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SUPREME COURT OF NEW JERSEY  
Disciplinary Review Board  
Docket No. DRB 05-255  
District Docket No. VI-04-034E

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IN THE MATTER OF :  
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JAMES J. GALLO :  
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AN ATTORNEY AT LAW :  
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Decision  
[Default R. 1:20-4(f)]

Decided: December 1, 2005

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 District VI Ethics Committee (DEC) pursuant to R.  
1:20-4(f).

Respondent was admitted to the New Jersey bar in 1978. He  
maintains a law practice in Jersey City, New Jersey. Respondent  
was suspended for three months in 1990 for recordkeeping  
violations leading to the negligent misappropriation of client  
trust funds. In re Gallo, 117 N.J. 365 (1990). Respondent's New  
Jersey Lawyers' Fund for Client Protection report contains the

following notation: "Please note that he is 'no response' for 2005; thus will be ineligible if he does not pay soon."

On May 2, 2005, the DEC transmitted the complaint to respondent's business address at 618 Newark Avenue, Jersey City, New Jersey, by regular and certified mail, return receipt requested. Although the certified mail was received on May 4, 2005, the signature of the recipient is illegible. The regular mail was not returned. Respondent did not file an answer to the complaint.

On June 17, 2005, the DEC sent a second letter to respondent at the same address, by regular and certified mail, return receipt requested. The letter notified respondent that, if he did not reply within five days, the matter would be certified to us for the imposition of sanction, and the complaint amended to include a violation of RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority). The certified mail was received on June 20, 2005. The signature of the recipient is illegible. The regular mail was not returned. As of the date of the certification of the record, August 18, 2005, respondent had not filed an answer to the complaint.

The four-count complaint charged respondent with having violated RPC 1.3 (lack of diligence), RPC 1.4(a) (failure to communicate with a client), RPC 1.16(d) (upon termination of

representation, failure to surrender papers and property to which the client is entitled - the client's file), and RPC 8.1(b) (failure to reply to a lawful demand for information from a disciplinary authority).

According to the complaint, in November or December 2002, grievant Nicholas Gerardi retained respondent to represent him in a workers' compensation matter. By December 2002, Gerardi had provided respondent with medical releases and "necessary information" to evaluate and prosecute the claim. Respondent delayed pursuing the claim for nearly two years and failed to file a workers' compensation petition in Gerardi's behalf. The complaint charged that respondent's failure to file the petition "within a reasonable time" constituted a lack of diligence.

From the time that respondent was retained until the summer of 2004, he failed to contact Gerardi about the status of his claim and to comply with Gerardi's requests for information about the matter, a violation of RPC 1.4(a).

In the summer of 2004, Gerardi informed respondent that he was discharging him as his attorney and repeatedly requested that respondent release his file. Although Gerardi tried to contact respondent approximately eight times to discharge him, respondent failed to reply "in this regard." Gerardi's new attorney also requested that respondent release Gerardi's file, to no avail.

According to the investigative report, Gerardi had retained another attorney in October 2004, even though he had not received his file from respondent. Gerardi's new attorney informed him that respondent had never filed the workers' compensation claim on his behalf, and that the statute of limitations had expired. The attorney, nevertheless, agreed to represent Gerardi if Gerardi would sign an acknowledgement that he had been advised that the employer could raise the expiration of the statute of limitations as an affirmative defense. According to the investigative report, the employer did raise this as a defense.

On December 29, 2004 and January 14, 2005, the DEC wrote to respondent requesting a reply to Gerardi's grievance, to no avail. Thereafter, on February 22, 2005, the DEC telephoned respondent's office requesting a copy of the file in this matter. Respondent wrote to the DEC that he would submit the file by February 28, 2005. However, as of the date of the complaint, April 15, 2005, respondent had not delivered the file, thereby violating RPC 8.1(b).

Service of process was properly made in this matter. The complaint contains sufficient facts to support a finding of unethical conduct. Because of respondent's failure to file an answer to the complaint, the allegations are deemed admitted. R. 1:20-4(f).

The complaint charged that respondent's failure to file a workers' compensation petition within a reasonable time constituted a lack of diligence. For nearly two years respondent did nothing to advance his client's workers' compensation claim. Moreover, according to the investigative report, respondent's inaction led to the expiration of the statute of limitations. We, therefore, find that respondent's conduct constituted a lack of diligence (RPC 1.3).

The complaint alleged that respondent failed to reply to Gerardi's requests for information about the status of the matter, and also failed to reply to Gerardi's multiple requests for the release of his file. We find that this conduct violates RPC 1.4(a) and RPC 1.16(d), respectively. Respondent also failed to reply to the DEC's requests for information about the grievance, and failed to file an answer to the complaint, thereby violating RPC 8.1(b).

Misconduct in non-default matters involving similar violations ordinarily results in either an admonition or a reprimand, depending on the seriousness of the offenses, harm to the clients, and the attorney's disciplinary history. See, e.g., In the Matter of Anthony R. Atwell, Docket No. DRB 05-023 (February 22, 2005) (admonition for lack of diligence and failure to communicate with client where the attorney failed to disclose

to the client that he had lost his file; the attorney canceled several appointments alleging his unavailability, rather than confessing his inability to locate the file); In re Aranquren, 172 N.J. 236 (2002) (reprimand where attorney failed to act with diligence in a bankruptcy matter, failed to communicate with the client, and failed to memorialize the basis of the fee; the attorney had a prior admonition and a six-month suspension); and In re Zeitler, 165 N.J. 503 (2000) (reprimand where attorney failed to act diligently in handling a PIP matter and failed to communicate with the client; the attorney had a prior admonition, reprimand, a one-year suspension, and a two-year suspension). These cases did not include failure to surrender the file on termination of the representation or failure to cooperate with disciplinary authorities.

In default matters with similar violations, where the attorneys do not have ethics histories, reprimands have been imposed. See, e.g., In re Giannattasio, 165 N.J. 570 (2000) (reprimand for lack of diligence where the attorney won the case for his client, but failed to file a judgment, failed to reply to the client's numerous requests for information about the status of the matter, and failed to cooperate with disciplinary authorities); In re Fleisher, 165 N.J. 501 (2000) (reprimand for lack of diligence, failure to surrender file on termination of

representation and failure to communicate with a client); and In re Martelli, 164 N.J. 106 (2000) (reprimand where, in three matters, the attorney engaged in a lack of diligence and failure to communicate with clients; the attorney also failed to comply with recordkeeping requirements). But see, In re Pollan, 163 N.J. 87 (2000) (three-month suspension where the attorney was retained in an estate matter in 1974 but took no action with respect to the estate funds except to place them in a certificate of deposit, where they stayed for almost 25 years, and failed to cooperate with disciplinary authorities; his ethics history included a six-month and a two-year suspension).

Had this been respondent's first ethics infraction then, notwithstanding the default nature of these proceedings, precedent would require a reprimand. We are aware that this respondent was previously suspended for three months for negligent misappropriation of client funds. While ordinarily we would consider this an aggravating factor, that suspension was imposed fifteen years ago for conduct unrelated to respondent's current ethics transgressions. We note also that the attorney in Zeitler, supra, received a reprimand in a non-default matter despite his extensive ethics history.

We, therefore, find that a reprimand properly addresses respondent's misconduct. Member Lolla voted to impose a censure. Member Boylan 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  
Julianne K. DeCore  
Chief Counsel



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

In the Matter of James J. Gallo  
Docket No. DRB 05-255


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Decided: December 1, 2005

Disposition: Reprimand

Members	Censure	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			
<b>Total:</b>	1	7			1

  
Julianne K. DeCore  
Chief Counsel