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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-369
District Docket No. IV-03-088E

IN THE MATTER OF
ANDREW BREKUS
AN ATTORNEY AT LAW

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Decision

Argued: February 16, 2006

Decided: March 23, 2006

Anne Cantwell appeared on behalf of the District IV Ethics Committee.

John Kelley appeared on behalf of respondent.

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

This matter was before us on a recommendation for discipline (reprimand) filed by the District IV Ethics Committee ("DEC"). The two-count complaint charged respondent with violating RPC 8.4(d) (conduct prejudicial to the administration of justice) and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority). Prior to the DEC hearing,

respondent and the presenter entered into a written stipulation of facts, which was admitted into the record.

Respondent was admitted to the New Jersey bar in 1986. He maintains a law practice in Cherry Hill, New Jersey.

In 2000, respondent was admonished for violating RPC 1.8(a) and (h) by failing to advise his client about a potential malpractice claim against respondent and to consult with independent counsel about the claim. In the Matter of Andrew J. Brekus, Docket No. 00-187 (DRB September 25, 2000).

Grievant Deborah Murphy retained respondent in 1995 to represent her in a personal injury matter. Respondent's misconduct in that matter resulted in his 2000 admonition. Our 2000 admonition letter mentioned respondent's January 1998 verbal agreement with Murphy to settle her potential malpractice claim against him by paying Murphy \$8,000 and reasonable medical expenses. As of the date of our letter, September 25, 2000, respondent had paid Murphy only \$3,000. We, therefore, directed respondent to "forthwith" pay Murphy the \$5,000 balance and to submit proof of that payment to the Office of Attorney Ethics ("OAE") within seven days of respondent's receipt of the admonition letter.

According to the stipulation, respondent failed to comply with our directive to pay Murphy the balance of the monies and submit proof of the payment to the OAE.

Murphy testified that, initially, respondent had agreed to pay her \$13,000, but later changed the amount to \$8,000 plus the payment of her reasonable medical expenses. After we issued the admonition letter, on September 28, 2000, respondent's counsel forwarded Murphy a \$5,000 check and a release. The letter to Murphy stated, in relevant part: "In addition, I have enclosed herewith an original and a copy of a Release of all claims regarding payment. I ask that you execute the original Release and return it to me" At the DEC hearing, Murphy asserted that, because respondent unilaterally changed his agreement to pay medical expenses, she returned the check and informed him "that's not going to work. That's not what you said and that's not what you promised."

Murphy claimed that, after she had not heard from respondent for "a long time," she filed another grievance with the OAE in 2002. Respondent's records showed, however, interim payments to Murphy from his business account, made on March 14, 2001 for \$1,000, May 5, 2001 for \$4,000, and August 29, 2001 for \$2,500.

Murphy retained another attorney, Leo Dubler, to sue respondent for the monies he owed her. It is not clear from the

record whether Dubler filed suit to enforce our directive to pay Murphy, or, after respondent paid Murphy, to recover additional amounts and/or to compel respondent to pay her medical providers. Respondent admitted that Murphy's chiropractor was not paid until the day before the DEC hearing.

According to respondent, based on his agreement with Dubler, he paid Murphy an additional \$2,500. Respondent added that, by way of an August 28, 2001 letter, he notified the DEC secretary, but not the OAE, of his payments to Murphy.

The OAE wrote to respondent on September 17, 2003 and October 28, 2003, requesting a reply to Murphy's grievance. Respondent did not reply to the OAE's September letter, but telephoned the OAE after receiving the October letter and obtained an extension to November 28, 2003. Respondent did not submit his reply before the new deadline, but notified the OAE that a response would be mailed out on December 4, 2003. Despite this assurance, he did not provide the OAE with a response.

Thereafter, by letter dated March 8, 2004, the DEC investigator requested a reply to the grievance by March 18, 2004. Respondent took no action until March 31, 2004, when he notified the investigator that he would submit a response on April 5, 2004. He again failed to do so.

Respondent admitted that he did not reply to the letters from the ethics authorities or turn over Murphy's original file. He claimed that psychological and emotional problems prevented him from attending to the grievance. He stated that he began to suffer from depression as a result of the death of two close friends: one in 2003, the other in the early winter of 2004. Respondent testified that he had sought assistance from the Pennsylvania Lawyers Concerned for Lawyers, had begun treatment with a psychiatrist - whom he continues to see every two weeks - and had been prescribed Wellbutrin and Lexapro. Respondent added that he is also treating with a therapist.

The DEC found a violation of RPC 8.4(d) (conduct prejudicial to the administration of justice) for respondent's failure to comply with the directive to pay Murphy the balance of the monies she was owed, and RPC 8.1(b) (failure to cooperate with disciplinary authorities) for his failure to reply to the OAE's and DEC's letters and to turn over Murphy's original file to disciplinary authorities.

