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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-198
District Docket Nos. XIV-05-442E;
XIV-05-443E; XIV-05-444E;
XIV-05-445E; XIV-05-446E;
XIV-05-447E; XIV-05-448E;
XIV-05-449E; XIV-05-450E;
XIV-05-490E; XIV-05-491E;
and XIV-05-525E

IN THE MATTER OF :
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EDWARD F. MITCHELL :
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 :
AN ATTORNEY AT LAW :
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 :

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

Decided: October 31, 2006

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

This matter came before us on a certification of default filed
by the Office of Attorney Ethics ("OAE"), pursuant to R. 1:20-4(f).
A fourteen-count complaint involving twelve clients charged
respondent with abandoning nine clients and violating RPC 1.1(a)
(gross neglect), RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of
diligence), RPC 1.4(a) (failure to keep a client reasonably

informed about the status of a matter or to promptly comply with requests for information),¹ RPC 1:16(d) (upon termination of representation, failure to protect a client's interests), RPC 8.4(b) (criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation). For the reasons expressed below, we recommend respondent's disbarment.

Respondent was admitted to the New Jersey bar in 1998. At the relevant times, he maintained law offices in Toms River, Lumberton, and Matawan, New Jersey. Although he has no history of discipline, the Supreme Court temporarily suspended him on September 21, 2005, pending the investigation of a trust overdraft. In re Mitchell, 185 N.J. 134 (2005). Respondent remains suspended.

Service of process was proper. On May 31, 2006, the OAE mailed copies of the complaint to respondent, via regular and certified mail, to his last known home address, 1517 Beach Boulevard, Forked River, New Jersey 08731, and his office addresses at E554 The Commons, Toms River, New Jersey 08755; 774

¹ With the exception of the Drakulich matter, respondent was retained after the 2004 rule amendments. Hereafter, this decision will cite the rule in effect at the time, RPC 1.4(b).

Eayerstown Road, Lumberton, New Jersey 08048; and 171 Main Street, Matawan, New Jersey 07747.

The regular mail sent to the Lumberton address was returned to the OAE on June 8, 2006, marked "undeliverable as addressed, unable to forward." As of the date of the certification of the record, July 10, 2006, the certified mail had not been returned.

The regular mail sent to the Toms River and Forked River addresses were returned to the OAE marked "return to sender - forwarding time expired." The certified mail sent to the Toms River address was not returned. The certified mail sent to the Forked River address was returned as undeliverable.

The regular and certified mailings sent to the Matawan address were also returned to the OAE as undeliverable.

On May 31, 2006, the OAE published a notice of the filing of the ethics complaint in The Asbury Park Press and the New Jersey Lawyer.

As of the date of the certification of the record, respondent had not filed an answer to the ethics complaint.

The Biler Matter - District Docket No. XIV-05-0442E

On January 27, 2005, Yury Biler retained respondent to represent him in Old Bridge Municipal Court in connection with a traffic ticket. Biler paid respondent a \$200 fee. Respondent

provided Biler with a written retainer agreement indicating that Biler was entitled to a full refund if the prosecutor did not offer to amend Biler's charges to "a no point violation." Respondent postponed the court date on three occasions. Ultimately, the matter was rescheduled for May 24, 2005.

Thereafter, Biler was unsuccessful in his numerous attempts to contact respondent. At some point, Biler discovered that respondent's office and cell phone numbers had been disconnected. Respondent did not appear on the scheduled court date, did not communicate with Biler, and performed no legal services on Biler's behalf, leaving Biler to represent himself.

The Fishkin Matter - District Docket No. XIV-05-0443E

On November 23, 2004, Leslie Fishkin retained respondent to represent him in Middletown Municipal Court for a traffic violation. Fishkin used his Visa card to pay respondent's \$250 fee. Respondent provided Fishkin with a written retainer agreement.

Fishkin forwarded to respondent his driving abstract, a questionnaire, and the other materials respondent requested for Fishkin's defense.

Fishkin's original court date, December 16, 2004, was postponed twice - first to January 31, 2005, then to May 18, 2005. When Fishkin attempted to contact respondent on May 13,

May 16 and May 17, 2005, he learned that respondent's office and cell phones, fax, and email were no longer in service.

