SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 06-108
District Docket No. XIV-05-058E
(X-05-900E)

IN THE MATTER OF	
GEORGE JEFFREY MOELLER	
AN ATTORNEY AT LAW	

Decision

Argued: June 15, 2006

Decided: August 22, 2006

Walton W. Kingsbery, III appeared on behalf of the Office of Attorney Ethics.

Michael S. Weinstein appeared on behalf of respondent.

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

This matter came before us on a recommendation for discipline filed by the District X Ethics Committee ("DEC"]. The one-count complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 1.4(a) (failure to keep client reasonably informed about the status of the matter and to promptly comply with reasonable requests for information), RPC 1.4(b) (failure to explain a matter to the extent reasonably

necessary to permit the client to make informed decisions regarding the representation), RPC 1.16(d) (upon termination of representation, failure to take steps to the extent reasonably practicable to protect a client's interests), and RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation).

We previously considered this matter at our January 2005 session, as a default, accompanied by respondent's motion to vacate the default. We granted the motion and remanded the matter to the DEC for a hearing. This is the product of the remand.

For the reasons stated below, we determine that respondent should be reprimanded.

Respondent was admitted to the New Jersey bar in 1978. He does not presently practice law. However, at the relevant times, he was associated with J. D. Larosiliere and Associates, LLC (the Larosiliere firm) (from January to August 2001) and Rubin, Fiorella and Friedman, LLP (from October 2001 through December 2002). Respondent was unemployed from August through October 2001, and from January 2003 through April 2003. Since April 2003, he has worked in New York as an insurance adjuster.

Respondent's ethics history includes a one-year suspension, which we concluded was an appropriate sanction based upon the

recommendation of the Committee on Attorney Advertising (CAA). In re Moeller, 177 N.J. 511 (2003). The CAA concluded that discipline was required for respondent's affiliation with a Texas corporation that marketed and sold living trusts to senior citizens. In re Moeller, DRB 02-463 (July 1, 2003) (slip op. at 3). That activity occurred between February 1996 and January 1999. Id. at 3, 10, 13.

In September 2003, the Supreme Court accepted our determination and suspended respondent for the following infractions: failure to explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation; charging an excessive fee; conflict of interest; accepting compensation from someone other than the client; sharing legal fees with a non-lawyer; permitting a person who recommends, employs or pays the lawyer to render legal services to another to direct the lawyer's professional judgment in rendering such legal services; assisting another in the unauthorized practice of law; making false or misleading communications about a lawyer, the lawyer's services or any matter in which the lawyer has or seeks a professional involvement; making false or misleading communications likely to create an unjustified expectation about results the lawyer can achieve; making false or misleading

communications about the lawyer's fee; compensating a person to recommend or secure the lawyer's employment by a client or as a reward for having made a recommendation resulting in the lawyer's employment by a client; using a firm name or letterhead that violates RPC 7.1; making a false statement to disciplinary authorities; failing to disclose a fact necessary to correct a misapprehension known by the person to have arisen in a disciplinary matter; misrepresentation; and improper use of a corporate name that does not comply with RPC 7.5. Respondent's suspension was effective October 4, 2003.

Keith and Sheila Hughes, husband and wife, were the owners of Adventure Sports, a business that sold sporting goods, including firearms. In April 1997, the Hughes' store was burglarized. Among the items stolen were three handguns. One or more of the guns was later used in the murder of two pizza delivery men. Because of subsequent negative publicity about the Hughes' business, and because of a lawsuit against them by the families of the murder victims, the Hugheses sought the advice of Dean G. Sutton, Esq. Sutton advised the Hugheses to avail themselves of a procedure known as an assignment for the benefit of creditors. Pursuant to the procedure, an assignee was to take control of the Hugheses' business assets. The assignee was Gary K. Norgaard, Esq.

The Hugheses became unhappy with Sutton's representation and consulted with respondent, whom they had known as a customer in their store. In April 2001, the Hugheses retained respondent to represent them in a matter that Norgaard had instituted against them, captioned Gary K. Norgaard, Assignee for the Benefit of Creditors of Adventure Sports, Inc. v. Keith and Sheila Hughes ("the Norgaard matter"). The Hugheses asserted a counterclaim against Norgaard and a third-party malpractice action against Sutton. The Hugheses paid respondent $10,000 to handle their matter through the conclusion of any trial.[1] At the time, respondent was employed with the Larosiliere firm.[2] According to respondent, the fee was paid directly to him at Larosiliere's direction as partial payment of what the latter owed him for work completed for the law firm. The retainer agreement, which was signed in June 2001, is between the Hugheses and respondent, not the Hugheses and the Larosiliere firm. According to Keith Hughes, to his knowledge, Larosiliere was not to be involved in "any way, shape or form."

