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SUPREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 05-212
District Docket No. IIIA-03-028E

IN THE MATTER OF
LEE D. GOTTESMAN
AN ATTORNEY AT LAW

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

Decided: September 29, 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 IIIA Ethics Committee (DEC) pursuant to R.
1:20-4(f).

Respondent was admitted to the New Jersey bar in 1981. At
the relevant times, he maintained a law office in Toms River,
New Jersey. Respondent has no disciplinary history.

On January 28, 2005, the DEC transmitted a copy of an amended complaint to respondent's business address at 509 Main Street, Toms River, New Jersey 08753. The amended complaint was sent via regular and certified mail, return receipt requested. According to the certification of record, someone signed for the certified letter on February 11, 2005, although the signature is not legible. The regular mailing was not returned.

On March 28, 2005, the DEC sent another letter to respondent 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 DEC would certify the record directly to us for imposition of sanction. The letter was not returned.

On March 31, 2005, the DEC sent respondent a corrected five-day letter. The corrections were minor, as the March 28 letter, while addressed to respondent, greeted him with the salutation "Dear Mr. Cheek." A handwritten notation on the corrected letter states that it was "only sent reg. mail." The regular mailing was not returned.

Apparently, either the March 28 or the March 31 letter was sent by certified mail. The DEC secretary's certification is unclear, however, as to which one. The secretary certified that

both letters were sent via regular mail. However, he also certified that a green card for one of the letters was returned on April 4, 2005, "indicating delivery." Based on the secretary's certification as a whole, it is likely that the March 28 letter was sent via certified mail.

Because respondent did not file an answer to the amended complaint within the time permitted and did not reply to any of the letters sent to him, the DEC certified this matter to us as a default.

The one-count amended complaint charged respondent with having violated RPC 1.1(a) (gross neglect), RPC 3.2 (failure to expedite litigation), RPC 1.4, presumably (a) (failure to keep a client reasonably informed about the status of a matter and promptly comply with reasonable requests for information), and RPC 8.4(c) (engaging in conduct involving dishonesty, fraud, deceit or misrepresentation). The amended complaint contains a limited number of factual allegations.

At some unidentified time, grievant William Shapiro retained respondent to represent him in an Ocean County Special Civil Part action. Presumably, grievant was the plaintiff. In June 2001, grievant's complaint was dismissed for failure to answer interrogatories.

Respondent never informed grievant that the complaint had been dismissed. In addition, when grievant asked respondent about the status of the matter, respondent told him that the case had been "adjourned."

Respondent was properly served when the DEC mailed the complaint to his address on January 28, 2005. Inasmuch as respondent failed to file a verified answer to the amended complaint, the allegations are deemed admitted. R. 1:20-4(f). While these allegations do not support a finding that respondent committed all of the violations with which he was charged, he did commit some of them and, thus, engaged in unethical conduct.

Although respondent clearly mishandled grievant's case, we find that he did not violate either RPC 1.1(a) or RPC 3.2. RPC 1.1(a) prohibits a lawyer from handling or neglecting "a matter entrusted to the lawyer in such manner that the lawyer's conduct constitutes gross negligence." We dismiss the RPC 1.1(a) charge because, in our view, the mere dismissal of a complaint based upon the failure to provide discovery, in and of itself, does not constitute gross negligence on the part of the attorney. Something more — such as dismissal with prejudice — is required. Because the record contains no evidence as to whether the action was restored or not, we cannot determine whether respondent

committed gross neglect. Thus, we have concluded that the RPC 1.1(a) charge should be dismissed.

The RPC 3.2 charge should be dismissed, too. This rule requires a lawyer to "make reasonable efforts to expedite litigation consistent with the interests of the client." Despite the dismissal of grievant's complaint, respondent could not have violated RPC 3.2 inasmuch as he had probably been involved in the matter only for a short while, and, once the action was dismissed, there was no litigation for him to expedite. However, while respondent did not violate RPC 3.2, he clearly should have been taking some action in the matter. Thus, to the extent that respondent appears to have done nothing, other than fabricate the status of the case and his work on it, respondent violated RPC 1.3 (lack of diligence).

RPC 1.3 requires a lawyer to "act with reasonable diligence and promptness in representing a client." Respondent permitted grievant's complaint to be dismissed for failure to answer interrogatories. Accordingly, he failed to "act with reasonable diligence and promptness" in his representation of the client.

We recognize that the amended complaint did not allege that respondent violated RPC 1.3. However, the allegations therein gave respondent sufficient notice of a potential violation of

the rule and the conduct upon which the violation could be sustained.

The remaining violations set forth in the amended complaint are sustainable based upon the facts alleged, which we deem admitted. The amended complaint alleged that respondent's failure to inform grievant that his case had been dismissed for failure to answer interrogatories constituted a violation of RPC 1.4(a), which requires a lawyer to keep "a client reasonably informed about the status of a matter." Because dismissal of a client's complaint is a significant development in any case, respondent's failure to inform grievant of this event constituted a failure to keep him reasonably informed about the status of the matter. Therefore, respondent violated RPC 1.4(a), as well as RPC 8.4(c). See, e.g., Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 347 (1984) (sometimes "silence can be no less a misrepresentation than words").

In addition, respondent violated RPC 8.4(c) a second time when, upon the grievant's inquiry, he misrepresented that the case had been adjourned.

There remains the determination of the quantum of discipline to be imposed upon respondent for his ethics violations. It is well-settled that "intentionally

misrepresenting the status of lawsuits warrants public reprimand." In re Kasdan, 115 N.J. 472, 488 (1989); In re Bildner, 149 N.J. 393 (1997) (attorney with no ethics history reprimanded for violations of RPC 1.3, RPC 1.4(a), and RPC 8.4(c) for failure to inform his clients that their complaint had been dismissed twice as a result of his failure to appear at an arbitration proceeding).

In a default matter, however, the discipline is upgraded to reflect a respondent's failure to cooperate with disciplinary authorities as an aggravating factor. In re Nemshick, 180 N.J. 304 (2004) (in matter that proceeded as a default, three-month suspension imposed for infractions that usually result in a reprimand; no ethics history).

In this case, we determine that respondent's ethics infractions, together with the default nature of this matter, warrant a censure. Members Stanton, Lolla, and Wissinger voted for a three-month suspension. Vice-Chair O'Shaughnessy did not participate.

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

Disciplinary Review Board
Mary J. Maudsley, Chair

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

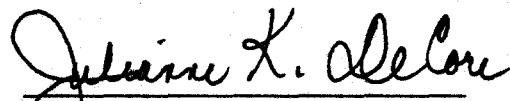
**SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD**

In the Matter of Lee D. Gottesman
Docket No. DRB 05-212

Decided: September 29, 2005

Disposition: Censure

Members	Censure	Reprimand	Admonition	Three-month Suspension	Did not participate
Maudsley	X				
O' Shaughnessy					X
Boylan	X				
Holmes	X				
Lolla				X	
Neuwirth	X				
Pashman	X				
Stanton				X	
Wissinger				X	
Total:	5			3	1



Julianne K. DeCore
Chief Counsel