written a bad trust account check in the amount of \$1,574.90 to her doctor, Cohen Chiropractic Center. On March 19, 2003, the OAE sent a copy of the dishonored check to respondent. Although this is not alleged in the complaint, the letter requested respondent to provide a written, documented explanation for the apparent overdraft of the trust account check, the client ledger card, and trust account bank statements from September 2002 to the present.

Respondent failed to reply to the May 19, 2003 letter and other letters not identified in the complaint. Accordingly, on May 8, 2003, the OAE issued a demand audit letter for the period of January 2002 through May 2003.

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<sup>1</sup> We acknowledge receipt of a handwritten letter from respondent, which we received on the morning of the hearing in this matter. However, the letter neither addressed the allegations of the complaint nor sought to vacate the default.

On May 30, 2003, after three adjournments, respondent appeared at the OAE, albeit with limited trust account statements and canceled checks, the Luszcz file, and part of the file of another grievant. Respondent did not provide the OAE with bank statements and canceled checks from March through May 2003, as requested, and claimed that his accountant had the remainder of his financial records. He agreed to forward the missing documents to the OAE by June 13, 2003, but provided no explanation for the trust account overdraft.

When the promised documentation was not provided, on June 18, 2003, the OAE sent a letter to respondent requesting him to forward it no later than June 23, 2003. Respondent ignored that letter.

On July 8, 2003, OAE investigator Alan Beck left a message on respondent's answering machine, asking for a return call. Respondent did not return Beck's call. On July 14, 2003, the OAE again requested that respondent submit the documents no later than July 23, 2003. Once again, respondent did not comply with the request.

On August 1, 2003, the OAE sought respondent's temporary suspension. Six days later, respondent filed an affidavit in

opposition to the OAE's request. On August 25, 2003, the Supreme Court ordered respondent to comply fully with the OAE's investigation within five days.

On September 2, 2003, OAE deputy ethics counsel Brian D. Gillet wrote to respondent and requested "all documentation and explanations, as outlined in my letters of June 6 [sic] 2003, June 18, 2003, and July 14, 2003 letters" by September 5, 2003. Two days later, respondent "forwarded a brief written response and a portion of his requested financial records."

On September 26, 2003, Gillet wrote to the Court and reported that respondent had failed to fully comply with the OAE in its investigation. Specifically, he had failed to provide the October 2002 trust account statement, three-way reconciliations, and a written explanation for the negative balances in his trust account. On October 8, 2003, the Supreme Court temporarily suspended respondent.

On October 17, 2003, attorney Anthony B. Vignuolo informed the OAE that he had been retained by respondent, and requested a list of outstanding documents and the questions that remained unanswered. That day, Gillet sent a letter to Vignuolo detailing the explanations required.



On October 22, 2003, another attorney, Jack Arseneault, sent a letter of representation to the OAE, stating that he would engage an accountant immediately to do a financial analysis and three-way reconciliation of respondent's trust account. The next day, Arseneault forwarded a summary of respondent's trust account activity for October 2002.

On November 7, 2003, CPA Charles W. Long, of the Michael J. Jenkowski accounting firm, sent a letter to the OAE, stating that he had reviewed all available records for respondent's trust account and that the balances indicated by respondent were accurate. That day, Arseneault filed a motion to reinstate respondent. In the supporting affidavit, respondent admitted that he had not performed three-way reconciliations for his accounts and that he had engaged in extremely sloppy bookkeeping, which led to a \$980.14 negative balance in his trust account. The OAE's audit of respondent's books and records confirmed the representations in respondent's affidavit.

On November 18, 2003, CPA Michael J. Jenkowski wrote to the OAE, stating that they had "prepared schedules for respondent's trust account for cash receipts and cash disbursements for 2002 and the ten month period ending October 31, 2003, separate

committees and, in one case, refusing to file an answer to the complaint. Respondent has compounded this history with his continued recalcitrance, which, in this case, demonstrates his lack of respect for the disciplinary system.

Here, consistent with respondent's history, he repeatedly ignored the OAE's requests for documents. His defiance continued unabated for quite some time, forcing the OAE to seek the Supreme Court's intervention, which resulted in an order compelling respondent to comply fully with the OAE's investigation. Still, respondent refused to cooperate, causing the Supreme Court to temporarily suspend him until he provided the requested information. Given the Supreme Court's inclination toward stern treatment of and progressive discipline for defaulting attorneys, a three-month suspension would be entirely appropriate here, in view of respondent's prior reprimand and censure for the same misconduct. However, there is still the default nature of this matter to consider.

