

PREME COURT OF NEW JERSEY
Disciplinary Review Board
Docket No. DRB 04-356
District Docket No. VII-04-003E

IN THE MATTER OF
A. KENNETH WEINER
AN ATTORNEY AT LAW

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

Decided: December 10, 2004

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

Pursuant to R. 1:20-4(f), the Office of Attorney Ethics
("OAE") certified the record in this matter directly to us for
the imposition of discipline, following respondent's failure to
file an answer to the formal ethics complaint.

Respondent was admitted to the New Jersey bar in 1970. He
maintains a law office in East Brunswick, New Jersey.

Respondent was privately reprimanded in 1988 for failure to
properly safeguard a client's funds and to return the balance at
the end of the representation. In the Matter of A. Kenneth

Weiner, Docket No. DRB 86-118 (May 5, 1998). In 1995, he was publicly reprimanded for failure to properly supervise his non-lawyer staff through his excessive delegation of authority, and by condoning the staff signing clients' names to documents. In re Weiner, 140 N.J. 621 (1995). He was temporarily suspended on July 22, 2004. In re Weiner, 180 N.J. 521 (2004).

On June 28, 2004, the DEC mailed a copy of the complaint to respondent by regular and certified mail, return receipt requested, to 646 Route 18, East Brunswick, New Jersey. The certified mail was returned unclaimed. The regular mail was not returned. Respondent did not file an answer to the complaint.

As a result of respondent's temporary suspension from practice on July 22, 2004, the DEC sent him a second letter on August 4, 2002, by regular and certified mail, return receipt requested, to both his office and home addresses. The letter notified respondent that, if he did not file an answer to the complaint within five days, the matter would be certified to us for the imposition of discipline. The certified mail was returned undelivered. The regular mail was not returned. Respondent did not file an answer to the complaint.

The complaint charged respondent with violating RPC 1.1(b) (pattern of neglect), RPC 1.3 (lack of diligence), RPC 1.4 (failure to communicate with a client), and RPC 5.1, presumably

either (a) (ensuring that other attorneys in the firm conform to the Rules of Professional Conduct), or (b) (failure to provide proper supervision to another attorney). The complaint also alleged that respondent's conduct involved deceit and misrepresentation, but it did not specifically charge a violation of RPC 8.4(c). The DEC's second letter to respondent amended the complaint to charge him with violating RPC 8.1(b) (failure to cooperate with disciplinary authorities).

In June 2001, Rose Koch and Charles Brown ("the grievants") retained respondent's firm in connection with the estate of their mother, Emma Brown. Even though the complaint alleged that the grievants retained respondent, the investigative report stated that the grievants had retained respondent's daughter, Randi Weiner. The grievants paid the firm \$2,000 and an additional \$250 to file an order to show cause in connection with the administration of the estate, which was to include claims of fraud in connection with the transfer of certain real estate owned by the estate. Respondent's firm confirmed the terms of their retention by letter dated June 7, 2001.

At some unknown date, the law firm terminated Randi Weiner's employment. Thereafter, Christopher Stubben and, later, Jeffrey Lichtenstein assumed responsibility for the matter.

Lichtenstein left the firm in November 2003.¹ According to the complaint, respondent failed to file an order to show cause or any pleadings on behalf of the grievants, and misled them for the next year that their matter was proceeding properly. In fact, the firm had not taken any action on their behalf.

The grievants called respondent's firm approximately fifteen times, to no avail. In August 2003, they also sent the firm a certified letter inquiring about the status of the matter, which went unanswered. In addition, from July to September 2003, the firm canceled nine appointments with the grievants.

Respondent's law firm neglected the grievants' matter from the time they retained the firm in June 2001, until they filed a grievance in September 2003. Despite the changes in attorney personnel at respondent's law firm, he failed to oversee the grievants' matter and its assignment to other attorneys within the firm.

After filing the grievance, the grievants learned that respondent never filed an order to show cause, never advanced any of their claims, and that real estate and other property of the estate was sold pursuant to an "Order to Allow the Sale of Property" dated January 3, 2003. Respondent's firm never

¹ Lichtenstein was temporarily suspended on March 2, 2004. In re Lichtenstein, 178 N.J. 498 (2004).

appeared at the hearing to object to the entry of the order, nor did it file an objection thereto.

The complaint charged that respondent's failure to institute an appropriate investigation or litigation on behalf of the grievants violated RPC 1.3; that his failure to keep his clients adequately and accurately informed and "his deceit and misrepresentation of facts" violated RPC 1.4; that his failure to oversee the grievants' matter or the attorneys in his office violated RPC 5.1; and that his conduct in this matter demonstrated a pattern of neglect, a violation of RPC 1.1(b).

Respondent told the DEC investigator that he was unable to produce the grievants' file or any record of services or notes to indicate that he was ever involved in their case. According to the investigative report, some of the grievants' telephone calls were directed to respondent; yet he did not reply to them. Respondent claimed that he knew nothing about the matter until the grievance was filed.

Respondent assumed that all of the cases that had been handled by his daughter "would naturally flow to the remaining senior attorneys."