Respondent did not appear at Fishkin's scheduled hearing, did not communicate with him and did not provide any legal services to him. Fishkin had to act pro se.

The Masucci Matter – District Docket No. XIV-05-0444E

On April 16, 2005, Anna Masucci retained respondent to represent her son, Giuseppe De Angelis, in Manalapan Municipal Court. Masucci paid respondent \$450. Respondent provided her with a receipt and retainer agreement.

De Angelis' hearing was scheduled for May 31, 2005. Approximately two weeks before the court date, Masucci tried to contact respondent at the telephone number he had provided her, only to discover that it was no longer a working number. Masucci also wrote two letters to respondent, to which he failed to reply.

Respondent did not appear at De Angelis' scheduled court date, did not communicate with him, and provided no legal services to him.

The Kula Matter – District Docket No. XIV-05-0445E

On December 20, 2004, Susan Kula retained respondent to represent her son, William, in Mansfield Municipal Court for a

motor vehicle violation. Kula used her credit card to charge the \$300 fee. Respondent provided Kula a written retainer agreement, which provided: "300 flat fee no other legal fee due."

Respondent's representation ended in February 2005, when William's case was resolved. Three months later, on May 21, 2005, without authorization from Kula, respondent charged an additional \$500 to Kula's credit card.

Kula believed that the additional charge was a billing error and, therefore, tried to telephone respondent to discuss the charges. Kula's attempts were to no avail as respondent's business and cell phones had been disconnected.

The Banka Matter - District Docket No. XIV-05-0446E

On February 17, 2005, Matthew Banka retained respondent to represent his son Matthew, Jr., in Brick Township Municipal Court on a driving-under-the-influence ("DUI") charge. On February 21, 2005, Banka paid respondent a \$1,000 fee. Respondent provided Banka with a retainer agreement that called for a \$1,000 flat fee.

Matthew, Jr.'s case was scheduled to be heard on February 22, 2005. However, during their February 21, 2005 meeting, respondent instructed him not to appear in court the next day because he was going to have the case postponed. Although Matthew, Jr. did not appear, respondent failed to obtain the

postponement. The court, therefore, issued a bench warrant for Matthew, Jr.'s arrest.

After Banka posted a \$500 bail, the case was postponed to March 2, 2005. The case was continued an additional four times. Respondent appeared on only one of the four continuances, at which time he notified the court that he was ill and unable to defend the case.

Afterwards, Banka tried to telephone respondent, only to discover that all of his telephone numbers had been disconnected. Banka had no further contact with respondent, who performed no further services on Matthew, Jr.'s behalf.

The Drakulich Matter - District Docket No. XIV-05-0447E

On October 21, 2003, Barbara Drakulich retained respondent to represent Omar Calderon (relationship unknown) in Middletown Township Municipal Court in connection with a traffic ticket. On that same day, Drakulich used her credit card to pay respondent's \$300 fee. The case was resolved on December 4, 2003.

On June 1, 2005, eighteen months later, respondent charged an additional \$300 to Drakulich without her authorization and for no apparent reason. The very next day, respondent charged an additional \$300 to Drakulich's credit card, again without her authorization and for no apparent reason.

The Mitchell Matter – District Docket No. XIV-05-448E

On December 28, 2004, Jemal Mitchell retained respondent to represent him in connection with a motor vehicle violation. Exhibits 22 and 23, the grievance and the retainer agreement, show that Mitchell paid respondent's \$400 flat fee in cash.

Respondent failed to appear on the scheduled court date. When Mitchell attempted to contact respondent, he discovered that respondent's telephones had been disconnected. Respondent did not perform any legal services for Mitchell and had no further communications with him.

The Wolf Matter – District Docket No. XIV-5-0449E

On December 11, 2004, Raymond Wolf retained respondent to represent him in Barnegat Township Municipal Court on a criminal charge. Respondent provided Mitchell with a retainer agreement that called for a \$1,000 fee if the matter proceeded in Municipal Court, or a \$3,000 fee if the matter was heard in Superior Court.