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[1] Although respondent accepted the $10,000 as a flat fee, the hearing panel report indicates that he spent sixty-one hours on the Hugheses' matter at a rate of $190 per hour, for a total of $11,590. Respondent recalls spending sixty-four hours, at a rate of $185 per hour, which comes to $11,840.

[2] Larosiliere was present during a meeting in February 2001, when the Hugheses met with respondent to discuss their matter.

During the course of the representation, respondent had regular telephone contact with the Hugheses, as well as several meetings. In October 2001, however, respondent left the Larosiliere firm and took a position with the firm of Rubin, Fiorella, LLP. When respondent left the Larosiliere firm, it was his understanding that his former employer would continue to represent the Hugheses. Respondent, however, never advised the Hugheses of this arrangement. In February 2002, Larosiliere abandoned his law practice and fled the United States. Thus, it would appear that no one was representing the Hugheses.

In May 2002, the Hugheses were copied on a letter from Norgaard's lawyer, John O'Boyle, to Judge Ronald B. Graves. In the letter, dated May 8, 2002, O'Boyle referred to the plaintiff's unopposed summary judgment motion filed in the Norgaard matter and the judge's stated intention, at the April 23 hearing, to decide the motion upon the papers, after O'Boyle had submitted a supplemental certification of service. In the letter, O'Boyle requested that Judge Graves not decide the motion on the papers because O'Boyle had learned that the Office of Attorney Ethics ("OAE") had "closed the office of Defendants' counsel (Larosiliere & Associates)" and temporarily suspended Larosiliere from the practice of law. O'Boyle sent the summary judgment motion to respondent at the Larosiliere firm, via

Lawyers Service. Lawyers Service did not return the motion undelivered.

According to O'Boyle's letter, he spoke with respondent on May 8, 2002, at which time respondent informed him that he had not represented the Hugheses since October 2001, when he left the Larosiliere firm. Respondent was, thus, unaware that the summary judgment motion had been filed. Respondent requested a copy of the motion, and agreed to contact the Hugheses and then to advise O'Boyle whether they intended to retain respondent's new law firm. In light of this information, O'Boyle requested that Judge Graves set a new hearing date.

According to the Hugheses' testimony, the May 2002 letter was the first indication they had that respondent was no longer representing them. Indeed, in the Hugheses' statement of claim, filed with the New Jersey Lawyers Fund for Client Protection, Sheila Hughes stated that they discovered their loss in May 2002, "when Mr. O'Boyle sent a letter stating that [respondent] told him he no longer represented us." Respondent did not contact the Hugheses after the May 2002 letter.

In March 2003, a status conference was held on the Hugheses' matter. Respondent did not appear and was ordered by the court to appear several days later. Respondent appeared before the court and stated that he would not abandon the

Hugheses' interests. Although he was instructed to bring the Hugheses' file to court, he failed to do so. Sheila Hughes recalled respondent's stating that he had left the file with the Larosiliere firm.

During the DEC hearing, the presenter asked Keith Hughes about his understanding of who represented him following the March 2003 proceedings:

> Q. Okay. As a result of those hearings in March of 2003, what was your understanding with respect to whether or not you were being represented or not?
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> A. Well, our understanding was we were still being represented but –
>
> R. By whom?
>
> A. Jeff Moeller.
>
> Q. How did you arrive at that understanding?
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> A. Because we just – of the initial contract basically he said he would – with that retainer he would see through with what needed to be done.
>
> Q. He said he would see it through to the end of the trial, is that right?
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> A. Correct, yes.
>
> Q. And you thought he would abide by that?
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> A. Yes. And the only vivid point I can recall is the fact of time he wasn't there and the judge specifically

> asking us is he representing you and my wife and we answered honestly saying we don't know. I mean we were in court saying we assumed he would be here and, yes, he should be representing us but we can't speak for him. We were basically left at that one particular hearing feeling like we were basically at that point abandoned.
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> [T87-22 to T88-24.][3]

In April 2003, Shelley A. Weinberg, Esq., respondent's "colleague and a friend," sent a letter to the Hugheses on his behalf, terminating the representation and advising the Hugheses that she had contacted the court about appointing new counsel. The Hugheses obtained other counsel independently. As of the date of the DEC hearing, they did not have possession of their file. In addition, as of that date, there was an $80,000 judgment against the Hugheses stemming from the present matter.