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).

Although respondent may have assumed that the grievants' case would "naturally flow" to another senior attorney, it apparently did not. His failure to ensure that the grievants' interests were protected through the succession of attorneys in respondent's firm violated RPC 5.1(b). According to the investigative report, although some of the grievants' telephone calls and letters were directed to him, he never replied to their requests for information. Respondent's conduct in this regard violated RPC 1.4(a).

Respondent's firm never filed an order to show cause or any other pleadings, nor did it take any action on the grievants' behalf. The firm's failure to act resulted in the sale of real and personal property pursuant to an "Order to Allow the Sale of Property." Although respondent was only charged with lack of diligence, the firm's failure to take any action rose to the level of gross neglect. As the firm's supervising attorney, thus, respondent was responsible for the firm's attorneys' violations of RPC 1.1(a) and RPC 1.3. Because three matters are generally required for a pattern of neglect, we dismiss that charge.

Although the complaint did not specifically charge respondent with a violation of RPC 8.4(c) (conduct involving dishonesty, fraud, deceit or misrepresentation), it alleged that respondent misled the grievants that their case was proceeding properly, even though the firm had done nothing. We, therefore, find that respondent also violated that RPC.

Finally, the DEC amended the complaint to include a violation of RPC 8.1(b) (failure to respond to a lawful demand for information from a disciplinary authority). We so find, based on respondent's failure to file an answer to the complaint.

In sum, respondent's misconduct constituted violations of RPC 1.1(a), RPC 1.3, RPC 1.4(a), RPC 5.1(b), RPC 8.1(b), and RPC 8.4(c).

Cases involving a failure to supervise junior attorneys, coupled with a combination of other violations, such as gross neglect, lack of diligence, and failure to communicate with clients, will ordinarily result in a reprimand. See In re DeZao, 170 N.J. 199 (2001) (reprimand for gross neglect, pattern of neglect, lack of diligence, failure to communicate with a client, failure to explain a matter to the extent necessary to permit the client to make an informed decision about the representation, and failure to supervise an attorney); In re

Rovner, 164 N.J. 616 (2000) (reprimand for gross neglect, lack of diligence, failure to communicate with a client, and failure to supervise attorneys); In re Daniel, 146 N.J. 490 (1996) (reprimand imposed for lack of diligence, failure to communicate with the client and failure to supervise an attorney employee); and In re Libretti, 134 N.J. 123 (1993) (public reprimand imposed where the attorney exhibited gross neglect, lack of diligence, failure to expedite litigation, failure to communicate with the client, failure to withdraw from the representation, and failure to exercise properly the responsibilities of a supervisory attorney). See also In re Fusco, 142 N.J. 636 (1995) (reprimand imposed where the attorney improperly delegated recordkeeping responsibilities for his firm's trust account to an associate over whom he had direct supervisory authority; the attorney's failure to supervise the junior attorney resulted in the junior attorney's knowing misappropriation of \$262,000 from the firm's trust and business accounts.)

The aggravating factors in this matter that require the imposition of discipline greater than a reprimand include the default status of these proceedings and respondent's ethics history, which includes a private reprimand and a public

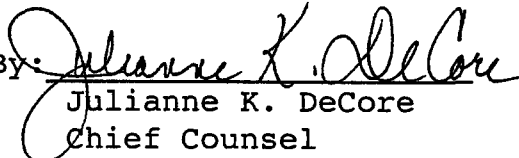
reprimand, the latter for failing to supervise his staff. Clearly, respondent has not learned from prior mistakes.

Based on these factors, we determine that a six-month suspension adequately addresses respondent's ethics transgressions. Chair Mary J. Maudsley did not participate.

We also determine that respondent should not be reinstated to the practice of law until all matters pending against him are resolved.

We further determine to require respondent to reimburse the Disciplinary Oversight Committee for administrative costs.

Disciplinary Review Board
William J. O'Shaughnessy
Vice-Chair

By: 
Julianne K. DeCore
Chief Counsel

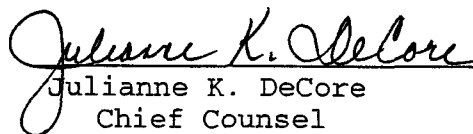
SUPREME COURT OF NEW JERSEY
DISCIPLINARY REVIEW BOARD
VOTING RECORD

In the Matter of A. Kenneth Weiner
Docket No. DRB 04-356

Decided: December 10, 2004

Disposition: Six-month suspension

| Members | Six-month Suspension | Reprimand | Admonition | Disqualified | Did not participate |
|---------------|-------------------------|-----------|------------|--------------|------------------------|
| Maudsley | | | | | X |
| O'Shaughnessy | X | | | | |
| Boylan | X | | | | |
| Holmes | X | | | | |
| Lolla | X | | | | |
| Pashman | X | | | | |
| Schwartz | X | | | | |
| Stanton | X | | | | |
| Wissinger | X | | | | |
| Total: | 8 | | | | 1 |


Julianne K. DeCore
Chief Counsel