The DEC found credible respondent's testimony about his mental health problems, considered it as mitigation, and determined that a reprimand was the appropriate discipline for respondent's misdeeds.

Following a de novo review of the record, we are satisfied that the DEC's conclusion that respondent was guilty of unethical conduct is supported by clear and convincing evidence.

In September 2000, we ordered respondent to honor the terms of his verbal agreement with Murphy and pay her the \$5,000 balance "forthwith." Our letter did not address the conditions for respondent's payment of Murphy's "reasonable medical expenses." Within the required time, through counsel, respondent forwarded a \$5,000 check and a release that unilaterally limited his obligation to Murphy. Murphy properly refused the new terms by returning the check and release. While respondent attempted to timely make a payment to Murphy, he, nevertheless, breached our directive. Moreover, when we imposed no more than an admonition in the original matter, we considered that respondent was "ready, willing and able to pay the balance of the settled claim." In the Matter of Andrew J. Brekus, Docket No. 00-187 (DRB September 25, 2000) (slip op. at 2). Respondent's unilateral actions were taken in bad faith and, again, at a time when Murphy was not represented by counsel.

After Murphy refused to accept the payment and respondent's new terms, apparently she was required to retain Dubler to enforce their agreement. The record is unclear about the date she retained him. Respondent's own records, however, show that he did not make

any further payments to Murphy until March 14, May 5, and August 29, 2001. It took him almost a year to make the payments he had earlier claimed he was "ready, willing and able" to make. Moreover, even though he notified the DEC secretary about the payments, he did not notify the OAE, as instructed. By failing to comply with our directive, respondent violated RPC 8.4(d). He also violated RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority) by failing to reply to the grievance and to turn over Murphy's file to the DEC.

The DEC believed respondent's claim of depression and considered it as mitigation. Respondent, however, failed to supply any corroborating reports or present any expert testimony in this regard. Nevertheless, we have considered his claim of depression only as it relates to the RPC 8.1(b) violation, since his failure to comply with our directive occurred prior to the death of his two friends.

The only issue left for determination is the quantum of discipline for respondent's violations of RPC 8.4(d) and RPC 8.1(b). In cases in which attorneys have not cooperated with disciplinary authorities, ordinarily admonitions or reprimands have been imposed. See, e.g., In the Matter of Andrew T. Brasno, Docket No. DRB 97-091 (June 25, 1997) (admonition for failure to reply to the ethics grievance and to turn over a client's file); In the

Matter of Mark D. Cubberley, Docket No. DRB 96-090 (April 19, 1996) (admonition for failure to reply to the ethics investigator's request for information); In re Williamson, 152 N.J. 489 (1998) (reprimand for failure to cooperate with disciplinary authorities; attorney had a prior private reprimand); In re Vedatsky, 138 N.J. 173 (1994) (reprimand for failure to cooperate with the district ethics committee); and In re Macias, 121 N.J. 243 (1990) (reprimand for failure to cooperate with the OAE).

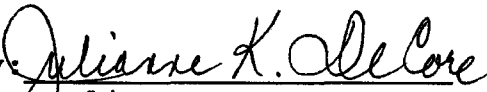
Attorneys who have failed to obey court orders have been reprimanded. See, e.g., In re Holland, 164 N.J. 246 (2000) (reprimand where the attorney, required to hold in trust a fee in which she and another attorney had an interest, violated a court order by taking the fee prior to the resolution of the dispute); In re Milstead, 162 N.J. 96 (1999) (reprimand where the attorney violated a court order by disbursing escrow funds to his client); and In re Hartmann, 142 N.J. 587 (1995) (reprimand for intentionally and repeatedly ignoring court orders to pay opposing counsel a fee, resulting in a warrant for the attorney's arrest; the attorney also displayed discourteous and abusive conduct toward a judge with intent to intimidate her).

Although respondent violated our directive, we find that his conduct was not as serious as that of Hartmann, who received a reprimand. However, an aggravating factor here is respondent's

prior admonition, which involved the same client matter, and his attempt to alter the terms of his verbal agreement with Murphy at a time when she was not represented by counsel, misconduct similar to that exhibited in the initial matter. On balance, we have given some weight to respondent's mitigation, and determine that a reprimand is the appropriate discipline for respondent's violations of RPC 8.1(b) and RPC 8.4(d). Member Lolla did not participate.

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
Chief Counsel

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

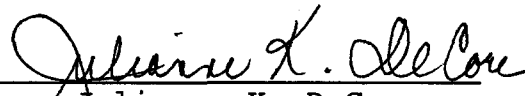
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Disposition: Reprimand

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


Julianne K. DeCore
Chief Counsel