As noted above, the complaint charged respondent with having violated RPC 8.4(c). This charge apparently was based on his statement to the OAE, in his March 2004 letter, that he had referred the Hugheses' case to Larosiliere, and on his statement to the court and to the Hugheses, at the March 2003 status conference, that he continued to represent them. Respondent,

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[3] T refers to the transcript of the DEC hearing on August 23, 2005.

however, did not produce any documents that would substantiate his claim that Larosiliere had been involved in the Hugheses' case. The complaint alleged that there were no records maintained by the Larosiliere firm that supported respondent's contention.

In addition, the complaint charged that respondent had failed to notify the Hugheses that Larosiliere had been suspended from the practice of law, and that Lewis B. Cohn, Esquire had been appointed attorney/trustee for the Larosiliere firm.

The DEC dismissed the charged violations of RPC 1.1(a), RPC 1.4(a), and RPC 8.4(c). The DEC found, however, that respondent violated RPC 1.4(b) (incorrectly cited as RPC 1.4(c)) and RPC 1.16(d). In the DEC's view, respondent's admitted failure to advise the Hugheses that he was leaving the Larosiliere firm and leaving the matter in the latter's care left them unable to make an informed decision about who would represent them. Furthermore, as the DEC pointed out, the Hugheses had retained respondent, not the Larosiliere firm. The DEC recommended that respondent receive a reprimand, a form of discipline also endorsed by the OAE.

Upon a de novo review of the record, we are satisfied that the conclusion of the DEC that respondent was guilty of

unethical conduct is fully supported by clear and convincing evidence.

The DEC correctly dismissed the alleged violations of RPC 1.1(a) and RPC 1.4(a). The record indicates that respondent took action on the Hugheses' behalf and communicated with them until he left the Larosiliere firm. In addition, respondent did not act unethically when he failed to inform the Hugheses that Larosiliere had been suspended from the practice of law and that Cohn had been appointed as trustee. When these events transpired, respondent had not been affiliated with the Larosiliere firm for months and, therefore, may not have known that the firm had been closed and Larosiliere suspended. Moreover, regardless of whether respondent or Larosiliere represented the Hugheses, respondent had no obligation to inform them of Larosiliere's ethics problems or his suspension.

Similarly, the alleged violation of RPC 8.4(c) was properly dismissed for lack of clear and convincing evidence. It cannot be found that, when respondent left the Larosiliere firm, he did not believe that the firm would continue to represent the Hugheses. Respondent discussed his understanding in his reply to the Hugheses' claim, filed with the New Jersey Lawyers' Fund for Client Protection:

> Then, in July and September 2001 that [sic] I appeared for a hearing before the CAA, pro

> se. Upon the conclusion of the hearings, I faced the very grim prospect that the Committee would likely issue a recommendation, including one including a suspension. I therefore arranged with Mr. Larosiliere for the proper and satisfactory handling of the Hughes matter in every respect, including the filing of any and all necessary documents and pleadings. Mr. Larosiliere suggested this arrangement because he still owed me money and he was willing to devote his services on behalf of the Hughes as a way to repay his obligation to me. I relied on the assurances of Mr. Larosiliere that he would indeed pursue the matter to conclusion. Given his background as previously described I had every confidence and reasonable expectation that he would follow through and properly represent the Hughes and that under the prevailing circumstances, Mr. Larosiliere's continuing representation of the Hughes would be superior to mine.
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> [Ex.J-10 at 7.]

That respondent produced no documents to support his claim is not dispositive of the issue. Given the ensuing events at the Larosiliere firm, it is not surprising that there was no evidence that Larosiliere had agreed to represent the Hugheses. Although the fact that the file was not found at the firm gives us pause, if respondent had kept the Hughes file, it would have behooved him to produce it, when so directed by the court. His failure to do so lends credence to his claim that he did not have it any longer.

As to the *remaining allegations*, violations of RPC 1.4(b) and RPC 1.16(d), in order to properly analyze the propriety of respondent's conduct, we had to first determine whether the Hugheses were his clients or the Larosiliere firm's clients. If the Hugheses were the clients of the Larosiliere firm, after respondent's departure, the file would have remained with the firm unless the Hugheses had directed otherwise. Respondent's contention that he arranged with Larosiliere for the firm to represent the Hugheses, evidences that the Hugheses were, in fact, his clients. They were, thus, his responsibility. Furthermore, there seems to be no doubt in the Hugheses' minds that respondent was representing them and that Larosiliere was to have no part in their representation.[4] The retainer agreement was with respondent and the $10,000 had been paid directly to respondent.

That being said, the DEC was correct in its determination that respondent violated RPC 1.4(b) and RPC 1.16(d) when he failed to protect the Hugheses' interests by terminating the representation without so advising them. Under RPC 1.16(d), attorneys have certain obligations to their clients "[u]pon

[4] This area of the record is somewhat muddied by respondent's statement, noted above, that Larosiliere told him to take the entire $10,000 as partial payment of what the firm owed him.

termination of representation." If respondent believed that, as of October 2001, he no longer represented the Hugheses, then he was required to protect his clients' interests by giving them reasonable notice, allowing them time to employ new counsel, surrendering their papers and property, and refunding any advance payment of fee that had not been earned. He did none of this.