On December 13, 2004, respondent charged \$1,000 to Wolf's credit card. On January 9, 2005, he charged an additional \$1,500. Respondent did not appear in Barnegat Municipal Court on the scheduled court dates. When Wolf tried to contact respondent, he discovered that respondent's telephones had been disconnected.

After respondent failed to appear in court on two occasions, Wolf entered a guilty plea to the charges against him. According to Wolf's grievance, he pleaded guilty just to avoid having to return to court. Wolf had another case that remained outstanding.

Respondent did not perform any legal services for Wolf and had no further communications with him.

The Picone Matter – District Docket No. XIV-05-0450E

In June 2005, Nicholas Picone retained respondent to represent his son, Nicholas, Jr., in a municipal court matter. Picone paid respondent a \$750 fee. Respondent, however, failed to appear in court on Nicholas' behalf and had no further contact with either Picone or his son.

When Picone and his son tried to contact respondent, they discovered that his telephones had been disconnected. According to Picone's grievance, he learned that respondent had "left town [and] his office was cleaned out. He wa[s] no where [sic] to be found." Picone retained another attorney to handle the matter.

The Lomibao Matter – District Docket No. XIV-05-049E

In November 2004, Juan Lomibao, Jr. retained respondent for a matter pending in Old Bridge Township Municipal Court. Lomibao

paid respondent a \$250 fee using his debit card on his credit union account. Respondent completed the matter in December 2004. Afterwards, they had no further contact. Lomibao owed respondent no additional monies for the representation.

On May 18, 2005, when Lomibao contacted his bank to verify the activity on his account, he noticed an unauthorized \$300 debit on his account. Lomibao's bank records revealed that respondent had withdrawn \$300 from Lomibao's account without Lomibao's knowledge or consent.

Afterwards, Lomibao tried to contact respondent, to no avail, as respondent's telephones had been disconnected. On May 21, 2005, Lomibao contacted the Lacey Township Police Department to report the theft and to supply the police with a written statement of events.

The Cruz Matter – District Docket No. 05-049E

In December 2004, Edgar Reyes Cruz retained respondent to represent him on DUI and reckless driving charges. Cruz paid respondent a \$700 fee.

Cruz's case was scheduled for a hearing on January 4, 2005. The matter was rescheduled to February 27, 2005, at respondent's request, to give him time to review the case. Prior to the new

hearing date, respondent requested an additional \$400 to retain an expert.

After respondent failed to appear at the hearing, Cruz contacted him, at which time respondent informed him that the case had been postponed until May 26, 2005. Although Cruz appeared in court on May 26, respondent again failed to appear.

Afterwards, Cruz was unable to contact respondent because all of his telephone numbers had been disconnected. Respondent had no further contact with Cruz and did not perform further legal services for him.

The Greene Matter – District Docket No. XIV-05-0525E

On December 14, 2004, Craig Greene retained respondent to defend him in Lakehurst Municipal Court on DUI and related traffic charges. Greene paid respondent a \$2,000 fee.

According to Greene, respondent appeared in court on three separate dates, but each time the case was postponed. The case was rescheduled for a fourth time. However, respondent failed to appear.

When Greene attempted to contact respondent, he discovered that respondent had left the area and abandoned his case. Greene had no further contact with respondent, who performed no further legal services on Greene's behalf.

Count thirteen of the complaint charged that respondent engaged in a pattern of neglect in his handling of the above matters (RPC 1.1(b)). Court fourteen charged that respondent engaged in conduct involving dishonesty, fraud, deceit or misrepresentation when he accepted fees from prospective clients without intending to perform the legal services for which he had been retained.

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

In nine of the above matters (Biler, Fishkin, Masucci, Banka, Mitchell, Wolf, Picone, Cruz, and Greene), respondent abandoned his clients - he took fees from them and did virtually no work on their cases. He failed to communicate with them and missed hearing dates. When respondent's clients attempted to contact him, they were unable to do so because the telephone numbers he had given them were no longer in service. He did not return any of the unearned fees.

We find that respondent engaged in gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, and failure to protect his clients' interests when he terminated the representation. Respondent's conduct in taking fees without

intending to provide legal services constituted conduct involving fraud, dishonesty, deceit, and misrepresentation.