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) (conduct meriting reprimand enhanced to three-month

account ledgers for 2002 and the ten months ended October 31, 2003, and three-way reconciliation of the trust account to reflect funds held as of November 17, 2003."

The complaint alleged that respondent's attorney trust account records contained the following recordkeeping deficiencies:

- a. Schedule of clients' ledger accounts was not prepared and reconciled quarterly to the trust account bank statement. [RPC 1.15(d) and R. 1:21-6c(1)(h)];
- b. Appropriate individual client ledgers were not maintained. [RPC 1.15(d) and R. 1:21-6c(1)(b)];
- c. A cash receipts and cash disbursements journal was not maintained. [RPC 1.15(d) and R. 1:21-6c(1)(h)].

[Complaint, ¶27.]

The complaint charged that respondent failed to maintain his trust and business account records as required by R. 1:21-6, thereby violating RPC 1.15(d). Notwithstanding the admitted overdraft of respondent's trust account and the repeated instances of his failure to cooperate with the OAE's investigation, the complaint did not charge respondent with

negligent misappropriation of client funds or failure to cooperate with disciplinary authorities.

Inasmuch as service of process was proper, and respondent failed to file a verified answer to the complaint within the time prescribed, the allegations are deemed admitted. R. 1:20-4(f). Moreover, the allegations in the complaint support a finding that respondent engaged in unethical conduct.

A schedule of respondent's client ledger accounts, individual client ledgers, and a cash receipts and cash disbursements journal for the time period of January 1, 2002 through October 31, 2003 were not prepared until sometime in November 2003, when they were prepared by the Jenkowski accounting firm at the request of respondent's lawyer. In addition, respondent admitted that he had not performed a three-way reconciliation of the trust account. This reconciliation was not performed until November 2003, when the Jenkowski firm was hired. Thus, the certified record supports the finding that respondent committed the alleged recordkeeping violations.

There remains the quantum of discipline to be imposed for respondent's recordkeeping violations. Generally, recordkeeping deficiencies warrant an admonition. See, e.g., In the Matter of

Arthur G. D'Alessandro, DRB 01-247 (June 17, 2002) (random audit uncovered "numerous recordkeeping deficiencies"); In the Matter of Marc D'Arienzo, DRB 00-101 (June 28, 2001) (attorney did not use trust account in connection with his practice and did not maintain any of the required receipts and disbursements journals or client ledger cards); and In the Matter of Nedum C. Ejioqu, DRB 99-070 (December 28, 1999) (select audit uncovered numerous recordkeeping deficiencies, in addition to a failure to comply with the rule governing contingent fee agreements). In our assessment of the appropriate measure of discipline to be imposed for the recordkeeping violations in this case, however, we are compelled to take into consideration respondent's extensive disciplinary history and the default nature of this matter.

This is respondent's fourth encounter with the disciplinary system. His disciplinary history consists of an admonition, a reprimand, and a censure. In each of the three previous matters, respondent was disciplined for failure to cooperate with disciplinary authorities. Therefore, even before this matter, respondent had an established history of refusing to reply to requests for information from district ethics

suspension due to default; no ethics history). In light of respondent's recordkeeping violations, his failure to learn from prior mistakes, and his steadfast refusal to recognize his obligation to cooperate fully with ethics authorities, we determine that he should be suspended for six months.

We further require respondent to reimburse the Disciplinary Oversight Committee for the costs incurred in connection with the prosecution of this matter.

Disciplinary Review Board  
William J. O'Shaughnessy  
Chair

By: \_\_\_\_\_  
Julianne K. DeCore  
Chief Counsel

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

In the Matter of Gerald M. Lynch  
Docket No. DRB 06-256

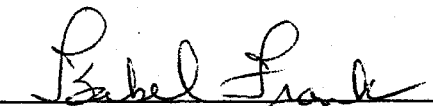
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Decided: November 28, 2006

Disposition: Six-month suspension

Members	Six-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				
<b>Total:</b>	9				

By   
Julianne K. DeCore  
Chief Counsel