This is not, however, a case of abandonment. Respondent contended that he believed that his clients were being protected by his former employer. What respondent clearly failed to do was to communicate that fact to the Hugheses for their information and approval. Respondent admitted his dereliction in that regard. Given the timing of these events, it is not difficult to understand how they happened.

When respondent left the Larosiliere firm, in October 2001, he was in the midst of the proceedings before the Committee on Attorney Advertising ("CAA") that led to his one-year suspension. Respondent explained that, in July and September 2001, he appeared before the CAA pro se, his funds having been exhausted during the CAA investigation. Respondent was, thereafter, facing a suspension and unable to financially continue to work for Larosiliere, who had not paid him during the summer of 2001. By the time of the March 2003 Hughes case

status conferences, respondent had already received the CAA's recommendation that he be suspended and he was again seeking employment. In late March 2003, he lost his home and his car due to financial difficulties.

This is not a situation where the attorney simply abandoned his clients; respondent thought that they were being capably represented by his former employer. Nevertheless, he had an obligation to protect them and to communicate with them regarding his plans for their representation and to seek their approval. Apparently, due to the other events in respondent's life, he overlooked his obligations to the Hugheses.

In mitigation, respondent claims that there is no need to protect the public from him because he no longer practices law. Moreover, his conduct in the Norgaard matter was not part of a wider pattern of neglect or client mistreatment. In addition, respondent's conduct was the result of his "impending suspension and ultimately, the literal loss of [his] home, employment, and livelihood." Finally, respondent had practiced law for twenty-two years without any incident.

In sum, respondent violated RPC 1.4(b) and RPC 1.16(d). His violation of RPC 1.4(b) arose from his failure to communicate with his clients when he withdrew from the

representation. That conduct is subsumed within the more comprehensive ethics violation described by RPC 1.16(d).

In the past, a single violation of RPC 1.16(d) has resulted in an admonition. See, e.g., In the Matter of Harry E. Franks, Jr., DRB 01-286 (November 1, 2001) (admonition for attorney who withdrew from the representation without taking reasonable steps to protect the client's interests or filing a motion to be relieved as counsel); In the Matter of Anthony F. Carracino, DRB 99-340 (December 28, 1999) (admonition for failure to properly withdraw from representation); and In the Matter of Ayshia Y. Armorer, DRB 97-462 (admonition for failure to return file contents, including documents and tape-recordings).

Like the above attorneys, respondent is guilty of one instance of failure to properly withdraw from representation. His conduct, however, warrants stronger discipline than an admonition. The harm to the Hugheses was severe. Their case proceeded for months when, unbeknownst to them, they had no representation. As of the DEC hearing, there was an $80,000 judgment against them. Moreover, when confronted with the situation, had respondent honestly stated that he could no longer represent the Hugheses, some of the harm to them could have been mitigated. Certainly, the statement in O'Boyle's May 2002 letter - that respondent planned to contact the Hugheses -

had to have confused them and dissuaded them from obtaining new counsel. Similarly, respondent's March 2003 statement to the court and to the Hugheses that he would not abandon the Hugheses was misleading; he actually never took up their cause again.

In our view, it does not appear that respondent was venal. Rather, he was overwhelmed and caused the Hugheses serious harm that may well have been avoided, had they been properly represented. Moreover, respondent's misconduct also wasted judicial resources, in that the trial court was forced to call two conferences, in March 2003, to determine the status of the Hugheses' case. As of the date of the DEC hearing, the Hugheses' malpractice action against Sutton was ongoing.

Thus, although an admonition is generally the appropriate measure of discipline for improper withdrawal from representation in one matter, we unanimously conclude that the circumstances here call for a reprimand. We note that the Court imposed respondent's one-year suspension after his representation of the Hugheses. We do not, thus, consider the suspension as an aggravating factor.

Member Bonnie Frost recused herself.

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

SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of George Jeffrey Moeller
Docket No. DRB 06-108

Argued: June 15, 2006

Decided: August 22, 2006

Disposition: Reprimand

Members	Suspension	Reprimand	Admonition	Disqualified	Did not participate
O'Shaughnessy		X			
Pashman		X			
Baugh		X			
Boylan		X			
Frost				X	
Lolla		X			
Pashman		X			
Stanton		X			
Wissinger		X			
Total:		8		1	

Julianne K. DeCore
Julianne K. DeCore
Chief Counsel