In Kula, Drakulich, and Lomibao, respondent used his clients' credit cards or debit card to obtain additional funds, without his clients' knowledge or consent, months after his clients' cases had been resolved. In so doing, respondent engaged in criminal conduct - theft - violating RPC 8.4(b), and conduct involving dishonesty, fraud and deceit, violating RPC 8.4(c).

In the Wolf matter, in addition to alleging abandonment, the complaint charged respondent with violating RPC 8.4(b) and (c). Wolf's retainer agreement called for fees of either \$1,000 or \$3,000, depending on whether the case proceeded in Municipal or Superior Court.

Wolf retained respondent on December 11, 2004. On December 13, 2004, respondent used Wolf's credit card to obtain \$1,000. On January 9, 2005, he used the card to obtain an additional \$1,500. It appears that Wolf may have retained respondent for two separate matters, because the complaint alleged that Wolf pleaded guilty in one case and that another case was still outstanding. Thus, had respondent provided legal services, he might have been entitled to two separate fees, possibly the amounts taken on December 13, 2004 and January 9, 2005. The complaint, therefore, does not establish, to a clear and

convincing standard, that respondent's conduct - taking \$1,000 and then \$1,500 - violated RPC 8.4(b) and (c). Nevertheless, respondent failed to represent Wolf in either matter and, as mentioned above, abandoned his client.

In sum, after taking fees from nine clients, respondent failed to perform services for them and became unreachable. As mentioned in Picone's grievance, respondent "left town," closed his office, and was "nowhere to be found."

The only issue left for determination is the quantum of discipline. Generally, the abandonment of clients has led to suspensions of varying lengths or disbarment, depending on a number of factors, such as the circumstances of the abandonment, the presence of other misconduct, and the attorney's disciplinary history. See, e.g., In re Hoffman, 163 N.J. 4 (2000) (three-month suspension for attorney who closed his office without notifying a client in a workers' compensation matter and three clients in personal injury matters; the attorney was guilty of gross neglect, lack of diligence, failure to communicate with clients, failure to protect clients' interests upon termination of representation, and failure to cooperate with disciplinary authorities; the attorney had a prior reprimand and a three-month suspension); In re Bowman, 178 N.J. 24 (2003) (default case; six-month suspension for attorney

who abandoned one client; violations included gross neglect, lack of diligence, failure to communicate with the client, failure to protect client's interests after terminating the representation, misrepresentation to client and tribunal, failure to cooperate with disciplinary authorities, and failure to comply with a court's directive; ethics history included a private reprimand and a six-month suspension); In re Bowman, 175 N.J. 108 (2003) (six-month suspension for abandonment of two clients, misrepresentations to disciplinary authorities, and pattern of neglect; other misconduct in three client matters, in various combinations, consisted of gross neglect, lack of diligence, failure to communicate with clients, failure to explain a matter to the extent reasonable necessary to permit the client to make an informed decision about the representation, failure to provide a written fee agreement, failure to protect a client's interests upon termination of representation, and misrepresentation of the status of a matter to a client; the attorney had a prior private reprimand); In re Bowman, 178 N.J. 25 (2003) (one-year suspension, in a default, consecutive to previously imposed six-month suspension; the attorney abandoned four clients; violations included gross neglect, pattern of neglect, lack of diligence, failure to communicate with clients, failure to protect clients' interests

on termination of the representation, failure to provide a written retainer agreement, communication with a person the attorney knows to be represented by counsel, failure to maintain reasonable efforts to ensure conduct of non-lawyer employee is compatible with attorney's professional obligations, failure to properly supervise non-lawyer employee, failure to cooperate with disciplinary authorities, and misrepresentation; ethics history included a private reprimand and two six-month suspensions); and In re Greenwalt, 171 N.J. 472 (2002) (one-year suspension for attorney who grossly neglected three client matters, abandoned his law practice, failed to notify clients of a prior suspension, and failed to cooperate with disciplinary authorities; the attorney had been temporarily suspended for failure to cooperate with the ethics investigation).

In one case, the attorney was disbarred. In re Kantor, 180 N.J. 226 (2004) (abandonment of law practice and failure to cooperate with disciplinary authorities, including failure to appear on the return date of the Supreme Court's Order to Show Cause, warranted disbarment; ethics history included a reprimand and a three-month suspension; default case).

But see In re Hughes, 183 N.J. 473 (2005) (reprimand for abandonment of one client, lack of diligence, failure to communicate with clients, and failure to protect clients'

interests on termination of the representation in three cases; strong mitigating factors considered).

In addition to abandoning his clients, respondent converted their monies through the use of their credit cards or debit card. Although research uncovered no cases directly on point, the following cases are instructive. In re Butler, 152 N.J. 445 (1998) (reprimand for attorney who sold a computer that belonged to his law firm; the attorney had unsuccessfully argued that the computer had been given to him in lieu of salary); and In re Birchall, 126 N.J. 344 (1991) (reprimand for attorney who twice entered his former wife's home without permission and removed property to use as a negotiating tool to obtain more favorable visitation rights with his children; the attorney suffered from alcoholism); In re Pariser, 162 N.J. 574 (2000) (six-month suspension for attorney who pled guilty to official misconduct for stealing items from co-workers while employed as a Deputy Attorney General); In re Burns, 142 N.J. 490 (1995) (six-month suspension for attorney who burglarized an automobile and committed thefts from two automobiles); In re Farr, 115 N.J. 231 (1989) (six-month suspension for stealing evidence for his personal use (marijuana and PCP) from the Prosecutor's Office, where he worked); In re Bevacqua, 185 N.J. 161 (2004) (three-year suspension for attorney who used a stolen credit card to attempt

to purchase merchandise at a store under an assumed name; at the time of his arrest, the attorney also had five fraudulent credit cards and a wallet with a phony driver's license bearing his picture; the attorney's ethics history included a reprimand and a six-month suspension); In re Meaden, 165 N.J. 22 (2000) (three-year suspension for attorney who, while on vacation in California, stole a credit card number while in a camera store and then attempted to commit theft by using the number to purchase \$5,800 worth of golf clubs, which he had delivered to a New Jersey address; the attorney also made multiple misrepresentations on firearms purchase identification cards and handgun permit applications by failing to disclose his psychiatric condition and his involuntary psychiatric commitment, as required by law; the attorney had a prior reprimand for making direct, in-person contact with victims of the Edison New Jersey Pipeline Explosion Mass Disaster); and In re Hasbrouck, 152 N.J. 366 (1998) (disbarment for attorney convicted of theft by unlawful taking and burglary of doctors' homes to obtain keys to their offices to have access to prescription drugs; the attorney had a prior one-year suspension for obtaining a controlled dangerous substance by fraud and for uttering a forged prescription; the Court found that the attorney's pattern of

illegal conduct demanded strohger discipline than would an isolated criminal incident).

As seen above, in cases involving the abandonment of clients, the discipline has ranged from a reprimand to disbarment. Respondent's case is most similar to Kantor (disbarment) in terms of the default nature of the proceedings (failure to cooperate with disciplinary authorities), and the number of clients involved (respondent abandoned nine clients, Kantor ten). Unlike Kantor, respondent has no ethics history. Kantor had a reprimand and three-month suspension.

As to respondent's theft of monies belonging to clients, his conduct was akin to Bevacqua's and Meaden's, in that all three attorneys misused other individuals' credit cards. Bevacqua and Meaden received three-year suspensions. Respondent's conduct was more culpable, however, because the victims entrusted him with their credit card information because of his status as his or her attorney and the trust and confidence they reposed to him.

Based on respondent's misconduct in the aggregate - his abandonment of clients, theft of monies belonging to clients, and disregard of his duty to cooperate with disciplinary authorities, we recommend that he be disbarred.

Members Boylan, Stanton, and Wissinger 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 J. O'Shaughnessy, Chair

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

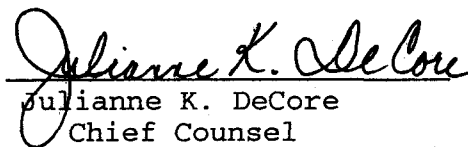
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Edward F. Mitchell
Docket No. DRB 06-198

Decided: October 31, 2006

Disposition: Disbar

Members	Disbar	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:	6				3


Julianne K. DeCore
Chief Counsel